

RECEIVED

JUN 10 2016

SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

William P. Keesley, Circuit Court Judge

Order (S.C. Ct. App. filed 1/13/2016)
2014-CP-32-01449

THE STATE,

RESPONDENT,

V.

QUENTIN RAYMAR PRICE,

PETITIONER

APPENDIX

JAEL D. GILREATH
Assistant Public Defender

Lexington County Public Defender's Office
407 West Main Street
Lexington, S. C. 29072
(803) 785-8873

ATTORNEY FOR PETITIONER.

ALAN WILSON
Attorney General

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P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
QUENTIN RAYMAR PRICE CDV WARRANT.....	1
QUENTIN RAYMAR PRICE BAIL FORM.....	3
QUENTIN RAYMAR PRICE BENCH WARRANT	5
MOTION TO VACATE BENCH WARRANT HEARING TRANSCRIPT, APRIL 7, 2014	6
CONTEMPT HEARING TRANSCRIPT, APRIL 9, 2014	30
PETITIONER BRIEF IN SUPPORT FOR APPEAL (COURT OF COMMON PLEAS)	69
RESPONDENT BRIEF IN SUPPORT FOR APPEAL (COURT OF COMMON PLEAS)	172
COURT OF COMMON PLEAS ORAL ARGUMENT TRANSCRIPT, SEPTEMBER 4, 2014.....	186
SUPPLEMENTAL ARGUMENT OF RESPONDENT (COURT OF COMMON PLEAS)	247
PETITIONER REPLY TO SUPPLEMENTAL ARGUMENT OF RESPONDENT (COURT OF COMMON PLEAS)	253
COURT OF COMMON PLEAS ORDER ON APPEAL, FILED OCTOBER 6, 2014.....	267
RESPONDENT PETITION FOR REHEARING (COURT OF COMMON PLEAS)	288
PETITIONER REPLY TO RESPONDENT'S PETITION FOR REHEARING (COURT OF COMMON PLEAS)	298
RESPONDENT MOTION TO DISMISS OR REMAND.....	306
PETITIONER RETURN TO MOTION TO DISMISS OR REMAND	334

ORDER DISMISSING APPEAL WITHOUT PREJUDICE, FILED JUNE 5, 2015	358
COURT OF COMMON PLEAS FINAL ORDER, FILED AUGUST 13, 2015	359
RESPONDENT MOTION TO DISMISS	361
PETITIONER RETURN TO MOTION TO DISMISS	371
ORDER DISMISSING APPEAL, FILED JANUARY 13, 2016	432
PETITIONER PETITION FOR REHEARING	433
RESPONDENT REPLY TO PETITION FOR REHEARING	455
ORDER DENYING PETITION FOR REHEARING, FILED MAY 12, 2016	456

#402 P.001002

10/28/2014 14:38

From:

ARREST WARRANT

2013A3210202227

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

13021164

against

Quentin Raymar Price

Address:

Phone:

SSN:

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

DL State: SC DL #:

DOB: Agency ORI: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: B. Booth - 0001

Offense: Domestic / Criminal Domestic Violence - 1st offense

Offense Code: 2671

Code/Ordinance Sec: 16-25-0020 (A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Quentin R. Price

11-20-13

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

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

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant

B. Booth

being duly sworn deposes and says that defendant

Quentin Raymar Price

did within this county and state on or about

11/19/2013

State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Lexington

In the following particulars:

DESCRIPTION OF OFFENSE: Domestic / Criminal Domestic Violence - 1st offense

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

That on November 19, 2013 while at [redacted] in the Gaston area of Lexington County SC, one Quentin Price did commit the crime of Criminal Domestic Violence first offense by jumping on Camisha Mims's back forcing her to the ground and then grabbing her lower jaw cutting the inside of her mouth. Quentin and Camisha have a two year old daughter in common. Affiant and others are witness to prove the same. This was done in the presence of their daughter as well. Case# 13-021164.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 521 Gibson Road

Lexington, SC 29072-

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/19/2013

defendant Quentin Raymar Price

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Lexington

) as set forth below.

DESCRIPTION OF OFFENSE: Domestic / Criminal Domestic Violence - 1st offense

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

Sworn to and subscribed before me on 11/20/2013

Signature of Issuing Judge

Brian W. Jeffcoat

Judge Code: 5058

Judge's Address Lexington County Judicial Center

Lexington, SC 29072-

Judge's Telephone (803)951-2595

Issuing Court ☒ Magistrate

☐ Municipal

☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

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

Judge BW ^{BAIL set}
 on 11-20-13
 Type and Amount: \$500-00513
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

Judge Adams ^{DISPOSITION before}
 on 10-28-14
 by plea
(Indicate jury trial, bench trial, plea, not, pros., etc.)

Disposition: guilty
 Sentence: \$55 fine + complete

DA consecutore

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

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Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS



BAIL PROCEEDING
FORM IISTATE OF SOUTH CAROLINA
COUNTY OF Lexington

IN THE Criminal Domestic Violence Court

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Price, Quentin Raymar
NAME OF DEFENDANTOffense Charged: Domestic / Criminal Domestic Violence - 1st offense (2013A3210202227)

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

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

This determination was based upon the following findings of fact: _____

Nature of Circumstances of Offense _____

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

THEREFORE, IT IS HEREBY ORDERED:

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

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

CASH IN LIEU OF BOND

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

CASH PERCENTAGE IN LIEU OF BOND

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

APPEARANCE RECOGNIZANCE WITH SURETY

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

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

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

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

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

INITIALS OF DEFENDANT

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

SIGNATURE OF JUDGE

DATE

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

SCCA/511A (Revised 3/2012)

Original Copy For The Trial Court - Copy For The Defendant

ACKNOWLEDGEMENT BY DEFENDANT

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

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

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

ADDRESS

SIGNATURE OF DEFENDANT

CITY/STATE/ZIP

TELEPHONE

DATE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

- a. ☐ Placement in custody. The defendant is placed in the custody of:

NAME OF PERSON OR ORGANIZATION

ADDRESS

CITY/STATE

ZIP

TELEPHONE

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

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

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

☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____

on _____ on condition that he return to the custody of _____

DATE(S)

NAME OF PERSON OR ORGANIZATION

at _____ as designated.

LOCATION

- d. ☐ Other conditions. The defendant will comply with the following other conditions of release:

Must Notify Court Immediately of Change of Address; No Contact with Victim; Do Not Return to Incident Location; Must have law enforcement escort to pick up personal belongings

APPEARANCE RECOGNIZANCE WITH SURETY

On the 20 day of NOVEMBER, 2013, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 5000.00, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

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

NAME OF SURETY

TELEPHONE

SIGNATURE OF SURETY BONDSMAN

ADDRESS OF SURETY

West Columbia, SC 29169

CITY/STATE/ZIP

SIGNATURE OF JUDGE

NAME OF INSURANCE COMPANY

DATE

ADDRESS OF INSURANCE COMPANY

M. Commissioner E. place

CITY/STATE/ZIP

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

2013A3210202227
Case Number

BENCH WARRANT
2013A3210202227

To any Lawful Constable or Officer:

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

Violate conditions of bond as imposed by The Honorable Brian Jeffcoat on November 20, 2013, in that he contacted the victim in a pending case against him to wit:
That on 03/09/14 around 6:00pm the defendant, Quentin Price, and his ex-girlfriend got into an argument after he started kicking her car and removed the vehicle license to her Dodge Neon. The defendant then charged Ms. Mims after she told him to leave causing her to fear that she was about to be assaulted. Ms. Mims then struck the defendant with a stun gun in self defense and ran back into her apartment to get away from him. The defendant then left the scene. This incident occurred at [REDACTED] in the Columbia area of Lexington County. Mr. Price and Ms. Mims formerly cohabitated together and have a child in common.

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

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

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

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

OFFICER'S RETURN

STATE OF SOUTH CAROLINA

Lexington County

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

Officer's Name

Date

Address: [REDACTED]

DL# [REDACTED]

State: SC

Height: 6'0"

Weight: 240

SSN: [REDACTED]

DOB: [REDACTED]

Sex: M

Race: B

Swansea Magistrate
04 - 2014 - 0018

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

MC3256

COPY

1 STATE OF SOUTH CAROLINA IN THE MAGISTRATE'S COURT
2 COUNTY OF LEXINGTON WARRANT # 2013A3210202227
3
4

5 STATE OF SOUTH CAROLINA,)
6 PLAINTIFF,)
7 VS.)
8 QUENTIN PRICE,)
9 DEFENDANT.)

APRIL 7, 2014
HEARING
(CONTEMPT OF COURT)

10
11
12
13 Contempt of Court Hearing held before
14 the Honorable Gary Reinhart, at Lexington County
15 Judicial Center, 205 East Main Street, Lexington,
16 South Carolina, on Monday, the 7th day of April
17 2014.
18
19
20

21
22
23
24
25

P R O C E E D I N G

Page 2

APPEARANCES

Representing the State of South Carolina:

NICOLE HOWLAND, ESQUIRE
Solicitor's Office
205 East Main Street
Lexington, South Carolina 29072

Representing the Defendant:

JAE L GILREATH, ESQUIRE
Public Defenders
407 1/2 Main Street
Lexington, South Carolina 29072

P R O C E E D I N G

Page 3

CONTENTS

1		
2	Proceedings	4
3	Argument by Counsel for Defendant	4
4	Argument by Counsel for the State	7
5	Findings of the Court	18
6	Certificate of Reporter	20
7	Word Index	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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P R O C E E D I N G

Page 4

1 Proceedings

2 THE COURT: All right. Quentin
3 Price.

4 (Inaudible conversation)

5 THE COURT: All right. Mr. Price
6 is actually in the detention center on a bench
7 warrant for an alleged bond violation issued by
8 Judge Whittle out of the Swansea Magistrate's
9 Office. This Court agreed to hear, or to see
10 Mr. Price on that bench warrant as he was to be
11 brought back before the Court, and that was as a
12 courtesy to defense counsel and the defendant so
13 that we could expedite him being seen.

14 In the meantime, I've received a
15 motion to vacate the bench warrant from defense
16 counsel, Ms. Gilreath. Ms. Gilreath, I'll hear
17 from you on your motion.

18 MS. GILREATH: Thank you, your
19 Honor. We are asking the Court to vacate the
20 bench warrant based on the fact that it was not
21 the proper mechanism for initiating the contempt
22 of court proceeding. Your Honor, I would first
23 refer to the Magistrate Court Bench Book that
24 says, a bench warrant may not be used to initiate
25 a criminal action. And this being a criminal

P R O C E E D I N G

Page 5

1 contempt of court proceeding, it is a criminal
2 action.

3 Criminal actions, obviously,
4 trigger certain Constitutional protections,
5 including the Fourteenth Amendment, the right to
6 receive due process, including those, including
7 the South Carolina Constitutional rights to due
8 process, which includes notice, being heard.

9 I think that the base of our
10 arguments that a rule to show cause would have
11 been the proper -- would have been the proper way
12 to initiate this action, your Honor. Based on --
13 I apologize. I thought you were about to speak.

14 THE COURT: I may still be
15 finished, but go ahead.

16 MS. GILREATH: Your Honor, the rule
17 to show cause is the proper procedure because it
18 gives -- it gives rule -- it gives the defendant
19 notice, the opportunity to be heard, the
20 opportunity to prepare a defense.

21 As you know, I don't normally raise
22 this objection, but I thought this case was
23 extremely compelling for bringing this up for the
24 simple fact that based on the fact that we had so
25 little notice to prepare a defense, you know.

P R O C E E D I N G

Page 6

1 Part of his Constitutional protections include,
2 you know, the right to compulsory process, to call
3 witnesses in your own defense. And the amount of
4 time that we had, we had witnesses, you know. My
5 client has -- he has a very good defense to the
6 alleged bond violation here that is the basis for
7 the contempt of court proceeding.

8 However, based on how little notice
9 we had, there was not time to subpoena those
10 witnesses to, you know, command them to be here.
11 So we would request that the bench warrant be
12 vacated and, instead, that a rule to show cause
13 would be issued to initiate any criminal contempt
14 of court proceedings.

15 THE COURT: Is that it?

16 MS. GILREATH: For the moment, your
17 Honor. And I do have supporting -- I have made --
18 I did file the motion which I would like to make a
19 Court's exhibit at this time. I did file it this
20 morning.

21 I think that Ms. Howland was -- had
22 a different issue with just getting a copy today.
23 But I just received notice of the issue on
24 Thursday and spent Friday and the weekend
25 preparing this and just filed it this morning, not

P R O C E E D I N G

Page 7

1 too long before court started.

2 So, at this point, I would like to
3 make this an exhibit and I do have supporting case
4 law that is the basis for my motion, your Honor.

5 THE COURT: Okay. And I'll let you
6 present it and provide all that to the Court. I
7 understand bench warrants and conditions of bond.
8 They're usually a matter between the defendant and
9 the Court. But, Ms. Howland, if you would like to
10 respond for the State, I'll be more than happy to
11 entertain any response from you.

12 MS. HOWLAND: Yes, your Honor.
13 Just procedurally, actually, Ms. Gilreath got
14 notice of this on Wednesday. I received -- it may
15 have been even before that, actually. Because,
16 actually, I think it was on Tuesday. Just to get
17 to procedural background, on March 31st, I was not
18 in the office, that was Monday. I received an
19 email from Judge Whittle's court stating that
20 Mr. Price was in jail and might be released on the
21 2nd.

22 Of course, I did not receive the --
23 even read the email until the 1st. I actually
24 sent an email to the Court saying we needed help
25 to take care of this quickly. I was concerned,

P R O C E E D I N G

Page 8

1 because I was going to be on annual leave Thursday
2 and Friday and was not scheduled to actually be in
3 Judge Whittle's court until this Thursday, I
4 didn't want to see Mr. Price sit down there.

5 So, at that point, I started
6 jumping through hoops to deal with Mr. Price prior
7 to going on leave. Based on the fact that
8 Mr. Price had a pending case, I reviewed my file
9 and it appeared that he might be represented by
10 Ms. Gilreath. But since Mr. Price had a history
11 of not showing up and doing what he was supposed
12 to, I wasn't sure if he'd actually shown up at the
13 court -- at the public defender's office as he was
14 required to. Because he had a pre-trial hearing
15 on February 14th where he was told by Judge
16 Whittle he was re-qualified for a public defender.
17 Originally, he didn't want one because he wanted a
18 "real" lawyer, not a PD.

19 However, he then showed up at his
20 pre-trial hearing with his mother on the 7th and
21 didn't have a PD yet, but he did show that he had
22 a card showing that he was supposed to have his
23 appointment on March 11th.

24 Let me also make the Court aware
25 that this is actually his second bond violation

P R O C E E D I N G

Page 9

1 because he was found in contempt December 16th for
2 hiding in the shower at the victim's house and it
3 gave him 30 days at that time.

4 Based on the fact that I thought
5 that he might be represented and had no way to
6 know he actually was because I hadn't seen him
7 again, I called Ms. Gilreath and actually emailed
8 her as well. Also, in an effort to accommodate
9 the defendant and not let him sit in jail for
10 another ten days, I contacted Judge Whittle's
11 court seeing if there was a way to get down there
12 or how we could accommodate Mr. Price, all while I
13 was trying to contact Ms. Gilreath.

14 At that point, Judge Whittle said
15 he would be more than happy to have the
16 defendant -- or a judge hear the case up here. I
17 walked over to find out who was sitting on the
18 bench. You were sitting on the bench. I asked if
19 you'd be willing hear Mr. Price.

20 At this point, I still didn't know
21 if he was represented. You said you were. I
22 asked that Ms. Cook go ahead and fax up the
23 charging document and the bond paperwork. And, at
24 that point, Mr. Price was brought forward because
25 he was in jail on another CDV, which is where this

P R O C E E D I N G

Page 10

1 contempt stems from.

2 At that point, since we've not
3 heard from Ms. Gilreath, but it looked like he
4 probably was represented, we seemed to think that
5 he was based on how he described the lawyer he had
6 talked with. At that point, the Court decided
7 that it would obviously not be appropriate to go
8 forth. But, once again, in an effort to
9 accommodate everyone quickly, we'll still keep it
10 up here and it would be heard today, the person
11 being brought in front of Judge Whittle.

12 So, procedurally, that's where we
13 are as far as what the State did everything they
14 could. So Ms. Gilreath actually had notice of
15 this, I guess, on Wednesday. And I will say that
16 I've just received this motion. Normally, I would
17 hate to go forward without something in writing
18 because I believe in being prepared, but I did
19 take about 20 minutes today to get up to speed on
20 what she brought forth.

21 The State's argument simply is
22 this. The bail proceeding forms, there are two of
23 them, form one and form two. These forms that are
24 currently being used by Magistrates Courts, they
25 were approved by the South Carolina Attorney

P R O C E E D I N G

Page 11

1 General on September 5th, 2006 and they're ones
2 that are actually being issued by court
3 administration. I suspect they're more current
4 than the Bench Book that was cited in her motion.

5 Anyway, on page -- on bond form
6 two, on the reverse side, the number one
7 acknowledgement by the defendant is, I understand
8 that if I violate any conditions of this order, a
9 warrant -- not a rule to show cause -- a warrant
10 for my arrest will be issued.

11 If you'd look at form one, it's
12 actually the very first thing the defendant
13 acknowledges: I understand that if I violate any
14 conditions of this order, a warrant, not a rule to
15 show cause, for my arrest will be issued.

16 This authority stems from statutory
17 authority that's actually under 22-3-950 as power
18 to punish for contempt which gives Magistrates
19 authority to do that. And then it's incorporated,
20 obviously, under 17-15-40, or a court shall state
21 conditions imposed. And that specifically says,
22 on releasing the person on any of the foregoing
23 conditions, the Court shall issue a brief order,
24 which basically comes with these forms which then
25 are stamped and judges may write additional

P R O C E E D I N G

Page 12

1 things, containing a statement of conditions
2 imposed. "Informing the person it's a penalty for
3 violation of the conditions of release and stating
4 that a warrant -- not a rule to show cause -- a
5 warrant for the person's arrest will be issued
6 immediately upon any such violation."

7 Now, as far as the issue with
8 Constitutional provisions and rights to jury
9 trials and things like that, Ms. Gilreath did
10 quote, state the Passmore, which is a 2005 Court
11 of Appeals South Carolina case. And it does talk
12 about this -- of course, this out of a Family
13 Court action. But the Court is very clear and
14 discusses all the cases about whether people have
15 a right to a jury trial and that sort of thing.
16 And, essentially, the -- if the penalty is
17 considered petty or less than six months in jail,
18 there's no right to a jury trial.

19 I find the timeliness argument --
20 and the reason it was brought up in this case
21 versus she had another client today who, a future
22 client that was in contempt because he wrote the
23 Court, that order -- that this argument didn't
24 come up for that one because it looked to be it
25 was going to be (inaudible) for defense counsel.

P R O C E E D I N G

Page 13

1 At this point, we feel like that it
2 is clear that the statute contemplates a warrant.
3 The form the defendant signs says a warrant.
4 These two particular documents are used throughout
5 the state. They were approved by the Attorney
6 General. They are issued by court administration.
7 Clearly, those two bodies, had they contemplated a
8 rule to show cause, would have put that.

9 Clearly, if a warrant was not the
10 mechanism to bring the defendant forth, the
11 statute would reflect that. But all we have is
12 Ms. Gilreath fending that it should be a rule to
13 show cause. There is no statutory authority,
14 there is no authority in the form that is approved
15 by the Attorney General's Office or the court
16 administration. And I don't see anywhere that
17 anything's on point in the case laws, the case law
18 that she cited.

19 However, I'm -- perhaps I'm
20 speaking out of turn, because since this is a
21 six-page motion and there's probably about twelve
22 cases cited, I have not had the opportunity to
23 read all of them. But based on the information
24 that I was able to review, specifically Passmore
25 which seems to be the one that discusses these

P R O C E E D I N G

Page 14

1 cases in-depth, it's clear the State's position
2 is, the bench warrant is the appropriate mechanism
3 and, frankly, the only mechanism that this Court
4 has to proceed with a contempt issue related to
5 the violation of a bond restriction.

6 THE COURT: Ms. Gilreath, anything
7 in response?

8 MS. GILREATH: Yes, your Honor.
9 First of all, we agree that where there has been a
10 bond violation, the proper thing to do is issue a
11 bench warrant. However, the whole purpose of
12 having a contempt of court proceeding is to
13 determine whether there has been a bond violation.

14 When the Court determines that
15 there has been a bond violation, at that point,
16 then a bench warrant is proper. At that point,
17 those Constitutional protections, because there
18 has been a proceeding where the defendant had
19 notice, a right to be heard, a right to confront
20 the witnesses against him, where all those rights
21 had been protected, at that point when it has been
22 determined to actually be a bond violation, that's
23 where we argue that a bench warrant is proper.

24 If the defendant receives a rule to
25 show cause and fails to appear, a bench warrant is

P R O C E E D I N G

Page 15

1 proper. If the defendant fails to appear for --

2 THE COURT: Wait a minute. Wait a
3 minute. You just told me that you agree that a
4 bench warrant needs to be issued, but then it's
5 only if he fails to appear for a rule to show
6 cause.

7 MS. GILREATH: I apologize, your
8 Honor. I'm listing other potential times when a
9 bench warrant would be proper. My argument is
10 that a bench warrant is proper upon a finding in a
11 proper court proceeding that a bond violation has
12 actually occurred. Otherwise, there would be no
13 point in having the contempt of court proceeding.
14 Otherwise, there would be no point in issuing a
15 rule to show cause.

16 They would just -- officers could
17 just present and the State could just present a
18 probable cause showing that there may have been
19 one, a bench warrant could be issued, they sit in
20 the detention center on a bench warrant with the
21 inability to bond out, they're essentially being
22 punished for an event that they've not yet been --
23 it has not yet been determined that they actually
24 committed. And that's part of the reason that
25 this case is so compelling is because --

P R O C E E D I N G

Page 16

1 THE COURT: Well, I don't mean to
2 cut you off, but let's address it. With that same
3 argument, then, you're basically saying you should
4 have a rule to show cause, try issuing an arrest
5 warrant.

6 MS. GILREATH: No, your Honor.
7 Because once an arrest warrant is issued, the
8 defendant then goes to bond court and has the
9 opportunity to bond out because they're presumed
10 innocent until proven guilty beyond a reasonable
11 doubt. The reasonable doubt standard still
12 applies in criminal contempt of court proceedings.

13 In one of the cases I have cited in
14 the motion, Poston v. Poston, and that is not --
15 that is a Family Court hearing but it deals with a
16 criminal contempt of court issue for constructive
17 contempt. The difference between constructive
18 contempt and direct contempt, of course, is that
19 direct contempt occurs within the presence of the
20 Court. And that was the reason that that issue
21 was not being raised with my future client, as she
22 mentioned, because --

23 THE COURT: In Poston, was the
24 defendant -- and if you know, you said it was a
25 Family Court hearing, he wasn't out on bond under

P R O C E E D I N G

Page 17

1 a contract that he had signed with the Court,
2 correct?

3 MS. GILREATH: It was a slightly
4 different situation in that he was not out on bond
5 on a criminal charge. But our argument is that
6 the statute that deals with bond violations and
7 the right --

8 THE COURT: The statute that deals
9 with bond violations is South Carolina -- is
10 Section Code 17-15-40, which I have pulled in
11 preparing to hear your motion after you had filed
12 it this morning. And, of course, Ms. Howland who,
13 in turn, actually read it and so I will not read
14 it again. And I will also acknowledge that the
15 back of the form four that the defendant signs is
16 very clear of what the penalties are if you
17 violate conditions of the bond.

18 Instead of going back and forth
19 with this between the two of you, I'm prepared to
20 rule at this time and I'm going to deny your
21 motion to vacate the bench warrant. However, in
22 the fact that you feel like you need some time to
23 prepare a proper defense, it looks like -- is the
24 defendant still awaiting bond on his other charge
25 as well or has he made bond on that charge?

P R O C E E D I N G

Page 18

1 MS. GILREATH: He has not yet made
2 bond. Because he'd been sitting on a bench
3 warrant, he couldn't bond out anyways. So he
4 hasn't attempted to make bond yet, your Honor.

5 THE COURT: Okay. Is 48 hours
6 enough time to prepare your defense and have your
7 witnesses here?

8 MS. GILREATH: We will do our best,
9 your Honor.

10 THE COURT: If it's not, I'll give
11 you more.

12 MS. GILREATH: Well, your Honor --

13 THE COURT: I'm asking you.

14 MS. GILREATH: Yes, your Honor.
15 That'll be enough.

16 THE COURT: Okay. All right. Then
17 I'll hear the -- either that or I can transfer it
18 back to -- I can let Judge Whittle hear it. I was
19 doing it as a benefit for --

20 MS. GILREATH: Your Honor, we do
21 have some evidence here to present today. We just
22 don't have the witnesses that, you know --

23 THE COURT: I'm not going to hear
24 half today and half tomorrow -- I mean, half
25 Wednesday. I'll hear it all together. All right.

P R O C E E D I N G

Page 19

1 We'll put it on the docket for Wednesday.

2 MS. GILREATH: Thank you, your
3 Honor.

4 THE COURT: Thank you.

5 (End of Recording)
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P R O C E E D I N G

Page 20

1 CERTIFICATE OF REPORTER
2
3

4 I, Laura S. DeCillis, Certified Court
5 Reporter and Notary Public in and for the State of
6 South Carolina at Large, do hereby certify:

7 That the foregoing transcript was
8 produced from a recording, not taken by same, and
9 that all audible testimony was transcribed by me
10 to the best of my ability.

11 I further certify that I am neither
12 related to nor counsel for any party to the cause
13 pending or interested in the events thereof.

14 Witness my hand, I have hereunto affixed
15 my official seal this 30th day of June 2014, at
16 Columbia, Richland County, South Carolina.

17 *Laura S. DeCillis*

18 Laura S. DeCillis,
19 Certified Court Reporter
20 State of South Carolina at Large
21 My Commission expires
22 August 10, 2015
23
24
25

P R O C E E D I N G

Page 1

A ability 20:7 able 13:24 accommodate 9:8,12 10:9 acknowledge 17:14 acknowledge... 11:7 acknowledges 11:13 action 4:25 5:2 5:12 12:13 actions 5:3 additional 11:25 address 16:2 administration 11:3 13:6,16 affixed 20:10 agree 14:9 15:3 agreed 4:9 ahead 5:15 9:22 alleged 4:7 6:6 Amendment 5:5 amount 6:3 annual 8:1 anything's 13:17 Anyway 11:5 anyways 18:3 apologize 5:13 15:7 Appeals 12:11 appear 14:25 15:1,5 APPEARANC... 2:1	argue 14:23 argument 3:3,4 10:21 12:19,23 15:9 16:3 17:5 arguments 5:10 arrest 11:10,15 12:5 16:4,7 asked 9:18,22 asking 4:19 18:13 attempted 18:4 Attorney 10:25 13:5,15 audible 20:7 August 20:17 authority 11:16 11:17,19 13:13 13:14 awaiting 17:24 aware 8:24	beyond 16:10 bodies 13:7 bond 4:7 6:6 7:7 8:25 9:23 11:5 14:5,10,13,15 14:22 15:11,21 16:8,9,25 17:4 17:6,9,17,24 17:25 18:2,3,4 Book 4:23 11:4 brief 11:23 bring 13:10 bringing 5:23 brought 4:11 9:24 10:11,20 12:20	Certified 20:4 20:15 certify 20:5,8 charge 17:5,24 17:25 charging 9:23 cited 11:4 13:18 13:22 16:13 clear 12:13 13:2 14:1 17:16 Clearly 13:7,9 client 6:5 12:21 12:22 16:21 Code 17:10 Columbia 20:11 come 12:24 comes 11:24 command 6:10 Commission 20:16 committed 15:24 compelling 5:23 15:25 compulsory 6:2 concerned 7:25 conditions 7:7 11:8,14,21,23 12:1,3 17:17 confront 14:19 considered 12:17 Constitutional 5:4,7 6:1 12:8 14:17	4:21 5:1 6:7,13 9:1 10:1 11:18 12:22 14:4,12 15:13 16:12,16 16:17,18,18,19 CONTENTS 3:1 contract 17:1 conversation 4:4 Cook 9:22 copy 6:22 correct 17:2 counsel 3:3,4 4:12,16 12:25 20:9 County 1:2,14 20:11 course 7:22 12:12 16:18 17:12 court 1:1,8,13 3:5 4:2,5,9,11 4:19,22,23 5:1 5:14 6:7,14,15 7:1,5,6,9,19,24 8:3,13,24 9:11 10:6 11:2,20 11:23 12:10,13 12:13,23 13:6 13:15 14:3,6 14:12,14 15:2 15:11,13 16:1 16:8,12,15,16 16:20,23,25 17:1,8 18:5,10 18:13,16,23 19:4 20:4,15
appeared 8:9 applies 16:12 appointment 8:23 appropriate 10:7 14:2 approved 10:25 13:5,14 April 1:7,16	B back 4:11 17:15 17:18 18:18 background 7:17 bail 10:22 base 5:9 based 4:20 5:12 5:24 6:8 8:7 9:4 10:5 13:23 basically 11:24 16:3 basis 6:6 7:4 believe 10:18 bench 4:6,10,15 4:20,23,24 6:11 7:7 9:18 9:18 11:4 14:2 14:11,16,23,25 15:4,9,10,19 15:20 17:21 18:2 benefit 18:19 best 18:8 20:7	C call 6:2 called 9:7 card 8:22 care 7:25 Carolina 1:1,5 1:16 2:3,5,9 5:7 10:25 12:11 17:9 20:5,11,16 case 5:22 7:3 8:8 9:16 12:11,20 13:17,17 15:25 cases 12:14 13:22 14:1 16:13 cause 5:10,17 6:12 11:9,15 12:4 13:8,13 14:25 15:6,15 15:18 16:4 20:9 CDV 9:25 center 1:15 4:6 15:20 certain 5:4 Certificate 3:6 20:1	constructive 16:16,17 contact 9:13 contacted 9:10 containing 12:1 contemplated 13:7 contemplates 13:2 contempt 1:8,13	18:13,16,23 19:4 20:4,15 Court's 6:19 courtesy 4:12 Courts 10:24 criminal 4:25,25 5:1,3 6:13 16:12,16 17:5 current 11:3 currently 10:24

P R O C E E D I N G

Page 2

cut 16:2	due 5:6,7	11:24	happy 7:10 9:15	information
D	E	forth 10:8,20	hate 10:17	13:23
day 1:16 20:11	East 1:15 2:5	13:10 17:18	hear 4:9,16 9:16	Informing 12:2
days 9:3,10	effort 9:8 10:8	forward 9:24	9:19 17:11	initiate 4:24
deal 8:6	either 18:17	10:17	18:17,18,23,25	5:12 6:13
deals 16:15 17:6	email 7:19,23,24	found 9:1	heard 5:8,19	initiating 4:21
17:8	emailed 9:7	four 17:15	10:3,10 14:19	innocent 16:10
December 9:1	entertain 7:11	Fourteenth 5:5	hearing 1:7,13	interested 20:9
decided 10:6	ESQUIRE 2:4,7	frankly 14:3	8:14,20 16:15	issue 6:22,23
DeCillis 20:4,15	essentially 12:16	Friday 6:24 8:2	16:25	11:23 12:7
defendant 1:9	15:21	front 10:11	held 1:13	14:4,10 16:16
2:6 3:3 4:12	event 15:22	further 20:8	help 7:24	16:20
5:18 7:8 9:9,16	events 20:9	future 12:21	hereunto 20:10	issued 4:7 6:13
11:7,12 13:3	evidence 18:21	16:21	hiding 9:2	11:2,10,15
13:10 14:18,24	exhibit 6:19 7:3	G	history 8:10	12:5 13:6 15:4
15:1 16:8,24	expedite 4:13	Gary 1:14	Honor 4:19,22	15:19 16:7
17:15,24	expires 20:16	General 11:1	5:12,16 6:17	issuing 15:14
defender 8:16	extremely 5:23	13:6	7:4,12 14:8	16:4
defender's 8:13	F	General's 13:15	15:8 16:6 18:4	J
Defenders 2:8	fact 4:20 5:24,24	getting 6:22	18:9,12,14,20	JAEL 2:7
defense 4:12,15	8:7 9:4 17:22	Gilreath 2:7	19:3	jail 7:20 9:9,25
5:20,25 6:3,5	fails 14:25 15:1	4:16,16,18	Honorable 1:14	12:17
12:25 17:23	15:5	5:16 6:16 7:13	hoops 8:6	judge 4:8 7:19
18:6	Family 12:12	8:10 9:7,13	hours 18:5	8:3,15 9:10,14
deny 17:20	16:15,25	10:3,14 12:9	house 9:2	9:16 10:11
described 10:5	far 10:13 12:7	13:12 14:6,8	Howland 2:4	18:18
detention 4:6	fax 9:22	15:7 16:6 17:3	6:21 7:9,12	judges 11:25
15:20	February 8:15	18:1,8,12,14	17:12	Judicial 1:15
determine 14:13	feel 13:1 17:22	18:20 19:2	I	jumping 8:6
determined	fending 13:12	give 18:10	Immediately	June 20:11
14:22 15:23	file 6:18,19 8:8	gives 5:18,18,18	12:6	jury 12:8,15,18
determines	filed 6:25 17:11	11:18	imposed 11:21	K
14:14	find 9:17 12:19	go 5:15 9:22	12:2	keep 10:9
difference 16:17	finding 15:10	10:7,17	in-depth 14:1	know 5:21,25
different 6:22	Findings 3:5	goes 16:8	inability 15:21	6:2,4,10 9:6,20
17:4	finished 5:15	going 8:1,7	inaudible 4:4	16:24 18:22
direct 16:18,19	first 4:22 11:12	12:25 17:18,20	12:25	L
discusses 12:14	14:9	18:23	include 6:1	Large 20:5,16
13:25	foregoing 11:22	good 6:5	includes 5:8	Laura 20:4,15
docket 19:1	20:6	guess 10:15	including 5:5,6	law 7:4 13:17
document 9:23	form 10:23,23	guilty 16:10	5:6	laws 13:17
documents 13:4	11:5,11 13:3	H	incorporated	lawyer 8:18 10:5
doing 8:11 18:19	13:14 17:15	half 18:24,24,24	11:19	leave 8:1,7
doubt 16:11,11	forms 10:22,23	hand 20:10	Index 3:7	

let's 16:2 Lexington 1:2 1:14,15 2:5,9 listing 15:8 little 5:25 6:8 long 7:1 look 11:11 looked 10:3 12:24 looks 17:23	Notary 20:4 notice 5:8,19,25 6:8,23 7:14 10:14 14:19 number 11:6	point 7:2 8:5 9:14,20,24 10:2,6 13:1,17 14:15,16,21 15:13,14 position 14:1 Poston 16:14,14 16:23 potential 15:8 power 11:17 pre-trial 8:14,20 prepare 5:20,25 17:23 18:6 prepared 10:18 17:19 preparing 6:25 17:11 presence 16:19 present 7:6 15:17,17 18:21 presumed 16:9 Price 1:8 4:3,5 4:10 7:20 8:4,6 8:8,10 9:12,19 9:24 prior 8:6 probable 15:18 probably 10:4 13:21 procedural 7:17 procedurally 7:13 10:12 procedure 5:17 proceed 14:4 proceeding 4:22 5:1 6:7 10:22 14:12,18 15:11 15:13 proceedings 3:2 4:1 6:14 16:12 process 5:6,8 6:2 produced 20:6 proper 4:21 5:11 5:11,17 14:10 14:16,23 15:1	15:9,10,11 17:23 protected 14:21 protections 5:4 6:1 14:17 proven 16:10 provide 7:6 provisions 12:8 public 2:8 8:13 8:16 20:4 pulled 17:10 punish 11:18 punished 15:22 purpose 14:11 put 13:8 19:1	release 12:3 released 7:20 releasing 11:22 Reporter 3:6 20:1,4,15 represented 8:9 9:5,21 10:4 Representing 2:3,6 request 6:11 required 8:14 respond 7:10 response 7:11 14:7 restriction 14:5 reverse 11:6 review 13:24 reviewed 8:8 Richland 20:11 right 4:2,5 5:5 6:2 12:15,18 14:19,19 17:7 18:16,25 rights 5:7 12:8 14:20 rule 5:10,16,18 6:12 11:9,14 12:4 13:8,12 14:24 15:5,15 16:4 17:20
M Magistrate 4:23 Magistrate's 1:1 4:8 Magistrates 10:24 11:18 Main 1:15 2:5,8 March 7:17 8:23 matter 7:8 mean 16:1 18:24 mechanism 4:21 13:10 14:2,3 mentioned 16:22 minute 15:2,3 minutes 10:19 moment 6:16 Monday 1:16 7:18 months 12:17 morning 6:20,25 17:12 mother 8:20 motion 4:15,17 6:18 7:4 10:16 11:4 13:21 16:14 17:11,21	O objection 5:22 obviously 5:3 10:7 11:20 occurred 15:12 occurs 16:19 office 2:4 4:9 7:18 8:13 13:15 officers 15:16 official 20:11 Okay 7:5 18:5 18:16 once 10:8 16:7 ones 11:1 opportunity 5:19,20 13:22 16:9 order 11:8,14,23 12:23 Originally 8:17	Q Quentin 1:8 4:2 quickly 7:25 10:9 quote 12:10	R raise 5:21 raised 16:21 re-qualified 8:16 read 7:23 13:23 17:13,13 real 8:18 reason 12:20 15:24 16:20 reasonable 16:10,11 receive 5:6 7:22 received 4:14 6:23 7:14,18 10:16 receives 14:24 recording 19:5 20:6 refer 4:23 reflect 13:11 Reinhart 1:14 related 14:4 20:9	S S 20:4,15 saying 7:24 16:3 says 4:24 11:21 13:3 scheduled 8:2 seal 20:11 second 8:25 Section 17:10 see 4:9 8:4 13:16 seeing 9:11 seen 4:13 9:6 sent 7:24 September 11:1
N need 17:22 needed 7:24 needs 15:4 neither 20:8 NICOLE 2:4 normally 5:21 10:16	P page 11:5 paperwork 9:23 part 6:1 15:24 particular 13:4 party 20:9 Passmore 12:10 13:24 PD 8:18,21 penalties 17:16 penalty 12:2,16 pending 8:8 20:9 people 12:14 person 10:10 11:22 12:2 person's 12:5 petty 12:17 PLAINTIFF 1:6			

P R O C E E D I N G

Page 4

show 5:10,17 6:12 8:21 11:9 11:15 12:4 13:8,13 14:25 15:5,15 16:4 showed 8:19 shower 9:2 showing 8:11,22 15:18 shown 8:12 side 11:6 signed 17:1 signs 13:3 17:15 simple 5:24 simply 10:21 sit 8:4 9:9 15:19 sitting 9:17,18 18:2 situation 17:4 six 12:17 six-page 13:21 slightly 17:3 Solicitor's 2:4 sort 12:15 South 1:1,5,16 2:3,5,9 5:7 10:25 12:11 17:9 20:5,11 20:16 speak 5:13 speaking 13:20 specifically 11:21 13:24 speed 10:19 spent 6:24 stamped 11:25 standard 16:11 started 7:1 8:5 state 1:1,5 2:3 3:4 7:10 10:13 11:20 12:10 13:5 15:17 20:4,16 State's 10:21 14:1	statement 12:1 stating 7:19 12:3 statute 13:2,11 17:6,8 statutory 11:16 13:13 stems 10:1 11:16 Street 1:15 2:5,8 subpoena 6:9 supporting 6:17 7:3 supposed 8:11 8:22 sure 8:12 suspect 11:3 Swansea 4:8 T take 7:25 10:19 taken 20:6 talk 12:11 talked 10:6 ten 9:10 testimony 20:7 Thank 4:18 19:2 19:4 thereof 20:9 thing 11:12 12:15 14:10 things 12:1,9 think 5:9 6:21 7:16 10:4 thought 5:13,22 9:4 Thursday 6:24 8:1,3 time 6:4,9,19 9:3 17:20,22 18:6 timeliness 12:19 times 15:8 today 6:22 10:10 10:19 12:21 18:21,24 told 8:15 15:3 tomorrow 18:24	transcribed 20:7 transcript 20:6 transfer 18:17 trial 12:15,18 trials 12:9 trigger 5:4 try 16:4 trying 9:13 Tuesday 7:16 turn 13:20 17:13 twelve 13:21 two 10:22,23 11:6 13:4,7 17:19 U understand 7:7 11:7,13 usually 7:8 V v 16:14 vacate 4:15,19 17:21 vacated 6:12 versus 12:21 victim's 9:2 violate 11:8,13 17:17 violation 4:7 6:6 8:25 12:3,6 14:5,10,13,15 14:22 15:11 violations 17:6,9 VS 1:7 W Wait 15:2,2 walked 9:17 want 8:4,17 wanted 8:17 warrant 1:1 4:7 4:10,15,20,24 6:11 11:9,9,14 12:4,5 13:2,3,9 14:2,11,16,23	14:25 15:4,9 15:10,19,20 16:5,7 17:21 18:3 warrants 7:7 wasn't 8:12 16:25 way 5:11 9:5,11 we'll 10:9 19:1 we've 10:2 Wednesday 7:14 10:15 18:25 19:1 weekend 6:24 Whittle 4:8 8:16 9:14 10:11 18:18 Whittle's 7:19 8:3 9:10 willing 9:19 Witness 20:10 witnesses 6:3,4 6:10 14:20 18:7,22 Word 3:7 write 11:25 writing 10:17 wrote 12:22 X Y Z 0 1 1/2 2:8 10 20:17 11th 8:23 14th 8:15 16th 9:1 17-15-40 11:20 17:10 18 3:5	1st 7:23 2 20 3:6 10:19 2005 12:10 2006 11:1 2013A321020... 1:1 2014 1:7,17 20:11 2015 20:17 205 1:15 2:5 22-3-950 11:17 29072 2:5,9 2nd 7:21 3 30 9:3 30th 20:11 31st 7:17 4 4 3:2,3 407 2:8 48 18:5 5 5th 11:1 6 7 7 1:7 3:4 7th 1:16 8:20

1 STATE OF SOUTH CAROLINA IN THE MAGISTRATE'S COURT
2 COUNTY OF LEXINGTON WARRANT # 2013A3210202227

3
4
5 STATE OF SOUTH CAROLINA,)
6 PLAINTIFF,)
7 VS.)
8 QUENTIN PRICE,)
9 DEFENDANT.)
10

APRIL 9, 2014
HEARING
(CONTEMPT OF COURT)

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14 Contempt of Court Hearing held before
15 the Honorable Gary Reinhart, at Lexington County
16 Judicial Center, 205 East Main Street, Lexington,
17 South Carolina, on Wednesday, April 9, 2014.
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P R O C E E D I N G

Page 2

APPEARANCES

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CONTENTS

1		
2	Proceedings	4
3	Witnesses on behalf of the State	
4	Meagan Penny	
	Direct/Howland	7
5	Cross/Gilreath	10
6	Kimishia Mims	
	Direct/Howland	17
7	Cross/Gilreath	18
8	Witnesses on behalf of the Defendant	
9	Shannon M. O'Cain	
	Direct/Gilreath	22
10	Quentin Price	
11	Direct/Gilreath	26
12	Court's Findings	31
13	Certificate of Reporter	33
14	Word Index	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

P R O C E E D I N G

Page 4

1 Proceedings

2 THE COURT: All right. Quentin
3 Price.

4 (Discussion off the record)

5 THE COURT: All right. Mr. Price,
6 you are currently in the detention center on a
7 bench warrant that was issued by Judge Whittle.

8 MR. PRICE: Yes, sir.

9 THE COURT: It stated there was
10 cause that you had violated conditions of your
11 bond, that information was brought to Judge
12 Whittle by the Lexington County Sheriff's
13 Department. Ms. Howland, I'll hear from the
14 State.

15 MS. HOWLAND: Your Honor, is the
16 Court going to take judicial notice about his bond
17 was set on November 20th, 2013 and the conditions
18 were no contact?

19 THE COURT: Of course, I am.

20 MS. HOWLAND: Your Honor, at this
21 point, we would call Meagan Penny.

22 MS. GILREATH: Your Honor, can I
23 make for the record, just to renew my objection
24 that this proceeding is violating my client's
25 procedural due process rights because there was no

P R O C E E D I N G

Page 5

1 rule to show cause issued? And I'm just stating
2 that for the record.

3 THE COURT: So noted.

4 MS. GILREATH: Thank you, your
5 Honor.

6 MS. HOWLAND: And, your Honor, I
7 would certainly renew all of our objections and
8 reasoning that were part of the record on Monday's
9 hearing.

10 THE COURT: Also so noted.

11 MS. HOWLAND: Your Honor, I would
12 like if the Court can give directions as far as
13 limiting the scope of examination. We are not
14 getting into the underlying criminal charge. I do
15 not want to get prior sworn testimony.

16 THE COURT: What I want you to do
17 is, Ms. Howland, is to set the basis of the
18 violation. The Court will go ahead and take
19 notice that the defendant was arrested on the
20 charge of criminal domestic violence. He had a
21 bond hearing on November the 20th of 2013 for the
22 offense of criminal domestic violence, at which
23 time Judge Jeffcoat set a \$5,000 surety bond.

24 That bond form was signed by the
25 defendant, Mr. Quentin Price. The conditions of

P R O C E E D I N G

Page 6

1 the bond were that the defendant must notify court
2 immediately of any change of address. He was to
3 have no contact with the victim. The victim's
4 form indicates that Ms. Kimishia Mims is the
5 victim in the crime of the criminal domestic
6 violence.

7 He was not to return to the
8 incident location. There was a new address
9 required. So I'm assuming that the incident
10 location was Centre Street in West Columbia. In
11 addition, he was advised that he was to have a law
12 enforcement escort to pick up any belongings from
13 that location.

14 That bond was posted by Gene Frye,
15 bail bondsman, on November the 20th, 2013. And,
16 again, the defendant signed, acknowledging that he
17 understands that if I violate any condition of
18 this order, a warrant will be -- a warrant for my
19 arrest will be issued. And it states, I
20 understand and have been informed that I have a
21 ~~right and an obligation to be present at trial and~~
22 should I fail to attend the court, the trial will
23 proceed in my absence. And it's been explained to
24 me that if I fail to appear before the Court as
25 required, a warrant for my arrest will be issued.

1 All right. Ms. Howland, please
2 tell me the State's position as to what the --
3 before you call any witnesses, I want to know what
4 the violation of the -- I want you to lay the
5 groundwork of what the violation is.

6 MS. HOWLAND: Your Honor, the
7 violation of the bond is having contact with the
8 victim, Kimishia Mims, on March 9th, 2014.

9 THE COURT: All right. And,
10 Ms. Gilreath, it's your position that your client
11 wishes to contest that, correct?

12 MS. GILREATH: Yes, your Honor.

13 THE COURT: All right.
14 Ms. Howland, you may call a witness that can
15 provide testimony to the Court that Mr. Price was
16 in violation on the date that you state.

17 MS. HOWLAND: We would call Meagan
18 Penny.

19 THE COURT: Ms. Penny, raise your
20 right hand, please, ma'am.

21 Whereupon:

22 Meagan Penny, having been duly
23 sworn and cautioned to speak the truth, the
24 whole truth and nothing but the truth,
25 testified as follows:

P R O C E E D I N G

Page 8

1 THE COURT: All right. And, if you
2 would, state your full name for the record and
3 step a little bit closer to the microphone.

4 THE WITNESS: Meagan Penny.

5 THE COURT: All right. Ms. Penny,
6 please answer any questions that the State may
7 have for you.

8 DIRECT EXAMINATION

9 BY MS. HOWLAND:

10 Q. Ms. Penny, do you know who Quentin Price
11 is?

12 A. Yes.

13 Q. Do you see him in the courtroom today?

14 A. Yes.

15 Q. Would you please describe him?

16 A. Tall --

17 Q. Where he is.

18 A. Oh. Over there.

19 Q. Over there being where?

20 A. In the red.

21 Q. And would you recognize Mr. Price if you
22 saw him out on the road?

23 A. Yes.

24 Q. What name do you know Mr. Price by?

25 A. Jeffrey.

1 Q. Do you happen to know why he's called
2 Jeffrey?

3 A. That's his dad's name.

4 Q. And on March 9th, 2014, did you see
5 Mr. Price?

6 A. Yes.

7 Q. Where did you see him?

8 A. In my neighborhood.

9 Q. Okay. And where is that?

10 A. River Oaks.

11 Q. Was Kimishia Mims present?

12 A. Yes.

13 Q. Tell me when you first -- where were you
14 when you first saw Mr. Price?

15 A. In my vehicle.

16 Q. Okay. And do you know about what time
17 it was?

18 A. Probably about ten, maybe. I'm not
19 sure.

20 Q. Was it dark?

21 A. Yes.

22 Q. And tell me what happened. Did you see
23 Mr. Price around Ms. Mims?

24 A. Yes.

25 Q. Did you see that when you first drove

P R O C E E D I N G

Page 10

1 up?

2 A. No.

3 Q. Okay. When did you see that?

4 A. When I heard her outside yelling about
5 him to stop kicking her window.

6 Q. And did you go downstairs when you heard
7 the yelling?

8 A. Well, I came outside.

9 Q. I'm sorry. Came outside? And who did
10 you see when you came outside?

11 A. Jeffrey and Kimishia.

12 THE COURT: Thank you. Do you want
13 to cross-examine?

14 MS. GILREATH: Yes, your Honor.

15 THE COURT: Sure. Go ahead.

16 CROSS-EXAMINATION

17 BY MS. GILREATH:

18 Q. Ms. Penny, you've stated that you know
19 Mr. Price as Jeffrey. When did you come to know
20 him by the name Jeffrey?

21 A. I've known him by that since I met him.

22 Q. And why was it that you said that he's
23 known by Jeffrey?

24 A. That's his dad's name.

25 Q. Have you ever met his dad?

1 A. No. But I met his mom.

2 Q. You met his mom?

3 A. Uh-huh.

4 Q. And his mom said that his dad's name is
5 Jeffrey so that's what he calls --

6 A. That's what they call him, yes.

7 Q. Okay. Okay. Ms. Penny, did you tell
8 Investigator Burt that Kimishia was your sister
9 and that she had come to visit you?

10 MS. HOWLAND: Objection, your
11 Honor. That's not relevant.

12 MS. GILREATH: This was relevant
13 to -- this was the date of the alleged bond
14 violation. This is what she told the officer when
15 he responded to the scene the day that he was
16 accused of being there.

17 MS. HOWLAND: It's not relevant
18 whether he was there or not, your Honor.

19 THE COURT: If that's the only
20 issue before the Court, the only issue before the
21 Court today was Mr. Price and contact with
22 Ms. Mims after November 20th, 2013. Your question
23 will remain to that fact.

24 MS. GILREATH: Yes, your Honor.

25 BY MS. GILREATH:

P R O C E E D I N G

Page 12

1 Q. Ms. Penny, were you -- at what point did
2 you see Mr. Price, or Jeffrey, on scene?

3 A. When I pulled up to my apartment
4 complex, I opened my door and he came walking up
5 asking me had I seen Kimishia Mims.

6 Q. Okay. Now, see, before, isn't it true
7 that you said that you pulled up and he was
8 already in contact with her?

9 MS. HOWLAND: Objection, your
10 Honor. That's not what she testified to.

11 MS. GILREATH: It's fine, your
12 Honor. I'll move on.

13 BY MS. GILREATH:

14 Q. Ms. Penny, isn't it true that you told
15 Investigator Burt that you arrived shortly after
16 eight o'clock p.m.?

17 A. I can't remember. I'm not sure.

18 Q. Do you know what time you arrived?

19 A. I know it was dark outside. But with
20 the daylight savings, now it would be daytime.

21 Q. And isn't it true that you told
22 Investigator Burt that, at that time, you observed
23 Kimishia and Quentin, whom you only knew as
24 Jeffrey, arguing in the parking lot?

25 A. No. I got there first.

1 Q. Okay. So, now, your testimony today is
2 that you got there first?

3 A. I was there. He was already in the
4 neighborhood. Whenever I pulled up and opened my
5 door, he walked up to it. Kimishia was nowhere in
6 sight then.

7 Q. Okay. And where did Kimishia come from?
8 At what point did Kimishia show up?

9 A. I'm not sure.

10 Q. You're not sure?

11 A. I'm not sure because I went ahead on
12 upstairs.

13 Q. Okay.

14 THE COURT: Is there something you
15 want to say to me?

16 MR. PRICE: Oh, no, sir, I don't.

17 THE COURT: All right. Then you
18 quit just sitting there constantly staring at me.

19 MR. PRICE: I'm sorry, sir. She
20 just told me to keep my eyes on you, that's all.

21 She told me --

22 THE COURT: Keep your eyes on --
23 she told you to keep your eyes -- to keep staring
24 at me?

25 MS. GILREATH: I advised my client

P R O C E E D I N G

Page 14

1 that during -- while the hearing was going on,
2 that he should stay facing you, your Honor.

3 MR. PRICE: I apologize. And I'll
4 look down.

5 THE COURT: It's a little different
6 than being stared down in the courtroom, so --

7 MS. GILREATH: I apologize, your
8 Honor. I was not aware of what was going on.

9 THE COURT: Go ahead and continue.

10 BY MS. GILREATH:

11 Q. Ms. Penny, did you speak with someone
12 from our office about this case? Did you speak
13 with a lady named Shannon O'Cain about this case
14 sometime within the past few days?

15 A. I think someone called me. I'm not sure
16 if that's the name. I don't know.

17 Q. Okay. Well, so you spoke with someone
18 in the past couple of days about this case?

19 A. Uh-huh.

20 Q. Do you remember what you told her?

21 A. Yeah. What happened. The same thing I
22 told them.

23 Q. Isn't it true that you told her that you
24 were in the house the whole time and you saw no
25 altercation?

P R O C E E D I N G

Page 15

1 MS. HOWLAND: Objection, your
2 Honor. She's asked this question about twelve
3 different ways and the victim is being consistent.
4 It's now badgering. And I object to her
5 continuing to ask the same question over and over
6 and over.

7 MS. GILREATH: First of all, your
8 Honor, this is not the victim. Second of all,
9 your Honor, this is meant to impeach her prior
10 statements.

11 MS. HOWLAND: Well, then, she can
12 call Ms. O'Cain. But, at this point, she has been
13 very clear about testifying.

14 THE COURT: I see. You asked her
15 the question about what she asked -- what she told
16 Ms. O'Cain and her answer was exactly what I've
17 already said today. If Ms. O'Cain is going to
18 testify later, she can come up and give a
19 different version.

20 MS. GILREATH: Yes, your Honor. I
21 have no further questions.

22 THE COURT: Ms. Mims, I have a
23 question for you.

24 MS. HOWLAND: She's not Ms. Mims,
25 your Honor.

P R O C E E D I N G

Page 16

1 THE WITNESS: No. That's --

2 THE COURT: Now you've got me doing
3 it. Ms. Penny, correct? All right. What date
4 did you see Mr. Price?

5 THE WITNESS: March the 9th.

6 THE COURT: And who did you see him
7 with?

8 THE WITNESS: Whenever I got there,
9 nobody. It was just him by his self.

10 THE COURT: Okay. Did you see him
11 again that day?

12 THE WITNESS: I seen him when I
13 heard Kimishia outside yelling. I walked outside
14 and they were both outside.

15 THE COURT: You saw Kimishia Mims
16 and Quentin Price together on March the 9th?

17 THE WITNESS: Yeah.

18 THE COURT: Thank you.
19 Ms. Gilreath, anything that you would like to say
20 or anyone you would like to call?

21 MS. GILREATH: Yes, your Honor.

22 I'd like to call Ms. Shannon O'Cain.

23 MS. HOWLAND: Your Honor, we do
24 have another witness we would put up, but I don't
25 know if you just want to go back and forth between

P R O C E E D I N G

Page 17

1 the two. We have one more witness we can put up.

2 THE COURT: I thought you didn't
3 have -- that the officer wasn't here.

4 MS. HOWLAND: No. We offer the
5 victim.

6 THE COURT: Oh. I apologize. Hold
7 on Ms. O'Cain. All right. Ma'am, if you would,
8 please raise your right hand.

9 Whereupon:

10 Kimishia Mims, having been duly
11 sworn and cautioned to speak the truth, the
12 whole truth and nothing but the truth,
13 testified as follows:

14 THE COURT: And please state your
15 full name, please.

16 THE WITNESS: Kimishia Mims.

17 THE COURT: Thank you, Ms. Mims.
18 Please answer any questions that Ms. Howland may
19 have for you.

20 DIRECT EXAMINATION

21 BY MS. HOWLAND:

22 Q. Ms. Mims, did you see Mr. Price on March
23 9th, 2014?

24 A. Yes, ma'am.

25 Q. Where did you see him?

P R O C E E D I N G

Page 18

1 A. At River Oaks Apartments.

2 Q. Do you know what time it was?

3 A. No, ma'am, I don't.

4 Q. Was it dark?

5 A. Yes, ma'am.

6 Q. Did he have any conversation with you?

7 A. Yes, ma'am.

8 MS. HOWLAND: No further
9 questions.

10 THE COURT: Ms. Gilreath?

11 CROSS-EXAMINATION

12 BY MS. GILREATH:

13 Q. Ms. Mims --

14 A. Yes?

15 Q. -- do you remember giving a written
16 statement on March 9th, 2014, related to this
17 incident?

18 A. Yes.

19 MS. HOWLAND: Your Honor, we're not
20 getting into the -- she's wanting to get into the
21 underlying facts of the case and the issue before
22 us --

23 THE COURT: Well, I'm going to
24 renew my instructions to both of you, that the
25 questions are and the only matter before this

1 Court today is not the events of March the 9th.
2 They are whether or not Mr. Price had contact with
3 Ms. Mims. That is the only matter before the
4 Court in the contempt hearing today.

5 MS. GILREATH: Your Honor, I would
6 argue that we should be allowed to ask about what
7 she told the police. Since when the police
8 arrived on the scene, they did not locate
9 Mr. Price there, I believe that what she told the
10 police about him being there and about what
11 happened and the different stories that she told,
12 because she did tell different stories, makes what
13 she said relevant and goes to her credibility as a
14 witness here.

15 MS. HOWLAND: Your Honor, there may
16 be various versions of events, but she never
17 wavered from the fact that Mr. Price was there.
18 Getting into the underlying facts creates problems
19 with the underlying criminal charge, perhaps
20 having jeopardy attached because they're sworn
21 statements. And, therefore --

22 THE COURT: I'm going to agree to
23 that. I'm actually -- this whole issue is a
24 matter of an issue between the Court and
25 Mr. Price.

P R O C E E D I N G

Page 20

1 So, Ms. Mims, did you see Mr. Price
2 on March the 9th, 2014?

3 THE WITNESS: Yes, sir, I did.

4 THE COURT: All right. Did
5 Mr. Price speak to you?

6 THE WITNESS: Yes, sir. And he
7 physically assaulted me, yes, sir.

8 THE COURT: Now, Ms. Gilreath, any
9 questions you want to ask towards that?

10 MS. GILREATH: Nothing, your
11 Honor.

12 THE COURT: All right.

13 MS. HOWLAND: Your Honor, that
14 would be the State's presentation of the --

15 THE COURT: Thank you, ma'am. You
16 may proceed.

17 MS. HOWLAND: Thank you, your
18 Honor. Just from a (inaudible) record, we'd like
19 to call Detective Gamble, just to say that he is
20 who sought out the bench warrant, if you feel
21 that's necessary.

22 MS. GILREATH: Your Honor, we would
23 object to any testimony given by Detective Gamble.
24 He was not there.

25 THE COURT: Calm down. Everybody

P R O C E E D I N G

Page 21

1 relax. I wasn't going to let him speak to start
2 with.

3 MS. HOWLAND: Okay. Just
4 procedurally, he was who served him.

5 THE COURT: All right.
6 Ms. Gilreath, is there anything you would like to
7 present on behalf of your client?

8 MS. GILREATH: Yes, your Honor.
9 And, for the record, we did intend to call -- we
10 have written sworn statements from two witnesses
11 who are going to be relevant to Mr. Price's
12 outlying defense. However, given the short
13 notice, we had --

14 THE COURT: Whoa, whoa, whoa.
15 Let's stop and be very careful on the short notice
16 comment. We went through this on Monday. You
17 knew a few days before, and I specifically asked
18 you on Monday if two days was enough time to
19 prepare for this hearing today and you told me it
20 was more than enough. I offered to give you more
21 time. So I --

22 MS. GILREATH: Your Honor, we
23 weren't aware that more time was an option.

24 THE COURT: Ms. Gilreath, when I
25 look at you and ask you is two days enough and you

P R O C E E D I N G

Page 22

1 say, yes, it is, I would not ask you if two days
2 is enough if I was not prepared to give you more
3 time.

4 MS. GILREATH: Yes, your Honor.

5 THE COURT: All right.

6 MS. GILREATH: Your Honor, I would
7 call Shannon O'Cain.

8 THE COURT: Ms. O'Cain, please
9 raise your right hand.

10 Whereupon,

11 Shannon M. O'Cain, having been duly
12 sworn and cautioned to speak the truth, the
13 whole truth and nothing but the truth,
14 testified as follows:

15 THE COURT: All right. State your
16 full name for the record for me, please.

17 THE WITNESS: Shannon Mary O'Cain.

18 THE COURT: Thank you, ma'am.
19 Please answer any questions that Ms. Gilreath may
20 have for you.

21 DIRECT EXAMINATION

22 BY MS. GILREATH:

23 Q. Ms. O'Cain, did you speak with an
24 individual named Andriana Peake related to this
25 case?

1 A. Yes.

2 Q. And who is Ms. Andriana Peake?

3 A. He is -- she is Quentin Price's direct
4 supervisor.

5 Q. And when did you speak to Ms. Peake?

6 A. I spoke with her twice last week, and
7 also spoke with her yesterday and met with her
8 today.

9 Q. And did you make every effort to attempt
10 to assist in this case in getting her here for
11 today?

12 A. Yes.

13 Q. Did you serve a subpoena upon her
14 today?

15 A. Yes.

16 Q. And did you speak with her regarding a
17 doctrine related to work records of Mr. Price --

18 A. Yes.

19 Q. -- from March 9th, 2014?

20 A. Yes.

21 Q. Would you recognize that if I showed it
22 to you?

23 A. Yes.

24 MS. HOWLAND: Objection, your
25 Honor. It's not authenticated, it's a copy,

P R O C E E D I N G

Page 24

1 they're not here, and I don't believe it's
2 admissible.

3 MS. GILREATH: Your Honor, as you
4 know, this is a contempt of court hearing. It is
5 not a trial. The rules of evidence have been
6 relaxed.

7 THE COURT: I'm going to look at
8 it. I mean, if you have something that you want
9 me to see, his work records, then let me see it.

10 MS. GILREATH: Your Honor, we do
11 have sworn statements from (inaudible), who filled
12 out a work record, as well as another co-worker
13 who's name is listed on there, too, who was with
14 him at work during this time who indicated that
15 Mr. Price was at work from 2:00 p.m. to
16 11:00 p.m., which includes the time frame during
17 which he would have gone by (inaudible). And I
18 have the supporting statements here, your Honor,
19 that have been sworn and notarized.

20 We spoke with these individuals.
21 Their supervisor, who also confirmed that
22 Mr. Price was at work and would not allow him time
23 off to come, as you know, in order for a court
24 subpoena to get back to the proper amount of time
25 (inaudible) notice, we did serve him with one.

P R O C E E D I N G

Page 25

1 MS. HOWLAND: Your Honor, I can't
2 hear Ms. Gilreath. She's acting like she's having
3 a personal conversation with you. So I can hear
4 her, if she could speak up, please.

5 THE COURT: Well, I think both of
6 you need to relax and remember that your respect
7 of everyone in this courtroom.

8 MS. GILREATH: I apologize, your
9 Honor. I did not realize that Ms. Howland could
10 not hear me. Would you like for me to repeat --

11 THE COURT: No. No, ma'am, I do
12 not. You can go ahead and step down now.

13 MS. GILREATH: Your Honor, I would
14 also call my client as a witness (inaudible).

15 THE COURT: Do you need anything
16 else from Ms. O'Cain?

17 MS. GILREATH: No, your Honor.

18 THE COURT: You may be seated
19 unless Ms. Howland has a question.

20 MS. HOWLAND: No. We actually have
21 got a rebuttal witness (inaudible).

22 THE COURT: Okay. Is your client
23 going to say anything?

24 MS. GILREATH: Yes, your Honor.

25 THE COURT: Go ahead and stand up.

P R O C E E D I N G

Page 26

1 Mr. Price, do you understand that anything you
2 say -- or, excuse me.

3 Whereupon:

4 Quentin Price, having been duly
5 sworn and cautioned to speak the truth, the
6 whole truth and nothing but the truth,
7 testified as follows:

8 THE COURT: All right.

9 DIRECT EXAMINATION

10 BY MS. GILREATH:

11 Q. Mr. Price, on March 9th, 2014, around
12 eight o'clock p.m., where were you?

13 A. I was at work.

14 Q. And can you tell us where work is?

15 A. West Columbia Wal-Mart.

16 Q. West Columbia Wal-Mart?

17 A. Yes, ma'am.

18 Q. Now, do you actually work for Wal-Mart
19 or do you work for another company?

20 A. It's like another company. When I'm
21 with a temp service, we'd start -- sometimes I
22 work from eight to five, sometimes I work from two
23 to eleven (inaudible).

24 Q. Okay. And you go from different -- from
25 Wal-Mart to Wal-Mart, sometimes starting at one

1 and sometimes ending up at another one?

2 A. Yes, ma'am.

3 Q. And that's your testimony today, that
4 you were working for this company, working with a
5 Wal-Mart, on March 9th, 2014 around eight
6 o'clock p.m.?

7 A. Yes, ma'am.

8 Q. Did you leave work at any time?

9 A. No, ma'am.

10 MS. GILREATH: Nothing further,
11 your Honor.

12 THE COURT: Which Wal-Mart were you
13 at?

14 THE WITNESS: West Columbia.

15 THE COURT: And how far is that
16 from the location that the other folks says you
17 were at?

18 THE WITNESS: I don't know, sir. I
19 don't even know what the location is and where
20 that at.

21 MS. HOWLAND: Your Honor, would the
22 Court take notice that the documentation presented
23 by Ms. Gilreath actually indicates Camden, not
24 West Columbia?

25 MS. GILREATH: And, your Honor,

P R O C E E D I N G

Page 28

1 that's --

2 THE COURT: That's what I saw.

3 MS. GILREATH: -- the reason for
4 the question. We spoke with the supervisor. They
5 bounce around from Wal-Mart to Wal-Mart, so the
6 one he keeps on file --

7 THE COURT: But there's nothing in
8 the statement that says that. I read the
9 statements. It doesn't say that we went -- it
10 basically says, took a lunch break from six to
11 seven and doesn't say anything about moving
12 locations. I mean, they both are very clear.

13 It says -- the only thing it says
14 is there was a lunch break from six to seven and
15 no one saw him leave. The man just told me he was
16 at the Wal-Mart in West Columbia. This says he
17 was in Camden.

18 MS. GILREATH: And, your Honor, for
19 that, I could call Ms. O'Cain again for an
20 explanation since she was the one who spoke with
21 ~~their a supervisor who indicated that that's~~
22 what happened.

23 THE COURT: What I'm saying is, you
24 gave me documentation that he was at work. I
25 asked the man where he was at. He was not where

1 this documentation says he was at based on what he
2 just told me.

3 Ms. Howland, you said you have a
4 witness, someone about this documentation as
5 well?

6 MS. HOWLAND: Your Honor, we would
7 just -- I think that what's been discovered
8 (inaudible).

9 THE COURT: All right. It comes
10 down to this. I have two people that didn't show
11 up but I've got, they supposedly cooperated enough
12 to get signatures that Ms. Gilreath told me were
13 sworn and notarized and I'm looking at one
14 statement that's not notarized. I'm looking at --
15 the second statement is also not notarized. Well,
16 one page is but I don't know what page it's on.
17 It's just a page with nothing on it but no notary
18 on the signature to the defendant's. Of course,
19 obviously, if the notary is not on the signature
20 itself --

21 MS. GILREATH: Your Honor, I can
22 call Ms. O'Cain to verify the statements. She
23 took them this morning. She went and met them at
24 work which, as it turns out, was the Wal-Mart in
25 West Columbia because they were coming there from

P R O C E E D I N G

Page 30

1 a different Wal-Mart.

2 THE COURT: Well, it comes down to
3 that, then I have the victim indicates and then I
4 have another independent witness that was present
5 that knows both Mr. Price and Ms. Mims.

6 Mr. Mims, I basically feel that
7 you're in contempt of court for violating the
8 conditions of your bond.

9 MS. GILREATH: Mr. Price?

10 THE COURT: Excuse me. Mr. Price.
11 When was this bench warrant served on you,
12 Mr. Price?

13 MR. PRICE: (Inaudible).

14 MS. HOWLAND: Your Honor, actually,
15 he was in jail until -- he was in jail on a
16 previous CDV conviction out of West Columbia and
17 he was sentenced out on March 13th and his release
18 date was April 2nd. Which was why I worked so
19 hard, knowing that after April 2nd, the bench
20 warrant would be what was holding him. But he was
21 ~~actually serving time on another sentence and~~
22 which was why we tried to deal with this prior to
23 his release date.

24 So, originally, he was getting
25 transported tomorrow down in Swansea to -- and he

P R O C E E D I N G

Page 31

1 actually was serving time on another offense up
2 until April 2nd. So we would ask if he's going to
3 get credit, we're asking for 30 days, that it
4 starts April 2nd, because prior to that, the bench
5 warrant wasn't holding him.

6 MS. GILREATH: Your Honor, we would
7 ask that it start as of the date that it was
8 served upon him. There's nothing prohibiting the
9 Court from awarding some of that time
10 (inaudible).

11 THE COURT: Was the West Columbia
12 CDV that you were serving time on, was it with the
13 same victim as this case?

14 MR. PRICE: Yes, sir.

15 MS. HOWLAND: Your Honor, as a
16 reminder, this is his second violation.

17 THE COURT: All right. Mr. Price,
18 again, I find you are in violation of the
19 condition of your bond as it was set by Judge
20 Jeffcoat on November 20th of 2013, requiring that
21 ~~you have absolutely no contact with Ms. Kimishia~~
22 Mims. I find that you violated that condition in
23 the fact that you did have contact with Ms. Mims.

24 For that contempt, I'm going to
25 sentence you to 30 days in jail. Those 30 days

P R O C E E D I N G

Page 32

1 will begin April the 2nd. Good luck to you, sir.

2 (End of Recording)

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CERTIFICATE OF REPORTER

I, Laura S. DeCillis, Certified Court Reporter and Notary Public in and for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was produced from a recording, not taken by same, and that all audible testimony was transcribed by me to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 30th day of June 2014, at Columbia, Richland County, South Carolina.

Laura S. DeCillis

Laura S. DeCillis,
Certified Court Reporter
State of South Carolina at Large
My Commission expires
August 10, 2015

P R O C E E D I N G

Page 1

A ability 33:7 absence 6:23 absolutely 31:21 accused 11:16 acknowledging 6:16 acting 25:2 addition 6:11 address 6:2,8 admissible 24:2 advised 6:11 13:25 affixed 33:10 agree 19:22 ahead 5:18 10:15 13:11 14:9 25:12,25 alleged 11:13 allow 24:22 allowed 19:6 altercation 14:25 amount 24:24 Andriana 22:24 23:2 answer 8:6 15:16 17:18 22:19 apartment 12:3 Apartments 18:1 apologize 14:3,7 17:6 25:8 appear 6:24 APPEARANC... 2:1	19:8 asked 15:2,14,15 21:17 28:25 asking 12:5 31:3 assaulted 20:7 assist 23:10 assuming 6:9 attached 19:20 attempt 23:9 attend 6:22 audible 33:7 August 33:17 authenticated 23:25 awarding 31:9 aware 14:8 21:23 B back 16:25 24:24 badgering 15:4 bail 6:15 based 29:1 basically 28:10 30:6 basis 5:17 behalf 3:3,8 21:7 believe 19:9 24:1 belongings 6:12 bench 4:7 20:20 30:11,19 31:4 best 33:7 bit 8:3 bond 4:11,16 5:21,23,24 6:1 6:14 7:7 11:13 30:8 31:19 bondsman 6:15 bounce 28:5 break 28:10,14 brought 4:11 Burt 11:8 12:15 12:22 C	call 4:21 7:3,14 7:17 11:6 15:12 16:20,22 20:19 21:9 22:7 25:14 28:19 29:22 called 9:1 14:15 calls 11:5 Calm 20:25 Camden 27:23 28:17 careful 21:15 Carolina 1:1,5 1:17 2:3,5,9 33:5,11,16 case 14:12,13,18 18:21 22:25 23:10 31:13 cause 4:10 5:1 33:9 cautioned 7:23 17:11 22:12 26:5 CDV 30:16 31:12 center 1:16 4:6 Centre 6:10 certainly 5:7 Certificate 3:13 33:1 Certified 33:4 33:15 certify 33:5,8 change 6:2 charge 5:14,20 19:19 clear 15:13 28:12 client 7:10 13:25 21:7 25:14,22 client's 4:24 closer 8:3 co-worker 24:12 Columbia 6:10 26:15,16 27:14	27:24 28:16 29:25 30:16 31:11 33:11 come 10:19 11:9 13:7 15:18 24:23 comes 29:9 30:2 coming 29:25 comment 21:16 Commission 33:16 company 26:19 26:20 27:4 complex 12:4 condition 6:17 31:19,22 conditions 4:10 4:17 5:25 30:8 confirmed 24:21 consistent 15:3 constantly 13:18 contact 4:18 6:3 7:7 11:21 12:8 19:2 31:21,23 contempt 1:8,14 19:4 24:4 30:7 31:24 CONTENTS 3:1 contest 7:11 continue 14:9 continuing 15:5 conversation 18:6 25:3 conviction 30:16 cooperated 29:11	29:18 court 1:1,8,14 4:2,5,9,16,19 5:3,10,12,16 5:18 6:1,22,24 7:9,13,15,19 8:1,5 10:12,15 11:19,20,21 13:14,17,22 14:5,9 15:14 15:22 16:2,6 16:10,15,18 17:2,6,14,17 18:10,23 19:1 19:4,22,24 20:4,8,12,15 20:25 21:5,14 21:24 22:5,8 22:15,18 24:4 24:7,23 25:5 25:11,15,18,22 25:25 26:8 27:12,15,22 28:2,7,23 29:9 30:2,7,10 31:9 31:11,17 33:4 33:15 Court's 3:12 courtroom 8:13 14:6 25:7 creates 19:18 credibility 19:13 credit 31:3 crime 6:5 criminal 5:14,20 5:22 6:5 19:19 CROSS-EXA... 10:16 18:11 cross-examine 10:13 Cross/Gilreath 3:5,7 currently 4:6 D

dad 10:25	doctrine 23:17	19:18	21:6,8,22,24	31:5
dad's 9:3 10:24	documentation	fail 6:22,24	22:4,6,19,22	Honor 4:15,20
11:4	27:22 28:24	far 5:12 27:15	24:3,10 25:2,8	4:22 5:5,6,11
dark 9:20 12:19	29:1,4	feel 20:20 30:6	25:13,17,24	7:6,12 10:14
18:4	doing 16:2	file 28:6	26:10 27:10,23	11:11,18,24
date 7:16 11:13	domestic 5:20	filled 24:11	27:25 28:3,18	12:10,12 14:2
16:3 30:18,23	5:22 6:5	find 31:18,22	29:12,21 30:9	14:8 15:2,8,9
31:7	door 12:4 13:5	Findings 3:12	31:6	15:20,25 16:21
day 11:15 16:11	downstairs 10:6	fine 12:11	give 5:12 15:18	16:23 18:19
33:11	drove 9:25	first 9:13,14,25	21:20 22:2	19:5,15 20:11
daylight 12:20	due 4:25	12:25 13:2	given 20:23	20:13,18,22
days 14:14,18	duly 7:22 17:10	15:7	21:12	21:8,22 22:4,6
21:17,18,25	22:11 26:4	five 26:22	giving 18:15	23:25 24:3,10
22:1 31:3,25		folks 27:16	go 5:18 10:6,15	24:18 25:1,9
31:25		follows 7:25	14:9 16:25	25:13,17,24
daytime 12:20	E	17:13 22:14	25:12,25 26:24	27:11,21,25
deal 30:22	East 1:16 2:5	26:7	goes 19:13	28:18 29:6,21
DeCillis 33:4,15	effort 23:9	foregoing 33:6	going 4:16 14:1	30:14 31:6,15
defendant 1:9	eight 12:16	form 5:24 6:4	14:8 15:17	Honorable 1:15
2:6 3:8 5:19,25	26:12,22 27:5	forth 16:25	18:23 19:22	house 14:24
6:1,16	eleven 26:23	frame 24:16	21:1,11 24:7	Howland 2:4
defendant's	enforcement	Frye 6:14	25:23 31:2,24	4:13,15,20 5:6
29:18	6:12	full 8:2 17:15	Good 32:1	5:11,17 7:1,6
Defenders 2:8	escort 6:12	22:16	groundwork 7:5	7:14,17 8:9
defense 21:12	ESQUIRE 2:4,7	further 15:21		11:10,17 12:9
Department	events 19:1,16	18:8 27:10		15:1,11,24
4:13	33:9	33:8	H	16:23 17:4,18
describe 8:15	Everybody		hand 7:20 17:8	17:21 18:8,19
Detective 20:19	20:25	G	22:9 33:10	19:15 20:13,17
20:23	evidence 24:5	Gamble 20:19	happen 9:1	21:3 23:24
detention 4:6	exactly 15:16	20:23	happened 9:22	25:1,9,19,20
different 14:5	examination	Gary 1:15	14:21 19:11	27:21 29:3,6
15:3,19 19:11	5:13 8:8 17:20	Gene 6:14	28:22	30:14 31:15
19:12 26:24	22:21 26:9	getting 5:14	hard 30:19	
30:1	excuse 26:2	18:20 19:18	hear 4:13 25:2,3	
direct 8:8 17:20	30:10	23:10 30:24	25:10	I
22:21 23:3	expires 33:16	Gilreath 2:7	heard 10:4,6	immediately 6:2
26:9	explained 6:23	4:22 5:4 7:10	16:13	impeach 15:9
Direct/Gilreath	explanation	7:12 10:14,17	hearing 1:7,14	inaudible 20:18
3:9,11	28:20	11:12,24,25	5:9,21 14:1	24:11,17,25
Direct/Howland	eyes 13:20,22,23	12:11,13 13:25	19:4 21:19	25:14,21 26:23
3:4,6	F	14:7,10 15:7	24:4	29:8 30:13
directions 5:12	facing 14:2	15:20 16:19,21	held 1:14	31:10
discovered 29:7	fact 11:23 19:17	18:10,12 19:5	hereunto 33:10	incident 6:8,9
Discussion 4:4	31:23	20:8,10,22	Hold 17:6	18:17
	facts 18:21		holding 30:20	includes 24:16

P R O C E E D I N G

Page 3

independent 30:4 Index 3:14 indicated 24:14 28:21 indicates 6:4 27:23 30:3 individual 22:24 individuals 24:20 information 4:11 informed 6:20 instructions 18:24 intend 21:9 interested 33:9 Investigator 11:8 12:15,22 issue 11:20,20 18:21 19:23,24 issued 4:7 5:1 6:19,25	7:8 9:11 10:11 11:8 12:5,23 13:5,7,8 16:13 16:15 17:10,16 31:21 knew 12:23 21:17 know 7:3 8:10 8:24 9:1,16 10:18,19 12:18 12:19 14:16 16:25 18:2 24:4,23 27:18 27:19 29:16 knowing 30:19 known 10:21,23 knows 30:5	17:24 18:3,5,7 20:15 22:18 25:11 26:17 27:2,7,9 MAGISTRAT... 1:1 Main 1:16 2:5,8 man 28:15,25 March 7:8 9:4 16:5,16 17:22 18:16 19:1 20:2 23:19 26:11 27:5 30:17 Mary 22:17 matter 18:25 19:3,24 Meagan 3:4 4:21 7:17,22 8:4 mean 24:8 28:12 meant 15:9 met 10:21,25 11:1,2 23:7 29:23 microphone 8:3 Mims 3:6 6:4 7:8 9:11,23 11:22 12:5 15:22,24 16:15 17:10,16 17:17,22 18:13 19:3 20:1 30:5 30:6 31:22,23 mom 11:1,2,4 Monday 21:16 21:18 Monday's 5:8 morning 29:23 move 12:12 moving 28:11	named 14:13 22:24 necessary 20:21 need 25:6,15 neighborhood 9:8 13:4 neither 33:8 never 19:16 new 6:8 NICOLE 2:4 notarized 24:19 29:13,14,15 notary 29:17,19 33:4 noted 5:3,10 notice 4:16 5:19 21:13,15 24:25 27:22 notify 6:1 November 4:17 5:21 6:15 11:22 31:20	offered 21:20 office 2:4 14:12 officer 11:14 17:3 official 33:11 Oh 8:18 13:16 17:6 Okay 9:9,16 10:3 11:7,7 12:6 13:1,7,13 14:17 16:10 21:3 25:22 26:24 opened 12:4 13:4 option 21:23 order 6:18 24:23 originally 30:24 outlying 21:12 outside 10:4,8,9 10:10 12:19 16:13,13,14
J JAEL 2:7 jail 30:15,15 31:25 Jeffcoat 5:23 31:20 Jeffrey 8:25 9:2 10:11,19,20,23 11:5 12:2,24 jeopardy 19:20 Judge 4:7,11 5:23 31:19 judicial 1:16 4:16 June 33:11	L lady 14:13 Large 33:5,16 Laura 33:4,15 law 6:11 lay 7:4 leave 27:8 28:15 Let's 21:15 Lexington 1:2 1:15,16 2:5,9 4:12 limiting 5:13 listed 24:13 little 8:3 14:5 locate 19:8 location 6:8,10 6:13 27:16,19 locations 28:12 look 14:4 21:25 24:7 looking 29:13,14 lot 12:24 luck 32:1 lunch 28:10,14	N name 8:2,24 9:3 10:20,24 11:4 14:16 17:15 22:16 24:13	O O'Cain 3:9 14:13 15:12,16 15:17 16:22 17:7 22:7,8,11 22:17,23 25:16 28:19 29:22 o'clock 12:16 26:12 27:6 Oaks 9:10 18:1 object 15:4 20:23 objection 4:23 11:10 12:9 15:1 23:24 objections 5:7 obligation 6:21 observed 12:22 obviously 29:19 offense 5:22 31:1 offer 17:4	P p.m 12:16 24:15 24:16 26:12 27:6 page 29:16,16,17 parking 12:24 part 5:8 party 33:9 Peake 22:24 23:2,5 pending 33:9 Penny 3:4 4:21 7:18,19,22 8:4 8:5,10 10:18 11:7 12:1,14 14:11 16:3 people 29:10 personal 25:3 physically 20:7 pick 6:12 PLAINTIFF 1:6 please 7:1,20 8:6
K keep 13:20,22,23 13:23 keeps 28:6 kicking 10:5 Kimishia 3:6 6:4	M M 3:9 22:11 ma'am 7:20 17:7			

8:15 17:8,14 17:15,18 22:8 22:16,19 25:4 point 4:21 12:1 13:8 15:12 police 19:7,7,10 position 7:2,10 posted 6:14 prepare 21:19 prepared 22:2 present 6:21 9:11 21:7 30:4 presentation 20:14 presented 27:22 previous 30:16 Price 1:8 3:10 4:3,5,8 5:25 7:15 8:10,21 8:24 9:5,14,23 10:19 11:21 12:2 13:16,19 14:3 16:4,16 17:22 19:2,9 19:17,25 20:1 20:5 23:17 24:15,22 26:1 26:4,11 30:5,9 30:10,12,13 31:14,17 Price's 21:11 23:3 prior 5:15 15:9 30:22 31:4 Probably 9:18 problems 19:18 procedural 4:25 procedurally 21:4 proceed 6:23 20:16 proceeding 4:24 Proceedings 3:2 4:1 process 4:25	produced 33:6 prohibiting 31:8 proper 24:24 provide 7:15 Public 2:8 33:4 pulled 12:3,7 13:4 put 16:24 17:1 Q Quentin 1:8 3:10 4:2 5:25 8:10 12:23 16:16 23:3 26:4 question 11:22 15:2,5,15,23 25:19 28:4 questions 8:6 15:21 17:18 18:9,25 20:9 22:19 quit 13:18 R raise 7:19 17:8 22:9 read 28:8 realize 25:9 reason 28:3 reasoning 5:8 rebuttal 25:21 recognize 8:21 23:21 record 4:4,23 5:2,8 8:2 20:18 21:9 22:16 24:12 recording 32:2 33:6 records 23:17 24:9 red 8:20 regarding 23:16 Reinhart 1:15 related 18:16	22:24 23:17 33:9 relax 21:1 25:6 relaxed 24:6 release 30:17,23 relevant 11:11 11:12,17 19:13 21:11 remain 11:23 remember 12:17 14:20 18:15 25:6 reminder 31:16 renew 4:23 5:7 18:24 repeat 25:10 Reporter 3:13 33:1,4,15 Representing 2:3,6 required 6:9,25 requiring 31:20 respect 25:6 responded 11:15 return 6:7 Richland 33:11 right 4:2,5 6:21 7:1,9,13,20 8:1 8:5 13:17 16:3 17:7,8 20:4,12 21:5 22:5,9,15 26:8 29:9 31:17 rights 4:25 River 9:10 18:1 road 8:22 rule 5:1 rules 24:5 S S 33:4,15 savings 12:20 saw 8:22 9:14 14:24 16:15 28:2,15	saying 28:23 says 27:16 28:8 28:10,13,13,16 29:1 scene 11:15 12:2 19:8 scope 5:13 seal 33:11 seated 25:18 second 15:8 29:15 31:16 see 8:13 9:4,7,22 9:25 10:3,10 12:2,6 15:14 16:4,6,10 17:22,25 20:1 24:9,9 seen 12:5 16:12 self 16:9 sentence 30:21 31:25 sentenced 30:17 serve 23:13 24:25 served 21:4 30:11 31:8 service 26:21 serving 30:21 31:1,12 set 4:17 5:17,23 31:19 seven 28:11,14 Shannon 3:9 14:13 16:22 22:7,11,17 Sheriff's 4:12 short 21:12,15 shortly 12:15 show 5:1 13:8 29:10 showed 23:21 sight 13:6 signature 29:18 29:19 signatures 29:12	signed 5:24 6:16 sir 4:8 13:16,19 20:3,6,7 27:18 31:14 32:1 sister 11:8 sitting 13:18 six 28:10,14 Solicitor's 2:4 sorry 10:9 13:19 sought 20:20 South 1:1,5,17 2:3,5,9 33:5,11 33:16 speak 7:23 14:11 14:12 17:11 20:5 21:1 22:12,23 23:5 23:16 25:4 26:5 specifically 21:17 spoke 14:17 23:6 23:7 24:20 28:4,20 stand 25:25 stared 14:6 staring 13:18,23 start 21:1 26:21 31:7 starting 26:25 starts 31:4 state 1:1,5 2:3 3:3 4:14 7:16 8:2,6 17:14 22:15 33:4,16 State's 7:2 20:14 stated 4:9 10:18 statement 18:16 28:8 29:14,15 statements 15:10 19:21 21:10 24:11,18 28:9 29:22 states 6:19 stating 5:1

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

v.

QUENTIN RAYMAR PRICE

DEFENDANT.

FILED

2014 SEP -3 P 1:24

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

APPEAL FROM LEXINGTON COUNTY

MAGISTRATE COURT

Case No.: 2014-CP-32-01449

Warrant No: 2013A3210202227

TO: The Honorable William P. Keesley;

The Defendant, Quentin Raymar Price, respectfully moves this Court to reverse the decision of the Magistrate Court finding the Defendant in contempt of court for the following reasons:

1. The Magistrate Judge erred in finding the Defendant in contempt of court for conduct occurring outside the presence of the Court because Magistrate judges lack subject matter jurisdiction to punish for contempt where the alleged contempt occurs outside the presence of the court.
2. The Magistrate Judge erred in failing to vacate the bench warrant that was issued for the purpose of bringing the Defendant before the Court in a criminal contempt of court proceeding, in violation of the Defendant's procedural Due process rights under the Fourteenth Amendment, compulsory process rights under the Sixth Amendment, and current South Carolina procedure, which requires that a criminal contempt of court proceeding be properly noticed by a rule to show cause supported by affidavits or verified pleadings alleging sufficient facts.
3. The Magistrate Judge erred in refusing to permit cross-examination of the State's witnesses where the Court limited cross-examination solely to the issue of identification,

thereby prohibiting the Defendant from calling impeachment witnesses and from presenting evidence of prior inconsistent statements made by the State's witnesses, in violation of the Defendant's Sixth Amendment right to confront the witnesses against him.

4. The Magistrate Judge erred in limiting the Defendant's testimony to his whereabouts on the date of the alleged incident, in violation of his constitutional right to present a full and complete defense.

Background

On November 19, 2013, Quentin Raymar Price was arrested on warrant number 2013A3210202227, and charged with Criminal Domestic Violence, First Offense. Price's bond, which was set by the Honorable Brian Jeffcoat on November 20, 2013, included a condition of no contact with the alleged victim, Camisha Mims. On March 24, 2014, while incarcerated on an unrelated charge in the Lexington County Detention Center, Price was screened by the Lexington County Public Defender's Office on the Criminal Domestic Violence charge.

On March 25, 2014, The Honorable Scott Whittle signed Bench Warrant 2013A3210202227 directing that the Defendant be arrested and kept at the "common jail...until he/she shall be thereof discharged by due course of law." As grounds for the arrest of the Defendant, the Bench Warrant alleges that the Defendant violated the conditions of his bond by contacting "the victim in a pending case against him." The Defendant was subsequently served with this Bench Warrant on March 27, 2014, while incarcerated in the Lexington County Detention Center (LCDC) serving a thirty (30) day sentence on an unrelated offense.

On April 1, 2014, defense counsel filed discovery requests and letters of representation for the Criminal Domestic Violence charge, warrant number 2013A3210202227, with the

Lexington County Central CDV Court and served the letters and requests on counsel for the State. *See* Attachment A. Later that afternoon, at 2:48p.m., defense counsel received an email from counsel for the State, Nicole Howland, asking whether Price had been screened and whether he was represented by defense counsel. Defense counsel responded at 4:41p.m., in an email that said, "He has been screened, and I will be representing him. I do not have the file yet, though. Why?" *See* Attachment B. On either April 1 or April 2, 2014, defense counsel spoke with Detective Stephen Gamble of the Lexington County Sheriff's Department, who indicated that Price had been served with a bench warrant for violating the conditions of his bond by having contact with the alleged victim, Camisha Mims, and that he was also being charged with a new count of Criminal Domestic Violence, First Offense, as well as Malicious Injury to Personal Property.

On April 2, 2014, defense counsel received an email from counsel for the State providing the same information, and indicating that the case was being transferred from the Swansea Magistrate Court to Central CDV Court with the consent of the Honorable Scott Whittle, and that the matter would be addressed on Monday, April 7, 2014 during Central CDV Court First Appearances. *See* Attachment C.

On Monday, April 7, 2014, the issue of the bond violation was brought before the Honorable Gary Reinhart in a contempt of court proceeding. Defense counsel moved to vacate the bench warrant on the grounds that the issuance of a bench warrant for the purpose of bringing Price before the court in a criminal contempt proceeding for conduct that allegedly occurred outside the presence of the Court violated Price's procedural due process rights under the Fourteenth Amendment, compulsory process rights under the Sixth Amendment, and current South Carolina procedure, which requires that a criminal contempt of court proceeding be

properly noticed by a rule to show cause supported by affidavits or verified pleadings alleging sufficient facts. The motion supported by a brief in support of the motion, which was marked as Defendant's Exhibit 1 (Attachment D). The motion was denied, and the Court asked defense counsel if forty-eight (48) hours would be "enough time to prepare [the Defendant's] defense and have . . . witnesses here." (Contempt of Court Hearing Transcript, 18:5-7, April 7, 2014 (Attachment E)). Defense counsel initially indicated she would do her best, but ultimately agreed to proceed with the contempt of court hearing on April 9, 2014. On April 9, 2014, before the first witness was called, defense counsel renewed the objection to the proceeding as "violating [Price's] procedural due process rights because there was no rule to show cause issued." (Contempt of Court Hearing Transcript, 4:22-5:2, April 9, 2014 (Attachment F)) Price was subsequently found in contempt of court for violating the conditions of his bond by the Honorable Gary Reinhart.

I. Magistrate judges lack subject matter jurisdiction to punish for contempt where the conduct constituting the alleged contempt occurs outside the presence of the court.

Whether the trial court lacks subject matter jurisdiction to hear a case is a fundamental issue that may be raised at any time, including for the first time on appeal, and it may be raised *sua sponte* by the court. *State v. Guthrie*, 352 S.C.103, 107, 572 S.E.2d 309, 311 (2002) (citing *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *State v. Ervin*, 333 S.C. 351, 510 S.E.2d 220 (Ct. App. 1998)). "[L]ack of subject matter may not be waived, even by consent of the parties." *Id.* Even if the issue of subject matter jurisdiction has not been raised by a party, trial courts and appellate courts have a duty to raise the issue *sua sponte*. *Amisub of South Carolina, Inc. v. Passmore*, 316 S.C. 112, 447 S.E.2d 207 (1994). Where a court does not have subject matter jurisdiction with respect to a matter, all acts by the court with respect to that matter are void. *Guthrie*, 352 S.C. at 107, 572 S.E.2d at 311.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also* *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993), *Peake v. South Carolina Dept. of Motor Vehicles*, 375 S.C. 589, 597, 654 S.E.2d 284, 289 (2007). In determining the intent of the legislature, courts must look to the plain language of the statute, giving words their plain and ordinary meaning. *Peak*, 375 S.C. at 598, 654 S.E.2d at 289; *Mun. Ass'n of South Carolina v. AT&T Commc'n of Southern States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). The plain language of the statute is considered to be the strongest evidence of legislative intent, outweighing all other rules of statutory construction. *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (2005). Where the language of the statute is unambiguous, courts may not change its meaning or impose a different one, but must give effect to the expressed intent of the legislature. *Rainey*, 341 S.C. at 85, 533 S.E.2d at 581; *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989). Statutes that are penal in nature must be strictly construed against the State and in favor of the defendant. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citing *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)).

The jurisdiction of Magistrate courts with respect to contempt proceedings is governed by Section 22-3-950 of the South Carolina Code of Laws. The statute provides that

Every magistrate shall have the power to enforce the observances of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is willfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

S.C. Code Ann. § 22-3-950 (Supp. 1976) (emphasis added). Notably absent from this section is the grant of any authority to punish for contempt of court where the alleged contempt is committed outside the presence of the court. Neither does the statute include any language granting authority to punish for contempt of court where the basis for the contempt is an alleged bond violation. By the plain language of the statute, magistrate judges have no authority to punish for contempt of court where the alleged conduct constituting contempt of court occurs outside the presence of the court.

The Fourth Circuit Court of Appeals has confirmed the longstanding limitation on the authority of magistrates to punish for contempt. In citing to the statute, then codified as S.C. Code, section 43-134, the court found that “[t]he contempt power under the South Carolina Statute is thus limited to instances where the contempt is committed *in the presence of the court*, or where the party is willfully guilty of an undue disturbance of the proceedings *before the magistrate while sitting officially*.” *Dean v. Shirer*, 547 F.2d 227, 230 (4th Cir. 1976) (interpreting South Carolina law) (emphasis added). As referenced by the South Carolina Attorney General’s Office in its opinion TO: Neal Forney, the power of a magistrate to punish by contempt of court has been limited to conduct in the presence of the court, dating as far back as 1796, where the South Carolina Constitutional Court of Appeals confirmed this authority and, by dictum, suggested that out of court conduct must be addressed by other means. TO: Neal Forney, 1978 S.C. Op. Atty. Gen. 214 (1978) (citing *Lining v. Bentham*, 2 S.C.L. (2 Bay) 1 (1796)).

The Attorney General’s Office has reiterated the historical interpretation of this limitation as recently as 2004 in an informal opinion addressed to the Honorable B. Lee Miller, a municipal court judge in Greenwood, South Carolina. Equating the authority of municipal court judges with that of magistrate court judges, the opinion cites to Section 22-3-950 as the statute

conferring contempt power on the court. The Honorable B. Lee Miller, 2004 WL 3058232 (2004). The opinion goes on to reiterate the longstanding tradition of limiting the contempt powers of magistrate judges, as articulated by the South Carolina Constitutional Court of Appeals in an opinion referencing justices of the peace, which were the precursors to magistrate judges:

Although justices of the peace have judicial power, yet they possess a very inferior jurisdiction...To commit for a contempt done in the face of a court is essential to preserve the order necessary for the convenient discharge of business. Such a power is incident to all judicial tribunals...But to commit for a contempt done out of court, is in no respect necessary for the discharge of the Justices' duties. Such a power is perhaps the greatest prerogative allowed to courts of the highest jurisdiction, and how inconsistent would the practice of this prerogative be in the hands of a justice, when we consider that even after a regular judgment given, a justice of the peace cannot take the body of a defendant, nor levy upon his lands, and can issue execution against his goods and chattels only....

Id. (citing *State v. Applegate*, 13 S.C.L. 110 (1822)).

The reason for the strict limitation on magistrate contempt power is that “[c]ontempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted.” *State v. Harper*, 297 S.C. 257, 258, 376 S.E.2d 272 (1989). In order for a magistrate to punish for contempt of court, a clear and specific violation of Section 22-3-950 must be shown. *Id.* at 259, 376 S.E.2d at 274. Conduct that does not clearly and specifically violate a provision of Section 22-3-950, is not punishable by contempt in magistrate’s court.

The State contends that the authority to punish a defendant for contempt of court for allegedly violating conditions of his bond stems from a combination of Section 22-3-950 and Section 17-15-30(D). As previously stated, the plain language of Section 22-3-950, coupled with the consistent interpretation of this statute as conferring contempt powers only for conduct

occurring in the presence of the court, leave no doubt as to the limitation on a magistrate's power to punish for contempt, as authorized by this statute.

Neither does Section 17-15-30(D) confer any power to punish a defendant for an alleged violation of bond conditions through contempt of court. Section 17-15-30 provides:

(A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, a court may, on the basis of available information, consider the nature and circumstances of an offense charged and an accused's:

- (1) family ties;
- (2) employment;
- (3) financial resources;
- (4) character and mental condition;
- (5) length of residence in the community;
- (6) record of convictions; and
- (7) record of flight to avoid prosecution or failure to appear at other court proceedings.

(B) A court shall consider, if available:

- (1) an accused's criminal record;
- (2) any charges pending against an accused at the time release is requested;
- (3) all incident reports generated as a result of an offense charged; and
- (4) whether an accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status.

(C)(1) Prior to or at the time of a hearing, the arresting law enforcement agency shall provide the court with the following information, if available:

- (a) the accused's criminal record;
- (b) any charges pending against the accused at the time release is requested;
- (c) all incident reports generated as a result of the offense charged; and
- (d) any other information that will assist the court in determining conditions of release.

(2) The arresting law enforcement agency shall inform the court if any of the information is not available at the time of the hearing and the reason the information is not available. Failure on the part of the law enforcement agency to provide the court with the information does not constitute grounds for the postponement or delay of the person's hearing.

(D) A court hearing these matters *has contempt powers to enforce the provisions of this section.*

S.C. Code Ann. 17-15-30 (Supp. 2012) (emphasis added). By the plain language of the statute, contempt powers are conferred only for the enforcement of Section 17-15-30, which does not impose any duties, requirements, or restrictions on a defendant. Instead, Section 17-15-30 may only be said to impose duties on the court determining conditions of release and on the arresting law enforcement agency as part of its participation in the bond setting hearing.

Subsection (A) provides a list of factors that the court may consider in determining conditions of release. Subsection (B) sets forth a list of factors that the court must consider, if available, when determining conditions of release. Finally, Subsection (C) requires that the arresting law enforcement agency provide the court with certain types of information or inform the court that the information is unavailable. Subsection (D), then, in authorizing contempt powers for the enforcement of the provisions of Section 17-15-30, may only be interpreted as permitting a finding of contempt where law enforcement does not comply with a provision of this section.

Had the Legislature intended to grant contempt powers for violations of conditions of bond, it could have done so in a number of ways. The Legislature could have crafted Subsection (D) to permit punishment by contempt for a violation of this title or chapter, as opposed to explicitly limiting the authority conferred to "this section." S.C. Code Ann. 17-15-30(D). Notably, the Legislature did not include a similar subsection in Section 17-15-10, which

specifically addresses permissible conditions of release. Had the Legislature included a subsection similar to Section 17-15-30(D), permitting enforcement of the conditions of release by contempt powers, the question would then arise as to whether this could be interpreted as an exception to the general limitation on magistrate authority to punish for contempt, as set forth in Section 22-3-950. However, the conspicuous absence of a grant of any such authority, either to magistrates in general, or in the statute governing conditions of release on bond, demonstrates that the Legislature did not intend to confer such power. To the contrary, and perhaps most notably, Section 17-15-100 confirms that the Legislature did not intend to confer any additional contempt power to any court, magistrate or otherwise, in its enactment of the statutes relating to bond conditions: "Nothing contained in Sections 17-15-10 through 17-15-60 shall affect the power of any court of the State to punish for contempt." S.C. Code Ann. § 17-15-100 (Supp. 1976). By the plain language of this statute, the Legislature indicated a clear intent that no provision contained in Sections 17-15-10 through 17-15-60 should be construed as either expanding or limiting the contempt powers of any court. Therefore, interpreting Section 17-15-30 as granting any additional contempt power to a magistrate court is inconsistent with the plain language of the statute.

Finally, although the Supreme Court has confirmed that "[t]he power to punish for contempt is inherent in all courts," *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915 (1982), the Court has not extended all powers of contempt to all courts. To the contrary, the Court confirmed the limitation on magistrate authority as being confined to "instances where the contempt is committed in the presence of the court, or where the party is willfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially." *Shirer*, 547 F.2d at 230. Although the Supreme Court has also indicated a willingness to take "a liberal and

expansive view of the 'presence' and 'court' requirements," *State v. Kennerly*, 337 S.C. 619, 620, 524 S.E.2d 837 (1999), the expansion of the presence and court requirements have primarily been limited to actions directly involving jurors, *Id.*, and actions occurring in the hallways of the courthouse or on the courthouse steps or cartilage. *See Id.*; *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955).

Notably, the Court's expansion of contempt powers primarily relates to conduct that would constitute *direct* contempt, or contempt for conduct that occurs within the presence of the court, as opposed to constructive contempt, or conduct that occurs outside the presence of the court. In *Kennerly*, the Court extended the presence of the court for direct contempt purposes to include "the jury room and at the hotel where the jury was sequestered. The conduct occurred where the jury was required to be, and while the jury was performing their legal duties." *Kennerly*, 337 at 621, 524 S.E.2d at 839. The Court reasoned that "[b]ecause Kennerly's conduct occurred within the sight and hearing of an integral and constituent part of the court, her conduct was "in the presence of the court" and constituted direct contempt." *Id.* at 622, 524 S.E.2d at 839.

In upholding another conviction for direct contempt, the Court stated in *State v. Goff* that "[w]hen the [c]ourt is in session, in order to extend its protection to its officers, jurors and witnesses, it must be considered to be present where those persons are required to be in the performance of their several duties." *Goff*, 228 S.C. at 23, 88 S.E.2d at 791. In spite of the Supreme Court's adoption an expansive view of direct contempt, it has never extended constructive contempt to include violations of bond conditions, nor has it interpreted a magistrate's contempt powers to include such authority.

Because the Defendant in this case was found in contempt by a magistrate court for

conduct that allegedly occurred outside the presence of the court on the basis that the conduct constituted a violation of the Defendant's bond, the magistrate judge lacked subject matter jurisdiction to hold the contempt proceeding, and the Defendant's conviction for contempt of court should be reversed.

- II. The issuance of a bench warrant for the purpose of bringing the Defendant before the Court in a criminal contempt of court proceeding for conduct that allegedly occurred outside the presence of the Court violates procedural Due process rights under the Fourteenth Amendment, compulsory process rights under the Sixth Amendment, and current South Carolina procedure, which requires that a criminal contempt of court proceeding be properly noticed by a rule to show cause supported by affidavits or verified pleadings alleging sufficient facts.**

Even if a magistrate court had the authority to punish for contempt where the conduct alleged took place outside the presence of the court and the basis of which is a violation of a defendant's bond, a bench warrant is not the proper mechanism for bringing the Defendant before the court. The proper procedure for initiating contempt of court proceedings for conduct outside the presence of the Court is the issuance of a Rule to Show Cause that is based upon either affidavits or verified pleadings alleging sufficient facts. *State v. Johnson*, 249 S.C. 1, 152 S.E. 2d 669 (1967) (overruled on other grounds by *State v. Kennerly*, 337 S.C. 617, 524 S.E.2d 837 (1999)); *Hornsby*, 187 S.C. at 463, 198 S.E. at 32. Criminal contempt proceedings trigger certain Constitutional protections, including the Fourteenth Amendment Due Process Clause's rights to notice and to be heard, and criminal penalties may not be imposed unless the person against whom proceedings are brought have been afforded these protections. See *Poston v. Poston*, 331 S.C. 106, 116-17, 502 S.E.2d 86, 91; *Ex Parte Cannon*, 685 S.E.2d 814 (S.C. Ct. App. 2009); *Hornsby v. Hornsby*, 187 S.C. 463, 198 S.E.2d 29 (1938). See also *Bloom v. Illinois*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968); *Hicks v. Feiock*, 485 U.S. 624, 632,

108 S.Ct. 1423, 1429-30, 99 L.E.2d 721, 731-32 (1988). Therefore, the issuance of the bench warrant denied the defendant of his procedural due process rights.

A. Criminal Contempt

All courts inherently possess some power to punish for contempt; this power is “essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.” *State v. Passmore*, 363 S.C. 568, 571, 611 S.E.2d 273, 275 (S.C. Ct. App. 2004) (quoting *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982) (citing *McLeod v. Hite*, 272 S.C. 303, 251 S.E.2d 746 (1979); *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955))). Contempt may be either civil or criminal, and the distinction between the two is essential because criminal contempt proceedings trigger certain Constitutional protections. *See Poston*, 331 S.C. at 116-17, 502 S.E.2d at 91; *Ex Parte Cannon*, 685 S.E.2d 814; *Hornsby*, 187 S.C. 463, 198 S.E.2d 29. *See also Bloom*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522; *Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30, 99 L.E.2d at 731-32.

In determining whether contempt is civil or criminal, the deciding factor is the purpose for which the power is exercised, “including the nature of the relief and the purpose for which the sentence is imposed.” *Poston*, 331 S.C. at 111, 502 S.E.2d at 88. Whereas the primary purpose of civil contempt is to bring the defendant into compliance with a court order for the benefit of the complainant, “[t]he primary purposes of criminal contempt are to preserve the court’s authority and to punish for disobedience of its orders.” *Id.*; *Ex Parte Kent*, 666 S.E.2d 921 (S.C. Ct. App. 2008). Criminal contempt is often distinguished from civil contempt by the nature of the punishment imposed upon a finding that the accused is in contempt. Where the penalty imposed is unconditional and not intended to “undo or remedy what has been done”

by compensating the complainant, and “the contemnor cannot shorten the term by promising not to repeat his offense,” the punishment is punitive in nature, rather than compensatory, and is therefore considered criminal contempt. *Poston*, 331 S.C. at 111, 502 S.E.2d at 88-89 (quoting *Hicks*, 485 U.S. at 633, 108 S.Ct. at 1430, 99 L.E.2d at 732). Specifically, if the punishment is a sentence of imprisonment limited to a definite period, the punishment is punitive and the contempt is considered criminal. *Poston*, 331 S.C. at 111, 502 S.E.2d at 88-89.

Criminal contempt proceedings trigger certain Constitutional protections, including the Fourteenth Amendment Due Process Clause’s rights to notice and to be heard, and criminal penalties may not be imposed unless the person against whom proceedings are brought has been afforded these protections. See *Poston*, 331 S.C. at 116-17, 502 S.E.2d at 91; *Ex Parte Cannon*, 685 S.E.2d 814; *Hornsby*, 187 S.C. 463, 198 S.E.2d 29; see also *Bloom*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522; *Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30, 99 L.E.2d at 731-32. Section One of the Fourteenth Amendment of the United States Constitution provides that States may not “deprive any person of life, liberty, or property, without the due process of law.” U.S. CONST. amend. XIV, § 1. The Constitution of the state of South Carolina further guarantees that an accused has the right “to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.” S.C. CONST. art. I, § 14. The rights of a defendant to confrontation and compulsory process are also preserved by Article Six of the United States Constitution. S.C. CONST. amend. VI. Additionally, while not all criminal contempt proceedings afford the right to a trial by jury, all criminal contempt must be proven beyond a reasonable doubt. *Poston*,

331 S.C. at 113, 502 S.E.2d at 89; *State v. Bowers*, 270, S.C. 124, 131, 241 S.E.2d 409, 412 (1978).

B. Rule to Show Cause

Because of the Federal and State Constitutional protections afforded to a defendant in a criminal contempt proceeding, the proper procedure for initiating contempt of court proceedings for conduct outside the presence of the Court is the issuance of a Rule to Show Cause that is based upon either affidavits or verified pleadings alleging sufficient facts. *Johnson*, 249 S.C. 1, 152 S.E. 2d 669; *Hornsby*, 187 S.C. at 463, 198 S.E. at 32. Before a defendant may be found in contempt of court for constructive contempt, or conduct occurring outside the presence of the court, he must have "due and reasonable notice of the proceeding." *Hornsby*, 187 S.C. at 463, 198 S.E. at 32. Consequently, in order for a defendant to be found guilty of criminal contempt of court, there must be a proceeding to determine whether the defendant has, in fact, engaged in some behavior that rises to the level of contempt of court, and the defendant must have reasonable notice both that a proceeding is to be held and of the nature of the proceeding, including the allegations against him. A bench warrant is not the proper mechanism for providing such notice to a defendant, and the issuance of a bench warrant, absent a finding of contempt by the Court in a contempt of court proceeding violates the due process rights of the defendant.

C. Bench Warrant

A bench warrant is "a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose after the court has acquired jurisdiction over the defendant on that particular charge by virtue of a previously served proper charging paper." *South Carolina Bench Book for Magistrates and Municipal Court Judges*, §

C.2. A bench warrant "may not be used to initiate a criminal action." *Id.* Circumstances under which the issuance of a bench warrant is proper include those where a properly noticed defendant fails to appear, a defendant has failed to comply with a sentence of the court, or the defendant failed to appear for a court proceeding, was tried in his absence, and must be brought before the court to comply with the sentence of the court. *Id.* Therefore, for purposes of a criminal contempt of court proceeding, the issuance of a bench warrant is not proper unless the defendant has been found guilty of contempt beyond a reasonable doubt by a court in a properly noticed proceeding where the defendant had the opportunity to be heard and was afforded the other appropriate Constitutional protections, or where after proper notice, the defendant failed to appear for the proceeding. Where a defendant is accused of conduct outside of court that, *if proven beyond a reasonable doubt*, would rise to the level of contempt of court, a bench warrant is not the proper mechanism for bringing the defendant to court for the contempt of court proceeding. Instead, the proper the proper mechanism for bringing a defendant to court for the criminal contempt proceedings is the issuance of a Rule to Show Cause that is based on affidavits or verified pleadings alleging sufficient facts. *Id.*; *Johnson*, 249 S.C. 1, 152 S.E. 2d 669.

Because the contempt of court proceeding was initiated improperly by the issuance of a bench warrant, rather than a rule to show cause, in violation of the Defendant's procedural due process rights, the conviction for contempt of court should be reversed.

III. The Magistrate Judge erred in refusing to permit cross-examination of the State's witnesses where the Court limited cross-examination solely to the issue of identification, thereby prohibiting the Defendant from calling impeachment witnesses and from presenting evidence of prior inconsistent statements made by the State's witnesses, in violation of the Defendant's Sixth Amendment right to confront the witnesses against him.

The Sixth Amendment right to confrontation, guaranteed by the United States Constitution includes the right to meaningful cross-examination of adverse witnesses. *State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) (citing *See State v. Brown*, 303 S.C. 169, 399 S.E.2d 593 (1991)). The Sixth Amendment and its attendant rights are extended to the states by the Fourteenth Amendment. *State v. Mizzell*, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002). The South Carolina Rules of Evidence provide an additional basis for cross-examination: "Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Rule 608(c), SCRE.

Although the trial court may impose reasonable restrictions on cross-examination, the Supreme Court has cautioned that before a court can prohibit cross-examination relating to such matters as bias, "the record must clearly show that the cross-examination is somehow inappropriate." *Graham*, 314 S.C. at 385, 444 S.E.2d at 527. A defendant proves a Sixth Amendment violation where he demonstrates that he was prohibited from engaging in otherwise appropriate cross-examination regarding any fact that would tend to give the jury a basis for questioning a witness's motive, reliability, or credibility. *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317; see also *Delaware v. Van Arsdall*, 475 U.S. 673, 680, 106 S.Ct. 1431, 1436, 89 L.Ed.2d 674, 684 (1986). Thus, the Sixth Amendment includes an inherent right to impeach a witness. *Id.* Violations of the Sixth Amendment right of confrontation can constitute reversible error. See

Graham, 314 S.C. at 385, 444 S.E.2d at 527.

Although the Sixth Amendment was not specifically mentioned in the trial court, the basis for the cross-examination questions that were excluded by the court were provided, and any additional argument would have been futile. It is well settled that the exact name of a legal doctrine is not necessary to preserve an issue for appeal, so long as the record reflects argument on that ground. *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001). "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide . . . a platform for meaningful appellate review." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). When error preservation is doubtful, courts of appeals should resolve the question in favor of reaching the merits of an issue. *Id.* at 330, 730 S.E.2d at 285. The issues of preservation in this case are very similar to those addressed in the Court of Appeals's recent decision in *State v. Haygood*. There, the Court of Appeals held a Sixth Amendment confrontation clause issue to be preserved where it was clear that the underlying basis for the objection was argued during trial, even though the magistrate court did not rule specifically on that issue. *Haygood*, No. 5247, 2014 WL 2930457 (S.C. Ct. App. June 30, 2014).

The doctrine of futility provides an additional basis for the preservation of issues in this case. Under the doctrine of futility, the Supreme Court has recognized that in circumstances where objecting or continuing to raise an argument to the trial judge would be futile, the "failure to raise an objection may be excused." *State v. Passmore*, 363 S.C. 568, 584-585, 611 S.E.2d 273, 282 (Ct. App. 2005). See *State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (finding "[a]s to counsel's failure to raise an objection, the tone and tenor of the trial judge's

remarks concerning her gender and conduct were such that any objection would have been futile.”); *see also State v. Higgenbottom*, 344 S.C. 11, 542 S.E.2d 718 (2001) (employing futility doctrine). Additionally, Rule 18(a), SCRCrimP, states, “[c]ounsel shall not attempt to further argue any matter after he has been heard and the ruling of the court has been pronounced.” Therefore, once a trial court has made clear its position on a matter, not only is the failure to continue arguing the matter excusable, it is not permitted under the Rules of Criminal Procedure.

Here, the issue of the defendant’s right to confrontation is preserved similarly to that in *Haygood*. Before calling the first witness, the State, represented by Nicole Howland, Esquire, requested a limiting instruction regarding the scope of examination on the basis that the State did “not want to get prior sworn testimony.” (Contempt Hr’g Tr. 5:11-15, April 9, 2014) The Court neither clearly granted nor clearly denied this request but instead requested that the State “set the basis of the violation” and proceeded to take notice of Price’s date of arrest, the judge who set the bond and the bond conditions that were put into place, the bail bondsman who posted Price’s bond, as well as a statement from the bond form, stating “[a]nd, again, the defendant signed, acknowledging that he understands that if I violate any condition of this order, a warrant will be - a warrant for my arrest will be issued.” (*Id.*, 5:16-6:25) The Court then requested that the State “lay the groundwork of what the violation is.” (*Id.*, 7:1-5)

The State called two witnesses, Meagan Penny and Camisha Mims. On cross-examination, defense counsel attempted to impeach both witnesses by prior inconsistent statements, which drew objection from the State. The Court limited defense counsel’s questioning of Meagan Penny, stating that “the only issue before the Court today was Mr. Price and contact with Ms. Mims after November 20th, 2013. Your question will remain to that fact.” (*Id.*, 11:20-23) The Court again limited defense counsel’s questioning of Penny when defense

counsel attempted to impeach Mims by prior inconsistent statements, limiting defense counsel to calling an impeachment witness, rather than questioning Mims regarding the statements. (*See Id.*, 15:14-19) The Court then proceeded to question Penny regarding the alleged bond violation. (*See Id.*, 16:22-15:18)

The State next called Camisha Mims. When defense counsel attempted to cross-examine Mims, the State again interjected, and the Court again gave a limiting instruction, stating that "the questions are and the only matter before this Court today is not the events of March the 9th. They are whether or not Mr. Price had contact with Ms. Mims. That is the only matter before the Court in the contempt hearing today." (*Id.*, 18:24-19:4) Defense counsel argued that what Mims told police and other stories that were given by Mims went to "her credibility as a witness here." (*Id.*, 19:5-14). The State began a counterargument relating to a concern that if facts and sworn statements would address, jeopardy would attach. (*See Id.*, 19:18-21) The Court agreed, again stated that "this whole issue is a matter of an issue between the Court and Mr. Price," and again proceeded to question the witness. (*Id.*, 19:22-20:5)

The Court asked Mims only whether she saw Price on March 9th, 2014, and whether he spoke to her, to which the witness stated "Yes, sir. And he physically assaulted me, yes, sir." (*Id.* 20:1-7) The Court then asked if defense counsel if there were "any questions [she] want[ed] to ask toward that." Because the questioning had been limited on multiple occasions to solely to whether the witness had seen Price and had contact with him on the date in question, defense counsel declined to ask more questions to that point.

In this case, defense counsel attempted to cross-examine the State's witnesses, and when objected to on grounds of relevance, attachment of jeopardy, and prior limiting instructions, the Court repeatedly limited counsel's questioning. Counsel attempted to argue that the questioning

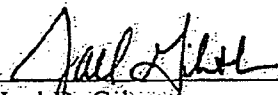
should be permitted as relevant impeachment material going to the credibility of the witness but was limited by the Court. Although defense counsel did not specifically say the words "Sixth Amendment," by raising the issues of impeachment and credibility as being essential to cross-examination of the witness, the underlying issue was presented to the court. Additionally, although the court failed to rule specifically on these issues, the court's repeated limiting instruction was sufficient to constitute a ruling against the defendant on the issue, such that the issue is preserved for appeal.

Because the trial court prohibited the Defendant from engaging in permissible cross-examination intended to impeach the witness and elicit testimony that would tend to draw into question the witness's credibility, the Defendant's Sixth Amendment right to confrontation was violated, and the conviction for contempt of court should be reversed.

CONCLUSION

For the foregoing reasons, the Defendant's conviction for contempt of court should be reversed.

Respectfully Submitted,



Jael D. Gilreath
407 1/2 W. Main St.
Lexington, SC 29072
(803) 785-8873
ATTORNEY FOR DEFENDANT

Lexington, South Carolina

Date: September 3, 2014

Attachment A

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

THE STATE)

vs.)

Price, Quentin)

DEFENDANT.)
_____)IN THE MAGISTRATE'S COURT
ELEVENTH JUDICIAL CIRCUIT**AFFIDAVIT OF SERVICE**

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says that on the 1st day of April, 2014. he/she served the **MOTION FOR DISCLOSURE OF EVIDENCE** on the Respondent/Defendant/Witness by delivering unto **Nicole Howland, Via Fax** a copy thereof and leaving the same with him/her at **LEXINGTON COUNTY CDV COURT, LEXINGTON SC.** Further, that the deponent is not a party to this action.

SWORN to before me this 1st)day of April, 2014)

 Notary Public for South Carolina)
My Commission Expires: 03/17/2021)

 SHANNON M. O'CAIN

92 OFFICE OF THE PUBLIC DEFENDER

Attachment A

ELIZABETH FULLWOOD
Lexington Public Defender
407 1/2 W. Main St.
Lexington, SC 29072
Telephone (803) 957-8873
Fax (803) 957-1443

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

ROBERT M. MADSEN
Circuit Public Defender

W. GREG SEIGLER
Tri-County Public Defender
Post Office Box 1852
McCormick, SC 29835
Telephone (864) 852-9555
Fax (864) 852-9554

March 31, 2014

Nicole Howland, Esquire
Lexington County Sheriff's Department
521 Gibson Road
Lexington, SC 29072

RE: Our Client: Price, Quentin Raymar
Warrant#: 2013A3210202227

Dear Ms. Howland:

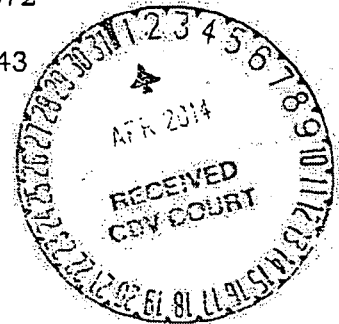
Please be advised that I have been appointed to represent **Quentin Raymar Price** on the above charges in Lexington County. Please do not communicate with this client or allow any communication with this client by any member of Law Enforcement without my prior consent. Thank you for your cooperation.

Sincerely,



Jael Gilreath
407 1/2 West Main Street
Lexington, SC 29072
(803) 785-8873
Fax#(803) 785-1143

cc: Carlie Woods, CDV Court Administrator



STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

2013A3210202227

vs.)

Price, Quentin Raymar
Defendant.MOTION FOR DISCLOSURE OF EVIDENCE
FAVORABLE TO DEFENDANTTO: Nicole Howland, Esquire

YOU WILL PLEASE TAKE NOTICE that as soon as counsel can be heard, the undersigned attorney for the above named Defendant will move before the Presiding Judge of the Eleventh Judicial Circuit, for an Order requiring disclosure of all evidence or information within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, or which is presently in the possession, custody or control of any law enforcement department within the State of South Carolina, which could tend to show that the Defendant is not guilty of the charges against him, or which could tend to mitigate his punishment, if convicted. This motion is made under the authority of Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972).



Jael D. Gilreath
Attorney for the Defendant
407 1/2 West Main St.
Lexington, SC 29072
(803) 957-8873

Lexington, South Carolina

Date: 04/01/2014

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

2013A3210202227

vs.)

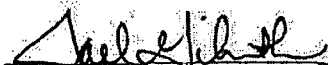
Price, Quentin Raymar
Defendant.)REQUEST FOR DISCLOSURE
PURSUANT TO RULE 5TO: Nicole Howard, Esquire

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned attorney, here by requests disclosure of all information available to the Defendant pursuant to Rule 5, SCRCrimP.

1. All information available to the defense under Rule 5, SCRCrimP.

The Defendant further moves that the State produce any statement of any prospective witness at the same time that it complies with remainder of this request. Note that this motion is made pursuant to Rule 5, SCRCrimP.

Respectfully submitted,



Jael H. Gilreath
Attorney for the Defendant
407 1/2 West Main St.
Lexington, SC 29072
(803) 957-8873

Lexington, South Carolina

Date: 04/01/2014

TRANSMISSION VERIFICATION REPORT

Attachment **95**

TIME : 03/31/2014 23:55
NAME : PUBLIC DEFENDER
FAX : 8039571443
TEL :
SER. # : BROH1J298750

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OFFICE OF THE PUBLIC DEFENDER**ELEVENTH JUDICIAL CIRCUIT**

ELIZABETH FULLWOOD
Lexington Public Defender
407 1/2 West Main Street
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Lexington, Saluda, Edgefield
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Telephone (864) 852-9555
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Date: April 1, 2014

To: Nicole Howland

Fax: 785-8279

From: Shannon M. O'Carroll

From Fax: 803-785-1443

Re: New Files! Discovery Requests!

Attachment B

Gilreath, Jael

From: Gilreath, Jael
Sent: Tuesday, April 01, 2014 4:41 PM
o: HOWLAND, NICOLE
Subject: RE: Quenton Price

He has been screened, and I will be representing him. I do not have his file yet, though. Why?

Jael Gilreath
Assistant Public Defender,
Eleventh Judicial Circuit
407 1/2 West Main Street
Lexington, South Carolina 29072
803-785-8873 (phone)
803-785-1443 (fax)
[REDACTED]

From: HOWLAND, NICOLE
Sent: Tuesday, April 01, 2014 2:48 PM
To: Gilreath, Jael
Subject: Quenton Price

He was scheduled to meet with a screener on March 11, 2014. Did he appear? Do you represent him?

Attachment C

Gilreath, Jael

From: HOWLAND, NICOLE
Sent: Wednesday, April 02, 2014 3:19 PM
To: Gilreath, Jael
Cc: GAMBLE, STEPHEN; Woods, Carlie; Whittle, Scott
Subject: RE: Quenton Price

He has been arrested another CDV, with the same victim and has a BW for a bond violation. He will be transported on Monday for that issue to be addressed. The case in which you have been appointed to represent him, is currently in Judge Whittle's court, but he agreed to allow Judge Reinhart to hear the matter so that it could be heard sooner. Originally, the contempt issue was going to be heard yesterday, but when it appeared he might be represented, the contempt hearing was postponed until Monday.

From: Gilreath, Jael
Sent: Tuesday, April 01, 2014 4:41 PM
To: HOWLAND, NICOLE
Subject: RE: Quenton Price

He has been screened, and I will be representing him. I do not have his file yet, though. Why?

Jael Gilreath
Assistant Public Defender,
Eleventh Judicial Circuit
407 1/2 West Main Street
Lexington, South Carolina 29072
803-785-8873 (phone)
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[REDACTED]

From: HOWLAND, NICOLE
Sent: Tuesday, April 01, 2014 2:48 PM
To: Gilreath, Jael
Subject: Quenton Price

He was scheduled to meet with a screener on March 11, 2014. Did he appear? Do you represent him?

Attachment D



STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

v.

QUENTIN RAYMAR PRICE

DEFENDANT.

MAGISTRATE'S COURT
LEXINGTON COUNTY, SC

CENTRAL CDV COURT COURT

ELEVENTH JUDICIAL CIRCUIT

MOTION TO VACATE BENCH WARRANT

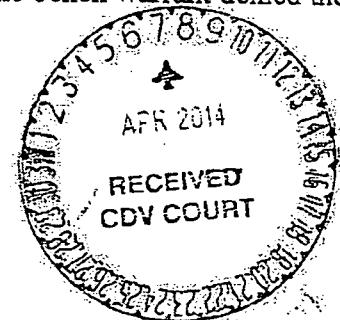
Warrant No: 2013A3210202227

TO: The Honorable Gary Reinhart, Chief Magistrate Judge;

The Defendant, Quentin Raymar Price, respectfully moves this Court to vacate the Bench Warrant issued by Judge Scott Whittle on March 25, 2014 for the following reasons:

The proper procedure for initiating contempt of court proceedings for conduct outside the presence of the Court is the issuance of a Rule to Show Cause that is based upon either affidavits or verified pleadings alleging sufficient facts. *State v. Johnson*, 249 S.C. 1, 152 S.E. 2d 669 (1967) (overruled on other grounds by *State v. Kennerly*, 337 S.C. 617, 524 S.E.2d 837 (1999)); *Hornsby*, 187 S.C. at 463, 198 S.E. at 32. Criminal contempt proceedings trigger certain Constitutional protections, including the Fourteenth Amendment Due Process Clause's rights to notice and to be heard, and criminal penalties may not be imposed unless the person against whom proceedings are brought have been afforded these protections. *See Poston v. Poston*, 331 S.C. 106, 116-17, 502 S.E.2d 86, 91; *Ex Parte Cannon*, 685 S.E.2d 814 (S.C. Ct. App. 2009); *Hornsby v. Hornsby*, 187 S.C. 463, 198 S.E.2d 29 (1938). *See also Bloom v. Illinois*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968); *Hicks v. Feiock*, 485 U.S. 624, 632, 108 S.Ct. 1423, 1429-30, 99 L.E.2d 721, 731-32 (1988). Therefore, the issuance of the bench warrant denied the defendant of his procedural due process rights.

I. Background



On March 25, 2014, The Honorable Scott Whittle signed Bench Warrant 2013A3210202227 directing that the Defendant be arrested and kept at the "common jail...until he/she shall be thereof discharged by due course of law." As grounds for the arrest of the Defendant, the Bench Warrant alleges that the Defendant violated the conditions of his bond by contacting "the victim in a pending case against him." The Defendant was subsequently served with this Bench Warrant and is currently incarcerated in the Lexington County Detention Center (LCDC). To date, neither the Defendant nor his Attorney of Record has been served with a Rule to Show Cause Notice for the Contempt of Court proceeding that is currently scheduled for April 7, 2014.

II. Criminal Contempt

All courts inherently possess the power to punish for contempt; this power is "essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *State v. Passmore*, 363 S.C. 568, 571, 611 S.E.2d 273, 275 (S.C. Ct. App. 2004) (quoting *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982) (citing *McLeod v. Hite*, 272 S.C. 303, 251 S.E.2d 746 (1979); *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955))). Contempt may be either civil or criminal, and the distinction between the two is essential because criminal contempt proceedings trigger certain Constitutional protections. *See Poston*, 331 S.C. at 116-17, 502 S.E.2d at 91; *Ex Parte Cannon*, 685 S.E.2d 814; *Hornsby*, 187 S.C. 463, 198 S.E.2d 29. *See also Bloom*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522; *Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30, 99 L.Ed.2d at 731-32.

In determining whether contempt is civil or criminal, the deciding factor is the purpose for which the power is exercised, "including the nature of the relief and the purpose for which

the sentence is imposed.” *Poston*, 331 S.C. at 111, 502 S.E.2d at 88. Whereas the primary purpose of civil contempt is to bring the defendant into compliance with a court order for the benefit of the complainant, “[t]he primary purposes of criminal contempt are to preserve the court’s authority and to punish for disobedience of its orders.” *Id.*; *Ex Parte Kent*, 666 S.E.2d 921 (S.C. Ct. App. 2008). Criminal contempt is often distinguished from civil contempt by the nature of the punishment imposed upon a finding that the accused is in contempt. Where the penalty imposed is unconditional and not intended to “undo or remedy what has been done” by compensating the complainant, and “the contemnor cannot shorten the term by promising not to repeat his offense,” the punishment is punitive in nature, rather than compensatory, and is therefore considered criminal contempt. *Poston*, 331 S.C. at 111, 502 S.E.2d at 88-89 (quoting *Hicks*, 485 U.S. at 633, 108 S.Ct. at 1430, 99 L.E.2d at 732). Specifically, if the punishment is a sentence of imprisonment limited to a definite period, the punishment is punitive and the contempt is considered criminal. *Poston*, 331 S.C. at 111, 502 S.E.2d at 88-89.

Criminal contempt proceedings trigger certain Constitutional protections, including the Fourteenth Amendment Due Process Clause’s rights to notice and to be heard, and criminal penalties may not be imposed unless the person against whom proceedings are brought has been afforded these protections. *See Poston*, 331 S.C. at 116-17, 502 S.E.2d at 91; *Ex Parte Cannon*, 685 S.E.2d 814; *Hornsby*, 187 S.C. 463, 198 S.E.2d 29; *see also Bloom*, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522; *Hicks*, 485 U.S. at 632, 108 S.Ct. at 1429-30, 99 L.E.2d at 731-32. Section One of the Fourteenth Amendment of the United States Constitution provides that States may not “deprive any person of life, liberty, or property, without the due process of law.” U.S. CONST. amend. XIV, § 1. The Constitution of the state of South Carolina further

guarantees that an accused has the right "to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both." S.C. CONST. art. I, § 14. The rights of a defendant to confrontation and compulsory process are also preserved by Article Six of the United States Constitution. S.C. CONST. amend. VI. Additionally, while not all criminal contempt proceedings afford the right to a trial by jury, all criminal contempt must be proven beyond a reasonable doubt. *Poston*, 331 S.C. at 113, 502 S.E.2d at 89; *State v. Bowers*, 270, S.C. 124, 131, 241 S.E.2d 409, 412 (1978).

III. Rule to Show Cause

Because of the Federal and State Constitutional protections afforded to a defendant in a criminal contempt proceeding, the proper procedure for initiating contempt of court proceedings for conduct outside the presence of the Court is the issuance of a Rule to Show Cause that is based upon either affidavits or verified pleadings alleging sufficient facts. *Johnson*, 249 S.C. 1, 152 S.E. 2d 669; *Hornsby*, 187 S.C. at 463, 198 S.E. at 32. Before a defendant may be found in contempt of court for constructive contempt, or conduct occurring outside the presence of the court, he must have "due and reasonable notice of the proceeding." *Hornsby*, 187 S.C. at 463, 198 S.E. at 32. Consequently, in order for a defendant to be found guilty of criminal contempt of court, there must be a proceeding to determine whether the defendant has, in fact, engaged in ~~some behavior that rises to the level of contempt of court, and the defendant must have~~ reasonable notice both that a proceeding is to be held and of the nature of the proceeding, including the allegations against him. A bench warrant is not the proper mechanism for providing such notice to a defendant, and the issuance of a bench warrant, absent a finding of

contempt by the Court in a contempt of court proceeding violates the due process rights of the defendant.

IV. Bench Warrant

A bench warrant is "a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose after the court has acquired jurisdiction over the defendant on that particular charge by virtue of a previously served proper charging paper." *South Carolina Bench Book for Magistrates and Municipal Court Judges*, § C.2. A bench warrant "may not be used to initiate a criminal action." *Id.* Circumstances under which the issuance of a bench warrant is proper include those where a properly noticed defendant fails to appear, a defendant has failed to comply with a sentence of the court, or the defendant failed to appear for a court proceeding, was tried in his absence, and must be brought before the court to comply with the sentence of the court. *Id.* Therefore, for purposes of a criminal contempt of court proceeding, the issuance of a bench warrant is not proper unless the defendant has been found guilty of contempt beyond a reasonable doubt by a court in a properly noticed proceeding where the defendant had the opportunity to be heard and was afforded the other appropriate Constitutional protections, or where after proper notice, the defendant failed to appear for the proceeding. Where a defendant is accused of conduct outside of court that, *if proven beyond a reasonable doubt*, would rise to the level of contempt of court, a bench warrant is not the proper mechanism for bringing the defendant to court for the contempt of court proceeding. ~~Instead, the proper the proper mechanism for bringing a defendant to court for the~~ criminal contempt proceedings is the issuance of a Rule to Show Cause that is based on affidavits or verified pleadings alleging sufficient facts. *Id.*; *Johnson*, 249 S.C. 1, 152 S.E. 2d 669.

V. Conclusion

For the foregoing reasons, the Defendant respectfully requests that this Court vacate the Bench Warrant issued by Judge Scott Whittle on March 25, 2014, and order that any court proceeding initiated based on allegations of constructive contempt of court involving the Defendant be properly initiated by a Rule to Show Cause.

Respectfully Submitted,



Jael D. Gilreath
407 1/2 W. Main St.
Lexington, SC 29072
(803) 785-8873
ATTORNEY FOR DEFENDANT

Lexington, South Carolina

Date: April 7, 2014



Attachment E

COPY

1 STATE OF SOUTH CAROLINA IN THE MAGISTRATE'S COURT
2 WARRANT # 2013A3210202227
3 COUNTY OF LEXINGTON
4
5

6 STATE OF SOUTH CAROLINA,)
7 PLAINTIFF,)
8 VS.)
9 QUENTIN PRICE,)
10 DEFENDANT.)
11
12

APRIL 7, 2014
HEARING
(CONTEMPT OF COURT)

13 Contempt of Court Hearing held before
14 the Honorable Gary Reinhart, at Lexington County
15 Judicial Center, 205 East Main Street, Lexington,
16 South Carolina, on Monday, the 7th day of April
17 2014.
18
19
20
21

22
23
24
25

NICOLE HOWLAND, ESQUIRE
Solicitor's Office
205 East Main Street
Lexington, South Carolina 29072

JAEL GILREATH, ESQUIRE
Public Defenders
407 1/2 Main Street
Lexington, South Carolina 29072

P R O C E E D I N G

Page 3

CONTENTS

1		
2	Proceedings	4
3	Argument by Counsel for Defendant	4
4	Argument by Counsel for the State	7
5	Findings of the Court	18
6	Certificate of Reporter	20
7	Word Index	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

P R O C E E D I N G

Page 4

Proceedings

THE COURT: All right. Quentin Price.

(Inaudible conversation)

THE COURT: All right. Mr. Price is actually in the detention center on a bench warrant for an alleged bond violation issued by Judge Whittle out of the Swansea Magistrate's Office. This Court agreed to hear, or to see Mr. Price on that bench warrant as he was to be brought back before the Court, and that was as a courtesy to defense counsel and the defendant so that we could expedite him being seen.

In the meantime, I've received a motion to vacate the bench warrant from defense counsel, Ms. Gilreath. Ms. Gilreath, I'll hear from you on your motion.

MS. GILREATH: Thank you, your Honor. We are asking the Court to vacate the bench warrant based on the fact that it was not the proper mechanism for initiating the contempt of court proceeding. Your Honor, I would first refer to the Magistrate Court Bench Book that says, a bench warrant may not be used to initiate a criminal action. And this being a criminal

P R O C E E D I N G

Page 5

1 contempt of court proceeding, it is a criminal
2 action.

3 Criminal actions, obviously,
4 trigger certain Constitutional protections,
5 including the Fourteenth Amendment, the right to
6 receive due process, including those, including
7 the South Carolina Constitutional rights to due
8 process, which includes notice, being heard.

9 I think that the base of our
10 arguments that a rule to show cause would have
11 been the proper -- would have been the proper way
12 to initiate this action, your Honor. Based on --
13 I apologize. I thought you were about to speak.

14 THE COURT: I may still be
15 finished, but go ahead.

16 MS. GILREATH: Your Honor, the rule
17 to show cause is the proper procedure because it
18 gives -- it gives rule -- it gives the defendant
19 notice, the opportunity to be heard, the
20 opportunity to prepare a defense.

21 As you know, I don't normally raise
22 this objection, but I thought this case was
23 extremely compelling for bringing this up for the
24 simple fact that based on the fact that we had so
25 little notice to prepare a defense, you know.

P R O C E E D I N G

Page 6

1 Part of his Constitutional protections include,
2 you know, the right to compulsory process, to call
3 witnesses in your own defense. And the amount of
4 time that we had, we had witnesses, you know. My
5 client has -- he has a very good defense to the
6 alleged bond violation here that is the basis for
7 the contempt of court proceeding.

8 However, based on how little notice
9 we had, there was not time to subpoena those
10 witnesses to, you know, command them to be here.
11 So we would request that the bench warrant be
12 vacated and, instead, that a rule to show cause
13 would be issued to initiate any criminal contempt
14 of court proceedings.

15 THE COURT: Is that it?

16 MS. GILREATH: For the moment, your
17 Honor. And I do have supporting -- I have made --
18 I did file the motion which I would like to make a
19 Court's exhibit at this time. I did file it this
20 morning.

21 I think that Ms. Howland was -- had
22 a different issue with just getting a copy today.
23 But I just received notice of the issue on
24 Thursday and spent Friday and the weekend
25 preparing this and just filed it this morning, not

P R O C E E D I N G

Page 7

1 too long before court started..

2 So, at this point, I would like to
3 make this an exhibit and I do have supporting case
4 law that is the basis for my motion, your Honor.

5 THE COURT: Okay. And I'll let you
6 present it and provide all that to the Court. I
7 understand bench warrants and conditions of bond.
8 They're usually a matter between the defendant and
9 the Court. But, Ms. Howland, if you would like to
10 respond for the State, I'll be more than happy to
11 entertain any response from you.

12 MS. HOWLAND: Yes, your Honor.
13 Just procedurally, actually, Ms. Gilreath got
14 notice of this on Wednesday. I received -- it may
15 have been even before that, actually. Because,
16 actually, I think it was on Tuesday. Just to get
17 to procedural background, on March 31st, I was not
18 in the office, that was Monday. I received an
19 email from Judge Whittle's court stating that
20 Mr. Price was in jail and might be released on the
21 2nd.

22 Of course, I did not receive the --
23 even read the email until the 1st. I actually
24 sent an email to the Court saying we needed help
25 to take care of this quickly. I was concerned,

P R O C E E D I N G

Page 8

1 because I was going to be on annual leave Thursday
2 and Friday and was not scheduled to actually be in
3 Judge Whittle's court until this Thursday, I
4 didn't want to see Mr. Price sit down there.

5 So, at that point, I started
6 jumping through hoops to deal with Mr. Price prior
7 to going on leave. Based on the fact that
8 Mr. Price had a pending case, I reviewed my file
9 and it appeared that he might be represented by
10 Ms. Gilreath. But since Mr. Price had a history
11 of not showing up and doing what he was supposed
12 to, I wasn't sure if he'd actually shown up at the
13 court -- at the public defender's office as he was
14 required to. Because he had a pre-trial hearing
15 on February 14th where he was told by Judge
16 Whittle he was re-qualified for a public defender.
17 Originally, he didn't want one because he wanted a
18 "real" lawyer, not a PD.

19 However, he then showed up at his
20 pre-trial hearing with his mother on the 7th and
21 didn't have a PD yet, but he did show that he had

22 a card showing that he was supposed to have his
23 appointment on March 11th.

24 Let me also make the Court aware
25 that this is actually his second bond violation

P R O C E E D I N G

Page 9

1 because he was found in contempt December 16th for
2 hiding in the shower at the victim's house and it
3 gave him 30 days at that time.

4 Based on the fact that I thought
5 that he might be represented and had no way to
6 know he actually was because I hadn't seen him
7 again, I called Ms. Gilreath and actually emailed
8 her as well. Also, in an effort to accommodate
9 the defendant and not let him sit in jail for
10 another ten days, I contacted Judge Whittle's
11 court seeing if there was a way to get down there
12 or how we could accommodate Mr. Price, all while I
13 was trying to contact Ms. Gilreath.

14 At that point, Judge Whittle said
15 he would be more than happy to have the
16 defendant -- or a judge hear the case up here. I
17 walked over to find out who was sitting on the
18 bench. You were sitting on the bench. I asked if
19 you'd be willing hear Mr. Price.

20 At this point, I still didn't know
21 if he was represented. You said you were. I
22 asked that Ms. Cook go ahead and fax up the
23 charging document and the bond paperwork. And, at
24 that point, Mr. Price was brought forward because
25 he was in jail on another CDV, which is where this

P R O C E E D I N G

Page 10

1 contempt stems from.

2 At that point, since we've not
3 heard from Ms. Gilreath, but it looked like he
4 probably was represented, we seemed to think that
5 he was based on how he described the lawyer he had
6 talked with. At that point, the Court decided
7 that it would obviously not be appropriate to go
8 forth. But, once again, in an effort to
9 accommodate everyone quickly, we'll still keep it
10 up here and it would be heard today, the person
11 being brought in front of Judge Whittle.

12 So, procedurally, that's where we
13 are as far as what the State did everything they
14 could. So Ms. Gilreath actually had notice of
15 this, I guess, on Wednesday. And I will say that
16 I've just received this motion. Normally, I would
17 hate to go forward without something in writing
18 because I believe in being prepared, but I did
19 take about 20 minutes today to get up to speed on
20 what she brought forth.

21 The State's argument simply is
22 this. The bail proceeding forms, there are two of
23 them, form one and form two. These forms that are
24 currently being used by Magistrates Courts, they
25 were approved by the South Carolina Attorney

P R O C E E D I N G

Page 11

1 General on September 5th, 2006 and they're ones
2 that are actually being issued by court
3 administration. I suspect they're more current
4 than the Bench Book that was cited in her motion.

5 Anyway, on page -- on bond form
6 two, on the reverse side, the number one
7 acknowledgement by the defendant is, I understand
8 that if I violate any conditions of this order, a
9 warrant -- not a rule to show cause -- a warrant
10 for my arrest will be issued.

11 If you'd look at form one, it's
12 actually the very first thing the defendant
13 acknowledges: I understand that if I violate any
14 conditions of this order, a warrant, not a rule to
15 show cause, for my arrest will be issued.

16 This authority stems from statutory
17 authority that's actually under 22-3-950 as power
18 to punish for contempt which gives Magistrates
19 authority to do that. And then it's incorporated,
20 obviously, under 17-15-40, or a court shall state
21 conditions imposed. And that specifically says,

22 on releasing the person on any of the foregoing
23 conditions, the Court shall issue a brief order,
24 which basically comes with these forms which then
25 are stamped and judges may write additional

P R O C E E D I N G

Page 12

1 things, containing a statement of conditions
2 imposed. "Informing the person it's a penalty for
3 violation of the conditions of release and stating
4 that a warrant -- not a rule to show cause -- a
5 warrant for the person's arrest will be issued
6 immediately upon any such violation."

7 Now, as far as the issue with
8 Constitutional provisions and rights to jury
9 trials and things like that, Ms. Gilreath did
10 quote, state the Passmore, which is a 2005 Court
11 of Appeals South Carolina case. And it does talk
12 about this -- of course, this out of a Family
13 Court action. But the Court is very clear and
14 discusses all the cases about whether people have
15 a right to a jury trial and that sort of thing.
16 And, essentially, the -- if the penalty is
17 considered petty or less than six months in jail,
18 there's no right to a jury trial.

19 I find the timeliness argument --
20 and the reason it was brought up in this case
21 versus she had another client today who, a future
22 client that was in contempt because he wrote the
23 Court, that order -- that this argument didn't
24 come up for that one because it looked to be it
25 was going to be (inaudible) for defense counsel.

1 At this point, we feel like that it
2 is clear that the statute contemplates a warrant.
3 The form the defendant signs says a warrant.
4 These two particular documents are used throughout
5 the state. They were approved by the Attorney
6 General. They are issued by court administration.
7 Clearly, those two bodies, had they contemplated a
8 rule to show cause, would have put that.

9 Clearly, if a warrant was not the
10 mechanism to bring the defendant forth, the
11 statute would reflect that. But all we have is
12 Ms. Gilreath fending that it should be a rule to
13 show cause. There is no statutory authority,
14 there is no authority in the form that is approved
15 by the Attorney General's Office or the court
16 administration. And I don't see anywhere that
17 anything's on point in the case laws, the case law
18 that she cited.

19 However, I'm -- perhaps I'm
20 speaking out of turn, because since this is a
21 ~~six-page motion and there's probably about twelve~~
22 cases cited, I have not had the opportunity to
23 read all of them. But based on the information
24 that I was able to review, specifically Passmore
25 which seems to be the one that discusses these

P R O C E E D I N G

Page 14

1 cases in-depth, it's clear the State's position
2 is, the bench warrant is the appropriate mechanism
3 and, frankly, the only mechanism that this Court
4 has to proceed with a contempt issue related to
5 the violation of a bond restriction.

6 THE COURT: Ms. Gilreath, anything
7 in response?

8 MS. GILREATH: Yes, your Honor.
9 First of all, we agree that where there has been a
10 bond violation, the proper thing to do is issue a
11 bench warrant. However, the whole purpose of
12 having a contempt of court proceeding is to
13 determine whether there has been a bond violation.

14 When the Court determines that
15 there has been a bond violation, at that point,
16 then a bench warrant is proper. At that point,
17 those Constitutional protections, because there
18 has been a proceeding where the defendant had
19 notice, a right to be heard, a right to confront
20 the witnesses against him, where all those rights
21 had been protected, at that point when it has been

22 determined to actually be a bond violation, that's
23 where we argue that a bench warrant is proper.

24 If the defendant receives a rule to
25 show cause and fails to appear, a bench warrant is

P R O C E E D I N G

Page 15

1 proper. If the defendant fails to appear for --

2 THE COURT: Wait a minute. Wait a
3 minute. You just told me that you agree that a
4 bench warrant needs to be issued, but then it's
5 only if he fails to appear for a rule to show
6 cause.

7 MS. GILREATH: I apologize, your
8 Honor. I'm listing other potential times when a
9 bench warrant would be proper. My argument is
10 that a bench warrant is proper upon a finding in a
11 proper court proceeding that a bond violation has
12 actually occurred. Otherwise, there would be no
13 point in having the contempt of court proceeding.
14 Otherwise, there would be no point in issuing a
15 rule to show cause.

16 They would just -- officers could
17 just present and the State could just present a
18 probable cause showing that there may have been
19 one, a bench warrant could be issued, they sit in
20 the detention center on a bench warrant with the
21 inability to bond out, they're essentially being
22 punished for an event that they've not yet been --
23 it has not yet been determined that they actually
24 committed. And that's part of the reason that
25 this case is so compelling is because --

P R O C E E D I N G

Page 16

1 THE COURT: Well, I don't mean to
2 cut you off, but let's address it. With that same
3 argument, then, you're basically saying you should
4 have a rule to show cause, try issuing an arrest
5 warrant.

6 MS. GILREATH: No, your Honor.
7 Because once an arrest warrant is issued, the
8 defendant then goes to bond court and has the
9 opportunity to bond out because they're presumed
10 innocent until proven guilty beyond a reasonable
11 doubt. The reasonable doubt standard still
12 applies in criminal contempt of court proceedings.

13 In one of the cases I have cited in
14 the motion, Poston v. Poston, and that is not --
15 that is a Family Court hearing but it deals with a
16 criminal contempt of court issue for constructive
17 contempt. The difference between constructive
18 contempt and direct contempt, of course, is that
19 direct contempt occurs within the presence of the
20 Court. And that was the reason that that issue
21 was not being raised with my future client, as she

22 mentioned, because --

23 THE COURT: In Poston, was the
24 defendant -- and if you know, you said it was a
25 Family Court hearing, he wasn't out on bond under

P R O C E E D I N G

Page 17

1 a contract that he had signed with the Court,
2 correct?

3 MS. GILREATH: It was a slightly
4 different situation in that he was not out on bond
5 on a criminal charge. But our argument is that
6 the statute that deals with bond violations and
7 the right --

8 THE COURT: The statute that deals
9 with bond violations is South Carolina -- is
10 Section Code 17-15-40, which I have pulled in
11 preparing to hear your motion after you had filed
12 it this morning. And, of course, Ms. Howland who,
13 in turn, actually read it and so I will not read
14 it again. And I will also acknowledge that the
15 back of the form four that the defendant signs is
16 very clear of what the penalties are if you
17 violate conditions of the bond.

18 Instead of going back and forth
19 with this between the two of you, I'm prepared to
20 rule at this time and I'm going to deny your
21 motion to vacate the bench warrant. However, in
22 the fact that you feel like you need some time to
23 prepare a proper defense, it looks like -- is the
24 defendant still awaiting bond on his other charge
25 as well or has he made bond on that charge?

P R O C E E D I N G

Page 18

1 MS. GILREATH: He has not yet made
2 bond. Because he'd been sitting on a bench
3 warrant, he couldn't bond out anyways. So he
4 hasn't attempted to make bond yet, your Honor.

5 THE COURT: Okay. Is 48 hours
6 enough time to prepare your defense and have your
7 witnesses here?

8 MS. GILREATH: We will do our best,
9 your Honor.

10 THE COURT: If it's not, I'll give
11 you more.

12 MS. GILREATH: Well, your Honor --

13 THE COURT: I'm asking you.

14 MS. GILREATH: Yes, your Honor.
15 That'll be enough.

16 THE COURT: Okay. All right. Then
17 I'll hear the -- either that or I can transfer it
18 back to -- I can let Judge Whittle hear it. I was
19 doing it as a benefit for --

20 MS. GILREATH: Your Honor, we do
21 have some evidence here to present today. We just

22 don't have the witnesses that, you know --

23 THE COURT: I'm not going to hear
24 half today and half tomorrow -- I mean, half
25 Wednesday. I'll hear it all together. All right.

P R O C E E D I N G

Page 19

1 We'll put it on the docket for Wednesday.

2 MS. GILREATH: Thank you, your

3 Honor.

4 THE COURT: Thank you.

5 (End of Recording)

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P R O C E E D I N G

Page 20

1 CERTIFICATE OF REPORTER
2
3

4 I, Laura S. DeCillis, Certified Court
5 Reporter and Notary Public in and for the State of
6 South Carolina at Large, do hereby certify:

7 That the foregoing transcript was
8 produced from a recording, not taken by same, and
9 that all audible testimony was transcribed by me
10 to the best of my ability.

11 I further certify that I am neither
12 related to nor counsel for any party to the cause
13 pending or interested in the events thereof.

14 Witness my hand, I have hereunto affixed
15 my official seal this 30th day of June 2014, at
16 Columbia, Richland County, South Carolina.

17 *Laura S. DeCillis*

18 Laura S. DeCillis,
19 Certified Court Reporter
20 State of South Carolina at Large
21 My Commission expires
22 August 10, 2015
23
24
25

A ability 20:7 able 13:24 accommodate 9:8,12 10:9 acknowledge 17:14 acknowledge... 11:7 acknowledges 11:13 action 4:25 5:2 5:12 12:13 actions 5:3 additional 11:25 address 16:2 administration 11:3 13:6,16 affixed 20:10 agree 14:9 15:3 agreed 4:9 ahead 5:15 9:22 alleged 4:7 6:6 Amendment 5:5 amount 6:3 annual 8:1 anything's 13:17 Anyway 11:5 anyways 18:3 apologize 5:13 15:7 Appeals 12:11 appear 14:25 15:1,5 APPEARANC... 2:1 appeared 8:9 applies 16:12 appointment 8:23 appropriate 10:7 14:2 approved 10:25 13:5,14 April 1:7,16	argue 14:23 argument 3:3,4 10:21 12:19,23 15:9 16:3 17:5 arguments 5:10 arrest 11:10,15 12:5 16:4,7 asked 9:18,22 asking 4:19 18:13 attempted 18:4 Attorney 10:25 13:5,15 audible 20:7 August 20:17 authority 11:16 11:17,19 13:13 13:14 awaiting 17:24 aware 8:24 B back 4:11 17:15 17:18 18:18 background 7:17 bail 10:22 base 5:9 based 4:20 5:12 5:24 6:8 8:7 9:4 10:5 13:23 basically 11:24 16:3 basis 6:6 7:4 believe 10:18 bench 4:6,10,15 4:20,23,24 6:11 7:7 9:18 9:18 11:4 14:2 14:11,16,23,25 15:4,9,10,19 15:20 17:21 18:2 benefit 18:19 best 18:8 20:7	beyond 16:10 bodies 13:7 bond 4:7 6:6 7:7 8:25 9:23 11:5 14:5,10,13,15 14:22 15:11,21 16:8,9,25 17:4 17:6,9,17,24 17:25 18:2,3,4 Book 4:23 11:4 brief 11:23 bring 13:10 bringing 5:23 brought 4:11 9:24 10:11,20 12:20 C call 6:2 called 9:7 card 8:22 care 7:25 Carolina 1:1,5 1:16 2:3,5,9 5:7 10:25 12:11 17:9 20:5,11,16 case 5:22 7:3 8:8 9:16 12:11,20 13:17,17 15:25 cases 12:14 13:22 14:1 16:13 cause 5:10,17 6:12 11:9,15 12:4 13:8,13 14:25 15:6,15 15:18 16:4 20:9 CDV 9:25 center 1:15 4:6 15:20 certain 5:4 Certificate 3:6 20:1	Certified 20:4 20:15 certify 20:5,8 charge 17:5,24 17:25 charging 9:23 cited 11:4 13:18 13:22 16:13 clear 12:13 13:2 14:1 17:16 Clearly 13:7,9 client 6:5 12:21 12:22 16:21 Code 17:10 Columbia 20:11 come 12:24 comes 11:24 command 6:10 Commission 20:16 committed 15:24 compelling 5:23 15:25 compulsory 6:2 concerned 7:25 conditions 7:7 11:8,14,21,23 12:1,3 17:17 confront 14:19 considered 12:17 Constitutional 5:4,7 6:1 12:8 14:17 constructive 16:16,17 contact 9:13 contacted 9:10 containing 12:1 contemplated 13:7 contemplates 13:2 contempt 1:8,13	4:21 5:1 6:7,13 9:1 10:1 11:18 12:22 14:4,12 15:13 16:12,16 16:17,18,18,19 CONTENTS 3:1 contract 17:1 conversation 4:4 Cook 9:22 copy 6:22 correct 17:2 counsel 3:3,4 4:12,16 12:25 20:9 County 1:2,14 20:11 course 7:22 12:12 16:18 17:12 court 1:1,8,13 3:5 4:2,5,9,11 4:19,22,23 5:1 5:14 6:7,14,15 7:1,5,6,9,19,24 8:3,13,24 9:11 10:6 11:2,20 11:23 12:10,13 12:13,23 13:6 13:15 14:3,6 14:12,14 15:2 15:11,13 16:1 16:8,12,15,16 16:20,23,25 17:1,8 18:5,10 18:13,16,23 19:4 20:4,15 Court's 6:19 courtesy 4:12 Courts 10:24 criminal 4:25,25 5:1,3 6:13 16:12,16 17:5 current 11:3 currently 10:24

P R O C E E D I N G

Page 2

cut 16:2	due 5:6,7	11:24	happy 7:10 9:15	information
D	E	F	G	H
day 1:16 20:11	East 1:15 2:5	forth 10:8,20	hate 10:17	13:23
days 9:3,10	effort 9:8 10:8	13:10 17:18	hear 4:9,16 9:16	Informing 12:2
deal 8:6	either 18:17	forward 9:24	9:19 17:11	initiate 4:24
deals 16:15 17:6	email 7:19,23,24	10:17	18:17,18,23,25	5:12 6:13
17:8	emailed 9:7	found 9:1	heard 5:8,19	initiating 4:21
December 9:1	entertain 7:11	four 17:15	10:3,10 14:19	innocent 16:10
decided 10:6	ESQUIRE 2:4,7	Fourteenth 5:5	hearing 1:7,13	interested 20:9
DeCillis 20:4,15	essentially 12:16	Friday 6:24 8:2	8:14,20 16:15	issue 6:22,23
defendant 1:9	15:21	front 10:11	16:25	11:23 12:7
2:6 3:3 4:12	event 15:22	further 20:8	held 1:13	14:4,10 16:16
5:18 7:8 9:9,16	events 20:9	future 12:21	help 7:24	16:20
11:7,12 13:3	evidence 18:21	16:21	hereunto 20:10	issued 4:7 6:13
13:10 14:18,24	exhibit 6:19 7:3		hiding 9:2	11:2,10,15
15:1 16:8,24	expedite 4:13	G	history 8:10	12:5 13:6 15:4
17:15,24	expires 20:16	Gary 1:14	Honor 4:19,22	15:19 16:7
defender 8:16	extremely 5:23	General 11:1	5:12,16 6:17	issuing 15:14
defender's 8:13	F	13:6	7:4,12 14:8	16:4
Defenders 2:8	fact 4:20 5:24,24	General's 13:15	15:8 16:6 18:4	J
defense 4:12,15	8:7 9:4 17:22	getting 6:22	18:9,12,14,20	Jael 2:7
5:20,25 6:3,5	fails 14:25 15:1	Gilreath 2:7	19:3	jail 7:20 9:9,25
12:25 17:23	15:5	4:16,16,18	Honorable 1:14	12:17
18:6	Family 12:12	5:16 6:16 7:13	hoops 8:6	judge 4:8 7:19
deny 17:20	16:15,25	8:10 9:7,13	hours 18:5	8:3,15 9:10,14
described 10:5	far 10:13 12:7	10:3,14 12:9	house 9:2	9:16 10:11
detention 4:6	fax 9:22	13:12 14:6,8	Howland 2:4	18:18
15:20	February 8:15	15:7 16:6 17:3	6:21 7:9,12	judges 11:25
determine 14:13	feel 13:1 17:22	18:1,8,12,14	17:12	Judicial 1:15
determined	fending 13:12	18:20 19:2	I	jumping 8:6
14:22 15:23	file 6:18,19 8:8	give 18:10	immediately	June 20:11
determines	filed 6:25 17:11	gives 5:18,18,18	12:6	jury 12:8,15,18
14:14	find 9:17 12:19	11:18	imposed 11:21	K
difference 16:17	finding 15:10	go 5:15 9:22	12:2	keep 10:9
different 6:22	Findings 3:5	10:7,17	in-depth 14:1	know 5:21,25
17:4	finished 5:15	goes 16:8	inability 15:21	6:2,4,10 9:6,20
direct 16:18,19	first 4:22 11:12	going 8:1,7	inaudible 4:4	16:24 18:22
discusses 12:14	14:9	12:25 17:18,20	12:25	L
13:25	foregoing 11:22	18:23	include 6:1	Large 20:5,16
docket 19:1	20:6	good 6:5	includes 5:8	Laura 20:4,15
document 9:23	form 10:23,23	guess 10:15	including 5:5,6	law 7:4 13:17
documents 13:4	11:5,11 13:3	guilty 16:10	5:6	laws 13:17
doing 8:11 18:19	13:14 17:15	H	incorporated	lawyer 8:18 10:5
doubt 16:11,11	forms 10:22,23	half 18:24,24,24	11:19	leave 8:1,7
		hand 20:10	Index 3:7	

let's 16:2 Lexington 1:2 1:14,15 2:5,9 listing 15:8 little 5:25 6:8 long 7:1 look 11:11 looked 10:3 12:24 looks 17:23 M Magistrate 4:23 Magistrate's 1:1 4:8 Magistrates 10:24 11:18 Main 1:15 2:5,8 March 7:17 8:23 matter 7:8 mean 16:1 18:24 mechanism 4:21 13:10 14:2,3 mentioned 16:22 minute 15:2,3 minutes 10:19 moment 6:16 Monday 1:16 7:18 months 12:17 morning 6:20,25 17:12 mother 8:20 motion 4:15,17 6:18 7:4 10:16 11:4 13:21 16:14 17:11,21 N need 17:22 needed 7:24 needs 15:4 neither 20:8 NICOLE 2:4 normally 5:21 10:16	Notary 20:4 notice 5:8,19,25 6:8,23 7:14 10:14 14:19 number 11:6 O objection 5:22 obviously 5:3 10:7 11:20 occurred 15:12 occurs 16:19 office 2:4 4:9 7:18 8:13 13:15 officers 15:16 official 20:11 Okay 7:5 18:5 18:16 once 10:8 16:7 ones 11:1 opportunity 5:19,20 13:22 16:9 order 11:8,14,23 12:23 Originally 8:17 P page 11:5 paperwork 9:23 part 6:1 15:24 particular 13:4 party 20:9 Passmore 12:10 13:24 PD 8:18,21 penalties 17:16 penalty 12:2,16 pending 8:8 20:9 people 12:14 person 10:10 11:22 12:2 person's 12:5 petty 12:17 PLAINTIFF 1:6	point 7:2 8:5 9:14,20,24 10:2,6 13:1,17 14:15,16,21 15:13,14 position 14:1 Poston 16:14,14 16:23 potential 15:8 power 11:17 pre-trial 8:14,20 prepare 5:20,25 17:23 18:6 prepared 10:18 17:19 preparing 6:25 17:11 presence 16:19 present 7:6 15:17,17 18:21 presumed 16:9 Price 1:8 4:3,5 4:10 7:20 8:4,6 8:8,10 9:12,19 9:24 prior 8:6 probable 15:18 probably 10:4 13:21 procedural 7:17 procedurally 7:13 10:12 procedure 5:17 proceed 14:4 proceeding 4:22 5:1 6:7 10:22 14:12,18 15:11 15:13 proceedings 3:2 4:1 6:14 16:12 process 5:6,8 6:2 produced 20:6 proper 4:21 5:11 5:11,17 14:10 14:16,23 15:1	15:9,10,11 17:23 protected 14:21 protections 5:4 6:1 14:17 proven 16:10 provide 7:6 provisions 12:8 public 2:8 8:13 8:16 20:4 pulled 17:10 punish 11:18 punished 15:22 purpose 14:11 put 13:8 19:1 Q Quentin 1:8 4:2 quickly 7:25 10:9 quote 12:10 R raise 5:21 raised 16:21 re-qualified 8:16 read 7:23 13:23 17:13,13 real 8:18 reason 12:20 15:24 16:20 reasonable 16:10,11 receive 5:6 7:22 received 4:14 6:23 7:14,18 10:16 receives 14:24 recording 19:5 20:6 refer 4:23 reflect 13:11 Reinhart 1:14 related 14:4 20:9	release 12:3 released 7:20 releasing 11:22 Reporter 3:6 20:1,4,15 represented 8:9 9:5,21 10:4 Representing 2:3,6 request 6:11 required 8:14 respond 7:10 response 7:11 14:7 restriction 14:5 reverse 11:6 review 13:24 reviewed 8:8 Richland 20:11 right 4:2,5 5:5 6:2 12:15,18 14:19,19 17:7 18:16,25 rights 5:7 12:8 14:20 rule 5:10,16,18 6:12 11:9,14 12:4 13:8,12 14:24 15:5,15 16:4 17:20 S S 20:4,15 saying 7:24 16:3 says 4:24 11:21 13:3 scheduled 8:2 seal 20:11 second 8:25 Section 17:10 see 4:9 8:4 13:16 seeing 9:11 seen 4:13 9:6 sent 7:24 September 11:1

P R O C E E D I N G

Page 4

show 5:10,17 6:12 8:21 11:9 11:15 12:4 13:8,13 14:25 15:5,15 16:4 showed 8:19 shower 9:2 showing 8:11,22 15:18 shown 8:12 side 11:6 signed 17:1 signs 13:3 17:15 simple 5:24 simply 10:21 sit 8:4 9:9 15:19 sitting 9:17,18 18:2 situation 17:4 six 12:17 six-page 13:21 slightly 17:3 Solicitor's 2:4 sort 12:15 South 1:1,5,16 2:3,5,9 5:7 10:25 12:11 17:9 20:5,11 20:16 speak 5:13 speaking 13:20 specifically 11:21 13:24 speed 10:19 spent 6:24 stamped 11:25 standard 16:11	statement 12:1 stating 7:19 12:3 statute 13:2,11 17:6,8 statutory 11:16 13:13 stems 10:1 11:16 Street 1:15 2:5,8 subpoena 6:9 supporting 6:17 7:3 supposed 8:11 8:22 sure 8:12 suspect 11:3 Swansea 4:8	transcribed 20:7 transcript 20:6 transfer 18:17 trial 12:15,18 trials 12:9 trigger 5:4 try 16:4 trying 9:13 Tuesday 7:16 turn 13:20 17:13 twelve 13:21 two 10:22,23 11:6 13:4,7 17:19	14:25 15:4,9 15:10,19,20 16:5,7 17:21 18:3 warrants 7:7 wasn't 8:12 16:25 way 5:11 9:5,11 we'll 10:9 19:1 we've 10:2 Wednesday 7:14 10:15 18:25 19:1 weekend 6:24 Whittle 4:8 8:16 9:14 10:11 18:18 Whittle's 7:19 8:3 9:10 willing 9:19 Witness 20:10 witnesses 6:3,4 6:10 14:20 18:7,22 Word 3:7 write 11:25 writing 10:17 wrote 12:22	1st 7:23 2 20 3:6 10:19 2005 12:10 2006 11:1 2013A321020... 1:1 2014 1:7,17 20:11 2015 20:17 205 1:15 2:5 22-3-950 11:17 29072 2:5,9 2nd 7:21 3 30 9:3 30th 20:11 31st 7:17 4 4 3:2,3 407 2:8 48 18:5 5 5th 11:1 6 7 7 1:7 3:4 7th 1:16 8:20
started 7:1 8:5 state 1:1,5 2:3 3:4 7:10 10:13 11:20 12:10 13:5 15:17 20:4,16 State's 10:21 14:1	take 7:25 10:19 taken 20:6 talk 12:11 talked 10:6 ten 9:10 testimony 20:7 Thank 4:18 19:2 19:4 thereof 20:9 thing 11:12 12:15 14:10 things 12:1,9 think 5:9 6:21 7:16 10:4 thought 5:13,22 9:4 Thursday 6:24 8:1,3 time 6:4,9,19 9:3 17:20,22 18:6 timeliness 12:19 times 15:8 today 6:22 10:10 10:19 12:21 18:21,24 told 8:15 15:3 tomorrow 18:24	understand 7:7 11:7,13 usually 7:8 v 16:14 vacate 4:15,19 17:21 vacated 6:12 versus 12:21 victim's 9:2 violate 11:8,13 17:17 violation 4:7 6:6 8:25 12:3,6 14:5,10,13,15 14:22 15:11 violations 17:6,9 VS 1:7	1/2 2:8 10 20:17 11th 8:23 14th 8:15 16th 9:1 17-15-40 11:20 17:10 18 3:5	

Attachment F

1 STATE OF SOUTH CAROLINA IN THE MAGISTRATE'S COURT
2 WARRANT # 2013A3210202227
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STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

VS.)

QUENTIN PRICE,)

DEFENDANT.)

APRIL 9, 2014
HEARING
(CONTEMPT OF COURT)

Contempt of Court Hearing held before
the Honorable Gary Reinhart, at Lexington County
Judicial Center, 205 East Main Street, Lexington,
South Carolina, on Wednesday, April 9, 2014.

1 APPEARANCES

2
3 Representing the State of South Carolina:4 NICOLE HOWLAND, ESQUIRE
5 Solicitor's Office
6 205 East Main Street
7 Lexington, South Carolina 29072

8 Representing the Defendant:

9 JAE L GILREATH, ESQUIRE
10 Public Defenders
11 407 1/2 Main Street
12 Lexington, South Carolina 29072
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P R O C E E D I N G

Page 3

1	CONTENTS	
2	Proceedings	4
3	Witnesses on behalf of the State	
4	Meagan Penny	
	Direct/Howland	7
5	Cross/Gilreath	10
6	Kimishia Mims	
	Direct/Howland	17
7	Cross/Gilreath	18
8	Witnesses on behalf of the Defendant	
9	Shannon M. O'Cain	
	Direct/Gilreath	22
10	Quentin Price	
11	Direct/Gilreath	26
12	Court's Findings	31
13	Certificate of Reporter	33
14	Word Index	
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Proceedings

2 THE COURT: All right. Quentin
3 Price.

4 (Discussion off the record)

5 THE COURT: All right. Mr. Price,
6 you are currently in the detention center on a
7 bench warrant that was issued by Judge Whittle.

8 MR. PRICE: Yes, sir.

9 THE COURT: It stated there was
10 cause that you had violated conditions of your
11 bond, that information was brought to Judge
12 Whittle by the Lexington County Sheriff's
13 Department. Ms. Howland, I'll hear from the
14 State.

15 MS. HOWLAND: Your Honor, is the
16 Court going to take judicial notice about his bond
17 was set on November 20th, 2013 and the conditions
18 were no contact?

19 THE COURT: Of course, I am.

20 MS. HOWLAND: Your Honor, at this
21 point, we would call Meagan Penny.

22 MS. GILREATH: Your Honor, can I
23 make for the record, just to renew my objection
24 that this proceeding is violating my client's
25 procedural due process rights because there was no

P R O C E E D I N G

Page 5

1 rule to show cause issued? And I'm just stating
2 that for the record.

3 THE COURT: So noted.

4 MS. GILREATH: Thank you, your
5 Honor.

6 MS. HOWLAND: And, your Honor, I
7 would certainly renew all of our objections and
8 reasoning that were part of the record on Monday's
9 hearing.

10 THE COURT: Also so noted.

11 MS. HOWLAND: Your Honor, I would
12 like if the Court can give directions as far as
13 limiting the scope of examination. We are not
14 getting into the underlying criminal charge. I do
15 not want to get prior sworn testimony.

16 THE COURT: What I want you to do
17 is, Ms. Howland, is to set the basis of the
18 violation. The Court will go ahead and take
19 notice that the defendant was arrested on the
20 charge of criminal domestic violence. He had a
21 bond hearing on November the 20th of 2013 for the
22 offense of criminal domestic violence, at which
23 time Judge Jeffcoat set a \$5,000 surety bond.

24 That bond form was signed by the
25 defendant, Mr. Quentin Price. The conditions of

1 the bond were that the defendant must notify court
2 immediately of any change of address. He was to
3 have no contact with the victim. The victim's
4 form indicates that Ms. Kimishia Mims is the
5 victim in the crime of the criminal domestic
6 violence.

7 He was not to return to the
8 incident location. There was a new address
9 required. So I'm assuming that the incident
10 location was Centre Street in West Columbia. In
11 addition, he was advised that he was to have a law
12 enforcement escort to pick up any belongings from
13 that location.

14 That bond was posted by Gene Frye,
15 bail bondsman, on November the 20th, 2013. And,
16 again, the defendant signed, acknowledging that he
17 understands that if I violate any condition of
18 this order, a warrant will be -- a warrant for my
19 arrest will be issued. And it states, I
20 understand and have been informed that I have a
21 right and an obligation to be present at trial and
22 should I fail to attend the court, the trial will
23 proceed in my absence. And it's been explained to
24 me that if I fail to appear before the Court as
25 required, a warrant for my arrest will be issued.

1 All right. Ms. Howland, please
2 tell me the State's position as to what the --
3 before you call any witnesses, I want to know what
4 the violation of the -- I want you to lay the
5 groundwork of what the violation is.

6 MS. HOWLAND: Your Honor, the
7 violation of the bond is having contact with the
8 victim, Kimishia Mims, on March 9th, 2014.

9 THE COURT: All right. And,
10 Ms. Gilreath, it's your position that your client
11 wishes to contest that, correct?

12 MS. GILREATH: Yes, your Honor.

13 THE COURT: All right.
14 Ms. Howland, you may call a witness that can
15 provide testimony to the Court that Mr. Price was
16 in violation on the date that you state.

17 MS. HOWLAND: We would call Meagan
18 Penny.

19 THE COURT: Ms. Penny, raise your
20 right hand, please, ma'am.

21 Whereupon:

22 Meagan Penny, having been duly
23 sworn and cautioned to speak the truth, the
24 whole truth and nothing but the truth,
25 testified as follows:

1 THE COURT: All right. And, if you
2 would, state your full name for the record and
3 step a little bit closer to the microphone.

4 THE WITNESS: Meagan Penny.

5 THE COURT: All right. Ms. Penny,
6 please answer any questions that the State may
7 have for you.

8 DIRECT EXAMINATION

9 BY MS. HOWLAND:

10 Q. Ms. Penny, do you know who Quentin Price
11 is?

12 A. Yes.

13 Q. Do you see him in the courtroom today?

14 A. Yes.

15 Q. Would you please describe him?

16 A. Tall --

17 Q. Where he is.

18 A. Oh. Over there.

19 Q. Over there being where?

20 A. In the red.

21 Q. And would you recognize Mr. Price if you
22 saw him out on the road?

23 A. Yes.

24 Q. What name do you know Mr. Price by?

25 A. Jeffrey.

P R O C E E D I N G

Page 9

1 Q. Do you happen to know why he's called
2 Jeffrey?

3 A. That's his dad's name.

4 Q. And on March 9th, 2014, did you see
5 Mr. Price?

6 A. Yes.

7 Q. Where did you see him?

8 A. In my neighborhood.

9 Q. Okay. And where is that?

10 A. River Oaks.

11 Q. Was Kimishia Mims present?

12 A. Yes.

13 Q. Tell me when you first -- where were you
14 when you first saw Mr. Price?

15 A. In my vehicle.

16 Q. Okay. And do you know about what time
17 it was?

18 A. Probably about ten, maybe. I'm not
19 sure.

20 Q. Was it dark?

21 A. Yes.

22 Q. And tell me what happened. Did you see
23 Mr. Price around Ms. Mims?

24 A. Yes.

25 Q. Did you see that when you first drove

1 up?

2 A. No.

3 Q. Okay. When did you see that?

4 A. When I heard her outside yelling about
5 him to stop kicking her window.

6 Q. And did you go downstairs when you heard
7 the yelling?

8 A. Well, I came outside.

9 Q. I'm sorry. Came outside? And who did
10 you see when you came outside?

11 A. Jeffrey and Kimishia.

12 THE COURT: Thank you. Do you want
13 to cross-examine?

14 MS. GILREATH: Yes, your Honor.

15 THE COURT: Sure. Go ahead.

16 CROSS-EXAMINATION

17 BY MS. GILREATH:

18 Q. Ms. Penny, you've stated that you know
19 Mr. Price as Jeffrey. When did you come to know
20 him by the name Jeffrey?

21 A. I've known him by that since I met him.

22 Q. And why was it that you said that he's
23 known by Jeffrey?

24 A. That's his dad's name.

25 Q. Have you ever met his dad?

P R O C E E D I N G

Page 11

1 A. No. But I met his mom.

2 Q. You met his mom?

3 A. Uh-huh.

4 Q. And his mom said that his dad's name is
5 Jeffrey so that's what he calls --

6 A. That's what they call him, yes.

7 Q. Okay. Okay. Ms. Penny, did you tell
8 Investigator Burt that Kimishia was your sister
9 and that she had come to visit you?

10 MS. HOWLAND: Objection, your
11 Honor. That's not relevant.

12 MS. GILREATH: This was relevant
13 to -- this was the date of the alleged bond
14 violation. This is what she told the officer when
15 he responded to the scene the day that he was
16 accused of being there.

17 MS. HOWLAND: It's not relevant
18 whether he was there or not, your Honor.

19 THE COURT: If that's the only
20 issue before the Court, the only issue before the
21 Court today was Mr. Price and contact with
22 Ms. Mims after November 20th, 2013. Your question
23 will remain to that fact.

24 MS. GILREATH: Yes, your Honor.

25 BY MS. GILREATH:

1 Q. Ms. Penny, were you -- at what point did
2 you see Mr. Price, or Jeffrey, on scene?

3 A. When I pulled up to my apartment
4 complex, I opened my door and he came walking up
5 asking me had I seen Kimishia Mims.

6 Q. Okay. Now, see, before, isn't it true
7 that you said that you pulled up and he was
8 already in contact with her?

9 MS. HOWLAND: Objection, your
10 Honor. That's not what she testified to.

11 MS. GILREATH: It's fine, your
12 Honor. I'll move on.

13 BY MS. GILREATH:

14 Q. Ms. Penny, isn't it true that you told
15 Investigator Burt that you arrived shortly after
16 eight o'clock p.m.?

17 A. I can't remember. I'm not sure.

18 Q. Do you know what time you arrived?

19 A. I know it was dark outside. But with
20 the daylight savings, now it would be daytime.

21 Q. And isn't it true that you told
22 Investigator Burt that, at that time, you observed
23 Kimishia and Quentin, whom you only knew as
24 Jeffrey, arguing in the parking lot?

25 A. No. I got there first.

1 Q. Okay. So, now, your testimony today is
2 that you got there first?

3 A. I was there. He was already in the
4 neighborhood. Whenever I pulled up and opened my
5 door, he walked up to it. Kimishia was nowhere in
6 sight then.

7 Q. Okay. And where did Kimishia come from?
8 At what point did Kimishia show up?

9 A. I'm not sure.

10 Q. You're not sure?

11 A. I'm not sure because I went ahead on
12 upstairs.

13 Q. Okay.

14 THE COURT: Is there something you
15 want to say to me?

16 MR. PRICE: Oh, no, sir, I don't.

17 THE COURT: All right. Then you
18 quit just sitting there constantly staring at me.

19 MR. PRICE: I'm sorry, sir. She
20 just told me to keep my eyes on you, that's all.
21 She told me --

22 THE COURT: Keep your eyes on --
23 she told you to keep your eyes -- to keep staring
24 at me?

25 MS. GILREATH: I advised my client

1 that during -- while the hearing was going on,
2 that he should stay facing you, your Honor.

3 MR. PRICE: I apologize. And I'll
4 look down.

5 THE COURT: It's a little different
6 than being stared down in the courtroom, so --

7 MS. GILREATH: I apologize, your
8 Honor. I was not aware of what was going on.

9 THE COURT: Go ahead and continue.

10 BY MS. GILREATH:

11 Q. Ms. Penny, did you speak with someone
12 from our office about this case? Did you speak
13 with a lady named Shannon O'Cain about this case
14 sometime within the past few days?

15 A. I think someone called me. I'm not sure
16 if that's the name. I don't know.

17 Q. Okay. Well, so you spoke with someone
18 in the past couple of days about this case?

19 A. Uh-huh.

20 Q. Do you remember what you told her?

21 A. Yeah. What happened. The same thing I
22 told them.

23 Q. Isn't it true that you told her that you
24 were in the house the whole time and you saw no
25 altercation?

P R O C E E D I N G

Page 15

1 MS. HOWLAND: Objection, your
2 Honor. She's asked this question about twelve
3 different ways and the victim is being consistent.
4 It's now badgering. And I object to her
5 continuing to ask the same question over and over
6 and over.

7 MS. GILREATH: First of all, your
8 Honor, this is not the victim. Second of all,
9 your Honor, this is meant to impeach her prior
10 statements.

11 MS. HOWLAND: Well, then, she can
12 call Ms. O'Cain. But, at this point, she has been
13 very clear about testifying.

14 THE COURT: I see. You asked her
15 the question about what she asked -- what she told
16 Ms. O'Cain and her answer was exactly what I've
17 already said today. If Ms. O'Cain is going to
18 testify later, she can come up and give a
19 different version.

20 MS. GILREATH: Yes, your Honor. I
21 have no further questions.

22 THE COURT: Ms. Mims, I have a
23 question for you.

24 MS. HOWLAND: She's not Ms. Mims,
25 your Honor.

1 THE WITNESS: No. That's --

2 THE COURT: Now you've got me doing
3 it. Ms. Penny, correct? All right. What date
4 did you see Mr. Price?

5 THE WITNESS: March the 9th.

6 THE COURT: And who did you see him
7 with?

8 THE WITNESS: Whenever I got there,
9 nobody. It was just him by his self.

10 THE COURT: Okay. Did you see him
11 again that day?

12 THE WITNESS: I seen him when I
13 heard Kimishia outside yelling. I walked outside
14 and they were both outside.

15 THE COURT: You saw Kimishia Mims
16 and Quentin Price together on March the 9th?

17 THE WITNESS: Yeah.

18 THE COURT: Thank you.

19 Ms. Gilreath, anything that you would like to say
20 or anyone you would like to call?

21 MS. GILREATH: Yes, your Honor.
22 I'd like to call Ms. Shannon O'Cain.

23 MS. HOWLAND: Your Honor, we do
24 have another witness we would put up, but I don't
25 know if you just want to go back and forth between

1 the two. We have one more witness we can put up.

2 THE COURT: I thought you didn't
3 have -- that the officer wasn't here.

4 MS. HOWLAND: No. We offer the
5 victim.

6 THE COURT: Oh. I apologize. Hold
7 on Ms. O'Cain. All right. Ma'am, if you would,
8 please raise your right hand.

9 Whereupon:

10 Kimishia Mims, having been duly
11 sworn and cautioned to speak the truth, the
12 whole truth and nothing but the truth,
13 testified as follows:

14 THE COURT: And please state your
15 full name, please.

16 THE WITNESS: Kimishia Mims.

17 THE COURT: Thank you, Ms. Mims.
18 Please answer any questions that Ms. Howland may
19 have for you.

20 DIRECT EXAMINATION

21 BY MS. HOWLAND:

22 Q. Ms. Mims, did you see Mr. Price on March
23 9th, 2014?

24 A. Yes, ma'am.

25 Q. Where did you see him?

1 A. At River Oaks Apartments.

2 Q. Do you know what time it was?

3 A. No, ma'am, I don't.

4 Q. Was it dark?

5 A. Yes, ma'am.

6 Q. Did he have any conversation with you?

7 A. Yes, ma'am.

8 MS. HOWLAND: No further
9 questions.

10 THE COURT: Ms. Gilreath?

11 CROSS-EXAMINATION

12 BY MS. GILREATH:

13 Q. Ms. Mims --

14 A. Yes?

15 Q. -- do you remember giving a written
16 statement on March 9th, 2014, related to this
17 incident?

18 A. Yes.

19 MS. HOWLAND: Your Honor, we're not
20 getting into the -- she's wanting to get into the
21 underlying facts of the case and the issue before
22 us --

23 THE COURT: Well, I'm going to
24 renew my instructions to both of you, that the
25 questions are and the only matter before this

1 Court today is not the events of March the 9th.
2 They are whether or not Mr. Price had contact with
3 Ms. Mims. That is the only matter before the
4 Court in the contempt hearing today.

5 MS. GILREATH: Your Honor, I would
6 argue that we should be allowed to ask about what
7 she told the police. Since when the police
8 arrived on the scene, they did not locate
9 Mr. Price there, I believe that what she told the
10 police about him being there and about what
11 happened and the different stories that she told,
12 because she did tell different stories, makes what
13 she said relevant and goes to her credibility as a
14 witness here.

15 MS. HOWLAND: Your Honor, there may
16 be various versions of events, but she never
17 wavered from the fact that Mr. Price was there.
18 Getting into the underlying facts creates problems
19 with the underlying criminal charge, perhaps
20 having jeopardy attached because they're sworn
21 statements. And, therefore --

22 THE COURT: I'm going to agree to
23 that. I'm actually -- this whole issue is a
24 matter of an issue between the Court and
25 Mr. Price.

1 So, Ms. Mims, did you see Mr. Price
2 on March the 9th, 2014?

3 THE WITNESS: Yes, sir, I did.

4 THE COURT: All right. Did
5 Mr. Price speak to you?

6 THE WITNESS: Yes, sir. And he
7 physically assaulted me, yes, sir.

8 THE COURT: Now, Ms. Gilreath, any
9 questions you want to ask towards that?

10 MS. GILREATH: Nothing, your
11 Honor.

12 THE COURT: All right.

13 MS. HOWLAND: Your Honor, that
14 would be the State's presentation of the --

15 THE COURT: Thank you, ma'am. You
16 may proceed.

17 MS. HOWLAND: Thank you, your
18 Honor. Just from a (inaudible) record, we'd like
19 to call Detective Gamble, just to say that he is
20 who sought out the bench warrant, if you feel
21 that's necessary.

22 MS. GILREATH: Your Honor, we would
23 object to any testimony given by Detective Gamble.
24 He was not there.

25 THE COURT: Calm down. Everybody

P R O C E E D I N G

Page 21

1 relax. I wasn't going to let him speak to start
2 with.

3 MS. HOWLAND: Okay. Just
4 procedurally, he was who served him.

5 THE COURT: All right.
6 Ms. Gilreath, is there anything you would like to
7 present on behalf of your client?

8 MS. GILREATH: Yes, your Honor.
9 And, for the record, we did intend to call -- we
10 have written sworn statements from two witnesses
11 who are going to be relevant to Mr. Price's
12 outlying defense. However, given the short
13 notice, we had --

14 THE COURT: Whoa, whoa, whoa.
15 Let's stop and be very careful on the short notice
16 comment. We went through this on Monday. You
17 knew a few days before, and I specifically asked
18 you on Monday if two days was enough time to
19 prepare for this hearing today and you told me it
20 was more than enough. I offered to give you more
21 time. So I --

22 MS. GILREATH: Your Honor, we
23 weren't aware that more time was an option.

24 THE COURT: Ms. Gilreath, when I
25 look at you and ask you is two days enough and you

1 say, yes, it is, I would not ask you if two days
2 is enough if I was not prepared to give you more
3 time.

4 MS. GILREATH: Yes, your Honor.

5 THE COURT: All right.

6 MS. GILREATH: Your Honor, I would
7 call Shannon O'Cain.

8 THE COURT: Ms. O'Cain, please
9 raise your right hand.

10 Whereupon,

11 Shannon M. O'Cain, having been duly
12 sworn and cautioned to speak the truth, the
13 whole truth and nothing but the truth,
14 testified as follows:

15 THE COURT: All right. State your
16 full name for the record for me, please.

17 THE WITNESS: Shannon Mary O'Cain.

18 THE COURT: Thank you, ma'am.

19 Please answer any questions that Ms. Gilreath may
20 have for you.

21 DIRECT EXAMINATION

22 BY MS. GILREATH:

23 Q. Ms. O'Cain, did you speak with an
24 individual named Andriana Peake related to this
25 case?

P R O C E E D I N G

Page 23

1 A. Yes.

2 Q. And who is Ms. Andriana Peake?

3 A. He is -- she is Quentin Price's direct
4 supervisor.

5 Q. And when did you speak to Ms. Peake?

6 A. I spoke with her twice last week, and
7 also spoke with her yesterday and met with her
8 today.

9 Q. And did you make every effort to attempt
10 to assist in this case in getting her here for
11 today?

12 A. Yes.

13 Q. Did you serve a subpoena upon her
14 today?

15 A. Yes.

16 Q. And did you speak with her regarding a
17 doctrine related to work records of Mr. Price --

18 A. Yes.

19 Q. -- from March 9th, 2014?

20 A. Yes.

21 Q. Would you recognize that if I showed it
22 to you?

23 A. Yes.

24 MS. HOWLAND: Objection, your
25 Honor. It's not authenticated, it's a copy,

1 they're not here, and I don't believe it's
2 admissible.

3 MS. GILREATH: Your Honor, as you
4 know, this is a contempt of court hearing. It is
5 not a trial. The rules of evidence have been
6 relaxed.

7 THE COURT: I'm going to look at
8 it. I mean, if you have something that you want
9 me to see, his work records, then let me see it.

10 MS. GILREATH: Your Honor, we do
11 have sworn statements from (inaudible), who filled
12 out a work record, as well as another co-worker
13 who's name is listed on there, too, who was with
14 him at work during this time who indicated that
15 Mr. Price was at work from 2:00 p.m. to
16 11:00 p.m., which includes the time frame during
17 which he would have gone by (inaudible). And I
18 have the supporting statements here, your Honor,
19 that have been sworn and notarized.

20 We spoke with these individuals.
21 Their supervisor, who also confirmed that
22 Mr. Price was at work and would not allow him time
23 off to come, as you know, in order for a court
24 subpoena to get back to the proper amount of time
25 (inaudible) notice, we did serve him with one.

P R O C E E D I N G

Page 25

1 MS. HOWLAND: Your Honor, I can't
2 hear Ms. Gilreath. She's acting like she's having
3 a personal conversation with you. So I can hear
4 her, if she could speak up, please.

5 THE COURT: Well, I think both of
6 you need to relax and remember that your respect
7 of everyone in this courtroom.

8 MS. GILREATH: I apologize, your
9 Honor. I did not realize that Ms. Howland could
10 not hear me. Would you like for me to repeat --

11 THE COURT: No. No, ma'am, I do
12 not. You can go ahead and step down now.

13 MS. GILREATH: Your Honor, I would
14 also call my client as a witness. (inaudible).

15 THE COURT: Do you need anything
16 else from Ms. O'Cain?

17 MS. GILREATH: No, your Honor.

18 THE COURT: You may be seated
19 unless Ms. Howland has a question.

20 MS. HOWLAND: No. We actually have
21 got a rebuttal witness (inaudible).

22 THE COURT: Okay. Is your client
23 going to say anything?

24 MS. GILREATH: Yes, your Honor.

25 THE COURT: Go ahead and stand up.

1 Mr. Price, do you understand that anything you
2 say -- or, excuse me.

3 Whereupon:

4 Quentin Price, having been duly
5 sworn and cautioned to speak the truth, the
6 whole truth and nothing but the truth,
7 testified as follows:

8 THE COURT: All right.

9 DIRECT EXAMINATION

10 BY MS. GILREATH:

11 Q. Mr. Price, on March 9th, 2014, around
12 eight o'clock p.m., where were you?

13 A. I was at work.

14 Q. And can you tell us where work is?

15 A. West Columbia Wal-Mart.

16 Q. West Columbia Wal-Mart?

17 A. Yes, ma'am.

18 Q. Now, do you actually work for Wal-Mart
19 or do you work for another company?

20 A. It's like another company. When I'm
21 with a temp service, we'd start -- sometimes I
22 work from eight to five, sometimes I work from two
23 to eleven (inaudible).

24 Q. Okay. And you go from different -- from
25 Wal-Mart to Wal-Mart, sometimes starting at one

1 and sometimes ending up at another one?

2 A. Yes, ma'am.

3 Q. And that's your testimony today, that
4 you were working for this company, working with a
5 Wal-Mart, on March 9th, 2014 around eight
6 o'clock p.m.?

7 A. Yes, ma'am.

8 Q. Did you leave work at any time?

9 A. No, ma'am.

10 MS. GILREATH: Nothing further,
11 your Honor.

12 THE COURT: Which Wal-Mart were you
13 at?

14 THE WITNESS: West Columbia.

15 THE COURT: And how far is that
16 from the location that the other folks says you
17 were at?

18 THE WITNESS: I don't know, sir. I
19 don't even know what the location is and where
20 that at.

21 MS. HOWLAND: Your Honor, would the
22 Court take notice that the documentation presented
23 by Ms. Gilreath actually indicates Camden, not
24 West Columbia?

25 MS. GILREATH: And, your Honor,

1 that's --

2 THE COURT: That's what I saw.

3 MS. GILREATH: -- the reason for
4 the question. We spoke with the supervisor. They
5 bounce around from Wal-Mart to Wal-Mart, so the
6 one he keeps on file --

7 THE COURT: But there's nothing in
8 the statement that says that. I read the
9 statements. It doesn't say that we went -- it
10 basically says, took a lunch break from six to
11 seven and doesn't say anything about moving
12 locations. I mean, they both are very clear.

13 It says -- the only thing it says
14 is there was a lunch break from six to seven and
15 no one saw him leave. The man just told me he was
16 at the Wal-Mart in West Columbia. This says he
17 was in Camden.

18 MS. GILREATH: And, your Honor, for
19 that, I could call Ms. O'Cain again for an
20 explanation since she was the one who spoke with
21 their -- a supervisor who indicated that that's
22 what happened.

23 THE COURT: What I'm saying is, you
24 gave me documentation that he was at work. I
25 asked the man where he was at. He was not where

1 this documentation says he was at based on what he
2 just told me.

3 Ms. Howland, you said you have a
4 witness, someone about this documentation as
5 well?

6 MS. HOWLAND: Your Honor, we would
7 just -- I think that what's been discovered
8 (inaudible).

9 THE COURT: All right. It comes
10 down to this. I have two people that didn't show
11 up but I've got, they supposedly cooperated enough
12 to get signatures that Ms. Gilreath told me were
13 sworn and notarized and I'm looking at one
14 statement that's not notarized. I'm looking at --
15 the second statement is also not notarized. Well,
16 one page is but I don't know what page it's on.
17 It's just a page with nothing on it but no notary
18 on the signature to the defendant's. Of course,
19 obviously, if the notary is not on the signature
20 itself --

21 MS. GILREATH: Your Honor, I can
22 call Ms. O'Cain to verify the statements. She
23 took them this morning. She went and met them at
24 work which, as it turns out, was the Wal-Mart in
25 West Columbia because they were coming there from

1 a different Wal-Mart.

2 THE COURT: Well, it comes down to
3 that, then I have the victim indicates and then I
4 have another independent witness that was present
5 that knows both Mr. Price and Ms. Mims.

6 Mr. Mims, I basically feel that
7 you're in contempt of court for violating the
8 conditions of your bond.

9 MS. GILREATH: Mr. Price?

10 THE COURT: Excuse me. Mr. Price.
11 When was this bench warrant served on you,
12 Mr. Price?

13 MR. PRICE: (Inaudible).

14 MS. HOWLAND: Your Honor, actually,
15 he was in jail until -- he was in jail on a
16 previous CDV conviction out of West Columbia and
17 he was sentenced out on March 13th and his release
18 date was April 2nd. Which was why I worked so
19 hard, knowing that after April 2nd, the bench
20 warrant would be what was holding him. But he was
21 actually serving time on another sentence and
22 which was why we tried to deal with this prior to
23 his release date.

24 So, originally, he was getting
25 transported tomorrow down in Swansea to -- and he

1 actually was serving time on another offense up
2 until April 2nd. So we would ask if he's going to
3 get credit, we're asking for 30 days, that it
4 starts April 2nd, because prior to that, the bench
5 warrant wasn't holding him.

6 MS. GILREATH: Your Honor, we would
7 ask that it start as of the date that it was
8 served upon him. There's nothing prohibiting the
9 Court from awarding some of that time
10 (inaudible).

11 THE COURT: Was the West Columbia
12 CDV that you were serving time on, was it with the
13 same victim as this case?

14 MR. PRICE: Yes, sir.

15 MS. HOWLAND: Your Honor, as a
16 reminder, this is his second violation.

17 THE COURT: All right. Mr. Price,
18 again, I find you are in violation of the
19 condition of your bond as it was set by Judge
20 Jeffcoat on November 20th of 2013, requiring that
21 you have absolutely no contact with Ms. Kimishia

22 Mims. I find that you violated that condition in
23 the fact that you did have contact with Ms. Mims.

24 For that contempt, I'm going to
25 sentence you to 30 days in jail. Those 30 days

1 will begin April the 2nd. Good luck to you, sir.

2 (End of Recording)

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P R O C E E D I N G

Page 33

1 CERTIFICATE OF REPORTER
2
3

4 I, Laura S. DeCillis, Certified Court
5 Reporter and Notary Public in and for the State of
6 South Carolina at Large, do hereby certify:

7 That the foregoing transcript was
8 produced from a recording, not taken by same, and
9 that all audible testimony was transcribed by me
10 to the best of my ability.

11 I further certify that I am neither
12 related to nor counsel for any party to the cause
13 pending or interested in the events thereof.

14 Witness my hand, I have hereunto affixed
15 my official seal this 30th day of June 2014, at
16 Columbia, Richland County, South Carolina.

17 *Laura S. DeCillis*

18 Laura S. DeCillis,
19 Certified Court Reporter
20 State of South Carolina at Large
21 My Commission expires
22 August 10, 2015
23
24
25

A	19:8	call 4:21 7:3,14	27:24 28:16	29:18
ability 33:7	asked 15:2,14,15	7:17 11:6	29:25 30:16	court 1:1,8,14
absence 6:23	21:17 28:25	15:12 16:20,22	31:11 33:11	4:2,5,9,16,19
absolutely 31:21	asking 12:5 31:3	20:19 21:9	come 10:19 11:9	5:3,10,12,16
accused 11:16	assaulted 20:7	22:7 25:14	13:7 15:18	5:18 6:1,22,24
acknowledging	assist 23:10	28:19 29:22	24:23	7:9,13,15,19
6:16	assuming 6:9	called 9:1 14:15	comes 29:9 30:2	8:1,5 10:12,15
acting 25:2	attached 19:20	calls 11:5	coming 29:25	11:19,20,21
addition 6:11	attempt 23:9	Calm 20:25	comment 21:16	13:14,17,22
address 6:2,8	attend 6:22	Camden 27:23	Commission	14:5,9 15:14
admissible 24:2	audible 33:7	28:17	33:16	15:22 16:2,6
advised 6:11	August 33:17	careful 21:15	company 26:19	16:10,15,18
13:25	authenticated	Carolina 1:1,5	26:20 27:4	17:2,6,14,17
affixed 33:10	23:25	1:17 2:3,5,9	complex 12:4	18:10,23 19:1
agree 19:22	awarding 31:9	33:5,11,16	condition 6:17	19:4,22,24
ahead 5:18	aware 14:8	case 14:12,13,18	31:19,22	20:4,8,12,15
10:15 13:11	21:23	18:21 22:25	conditions 4:10	20:25 21:5,14
14:9 25:12,25	B	23:10 31:13	4:17 5:25 30:8	21:24 22:5,8
alleged 11:13	back 16:25	cause 4:10 5:1	confirmed 24:21	22:15,18 24:4
allow 24:22	24:24	33:9	consistent 15:3	24:7,23 25:5
allowed 19:6	badgering 15:4	cautioned 7:23	constantly 13:18	25:11,15,18,22
altercation	bail 6:15	17:11 22:12	contact 4:18 6:3	25:25 26:8
14:25	based 29:1	26:5	7:7 11:21 12:8	27:12,15,22
amount 24:24	basically 28:10	CDV 30:16	19:2 31:21,23	28:2,7,23 29:9
Andriana 22:24	30:6	31:12	contempt 1:8,14	30:2,7,10 31:9
23:2	basis 5:17	center 1:16 4:6	19:4 24:4 30:7	31:11,17 33:4
answer 8:6	behalf 3:3,8 21:7	Centre 6:10	31:24	33:15
15:16 17:18	believe 19:9 24:1	certainly 5:7	CONTENTS	Court's 3:12
22:19	belongings 6:12	Certificate 3:13	3:1	courtroom 8:13
apartment 12:3	bench 4:7 20:20	33:1	contest 7:11	14:6 25:7
Apartments	30:11,19 31:4	Certified 33:4	continue 14:9	creates 19:18
18:1	best 33:7	33:15	continuing 15:5	credibility 19:13
apologize 14:3,7	bit 8:3	certify 33:5,8	conversation	credit 31:3
17:6 25:8	bond 4:11,16	change 6:2	18:6 25:3	crime 6:5
appear 6:24	5:21,23,24 6:1	charge 5:14,20	conviction 30:16	criminal 5:14,20
APPEARANC...	6:14 7:7 11:13	19:19	cooperated	5:22 6:5 19:19
2:1	30:8 31:19	clear 15:13	29:11	CROSS-EXA...
April 1:7,17	bondsman 6:15	28:12	copy 23:25	10:16 18:11
30:18,19 31:2	bounce 28:5	client 7:10 13:25	correct 7:11	cross-examine
31:4 32:1	break 28:10,14	21:7 25:14,22	16:3	10:13
argue 19:6	brought 4:11	client's 4:24	counsel 33:9	Cross/Gilreath
arguing 12:24	Burt 11:8 12:15	closer 8:3	County 1:2,15	3:5,7
arrest 6:19,25	12:22	co-worker 24:12	4:12 33:11	currently 4:6
arrested 5:19	C	Columbia 6:10	couple 14:18	
arrived 12:15,18		26:15,16 27:14	course 4:19	D

independent 30:4 Index 3:14 indicated 24:14 28:21 indicates 6:4 27:23 30:3 individual 22:24 individuals 24:20 information 4:11 informed 6:20 instructions 18:24 intend 21:9 interested 33:9 Investigator 11:8 12:15,22 issue 11:20,20 18:21 19:23,24 issued 4:7 5:1 6:19,25	7:8 9:11 10:11 11:8 12:5,23 13:5,7,8 16:13 16:15 17:10,16 31:21 knew 12:23 21:17 know 7:3 8:10 8:24 9:1,16 10:18,19 12:18 12:19 14:16 16:25 18:2 24:4,23 27:18 27:19 29:16 knowing 30:19 known 10:21,23 knows 30:5	17:24 18:3,5,7 20:15 22:18 25:11 26:17 27:2,7,9 MAGISTRAT... 1:1 Main 1:16 2:5,8 man 28:15,25 March 7:8 9:4 16:5,16 17:22 18:16 19:1 20:2 23:19 26:11 27:5 30:17 Mary 22:17 matter 18:25 19:3,24 Meagan 3:4 4:21 7:17,22 8:4 mean 24:8 28:12 meant 15:9 met 10:21,25 11:1,2 23:7 29:23 microphone 8:3 Mims 3:6 6:4 7:8 9:11,23 11:22 12:5 15:22,24 16:15 17:10,16 17:17,22 18:13 19:3 20:1 30:5 30:6 31:22,23 mom 11:1,2,4 Monday 21:16 21:18 Monday's 5:8 morning 29:23 move 12:12 moving 28:11	named 14:13 22:24 necessary 20:21 need 25:6,15 neighborhood 9:8 13:4 neither 33:8 never 19:16 new 6:8 NICOLE 2:4 notarized 24:19 29:13,14,15 notary 29:17,19 33:4 noted 5:3,10 notice 4:16 5:19 21:13,15 24:25 27:22 notify 6:1 November 4:17 5:21 6:15 11:22 31:20	offered 21:20 office 2:4 14:12 officer 11:14 17:3 official 33:11 Oh 8:18 13:16 17:6 Okay 9:9,16 10:3 11:7,7 12:6 13:1,7,13 14:17 16:10 21:3 25:22 26:24 opened 12:4 13:4 option 21:23 order 6:18 24:23 originally 30:24 outlying 21:12 outside 10:4,8,9 10:10 12:19 16:13,13,14
J JAEL 2:7 jail 30:15,15 31:25 Jeffcoat 5:23 31:20 Jeffrey 8:25 9:2 10:11,19,20,23 11:5 12:2,24 jeopardy 19:20 Judge 4:7,11 5:23 31:19 judicial 1:16 4:16 June 33:11	leave 27:8 28:15 Let's 21:15 Lexington 1:2 1:15,16 2:5,9 4:12 limiting 5:13 listed 24:13 little 8:3 14:5 locate 19:8 location 6:8,10 6:13 27:16,19 locations 28:12 look 14:4 21:25 24:7 looking 29:13,14 lot 12:24 luck 32:1 lunch 28:10,14	N name 8:2,24 9:3 10:20,24 11:4 14:16 17:15 22:16 24:13	O O'Cain 3:9 14:13 15:12,16 15:17 16:22 17:7 22:7,8,11 22:17,23 25:16 28:19 29:22 o'clock 12:16 26:12 27:6 Oaks 9:10 18:1 object 15:4 20:23 objection 4:23 11:10 12:9 15:1 23:24 objections 5:7 obligation 6:21 observed 12:22 obviously 29:19 offense 5:22 31:1 offer 17:4	P p.m 12:16 24:15 24:16 26:12 27:6 page 29:16,16,17 parking 12:24 part 5:8 party 33:9 Peake 22:24 23:2,5 pending 33:9 Penny 3:4 4:21 7:18,19,22 8:4 8:5,10 10:18 11:7 12:1,14 14:11 16:3 people 29:10 personal 25:3 physically 20:7 pick 6:12 PLAINTIFF 1:6 please 7:1,20 8:6
K keep 13:20,22,23 13:23 keeps 28:6 kicking 10:5 Kimishia 3:6 6:4	M M 3:9 22:11 ma'am 7:20 17:7			

P R O C E E D I N G

Page 4

8:15 17:8,14 17:15,18 22:8 22:16,19 25:4 point 4:21 12:1 13:8 15:12 police 19:7,7,10 position 7:2,10 posted 6:14 prepare 21:19 prepared 22:2 present 6:21 9:11 21:7 30:4 presentation 20:14 presented 27:22 previous 30:16 Price 1:8 3:10 4:3,5,8 5:25 7:15 8:10,21 8:24 9:5,14,23 10:19 11:21 12:2 13:16,19 14:3 16:4,16 17:22 19:2,9 19:17,25 20:1 20:5 23:17 24:15,22 26:1 26:4,11 30:5,9 30:10,12,13 31:14,17 Price's 21:11 23:3 prior 5:15 15:9 30:22 31:4 Probably 9:18 problems 19:18 procedural 4:25 procedurally 21:4 proceed 6:23 20:16 proceeding 4:24 Proceedings 3:2 4:1 process 4:25	produced 33:6 prohibiting 31:8 proper 24:24 provide 7:15 Public 2:8 33:4 pulled 12:3,7 13:4 put 16:24 17:1 Q Quentin 1:8 3:10 4:2 5:25 8:10 12:23 16:16 23:3 26:4 question 11:22 15:2,5,15,23 25:19 28:4 questions 8:6 15:21 17:18 18:9,25 20:9 22:19 quit 13:18 R raise 7:19 17:8 22:9 read 28:8 realize 25:9 reason 28:3 reasoning 5:8 rebuttal 25:21 recognize 8:21 23:21 record 4:4,23 5:2,8 8:2 20:18 21:9 22:16 24:12 recording 32:2 33:6 records 23:17 24:9 red 8:20 regarding 23:16 Reinhart 1:15 related 18:16	22:24 23:17 33:9 relax 21:1 25:6 relaxed 24:6 release 30:17,23 relevant 11:11 11:12,17 19:13 21:11 remain 11:23 remember 12:17 14:20 18:15 25:6 reminder 31:16 renew 4:23 5:7 18:24 repeat 25:10 Reporter 3:13 33:1,4,15 Representing 2:3,6 required 6:9,25 requiring 31:20 respect 25:6 responded 11:15 return 6:7 Richland 33:11 right 4:2,5 6:21 7:1,9,13,20 8:1 8:5 13:17 16:3 17:7,8 20:4,12 21:5 22:5,9,15 26:8 29:9 31:17 rights 4:25 River 9:10 18:1 road 8:22 rule 5:1 rules 24:5 S S 33:4,15 savings 12:20 saw 8:22 9:14 14:24 16:15 28:2,15	saying 28:23 says 27:16 28:8 28:10,13,13,16 29:1 scene 11:15 12:2 19:8 scope 5:13 seal 33:11 seated 25:18 second 15:8 29:15 31:16 see 8:13 9:4,7,22 9:25 10:3,10 12:2,6 15:14 16:4,6,10 17:22,25 20:1 24:9,9 seen 12:5 16:12 self 16:9 sentence 30:21 31:25 sentenced 30:17 serve 23:13 24:25 served 21:4 30:11 31:8 service 26:21 serving 30:21 31:1,12 set 4:17 5:17,23 31:19 seven 28:11,14 Shannon 3:9 14:13 16:22 22:7,11,17 Sheriff's 4:12 short 21:12,15 shortly 12:15 show 5:1 13:8 29:10 showed 23:21 sight 13:6 signature 29:18 29:19 signatures 29:12	signed 5:24 6:16 sir 4:8 13:16,19 20:3,6,7 27:18 31:14 32:1 sister 11:8 sitting 13:18 six 28:10,14 Solicitor's 2:4 sorry 10:9 13:19 sought 20:20 South 1:1,5,17 2:3,5,9 33:5,11 33:16 speak 7:23 14:11 14:12 17:11 20:5 21:1 22:12,23 23:5 23:16 25:4 26:5 specifically 21:17 spoke 14:17 23:6 23:7 24:20 28:4,20 stand 25:25 stared 14:6 staring 13:18,23 start 21:1 26:21 31:7 starting 26:25 starts 31:4 state 1:1,5 2:3 3:3 4:14 7:16 8:2,6 17:14 22:15 33:4,16 State's 7:2 20:14 stated 4:9 10:18 statement 18:16 28:8 29:14,15 statements 15:10 19:21 21:10 24:11,18 28:9 29:22 states 6:19 stating 5:1

stay 14:2	16:18 17:17	21:18,25 22:1	want 5:15,16 7:3	working 27:4,4
step 8:3 25:12	20:15,17 22:18	26:22 29:10	7:4 10:12	written 18:15
stop 10:5 21:15	thereof 33:9		13:15 16:25	21:10
stories 19:11,12	thing 14:21	U	20:9 24:8	X
Street 1:16 2:5,8	28:13	Uh-huh 11:3	wanting 18:20	
6:10	think 14:15 25:5	14:19	warrant 1:1 4:7	Y
subpoena 23:13	29:7	underlying 5:14	6:18,18,25	Yeah 14:21
24:24	thought 17:2	18:21 19:18,19	20:20 30:11,20	16:17
supervisor 23:4	time 5:23 9:16	understand 6:20	31:5	yelling 10:4,7
24:21 28:4,21	12:18,22 14:24	26:1	wasn't 17:3 21:1	16:13
supporting	18:2 21:18,21	understands	31:5	yesterday 23:7
24:18	21:23 22:3	6:17	wavered 19:17	
supposedly	24:14,16,22,24	upstairs 13:12	ways 15:3	Z
29:11	27:8 30:21	V	we're 18:19 31:3	
sure 9:19 10:15	31:1,9,12	various 19:16	Wednesday 1:17	0
12:17 13:9,10	today 8:13 11:21	vehicle 9:15	week 23:6	
13:11 14:15	13:1 15:17	verify 29:22	went 13:11	1
surety 5:23	19:1,4 21:19	version 15:19	21:16 28:9	1/2 2:8
Swansea 30:25	23:8,11,14	versions 19:16	29:23	10 3:5 33:17
sworn 5:15 7:23	27:3	victim 6:3,5 7:8	weren't 21:23	11:00 24:16
17:11 19:20	told 11:14 12:14	15:3,8 17:5	West 6:10 26:15	13th 30:17
21:10 22:12	12:21 13:20,21	30:3 31:13	26:16 27:14,24	17 3:6
24:11,19 26:5	13:23 14:20,22	victim's 6:3	28:16 29:25	18 3:7
29:13	14:23 15:15	violate 6:17	30:16 31:11	
T	19:7,9,11	violated 4:10	Whittle 4:7,12	2
take 4:16 5:18	21:19 28:15	31:22	whoa 21:14,14	2:00 24:15
27:22	29:2,12	violating 4:24	21:14	2013 4:17 5:21
taken 33:6	tomorrow 30:25	30:7	window 10:5	6:15 11:22
Tall 8:16	transcribed 33:7	violation 5:18	wishes 7:11	31:20
tell 7:2 9:13,22	transcript 33:6	7:4,5,7,16	witness 7:14 8:4	2013A321020...
11:7 19:12	transported	11:14 31:16,18	16:1,5,8,12,17	1:1
26:14	30:25	violence 5:20,22	16:24 17:1,16	2014 1:7,17 7:8
temp 26:21	trial 6:21,22	6:6	19:14 20:3,6	9:4 17:23
ten 9:18	24:5	visit 11:9	22:17 25:14,21	18:16 20:2
testified 7:25	tried 30:22	VS 1:7	27:14,18 29:4	23:19 26:11
12:10 17:13	true 12:6,14,21		30:4 33:10	27:5 33:11
22:14 26:7	14:23	W	witnesses 3:3,8	2015 33:17
testify 15:18	truth 7:23,24,24	Wal-Mart 26:15	7:3 21:10	205 1:16 2:5
testifying 15:13	17:11,12,12	26:16,18,25,25	Word 3:14	20th 4:17 5:21
testimony 5:15	22:12,13,13	27:5,12 28:5,5	work 23:17 24:9	6:15 11:22
7:15 13:1	26:5,6,6	28:16 29:24	24:12,14,15,22	31:20
20:23 27:3	turns 29:24	30:1	26:13,14,18,19	22 3:9
33:7	twelve 15:2	walked 13:5	26:22,22 27:8	26 3:11
Thank 5:4 10:12	twice 23:6	16:13	28:24 29:24	29072 2:5,9
	two 17:1 21:10	walking 12:4	worked 30:18	2nd 30:18,19

P R O C E E D I N G

Page 6

31:2,4 32:1				
3				
30 31:3,25,25				
30th 33:11				
31 3:12				
33 3:13				
4				
43:2				
407 2:8				
5				
5,000 5:23				
6				
7				
73:4				
8				
9				
9 1:7,17				
9th 7:8 9:4 16:5				
16:16 17:23				
18:16 19:1				
20:2 23:19				
26:11 27:5				

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2014 AUG 27 PM 12:08

CRIMINAL APPEAL FROM

COUNTY OF LEXINGTON)

MAGISTRATE'S COURT

STATE of SOUTH CAROLINA)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON CO

LW

Respondent,)

Case No.: 2014-CP-32-01449

WARRANT#: 2013A3210202227

VS.)

Quentin Raymar Price)

Appellant)

ORIGINAL

STATEMENT OF THE FACTS

1. Quentin Lamar Price was arrested by the Lexington County Sheriff's Department (LCSD) on November 19, 2013 for Criminal Domestic Violence (CDV).
2. The Honorable Judge Jeffcoat set the defendant's bond on November 20, 2013 with a condition to have no contact with the victim, Camisha Mims. (Attachment A)
3. On December 3, 2013 the defendant was found hiding in the victim's shower by a Lexington County Sheriff's Deputy
4. On December 16, 2013, the Honorable Judge Reinhart found Mr. Price in contempt for violating conditions of his bond on December 3, 2013 and sentenced the defendant to 30 days in jail.
5. On March 9, 2014, the victim, Camisha Mims filed an incident report with LCSD alleging Mr. Price had assaulted her. The report was assigned to Detective Stephen Gamble to investigate.
6. On March 13, 2014, the defendant pled guilty to a 2012 CDV in the West Columbia Municipal Court and sentenced to 30 days in jail.
7. On March 25, 2014, Detective Gamble obtained a Bench Warrant for the bond violation and two arrest warrants for Malicious Injury to Personal Property and

CDV for the March 9, 2014 incident. These warrants were issued by the Honorable Judge Whittle, and served on the defendant who was serving a 30 day sentence for the West Columbia CDV conviction.

8. On April 1, 2014, the State was notified that the defendant was served with the BW for the bond violation. At that time, the State did not know the defendant was serving a sentence on another charge. The release date on the West Columbia CDV conviction was April 2, 2014, and after that date, the BW would be holding the defendant in jail.
9. On April 1, 2014, the State sent an email and called the Assistant Public Defender, Jael Gilreath, to determine if she represented Mr. Price, but was unable to contact Miss Gilreath.
10. On April 1, 2014, The Honorable Judge Whittle agreed to allow the Honorable Judge Reinhart to address the BW so that the matter could be heard expeditiously.
11. A contempt hearing was scheduled for the afternoon of April 1, 2014, but once the State determined the defendant was probably represented, the contempt hearing was postponed until April 7, 2014. The defendant was not scheduled for release on the sentence he was serving until April 2, 2014, and the Prosecutor was not available April 3 and 4. April 7, 2014 was the first available date for the matter to be addressed.
12. On April 3, 2014, all information to support the BW was provided to defense counsel.
13. On April 7, 2014, defense counsel filed a motion to vacate the BW, which was denied by the Honorable Judge Reinhart. At the request of defense counsel, the contempt hearing was postponed until April 9, 2014.
14. On April 9, 2014, the contempt hearing was scheduled, and after taking testimony and evidence, the Honorable Judge Reinhart found the defendant in contempt of court and sentenced him to 30 days in jail, with the time to start from April 2, 2014.

GROUNDS FOR APPEAL

The Defendant raises five grounds for appeal in the Notice of Appeal:

1. The Magistrate erred in failing to vacate the Bench Warrant issued for violating the bond condition of "no contact with the victim" which was one of the terms of the defendant's release.
2. The Magistrate erred in limiting the scope of the cross examination of the State's witnesses.
3. The Magistrate erred in limiting the defendant's testimony.
4. The Magistrate erred in failing to give the defendant credit for time served.
5. The Magistrate erred in finding the defendant guilty of contempt by failing to apply the reasonable doubt standard to convict.

ARGUMENT

Issues raised on Appeal were not properly preserved.

"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." *Rogers v. State*, 358 S.C. 266, 269 594 S.E.2d 278, 279 (Ct.App.2004). In order for an issue to be properly preserved for appellate review, the issue must be raised to and ruled upon by the lower court. *Wilder Corp v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). The Appellant must be the party to have raised the issue at trial, and the issue must be raised in a timely manner. Additionally, the grounds supporting the objection must be stated with specificity in order to clearly delineate the alleged error. *Wilder Corp v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998). Courts have consistently held that issues not raised and ruled on by the trial court judge are not preserved for review by an appellate court. The record does not reflect that Grounds 2-5 were properly raised or ruled upon at the trial court level, and therefore were not properly preserved for appellate review.

Arguably, even if the final grounds for appeal had been properly preserved, the conviction for contempt should not be reversed. "In a criminal case, the appellate court sits to review errors of law only. We are bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6. 545 S.E.2d 827, 829 (2001). The Magistrate weighed the testimony of the four people who testified, and reviewed the documents admitted as evidence, and rendered a verdict of guilty. The record reflects the defendant testified inconsistently with the alibi defense presented through affidavits presented by defense counsel.

The remaining issue on appeal is whether the Bench Warrant should have been vacated, however, the record is not clear as to whether this issue was properly preserved either. In the hearing on April 7, 2014, defense counsel made a motion to vacate the Bench Warrant because it was not the proper mechanism to initiate a contempt proceeding. That motion was denied. At the request of defense counsel, the contempt hearing was scheduled on April 9, 2014. At the subsequent hearing, defense counsel objected to the proceeding as a violation of "my client's procedural due process rights because there was no rule to show cause issued." Defense counsel did not specifically renew the motion to vacate the Bench Warrant. The Honorable Judge Reinhart noted the objection defense counsel made, but did not issue a formal ruling to deny the motion. At that time, the court proceeded with the contempt hearing.

A Bench Warrant is the correct method to address a bond violation.

A judge completes a Bail Proceeding Form, either Form I or Form II, when setting bond on a criminal charge. Both forms have identical language that states:

1. I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.
2. I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend court, the trial will proceed in my absence.
3. It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued. (See Attachment B and C)

The statute that governs the setting of bond conditions is 17-15-40, and states:

§ 17-15-40 Order of court shall state conditions imposed and other matters; acknowledgment by person released.

On releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person's arrest will be issued immediately upon any such violation. The person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation thereof on a form to be prescribed by the Attorney General.

The purpose of 17-15-40 is to grant authority of the court to impose bond conditions upon a defendant's release from jail. This statute further imparts the power of the court to issue a "...warrant for the person's arrest....upon any such violation." Had the legislature intended a Rule to Show Cause (RTSC) to be the mechanism to address violations by the defendant of the conditions of his release, then the statute would have used this language. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature, and the text of a statute is considered the best evidence of legislative intent. *White Oak Manor, Inc. v. Lexington Ins. Co.* 407 S.C. 1, 753 S.E.2d 537. Statutory language "must be construed in context and in light of the intended purpose of the statute in a manner which harmonizes with its subject matter and accords with its general purpose." *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011).

In further support that a bench warrant is the appropriate mechanism to bring the defendant before the court for violating the condition of the bond, if a defendant fails to appear as required, a bench warrant is what is authorized and subsequently what issued, rather than a rule to show cause.

Two other statutes. 17-15-10 and 17-15-30, govern the setting of bond, conditions of release, and the contempt power of the court should the defendant violate the terms of release.

§17-15-10. Person charged with noncapital offense may be released on his own recognizance; conditions of release; bond hearing for burglary charges.

(A) Any person charged with a noncapital offense triable in either the magistrates, county or circuit court, shall, at his appearance before any of such courts, be ordered released pending trial on his own recognizance without surety in an amount specified by the court, unless the court determines in its discretion that such a release will not reasonably assure the appearance of the person as required, or unreasonable danger to the community will result. If such a determination is made by the court, it may impose any one or more of the following conditions of release:

(1) require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court;

(2) place the person in the custody of a designated person or organization agreeing to supervise him;

(3) place restrictions on the travel, association, or place of abode of the person during the period of release; (emphasis added);

(4) impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours.

(B) Any person charged with the offense of burglary in the first degree pursuant to Section 16-11-311 may have his bond hearing for that charge in summary court unless the solicitor objects.

§ 17-15-30. Matters to be considered in determining conditions of release; contempt.

(A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, a court may, on the basis of available information, consider the nature and circumstances of an offense charged and an accused's:

- (1) family ties;
- (2) employment;
- (3) financial resources;
- (4) character and mental condition;
- (5) length of residence in the community;
- (6) record of convictions; and
- (7) record of flight to avoid prosecution or failure to appear at other court proceedings.

(B) A court shall consider, if available:

-
- (1) an accused's criminal record;
 - (2) any charges pending against an accused at the time release is requested;
 - (3) all incident reports generated as a result of an offense charged; and

- (4) whether an accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status.
- (C) (1) Prior to or at the time of a hearing, the arresting law enforcement agency shall provide the court with the following information, if available:
- (a) the accused's criminal record;
 - (b) any charges pending against the accused at the time release is requested;
 - (c) all incident reports generated as a result of the offense charged; and
 - (d) any other information that will assist the court in determining conditions of release.
- (2) The arresting law enforcement agency shall inform the court if any of the information is not available at the time of the hearing and the reason the information is not available. Failure on the part of the law enforcement agency to provide the court with the information does not constitute grounds for the postponement or delay of the person's hearing.
- (D) A court hearing these matters has contempt powers to enforce the provisions of this section. (emphasis added).

In addition to 17-15-30, Magistrates are also granted the authority to hold a party in contempt in §22-3-950.

§ 22-3-950 Power to punish for contempt. Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

The South Carolina Code has multiple statutes where the Legislature mandates the use of a Rule to Show Cause (RTSC), rather than a Bench Warrant (BW), to initiate

action by the Courts. Just a few of the code sections are: §63-5-20, §63-17-370, §63-17-380, §63-17-385, §63-17-400. A RTSC is commonly used in Family Court to address contemptuous conduct, however, even the Legislature recognizes that this practice has exceptions, which are outlined in §63-17-400:

§ 63-17-400 Service of warrant.

When a petition is presented to the court and it shall appear that:

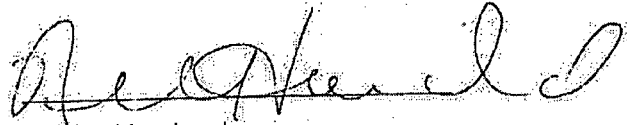
- (1) the summons or rule to show cause cannot be served; or
- (2) the respondent has failed to obey the summons or rule to show cause; or
- (3) the respondent is likely to leave the jurisdiction; or
- (4) a summons or rule to show cause would be ineffectual; or
- (5) **the safety of the petitioner is endangered**; or (emphasis added)
- (6) a respondent on bond or on probation has failed to appear, the court may issue a warrant, in the form prescribed in Section §63-17-410, directing that the respondent be arrested and brought before the court. Warrants and other processes may be served by any peace officer, or by the probation counselor. The court shall make rules relative to the service of warrants. Warrants issued by the court shall be valid throughout the State. The judge may issue ex parte orders for temporary child support, temporary custody and restraining orders where conditions warrant.

CONCLUSION

Magistrates have the authority under §17-15-10(3) to place restrictions on a defendant's travel, associations and place of abode. Additionally, §17-15-30 allows a magistrate to use the power of contempt to enforce the conditions placed on a defendant when released on bond. Further, §17-15-40 specifically outlines that a warrant will be issued if a defendant violates a condition of release. Had the legislature intended that a Rule to Show Cause was the mechanism to be used to bring a defendant before the court to answer for bond violations/contemptuous conduct, the statute would use the verbiage, "rule to show cause," as is used in other sections of the South Carolina Code. However, the statute §17-15-40 plainly states, "warrant." The principle of statutory construction is to give plain meaning to a statute. The Bail Form signed by the defendant and the judge uses the language "warrant." There is no statutory authority for the use of a RTSC in the context of contemptuous conduct that

results in a bond violation. Therefore, the issuance of the Bench Warrant was the proper mechanism to bring the defendant before the Court to address the bond violation, and the Magistrate did not err by not vacating the Bench Warrant.

Respectively Submitted,

A handwritten signature in black ink, appearing to read 'Nicole Howland', written over a horizontal line.

Nicole Howland
Attorney for the Respondent
521 Gibson Road
Lexington, SC 29073
803-785-2466

Criminal Charging Document No.

BAIL PROCEEDING
FORM IISTATE OF SOUTH CAROLINA
COUNTY OF Lexington

IN THE Criminal Domestic Violence Court

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Price, Quentin Raymar

NAME OF DEFENDANT

Offense Charged: Domestic / Criminal Domestic Violence - 1st offense (2013A3210202227)

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

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

This determination was based upon the following findings of fact:

Nature of Circumstances of Offense

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

THEREFORE, IT IS HEREBY ORDERED:

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

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

CASH IN LIEU OF BOND

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

CASH PERCENTAGE IN LIEU OF BOND

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

APPEARANCE RECOGNIZANCE WITH SURETY

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

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

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

☒ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on December 16, 2013 at 1:00 o'clock PM, at Criminal Domestic Violence Court - 139 East Main Street/Lexington, SC 29072 / (503) 785-2886. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

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

INITIALS OF DEFENDANT

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

SIGNATURE OF JUDGE

DATE

11-30-13



Lexington County Clerk

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
SCCA/511A (Revised 3/2012) Original Copy For The Trial Court - Copy For The Defendant

ACKNOWLEDGEMENT BY DEFENDANT

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

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

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

ADDRESS

SIGNATURE OF DEFENDANT

CITY/STATE/ZIP

TELEPHONE

DATE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:

NAME OF PERSON OR ORGANIZATION

ADDRESS

CITY/STATE

ZIP

TELEPHONE

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

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

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

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

on _____ on condition that he return to the custody of _____

DATE(S)

NAME OF PERSON OR ORGANIZATION

at _____ as designated.

LOCATION

d. ☐ Other conditions. The defendant will comply with the following other conditions of release:

Must Notify Court Immediately of Change of Address; No Contact with Victim; Do Not Return to Incident Location; Must have law enforcement escort to pick up personal belongings

APPEARANCE RECOGNIZANCE WITH SURETY

On the 20 day of NOVEMBER, 2013, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 5000.00, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

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

NAME OF SURETY

TELEPHONE

SIGNATURE OF SURETY BONDSMAN

Gene Frye Bail Bonds

ADDRESS OF SURETY

West Columbia, SC 29169

CITY/STATE/ZIP

(803) 826-1122

SIGNATURE OF JUDGE

NAME OF INSURANCE COMPANY

DATE

ADDRESS OF INSURANCE COMPANY

CITY/STATE/ZIP

CRIMINAL CHARGING DOCUMENT NO. _____

BAIL PROCEEDING
FORM I

STATE OF SOUTH CAROLINA

COUNTY OF _____

IN THE

- ☐ COURT OF GENERAL SESSIONS
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

v.

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

NAME OF DEFENDANT _____

Offense Charged: _____

IT IS HEREBY ORDERED

I

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

II

That the above named defendant be released from custody upon a recognizance without surety executed by him.

Appearance Recognizance Without Surety

On the _____ day of _____, _____, personally appeared before the undersigned judge the defendant named above who acknowledged himself indebted to the State of South Carolina, in the sum of _____ dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of the Order.

III

That the defendant will notify the court promptly if he changes his address from the one contained in this Order and will comply with the following other conditions of release: _____

IV

That the defendant shall appear at (check one):

- ☐ the term of _____ COURT OF GENERAL SESSIONS _____ beginning on _____
 at _____ o'clock, _____ M, at _____
 and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT _____ beginning on _____
 at _____ o'clock, _____ M, at _____
 If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

ACKNOWLEDGEMENT BY DEFENDANT

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

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

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

ATTORNEY REPRESENTING ACCUSED (IF KNOWN) _____

SIGNATURE OF DEFENDANT _____

ADDRESS _____

SIGNATURE OF JUDGE _____

CITY/STATE/ZIP _____

TELEPHONE _____

DATE _____

SOCIAL SECURITY NUMBER _____

DRIVER'S LICENSE OR ID NUMBER _____

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
 Original Copy For The Trial Court - Copy For The Defendant

Attachment B

Criminal Charging Document No. _____

**BAIL PROCEEDING
FORM II**STATE OF SOUTH CAROLINA
COUNTY OF _____IN THE ☐ COURT OF GENERAL SESSIONS
☐ MAGISTRATE COURT
☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

v.

NAME OF DEFENDANT

Offense Charged: _____

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

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

This determination was based upon the following findings of fact: _____

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

THEREFORE, IT IS HEREBY ORDERED:

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

CASH IN LIEU OF BOND☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.**CASH PERCENTAGE IN LIEU OF BOND**☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.**APPEARANCE RECOGNIZANCE WITH SURETY**☐ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of _____.

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

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

☐ the session of ☐ **MAGISTRATE COURT** ☐ **MUNICIPAL COURT** beginning on _____ at _____ o'clock, M, at _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT _____

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

SIGNATURE OF JUDGE_____
DATE*Attachment C*

ACKNOWLEDGEMENT BY DEFENDANT

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

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

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

ADDRESS _____ SIGNATURE OF DEFENDANT _____
 CITY/STATE/ZIP _____ TELEPHONE _____ DATE _____
 SOCIAL SECURITY NUMBER _____ DRIVER'S LICENSE OR ID NUMBER _____ ATTORNEY REPRESENTING ACCUSED (IF KNOWN) _____

SPECIAL CONDITIONS OF RELEASE

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

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

SIGNATURE OF CUSTODIAN (IF APPROVED) _____ DATE _____

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

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____
 on _____ on condition that he return to the custody of _____
 at _____ as designated.

DATE(S) _____ NAME OF PERSON OR ORGANIZATION _____

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release: _____

APPEARANCE RECOGNIZANCE WITH SURETY

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

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

NAME OF SURETY BONDSMAN _____ TELEPHONE _____ SIGNATURE OF SURETY BONDSMAN _____

ADDRESS OF SURETY BONDSMAN _____

CITY/STATE/ZIP _____ SIGNATURE OF JUDGE _____

NAME OF INSURANCE COMPANY _____ DATE _____

ADDRESS OF INSURANCE COMPANY _____

CITY/STATE/ZIP _____

Approved by SC Attorney General
 17-15-40
 ber 5, 2006

1 State of South Carolina

Court of Common Pleas

2 County of Lexington

3
4
5 State)

6 Plaintiff,)

v.)

Transcript of Record
14-CP-32-1449

7 Quentin Raymar Price)

8 Defendant.)
9

10 September 4, 2014
11 Lexington, South Carolina
12

13 B E F O R E:

14 The Honorable William P. Keesley, Judge.
15

16 A P P E A R A N C E S:

17 Nicole Howland, Esquire
Attorney for the Plaintiff

18 Jael D. Gilreath, Esquire
19 Attorney for the Defendant
20

21
22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

1

I N D E X

2

WITNESSESDIRECTCROSSREDIRECTRECROSS

3

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5

(There were no witnesses.)

6

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

16

State's 1

Brief

28

17

Court's 1

Brief

3

18

19

20

21

22

23

24

25

1 (The following proceedings were held on
2 September 4, 2014.)

3 (Court's Exhibit Number 1, brief, marked for
4 identification.)

5 **THE COURT:** All right. This is an appeal from
6 the magistrate's court. Let me hear from the
7 Appellant.

8 **MS. GILREATH:** Thank you, Your Honor. Before I
9 begin, I have a copy of the case law that I intend
10 to reference, and I'm handing over a copy to the
11 State. And then I have a copy of that along with my
12 brief that I'd like to hand up to the Court. And
13 I've also made that brief a Court's Exhibit that's
14 been premarked and I'd like to make that a Court's
15 Exhibit at this time.

16 **THE COURT:** Has that been marked?

17 **COURT REPORTER:** Yes, sir, it's marked.

18 **MS. GILREATH:** Would Your Honor mind if I use
19 the podium?

20 **THE COURT:** It's fine with me.

21 **MS. GILREATH:** Thank you.

22 **THE COURT:** Yes, ma'am.

23 **MS. GILREATH:** May it please the Court. My
24 name is Jael Gilreath and I represent the Appellant
25 in this case, Quentin Raymar Price. We're before

1 the Court today asking that the Court reverse
2 Mr. Price's conviction for contempt of court for
3 three reasons:

4 First, the magistrate judge erred in finding
5 Mr. Price in contempt of court because magistrate
6 judges lack subject matter jurisdiction to punish
7 for contempt where the alleged attempt occurs
8 outside the presence of the court.

9 Second, even if the magistrate had the
10 authority to address the matter in a contempt of
11 court proceeding, the magistrate judge erred in
12 failing to vacate the bench warrant that was issued
13 for the purpose of bringing the defendant before the
14 court in a criminal contempt of court proceeding in
15 violation of the defendant's procedural due process
16 rights under the Fourteenth Amendment, compulsory
17 process rights under the Sixth Amendment and current
18 South Carolina case law which requires that a
19 criminal contempt of court proceeding be initiated
20 by a rule to show cause supported by affidavits or
21 ~~verified pleadings alleging sufficient facts.~~

22 And, finally, the magistrate judge erred in
23 limiting cross-examination solely to the issue of
24 identification thereby prohibiting the defendant
25 from impeaching the State's witnesses and presenting

1 evidence of prior inconsistent statements made by
2 the State's witnesses in violation of the
3 defendant's Sixth Amendment right to confrontation.

4 As to the issue of subject matter jurisdiction,
5 magistrate courts lack subject matter jurisdiction
6 to punish for contempt where the alleged conduct
7 constituting the basis for the contempt occurs
8 outside the presence of the court.

9 Now, the issue of whether a court lacks subject
10 matter jurisdiction to hear a case is a fundamental
11 issue that may be raised at any time, including for
12 the first time on appeal. It also may be raised sua
13 sponte by the court and it may be not waived even by
14 consent of the parties. This principle has been
15 well-established and has been pronounced in a number
16 of cases including the Supreme Court's decision in
17 State v. Guthrie --

18 THE COURT: You need to slow down.

19 MS. GILREATH: I apologize, Your Honor.

20 THE COURT: Go ahead. She's got to take down
21 what you say. So if you're just going to read that,

22 you need to slow down. Okay?

23 MS. GILREATH: Yes, Your Honor.

24 THE COURT: Thank you.

25 MS. GILREATH: Do you need me to repeat

1 anything I said?

2 THE COURT: No, I can follow you, but I just --
3 I wouldn't want to be typing it.

4 MS. GILREATH: I apologize. I will slow down.

5 Now, in Guthrie, the court found that this
6 issue was so fundamental as to say that where a
7 court does not have subject matter jurisdiction, all
8 acts by the court with respect to that matter are
9 void.

10 Now, in determining magistrate jurisdiction to
11 hear contempt cases, we first look to the statute
12 that confers contempt powers to magistrates. When
13 interpreting statutes, the cardinal rule of
14 statutory construction is to ascertain and
15 effectuate the intent of the Legislature. In
16 determining the intent of the Legislature, courts
17 are to look to the plain language of the statute
18 giving words their plain and ordinary meaning as
19 this is considered the best evidence of the intent
20 of the Legislature.

21 ~~Now, where the language of the statute is~~
22 unambiguous, courts are not to change its meaning or
23 impose a different one, but are to give effect --

24 THE COURT: You're speeding back up.

25 MS. GILREATH: I apologize.

1 But are to give effect to the intent of the
2 Legislature as effectuated by the plain language of
3 the statute. Statutes that are penal in nature must
4 also be strictly construed against the State and in
5 favor of the defendant.

6 **THE COURT:** You're speeding back up. You need
7 to slow down. I'm sorry, but she was just talking
8 to me about a case we had that she's doing a
9 transcript on now where the attorney who was
10 testifying in a PCR case was talking a hundred miles
11 an hour and I told him he wasn't slowing down, the
12 court reporter told him to slow down over and over
13 again, and she's having a nightmare trying to type
14 this thing. So just try to slow down, okay.

15 **MS. GILREATH:** I will, Your Honor.

16 **THE COURT:** Thank you.

17 **MS. GILREATH:** Jurisdiction of magistrate
18 courts with respect to contempt proceedings is
19 governed by South Carolina Code Section 22-3-950.
20 The statute provides that every magistrate shall
21 ~~have the power to enforce the observances of decorum~~
22 in his court while holding the same, and for that
23 purpose, he may punish for contempt any person who,
24 in the presence of the court, shall offer an insult
25 to the magistrate or a juror or who is willfully

1 guilty of an undue disturbance of the proceedings
2 before the magistrate while sitting officially.

3 The statute goes on to say that magistrates
4 have the prior to punish for contempt by imposition
5 of sentences up to the limits imposed by magistrate
6 courts in 22-3-550.

7 Now, notably, nothing in the plain language of
8 this statute grants any authority to magistrates to
9 punish for contempt of court where the alleged
10 contempt is committed outside the presence of the
11 court or where the basis for the contempt is an
12 alleged bond violation. Instead, the statute
13 explicitly limits magistrate contempt powers to a
14 very limited set of circumstances. They may punish
15 for contempt where a person offers an insult to the
16 magistrate or juror or is willfully guilty of the
17 undue disturbance of the proceedings. Both of these
18 circumstances are limited to violations that occur
19 in the presence of the court for direct contempt.

20 Now, interpreting -- in interpreting this
~~21 statute under South Carolina law, the Fourth Circuit~~
22 Court of Appeals confirmed the long-standing
23 limitation on the authority of magistrates to punish
24 for contempt finding that magistrate contempt power
25 under the statute is limited to incidences where the

1 contempt is committed in the presence of the court
2 or where the party is willfully guilty of an undue
3 disturbance of the proceedings before the magistrate
4 while sitting officially. And the case that I'm
5 referencing here, Your Honor, is Dean v. Shirer,
6 which I've provided to the Court.

7 The Attorney General's Office has also
8 recognized this limitation. And there are two
9 opinions from the Attorney General's Office which
10 are particularly instructive here. The first is in
11 TO: Neal Forney. In this opinion, the Attorney
12 General's Office referenced limitations on
13 magistrate contempt powers dating back to 1796 where
14 the South Carolina Constitutional Court of Appeals
15 confirmed this authority and by dictum suggested
16 that out-of-court conduct must be addressed by other
17 means.

18 The 1796 case that's cited there, Your Honor,
19 is Lining v. Bentham. The Attorney General's Office
20 reiterated this historical interpretation as
~~21 recently as 2004 in an informal opinion addressed to~~
22 the Honorable B. Lee Miller, a municipal court judge
23 in Greenwood.

24 Now, in equating the authority of a municipal
25 court judge with that of a magistrate court judge,

1 the opinion cites to 22-3-950 as the statute that
2 confers contempt power on the court and cites to the
3 longstanding tradition of limiting the contempt
4 powers of magistrate judges as was articulated again
5 by the South Carolina Constitutional Court in State
6 v. Applegate in 1822.

7 Now, in this opinion, the court references
8 justices of the peace, which were a precursor to
9 magistrate judges, but there the court emphasized
10 that the inferior jurisdiction of such court -- they
11 referenced the inferior jurisdiction of such courts
12 and noted that where -- whereas punishing for
13 contempt that occurs in the face of the court is
14 essential to a preservation of order and discharging
15 the court's business, contempt done out of court is
16 not essential to performing those duties and such
17 power is reserved to courts of higher jurisdictions.

18 Now, as the Supreme Court found in State v.
19 Harper, the reason for the strict limitation on
20 magistrate contempt power is that contempt is

~~21 considered an extreme measure, and the power to a~~

22 judge in contempt is not to be lightly asserted.

23 Because there is no extension of magistrate contempt
24 authority beyond the confines of 22-3-950, conduct
25 that does not clearly and specifically violate the

1 provisions of this section are not punishable by
2 contempt in magistrate's court.

3 Now, in addition to the lack of statutory
4 authority granted or that could be granted in
5 22-3-950, neither has any authority to punish for
6 contempt being granted in the statute governing bond
7 conditions. I believe that the State's position,
8 based on the arguments that were had below, was that
9 17-15-30(D) grants power to punish violations of
10 bond conditions through contempt.

11 Now, 17-15-30 provides in subsection (A) that
12 -- basically it provides that determining conditions
13 of release -- in determining conditions of release,
14 it provides a list of factors that a court may
15 consider in determining those conditions if that
16 information is available. Subsection (B) goes on to
17 state the factors that a court shall consider if
18 available.

19 Now, subsection (C) and (1) actually apply to
20 law enforcement agencies. In those subsections, it
~~21 basically puts a requirement on law enforcement to~~
22 provide certain information, such as the criminal
23 record, to the court either at or prior to the time
24 of the hearing or to inform the court that the
25 information is not available and give the reasons

1 why.

2 Subsection (D) then of section 30 states that a
3 court hearing these matters has contempt powers to
4 enforce the provisions of this section.

5 Now, by the plain language of the statute,
6 contempt powers are conferred. However, they are
7 only conferred for the enforcement of 17-15-30,
8 which does not impose any duties, requirements or
9 restrictions on a defendant and does not address
10 actual bond conditions in any way. The only duties
11 imposed by this section relate to both the court and
12 to law enforcement, so it cannot be inferred that
13 the contempt powers mentioned here relate to the
14 enforcement of a defendant's bond conditions.

15 Now, had the Legislature intended to grant
16 contempt powers for violations of conditions of
17 bond, it could have done so in a number of ways:
18 First, it could have drafted subsection (D) to
19 permit punishment for contempt for a violation of
20 this title or chapter as opposed to explicitly
~~21 limiting the authority conferred to punishment for~~
22 violations of this section, referencing section 30.

23 Notably, the Legislature did not include a
24 similar subsection in section 17-15-10 which does
25 specifically address permissible conditions of

1 release on bond. Now, had it done so, then the
2 question would arise as to whether this could be
3 interpreted as an exception to the general
4 limitation on magistrate authority to punish for
5 contempt as set forth in 22-3-950, but the
6 conspicuous absence of a grant of any such authority
7 either to magistrates in general or in the statute
8 governing conditions of release on bond demonstrates
9 that the Legislature had no intent of conferring
10 such power.

11 To the contrary and perhaps most notably,
12 section 17-15-100 actually confirms that the
13 Legislature did not intend for the statute governing
14 bond to either expand or limit the contempt powers
15 of any court. This section states, Nothing
16 contained in sections 17-15-10 through 17-15-60
17 shall affect the power of any court of the State to
18 punish for contempt.

19 So in interpreting 17-15-30 as granting any
20 additional contempt power to a magistrate court, is
21 ~~inconsistent with the plain language of the statute.~~

22 So although the power to punish for contempt is
23 inherent in all courts, this power -- all powers of
24 contempt have not been extended to all courts. To
25 the contrary, in the Shirer decision that I

1 mentioned earlier, the court basically confirms that
2 magistrates are limited in their contempt powers to
3 punishing for direct contempt only and only in the
4 circumstances outlined in the statute.

5 Now, the Supreme Court has indicated a
6 willingness to take a liberal and expansive view of
7 presence and court requirements for purposes of
8 contempt, but these expansions typically have only
9 applied to direct contempt or contempt that occurs
10 within the presence of the court. Examples of this
11 have included expansions of direct contempt to
12 include areas beyond the mere courtroom, to include
13 hallways or the curtilage or the steps of the
14 courthouse, and to include issues involving jurors
15 that are currently sitting in a trial.

16 However, in none of these cases, has the court
17 ever expanded contempt powers to include punishment
18 for bond violations, nor has it included an
19 expansion of magistrate powers of contempt to
20 include conduct outside the presence of the court.

~~21 So in addition to there being no authority~~
22 permitting it, permitting courts to punish for
23 contempt in these circumstances, I would argue is
24 simply bad public policy. This frequently puts a
25 defendant in the position of facing 30 days in jail

1 to be served day for day in addition to and
2 generally consecutive to any other sentence that
3 they may face unless they are perhaps able to
4 negotiate a plea to some sort of suspended sentence,
5 in which case, they may be giving up constitutional
6 rights as to their pending criminal charge which
7 they may be claiming innocence to, but they're doing
8 so simply to keep themselves out of jail.

9 So, Your Honor, in this case, Mr. Price was
10 convicted of contempt of court based on conduct that
11 allegedly occurred around eight o'clock p.m. on a
12 Sunday night at a private residence in West Columbia
13 outside the presence of any judge, any jurors, no
14 law enforcement was present with him on scene and
15 certainly not during a court proceeding before a
16 magistrate. Therefore, no argument can be made that
17 the basis for the contempt falls within the contempt
18 powers of the magistrate to punish for direct
19 contempt.

20 As a result, the magistrate judge lacked
21 ~~subject matter jurisdiction to hold a contempt of~~
22 court hearing on the matter, and Mr. Price's
23 conviction for contempt of court should be reversed
24 for that reason.

25 Now, even if the magistrate had had the

1 authority to address the alleged bond violation in a
2 contempt of court hearing, the proper mechanism for
3 bringing him before the court in a criminal contempt
4 of court proceeding would have been a rule to show
5 cause. Instead of a rule to show cause, a bench
6 warrant had been issued, and that was the mechanism
7 used to bring Mr. Price before the court. As a
8 result, Mr. Price's procedural due process rights
9 under the Fourteenth Amendment, as well as
10 compulsory process rights under the Sixth Amendment
11 were violated and his conviction should be reversed
12 on these grounds as well.

13 When the conduct forming the basis for an
14 alleged contempt takes place outside the presence of
15 the court, the contempt alleged is constructive and
16 not direct. Because the alleged constructive
17 contempt formed the basis for a criminal contempt of
18 court proceeding, certain constitutional rights
19 attached, including the rights to notice and to be
20 heard under the Fourteenth Amendment.

~~21 Now, we know that this was held as a criminal~~
22 contempt of court proceeding as opposed to a civil
23 because of the differences in the nature of criminal
24 contempt and civil contempt. Criminal contempt may
25 be distinguished from civil in that criminal

1 contempt is intended to punish a defendant and
2 vindicate the court's authority rather than to bring
3 someone into compliance with a court order.

4 So where contempt is criminal, the punishment
5 imposed is for a definite time. There's nothing
6 that anyone can do to purge themselves of the
7 contempt or to bring themselves back into the
8 court's good graces to alleviate or shorten the
9 sentence or lessen the penalty. These issues have
10 been well-settled as evidenced in the Supreme
11 Court's decisions in such cases as Poston and
12 Hornsby. And I've provided the Court with copies of
13 those as well.

14 Now, although these cases do not deal with
15 criminal defendants accused of bond violations, they
16 do address the rights of the accused and proper
17 procedures for initiating criminal contempt of court
18 proceedings.

19 Now, I think that it's also instructive that
20 these aren't criminal cases because the cases
~~21 addressing them are family and civil which indicates~~
22 that typically this is a procedure used in those
23 types of cases and not in criminal cases.

24 In any case, when initiating a criminal
25 contempt of court action, due process requires that

1 the proceeding be initiated by a rule to show cause
2 and not a bench warrant, and that rule to show cause
3 must also be based on affidavits or verified
4 pleadings alleging sufficient facts. And this was
5 established in cases such as State v. Johnson.

6 This case and others that stand for the same
7 proposition were referenced in the Attorney
8 General's opinion that I mentioned earlier,
9 TO: Neal Forney, with the opinion advising that
10 those cases indicate that a requirement -- the
11 requirement that a rule to show cause must be issued
12 to initiate contempt proceedings for conduct that
13 takes place outside the presence of the court.

14 Now, the rule to show cause is important
15 because it protects the constitutional rights of the
16 accused in the proceeding to notice, to present a
17 defense, to give time for compulsory process. A
18 bench warrant, on the other hand, is not the proper
19 mechanism for initiating criminal contempt of court
20 proceedings.

21 ~~In fact, the magistrate's own bench book~~
22 advises magistrates that bench warrants may not be
23 used to initiate criminal action. Instead, it
24 provides examples of times when a bench warrant
25 would be appropriate. These include circumstances

1 where, after proper notice, a defendant fails to
2 appear after a proceeding or where the defendant may
3 have been tried in his absence, he needs to be
4 brought into the court to comply with sentencing,
5 and circumstances such as this.

6 So during the hearing on April the 7th which
7 addressed this issue, I think that the magistrate
8 may have confused or sort of conflated the issue of
9 a bench warrant with the issuance of an arrest
10 warrant for a criminal charge. And these procedures
11 and the bases for the issuances of such are
12 different in that with an arrest warrant, the
13 accused has the ability to bond out, is afforded
14 specific constitutional protections that are
15 afforded and guaranteed through the usual criminal
16 process.

17 So, in this case, the rule to show cause was
18 never issued. Mr. Price was instead brought before
19 the court on a bench warrant in violation of those
20 procedural due process rights and his compulsory
21 ~~process rights under the Fourteenth and Sixth~~

22 Amendments. As a result, we would argue that his
23 conviction for contempt of court should be reversed
24 on these grounds as well.

25 Finally, Your Honor, as to the actual contempt

1 of court hearing that was held, we would argue that
2 the magistrate judge also erred in limiting
3 cross-examination of the State's witnesses solely to
4 the issue of identification which thereby prohibited
5 the defendant from impeaching witnesses and
6 presenting evidence of prior inconsistent statements
7 made by the State's witnesses and that this was in
8 violation of the defendant's Sixth Amendment right
9 to confront the witnesses against him.

10 Now, the Sixth Amendment right to confrontation
11 includes the right to a meaningful cross-examination
12 of adverse witnesses. This was found by the court
13 in State v. Graham. The rules of evidence -- South
14 Carolina Rules of Evidence provide an additional
15 basis for cross-examination. Rule 608(C) says that
16 bias, prejudice or any motive to misrepresent may be
17 shown to impeach the witness either by examination
18 of the witness or by evidence otherwise adduced.

19 Now, although a trial court may impose
20 reasonable restrictions on cross-examination, the
~~21 Supreme Court has cautioned that before a court can~~
22 prohibit cross-examination that relates to such
23 matters as bias, the record must show that there was
24 -- that the cross-examination was otherwise or
25 somehow inappropriate.

1 A defendant's Sixth Amendment rights are
2 violated when he demonstrates that he was prohibited
3 from engaging in what would be otherwise appropriate
4 cross-examination regarding any fact that would tend
5 to provide a basis for questioning a witness' motive
6 or reliability or credibility. Thus, the Sixth
7 Amendment includes an inherent right to impeach a
8 witness. And violations of Sixth Amendment rights
9 of confrontation can constitute reversible error.

10 Now, although the Sixth Amendment was not
11 specifically mentioned at the trial court level, the
12 basis for the cross-examination questions that were
13 excluded by the court were provided and any
14 additional argument would have been futile in the
15 matter.

16 Now, it's well-settled that the exact name of a
17 legal doctrine is not necessary in order to preserve
18 an issue for appeal. All that's required is that
19 the record reflect an argument on that ground so
20 that the trial court has a fair opportunity to rule
21 on the issues. And the courts have found that when
22 error preservation is doubtful, courts sitting in
23 appeal should resolve the question in favor of
24 reaching, reaching the merits of an issue.

25 The issue of preservation in this case, I would

1 argue, is very similar to those addressed in the
2 Court of Appeals recent decision in State v.
3 Haygood. There the Court of Appeals held that a
4 Sixth Amendment Confrontation Clause issue was
5 properly preserved where it was clear that even
6 though Sixth Amendment and Confrontation Clause had
7 not specifically been mentioned --

8 **THE COURT:** Hold on a second. This is another
9 judge. I need to talk to him. We've been playing
10 phone tag. Give me just a second. We're at ease.

11 (Brief Recess.)

12 **THE COURT:** All right. Go ahead, please.

13 **MS. GILREATH:** Thank you, Your Honor.

14 Your Honor, I think I was saying that I believe
15 the preservation issues in this case are very
16 similar to the Court of Appeals recent decision in
17 State v. Haygood. There the Court of Appeals found
18 that a Sixth Amendment Confrontation Clause issue
19 had been properly preserved even where the
20 underlying basis for the objection was argued

21 ~~without actually saying Sixth Amendment~~

22 Confrontation Clause and although the magistrate did
23 not specifically rule on the Sixth Amendment
24 Confrontation Clause issue.

25 Now, the doctrine of futility would also

1 provide an additional basis for the preservation of
2 issues in this case. Under this doctrine, the
3 Supreme Court has recognized that there are
4 circumstances where objecting or continuing to raise
5 an argument to the trial judge would be futile,
6 whether it be because the judge has already ruled on
7 the matter in some way or because of the judge's
8 tone and tenure, the court would find that the
9 failure to raise the objection could be excused.

10 Additionally, in the Rules of Criminal
11 Procedure, Rule 18(a), it actually prohibits counsel
12 from attempting to further argue any matter that has
13 been heard and where the ruling of the court has
14 been pronounced. So, essentially, once a trial
15 court has made clear its position on a matter, not
16 only is the failure to keep raising the argument or
17 the objection excusable, it's also not permitted
18 under the rules of criminal procedure.

19 Here I would argue that the right of
20 confrontation is preserved similarly to that in

~~21 Haygood where the court had found that that~~

22 Confrontation Clause was still preserved.

23 Basically, the court found that although the judge
24 did not specifically rule on the issue that counsel
25 had attempted to raise, because the underlying issue

1 was raised and the objection was denied by the
2 court, the issue was properly preserved.

3 In this case, the contempt of court hearing was
4 held on April the 9th. Before calling the first
5 witness, the State, represented by Ms. Howland,
6 requested a limiting instruction regarding the scope
7 of the examination on the basis that the State did
8 not want to get prior sworn testimony. And that's
9 in the contempt hearing transcript from April 9th,
10 page five at lines 11 through 15.

11 Now, the court neither really fairly granted
12 nor fairly denied this request, but instead
13 requested that the State set the basis of the
14 violation and then proceeded to take judicial notice
15 of various matters, including Mr. Price's date of
16 arrest, the judge who set the bond, the bond
17 conditions and other similar matters. Because it
18 was unclear whether the limiting instruction had
19 actually been put into place or what it might even
20 cover, there really was no basis for an objection at

21 ~~that time.~~

22 Now, after taking notice of the various
23 matters, the court requested that the State lay the
24 groundwork for what the violation was, which was
25 stated to be the bond violation.

1 After that, the State called two witnesses,
2 Meagan Penny and Camisha Mims. On
3 cross-examination, I had attempted to impeach both
4 witnesses by prior inconsistent statements which
5 drew objection from the State. The court limited
6 defense counsel's questioning to Meagan Penny
7 stating that the only issue before the court today,
8 was Mr. Price in contact with Ms. Mims after
9 November 20th, 2013. Your question will remain to
10 that fact.

11 And that's on page, of the same transcript,
12 page 11, lines 20 through 23.

13 The court again limited the questioning of
14 Penny when defense counsel attempted to impeach
15 prior inconsistent -- by prior inconsistent
16 statements, limiting, limiting defense counsel to
17 instead of questioning Ms. Penny regarding the prior
18 inconsistent statements, to calling an impeachment
19 witness instead. And then, at that point, the court
20 then proceeded to question Ms. Penny itself
21 regarding the alleged bond violation.

22 The State's next witness was Ms. Camisha Mims.
23 On the attempted cross-examination of Ms. Mims, the
24 State again interjected and the court again gave a
25 limiting instruction stating that the questions are

1 and the only matter before this court today is not
2 the events of March the 9th, they are whether or not
3 Mr. Price had contact with Ms. Mims. That is the
4 only matter before the court in the contempt hearing
5 today.

6 And that's on pages 18 and 19, lines 24 through
7 line four on page 19 -- or -- yeah, on page 19.

8 The argument was then made that what Ms. Mims
9 told police and what -- all what stories had been
10 given by her to various people went to her
11 credibility as a witness and were intended for
12 impeachment purposes. The State began a
13 counterargument relating to a concern that if facts
14 and sworn statements were addressed, that jeopardy
15 might attach. And to that matter, the court agreed,
16 again stated that this whole issue is a matter of an
17 issue between the court and Mr. Price and again
18 proceeded to question the witness itself.

19 The only question that the court asked Ms. Mims
20 was whether she saw Mr. Price on March 9th and

21 ~~whether he spoke to her. After she responded in the~~
22 affirmative, the court then asked if defense counsel
23 wanted to ask any questions toward that. Because,
24 essentially, that question had been asked and
25 answered, defense counsel declined to ask any

1 additional questions regarding the sole issue that
2 the court limited it to as to whether she saw him
3 and had contact with him.

4 So although the specific words Sixth Amendment
5 and confrontation were not stated, raising the
6 issues of impeachment and credibility as being
7 essential to cross-examination gave the court fair
8 opportunity to rule on these issues. And with these
9 issues being essential to the Sixth Amendment right
10 to confrontation, they were presented to the court
11 with a fair opportunity to rule on them and the
12 questioning was then denied.

13 So -- and in addition to that, based on the
14 fact that the limiting instruction was given
15 repeatedly and the tone and tenure of the limiting
16 instruction, I would argue that any additional
17 argument or trying to raise any additional issues
18 towards being able to ask more questions about these
19 matters would simply have been futile and perhaps
20 detrimental to the interest of the defendant.

21 ~~So in conclusion as to that issue, because the~~
22 trial court prohibited the defendant from engaging
23 in this permissible cross-examination, which was
24 intended to impeach the witness, elicit testimony
25 that would draw into question the witness'

1 credibility, the Sixth Amendment right to
2 confrontation was violated, and the conviction for
3 contempt of court should be reversed on those
4 grounds as well.

5 So just to sort of sum up the issues here, the
6 magistrate court lacked subject matter jurisdiction
7 to find him guilty of -- Mr. Price guilty of
8 contempt of court in this case. Even if the
9 magistrate had had the authority to do so, a rule to
10 show cause should have been issued to initiate the
11 proceedings not a bench warrant and the defendant
12 should have been allowed to fully cross-examine the
13 witnesses against him. Because these were not
14 allowed and because these procedures were not
15 followed, Mr. Price's constitutional rights were
16 violated and we would argue that the conviction for
17 contempt of court should be reversed.

18 **THE COURT:** Thank you.

19 What's the State's position?

20 **MS. HOWLAND:** May it please the Court. Your

21 ~~Honor, I actually have a brief in opposition, which~~

22 I prefiled with the court, but I brought another
23 copy to be marked as State's Exhibit 1. This brief
24 addresses the --

25 (State's Exhibit Number 1, brief, marked for

1 identification.)

2 MS. HOWLAND: Your Honor, the brief that I
3 prefiled with the court actually addressed the
4 original five issues that were filed by the
5 Appellant yesterday -- actually on September 2nd or
6 3rd. The Appellant modified to six issues on appeal
7 which then changed later in the day to three issues
8 on appeal. So I don't actually have a written brief
9 addressing the subject matter jurisdiction issue,
10 but I'm prepared to do that in the oral argument.

11 The meat and potatoes of this case is pretty
12 simple. It comes down to whether judges have the
13 authority to enforce their own orders. And if they
14 do have the authority to enforce their own orders,
15 under what circumstances, which mechanism they're
16 going to use. And, further, the Appellant argues
17 that magistrates have even less authority to enforce
18 their own orders and that they lack the ability to
19 hold defendants accountable for violating conditions
20 of release.

21 ~~Contempt is a power that is necessary, vital~~
22 and instrumental in maintaining the decorum of the
23 judicial process. There are many things in today's
24 argument that defense counsel and the State agree
25 on, statutory construction, legislative intent, the

1 expanse of power and contempt in the courts, and the
2 fact that there has to be -- there must be decorum,
3 there must be respect for the judicial process.

4 Just to give a basic statement of the facts,
5 this is a case that stems from Mr. Price being found
6 in contempt for violating the terms of his bond. It
7 was the second time. He was on release for an
8 arrest for domestic violence with Kamisha Mims. He
9 was found later hiding in her shower and was found
10 in contempt the first time. The second time, which
11 is what this appeal stems from, resulted not only in
12 a bench warrant for failing to abide by the terms of
13 his bond conditions, but it also resulted in another
14 arrest warrant for Mr. Price for CDV against
15 Ms. Mims.

16 And at this current time, Mr. Price has a
17 pending bench warrant for failure to appear for not
18 appearing at a subsequent court hearing and an
19 arrest warrant for threatening an alibi witness that
20 was presented in the very contempt proceedings that
~~21 are under appeal today by threatening her over the~~
22 phone.

23 As far as subject matter jurisdiction goes, the
24 State recognizes this can be raised at any time, but
25 the argument being that somehow magistrates lack the

1 authority to enforce their orders is disingenuous.
2 To start with, when defendants have their bond set,
3 there are two different forms that magistrates use,
4 and those were presented as part of the exhibit to
5 Your Honor.

6 And in those bail proceeding forms, there's a
7 form one and a form two. The language that is
8 specifically used: Number one, I understand -- and
9 I meaning the defendant -- understand that if I
10 violate any conditions of this order, a warrant for
11 my arrest will be issued. Not a rule to show cause,
12 a warrant.

13 The statute that governs the setting of a bond
14 under 17-15-40 says a lot of things, but the most
15 pertinent part is that a warrant for the person's
16 arrest will be issued immediately upon any such
17 violation of the terms of the order of their
18 release. That's the authority that's conveyed.

19 If the Legislature or Court Administration or
20 the Attorney General's Office that approves these
21 ~~forms that are used by every bond setting judge in~~
22 this state, had they intended rule to show cause,
23 that's the language they would have used, but they
24 didn't. Had the statute intended rule to show
25 cause, that's the language that would have been

1 used, but it wasn't.

2 And it's not that the South Carolina Code
3 doesn't use the language "rule to show cause",
4 because the code does. The rule to show cause is
5 the mechanism to bring a contemtor before the court
6 in many areas within the code, however, not in this
7 statutory language. The language that grants the
8 authority uses the term warrant.

9 Now, a rule to show cause is the common
10 practice to be used in family court to bring
11 contemtors before the judge to address the fact
12 that there has been contemptuous conduct, but even
13 in family court where a rule to show cause is the
14 common practice, there are exceptions. And under
15 63-17-400, one of -- it lists six different
16 exceptions to where a warrant, a bench warrant, is
17 the appropriate mechanism and not a rule to show
18 cause, and one of these, subsection (5), is the
19 safety of the petitioner is in danger.

20 Now, while this is a domestic violence case and
~~21 the safety of victims is paramount, the argument~~
22 being made by the Appellant has far more reaching
23 implications. Essentially, if the Court accepts
24 what defense counsel is putting forth, the Court is
25 saying that magistrates can't enforce their orders,

1 and when people are released on bond, if they don't
2 do what they're supposed to, judges can't hold them
3 accountable, that defendants can not show up for
4 court, defendants can violate the terms of release
5 by going back to the incident location or having
6 contact with the victim.

7 There must be the authority of judges to hold
8 defendants accountable to what the defendant agreed
9 to and had notice of when they were released from
10 jail.

11 Now, as to what is considered in the presence
12 of the Court, Ms. Gilreath is correct in that there
13 is no case law on point dealing with a defendant
14 violating the terms of their bond, but that doesn't
15 mean that there isn't the authority to do so. The
16 silence on the issue by the courts merely means the
17 courts haven't ruled on it. It doesn't mean that
18 the courts don't have the authority.

19 When there's multiple case law, which
20 Ms. Gilreath has provided to the Court, that
21 addresses the fact that all courts have the inherent
22 power to punish for contempt, it's essential to the
23 preservation of order in judicial proceedings and an
24 enforcement of judgments, orders and writs of the
25 court and consequently to the due administration of

1 justice.

2 If a defendant is released on bond for criminal
3 domestic violence and told not to have contact with
4 the victim and then goes to the victim's place --
5 where they live and commits another criminal act
6 which results in another warrant for another CDV and
7 a judge doesn't have the ability to find that person
8 in contempt for violating that court order, then
9 it's anarchy. There is no administration of
10 justice.

11 Now, Ms. Gilreath addresses the limiting
12 instructions on the cross-examination of the two
13 witnesses that were presented by the State. Number
14 one, the State believes this was not properly
15 preserved based on the fact that issue preservation
16 is pretty standard as far as what must be done, the
17 issue must be raised and ruled upon by the lower
18 court, the appellant must be the party that raised
19 the issue at trial and it must be raised in a timely
20 manner, and the grounds supporting the objection
21 must be stated with specificity in order to clearly
22 delineate the alleged error.

23 The transcript of the contempt proceeding does
24 not demonstrate that any of these actions were
25 properly taken. Based on that, the State believes

1 that the issue was not properly preserved and
2 therefore not something for the Court to look at.

3 But in the alternative, if the Court determines
4 based on the arguments made by the Appellant, that
5 ground number three was properly preserved, I think
6 it's important for the Court to know that when the
7 appeal was filed, the knowledge that defense counsel
8 had is different from the knowledge defense counsel
9 has now.

10 Based on the fact that defense counsel filed an
11 appeal bond, I was concerned about the safety of the
12 victim and began to listen to Mr. Price's jail phone
13 calls, and those jail phone calls were presented to
14 Ms. Gilreath. And in those jail phone calls, there
15 was discussion of fabricating an alibi. And the
16 information that was actually presented in court, an
17 affidavit from an Ambrea Reese, was presented by
18 defense counsel, which then was contradicted in
19 Mr. Price's own testimony at the contempt
20 proceeding.

21 ~~The affidavit that was presented by Ms. Reese,~~
22 who did not appear in court to be cross-examined or
23 just a piece of paper, I didn't have an opportunity
24 to cross-examine anyone, said that Mr. Price was in
25 Camden. And then when Mr. Price testified, he said

1 he was in West Columbia. So he disputed his own
2 alibi defense.

3 And subsequent jail phone calls divulged that
4 Ms. Ambrea Reese was not a mutual co-worker. She's
5 the new girlfriend of Mr. Price and pregnant with
6 his child. They discussed the fact of how they were
7 going to create an alibi. And then after the
8 contempt hearing, there was a discussion in the
9 phone calls by Mr. Price and Ms. Reese about they
10 should have gotten their stories straight because if
11 he had known that she was going to say he was in
12 Camden, he wouldn't have said he was in West
13 Columbia.

14 So even had there been -- the State's two
15 witnesses were there and available for
16 cross-examination. The two affidavits presented by
17 defense counsel, there was nobody there. And once
18 again, we believe that even -- that the argument --
19 that this grounds for appeal wasn't properly
20 preserved. But even if it was, it's harmless error
21 ~~here based on the information that was subsequently~~
22 determined from listening to jail phone calls by the
23 defendant.

24 The State's position is very simply this:
25 Magistrates have the authority to set bond

1 restrictions and those bond restrictions can include
2 limitations on who a defendant associates with and
3 where they live. Magistrates have the authority
4 under 17-15-10 and 17-15-30. And under 17-15-30,
5 the magistrates have the power of contempt to
6 enforce the conditions placed on the defendant.

7 There's nothing to indicate that defendant
8 should have less -- that magistrates should have
9 less authority to enforce orders that they issue,
10 especially in cases that they continue to maintain
11 jurisdiction over. This isn't a situation of where
12 a magistrate set a bond, it was a general sessions
13 level case, the case then was transferred to the
14 solicitor's office with jurisdiction transferring to
15 circuit court. This is a magistrate level case. A
16 Lexington County magistrate set a bond on Mr. Price,
17 told him not to have contact with Kamisha Mims and
18 he did more than once.

19 Had the Legislature intended that rule to show
20 causes would be the appropriate mechanism to bring a
21 contemptor in magistrate's court before them, they

22 would have used that language. And there is the
23 requirement that when you look at statutory
24 construction, that you look at legislative intent in
25 the plain wording, in the plain meaning of the

1 statute.

2 The language on the form, the bail form, says
3 warrant. The language in the statute says warrant.
4 And based on that, the State's position is that the
5 magistrate didn't err by refusing to vacate the
6 bench warrant, that the magistrate does have
7 authority to address contemptuous conduct even if it
8 is not in the actual courtroom or the curtilage of
9 the courthouse, because after all, a defendant who
10 makes contact with a victim which has the potential
11 to make that victim not participate in the process
12 is -- totally undermines the whole process, the
13 whole judicial system.

14 Defendants have to do what courts tell them and
15 victims have to believe that if a judge tells a
16 defendant, don't have contact with me, that if he
17 does, that the appropriate action will be taken.

18 Now, had this been a general sessions level
19 offense with ten years hanging over Mr. Price's
20 head, then a bond revocation would have been the
21 ~~step to take. But in magistrate's court, revoking a~~
22 bond and saying someone's going to sit in court
23 until their trial is heard when the sentence is 30
24 days is not practical because our cases don't move
25 that quickly.

1 We believe, the State's position is simply
2 this: Magistrates have the authority to enforce
3 orders. A warrant, a bench warrant is the
4 appropriate mechanism because that's what the form
5 says, that's what the statutes say. And we believe
6 that the conviction for contempt should be upheld.

7 **THE COURT:** All right. When I went through
8 training, we were taught the differences between
9 civil and criminal contempt, and we were taught that
10 it can be confusing at times. But I was basically
11 told that if something happened out there that I did
12 not observe, then I don't have the authority to
13 arrest that person. I can bring them in and cite
14 them for contempt and then I'd go through appointing
15 an attorney and then I set a hearing.

16 If I accept all of your arguments, how do you
17 jump through -- how do you get past the argument
18 that it's a due process violation when you issue a
19 warrant and have somebody arrested when you haven't
20 had the hearing yet?

21 **MS. HOWLAND:** May I respond, Your Honor?

22 **THE COURT:** That was a question to you.

23 **MS. HOWLAND:** If a defendant fails to appear,
24 there isn't a rule to show cause issued to have a
25 hearing.

1 **THE COURT:** Different animal.

2 **MS. HOWLAND:** If the defendant has been told --
3 their notice simply is this: They have been told,
4 these are the terms you must comply with; this is
5 what you're agreeing to do upon your release; and if
6 you don't, a warrant will be issued.

7 **THE COURT:** Yeah, but what if, what if, devil's
8 advocate, the victim is lying through her teeth?
9 I'm not saying your victim was.

10 **MS. HOWLAND:** No.

11 **THE COURT:** I don't even know who you all are
12 talking about. What if the victim is lying through
13 her teeth, that she has ulterior motives, that
14 they're in the middle of a family court dispute, all
15 the things we hear all the time, that she's trying
16 to gain advantage of on a custody issue, and she can
17 keep getting this guy locked up, and he has no right
18 to have a hearing in advance of being locked up is
19 what you're telling me.

20 **MS. HOWLAND:** Well, I think that I have
21 confidence that it's -- that when the information is
22 presented to a judge -- it's not like we just get a
23 warrant. The information is presented to the judge.
24 The judge makes the decision at that point whether
25 the judge believes there is enough to issue a bench

1 warrant. And if the judge believes there is not,
2 the judge doesn't. It's not as if judges take these
3 situations lightly.

4 **THE COURT:** I've never accused anybody of
5 taking anything lightly. But go back to the first
6 issue. I am told, take your job seriously, but if
7 that conduct doesn't happen in your presence, in
8 other words, if you're holding court and the guy's
9 not there, that's supposed to be there, you know it.

10 **MS. HOWLAND:** Right.

11 **THE COURT:** You can order that person to be
12 locked up because they did not appear in your court.
13 Now, they might have had a real good reason for not
14 appearing and they have to file a motion to vacate
15 the bench warrant.

16 What I'm asking you is if I accept all of your
17 argument, how do I get past the part that a
18 magistrate is locking somebody up on a bench warrant
19 who has not had any opportunity to refute the
20 allegations that were made to issue the bench
21 warrant?

22 **MS. HOWLAND:** I think it stems from the idea of
23 what the presence of the court is. The training
24 that you are alleging is that you would actually
25 have to see it.

1 However, the presence of the court has been
2 discussed in Kennerly and other -- a wide variety of
3 cases have been presented, that the presence of the
4 court is to be viewed in a very liberal and
5 expansive fashion. If it extends beyond this
6 courtroom, as it has in jury rooms, that's been
7 addressed by the court and it's been determined that
8 contemptuous conduct in the presence of the court
9 can extend to a jury room or can extend to the
10 courthouse steps.

11 **THE COURT:** I know I can find somebody in
12 contempt. The question is, the hearing, the
13 mechanism for issuing the warrant to lock somebody
14 up. I can pull up a hundred orders on this computer
15 right now that I've set in cases where I say, have
16 no contact with them, but if I'm at my home in
17 Edgefield on Sunday and something happens in West
18 Columbia on that night, what authority would I have
19 to order that person to be locked up until we could
20 have a hearing to determine whether he actually did
21 what he was accused of doing in West Columbia on
22 that Sunday night? I didn't see him.

23 **MS. HOWLAND:** Your Honor, all I can refer to is
24 that the statute that allows magistrates to find
25 people in contempt says warrant. The bond paperwork

1 that the defendant signs and is issued by the judge
2 says warrant.

3 **THE COURT:** I've heard your argument. I accept
4 what you're saying. The bond form is not law.

5 **MS. HOWLAND:** I understand that, but the
6 statute is what guides the court.

7 **THE COURT:** It says warrant. And you can issue
8 a bench warrant if they don't appear and these other
9 things. What I'm saying is you have to kind of read
10 these things together and how things are in
11 practice. If I could do what you're suggesting was
12 permissible in this case, then I could have somebody
13 in the parking lot locked up. And I don't
14 understand that to be what I was told that I could
15 do.

16 **MS. HOWLAND:** Well, I think that taking the
17 situation as a whole, the -- realizing that bond
18 paperwork is not law, part of what gives the court
19 the authority to issue a bench warrant for failure
20 to appear is one of the very things, it's number
21 two, I believe, on the bond paperwork that's signed

22 that says that you've got to show up when you're
23 told.

24 And I think it -- if the Court's position is
25 that there must be a rule to show cause first, then

1 I don't know where the warrant comes in from a
2 procedural standpoint. If the issue is that a rule
3 to show cause, which is going to require an
4 affidavit, I'm not really sure who's going to
5 provide that affidavit because if a rule to show
6 cause requires an affidavit to be served on the
7 defendant with a ten-day notice, meanwhile we've got
8 a victim out there that's kind of in limbo, then --

9 THE COURT: I don't get to change the
10 constitution.

11 MS. HOWLAND: I understand that. But we have
12 situations in court all the time where the defendant
13 drives up, parks in this parking lot, drops the
14 victim off, drives across the street and a detective
15 sees it, sees the fact that they arrive together and
16 engage in deception by dropping one of them across
17 the street in the parking lot. That is not in the
18 court's presence if you're requiring that you must
19 see it if you're up here or any judge that's in
20 chambers, but, clearly, it is within the presence of
21 what is contemplated by the Legislature.

22 THE COURT: I don't see how. I apologize I'm
23 not making myself clear. The power of contempt is
24 one thing. I'm not even talking about that. I'm
25 talking about how do you hold -- put somebody in

1 jail without having a hearing when you did not
2 observe it and it was not in your presence as a
3 judge? It was not within any expansion of what is
4 in the presence of the judge. And I understand your
5 position, but you haven't given me a single case
6 that I know of that says that a judge can, without a
7 hearing, lock somebody up because somebody else said
8 that person, that defendant, violated the condition
9 of the bond.

10 What you do is you notify the sheriff's
11 department and they take the steps that you said
12 that y'all have taken to protect this lady until it
13 can get into court and you can have a hearing.
14 Otherwise, it -- something's happened outside the
15 courtroom, there's some noise, something's happened,
16 I would never bring that person in here and say, I'm
17 holding you in contempt. I'll say, I'm citing you
18 for contempt. I'm putting you on notice. I'm going
19 to issue a written directive. Do you have an
20 attorney? Of course, I realize this is circuit
21 ~~court and we work out the attorney. And I tell them~~
22 that they can be present. I've even set bonds on
23 those things.

24 MS. HOWLAND: Your Honor, I guess -- and this
25 is what came up at the trial level that Judge

1 Reinhart addressed. Arrest warrants are issued
2 based on probable cause and people go to jail and
3 then their bond is set and then there's a hearing
4 later, whether it's a preliminary hearing or
5 subsequently a trial. I don't think what is being
6 presented here is really that much different.

7 The authority that I believe that gives
8 magistrates or any judge the authority to hold
9 someone in contempt for violating the terms of their
10 bond is by statute. I think --

11 THE COURT: I'm not talking about contempt. He
12 can hold that person in contempt. Holding that
13 person in contempt without a hearing is prejudging
14 the case. If you're saying that when he issued the
15 bench warrant, he made a decision that this
16 defendant's in contempt --

17 MS. HOWLAND: He did not.

18 THE COURT: Okay. Then I don't understand the
19 words you're using.

20 MS. HOWLAND: The bench warrant was the
21 ~~mechanism to bring the defendant in front of the~~
22 court.

23 THE COURT: I agree with that.

24 MS. HOWLAND: And then the hearing was held.

25 THE COURT: But you keep talking about contempt

1 and I'm not talking about contempt. I'm talking
2 about what you just said, the mechanism by which the
3 person is brought into court. How do you lock
4 somebody up without having a hearing in advance?
5 They say that's a due process violation. You say
6 it's not. You say it's in the statute, refers to
7 bench warrants.

8 I've got all of this. Y'all have done an
9 excellent job of putting it before me. I don't want
10 to beat a dead horse.

11 MS. HOWLAND: I understand.

12 THE COURT: All right. You got anything else?

13 MS. HOWLAND: No, Your Honor.

14 THE COURT: Y'all got anything else?

15 MS. GILREATH: Your Honor, if I can just make a
16 brief rebuttal?

17 THE COURT: Sure.

18 MS. GILREATH: I think that part of the issue
19 here is that issues of bond and the court's
20 authority to enforce conditions of bond is being
21 conflated with contempt. We're not saying that the
22 court does not have the authority to enforce
23 conditions, they do, and that will be through the
24 procedure of a bond modification or a bond
25 revocation, which will be done after notice in a

1 hearing.

2 We do agree that contempt power is necessary,
3 but it does also have its limits and until it's
4 expanded by the Legislature to include the authority
5 to punish for contempt for violations of conditions
6 of bond under these circumstances, a court can't
7 expand its own jurisdiction to include this.

8 The form does say that a warrant will be issued
9 for arrest, but it says nothing about contempt. It
10 says nothing about you could be held in contempt of
11 court. It says that a warrant could be issued. And
12 what's contemplated there, I think, is a bond
13 modification or a bond revocation. So I think
14 that's part of the problem here is that the two
15 issues are sort of being conflated. There's nothing
16 preventing someone from getting an order of
17 protection or a restraining order and, in that case,
18 an arrest warrant could be issued because that's a
19 separate violation.

20 One of the -- another thing that I feel that I
21 ~~need to address is this bringing up of jail phone~~
22 calls and these sorts of things.

23 THE COURT: I don't decide appeals based on
24 what happened after the fact.

25 MS. GILREATH: Yes, that's correct, Your Honor.

1 And I just wanted to make sure that was on the
2 record that that's -- that was not a part of the
3 proceeding below and it was --

4 THE COURT: Nor do I decide whether setting a
5 5,000 dollar bond on somebody who was found in
6 somebody's shower was a reasonable thing to do.
7 That's not my job unless it's brought before me, and
8 that's not before me. Go ahead.

9 MS. GILREATH: Your Honor, I just wanted to
10 make sure it was on the record that that was not
11 part of the proceeding below and that the, you know,
12 I would say that the Appellate record was sealed on
13 that issue. But I think that, you know, from what I
14 understand, Lexington Magistrate Court is a little
15 bit of an outlier in this in terms of the way we --
16 they handle contempt and enforcing bond conditions.
17 I mean, in general sessions, you have murder cases
18 and CDV high and aggravated cases where they're not
19 dealt with in this way and those are far more
20 serious charges.

21 So I would argue that, you know, it's not
22 clearly contemplated by the Legislature. And the
23 fact that the two issues are being conflated as the
24 contempt and the bond violation, I think that's sort
25 of part of where the problem is that if it's being

1 handled as a contempt, it would have to be done with
2 a rule to show cause as opposed to a bench warrant.

3 The magistrates are free to deal with it as a
4 bond modification or a revocation, but we would
5 argue that they don't have subject matter
6 jurisdiction in the first place to handle it as
7 contempt where the conduct occurred outside the
8 court. And even if they did, it would have to be
9 done with a rule to the show cause.

10 THE COURT: I'll notify you of a decision in
11 writing. Thank you very much.

12 MS. GILREATH: Thank you, Your Honor.

13 MS. HOWLAND: Your Honor, may I ask a question?

14 THE COURT: Yes, ma'am.

15 MS. HOWLAND: Your Honor, it was clear that you
16 had concerns about the due process argument and you
17 probably felt like the State didn't address that
18 appropriately. And I wasn't sure if you would allow
19 an opportunity to submit a supplemental memorandum
20 on that particular issue or if you feel like you
21 have enough in front of you that you do not need any
22 additional information.

23 THE COURT: How much time are you talking
24 about?

25 MS. HOWLAND: Ten days.

1 **THE COURT:** Do you want to be heard?

2 **MS. GILREATH:** Your Honor, I would leave it in
3 your discretion.

4 **THE COURT:** All right. Ten days is granted to
5 brief due process issues.

6 **MS. HOWLAND:** Thank you.

7 **THE COURT:** Thank you.

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9 **END OF PROCEEDINGS**

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Civil Court for Lexington County, South Carolina, on the 4th of September, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 11, 2014

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

1	63-17-400 [1] - 32:15	advance [2] - 40:18, 47:4	appeal [12] - 3:5, 5:12, 21:18, 21:23, 29:6, 29:8, 30:11, 30:21, 35:7, 35:11, 38:19, 52:12	associates [1] - 37:2
1 [8] - 2:16, 2:17, 3:3, 11:19, 28:23, 28:25	7	advantage [1] - 40:16	appeals [1] - 48:23	attach [1] - 26:15
11 [3] - 24:10, 25:12, 52:18	7th [1] - 19:6	adverse [1] - 20:12	Appeals [6] - 8:22, 9:14, 22:2, 22:3, 22:16, 22:17	attached [1] - 16:19
14-CP-32-1449 [1] - 1:6	9	advises [1] - 18:22	appear [7] - 19:2, 30:17, 35:22, 39:23, 41:12, 43:8, 43:20	attempt [1] - 4:7
15 [1] - 24:10	9th [4] - 24:4, 24:9, 26:2, 26:20	advising [1] - 18:9	appearing [2] - 30:18, 41:14	attempted [4] - 23:25, 25:3, 25:14, 25:23
17-15-10 [3] - 12:24, 13:16, 37:4	A	advocate [1] - 40:8	appellant [1] - 34:18	attempting [1] - 23:12
17-15-100 [1] - 13:12	abide [1] - 30:12	affect [1] - 13:17	Appellant [7] - 3:7, 3:24, 29:5, 29:6, 29:16, 32:22, 35:4	Attorney [8] - 1:17, 1:19, 9:7, 9:9, 9:11, 9:19, 18:7, 31:20
17-15-30 [5] - 11:11, 12:7, 13:19, 37:4	ability [3] - 19:13, 29:18, 34:7	affidavit [5] - 35:17, 35:21, 44:4, 44:5, 44:6	Appellate [1] - 49:12	attorney [4] - 7:9, 39:15, 45:20, 45:21
17-15-30(D) [1] - 11:9	able [2] - 15:3, 27:18	affidavits [3] - 4:20, 18:3, 36:16	Applegate [1] - 10:6	authority [37] - 4:10, 8:8, 8:23, 9:15, 9:24, 10:24, 11:4, 11:5, 12:21, 13:4, 13:6, 14:21, 16:1, 17:2, 28:9, 29:13, 29:14, 29:17, 31:1, 31:18, 32:8, 33:7, 33:15, 33:18, 36:25, 37:3, 37:9, 38:7, 39:2, 39:12, 42:18, 43:19, 46:7, 46:8, 47:20, 47:22, 48:4
17-15-60 [1] - 13:16	absence [2] - 13:6, 19:3	afforded [2] - 19:13, 19:15	applied [1] - 14:9	available [4] - 11:16, 11:18, 11:25, 36:15
1796 [2] - 9:13, 9:18	accept [3] - 39:16, 41:16, 43:3	agencies [1] - 11:20	apply [1] - 11:19	
18 [1] - 26:6	accepts [1] - 32:23	aggravated [1] - 49:18	appointing [1] - 39:14	B
18(a) [1] - 23:11	accountable [3] - 29:19, 33:3, 33:8	agree [3] - 29:24, 46:23, 48:2	appropriate [6] - 18:25, 21:3, 32:17, 37:20, 38:17, 39:4	bad [1] - 14:24
1822 [1] - 10:6	accurate [1] - 52:9	agreed [2] - 26:15, 33:8	appropriately [1] - 50:18	ball [2] - 31:6, 38:2
19 [3] - 26:6, 26:7	accused [6] - 17:15, 17:16, 18:16, 19:13, 41:4, 42:21	agreeing [1] - 40:5	approves [1] - 31:20	based [12] - 11:8, 15:10, 18:3, 27:13, 34:15, 34:25, 35:4, 35:10, 36:21, 38:4, 46:2, 48:23
2	act [1] - 34:5	ahead [3] - 5:20, 22:12, 49:8	April [3] - 19:6, 24:4, 24:9	bases [1] - 19:11
20 [1] - 25:12	action [3] - 17:25, 18:23, 38:17	alibi [4] - 30:19, 35:15, 36:2, 36:7	areas [2] - 14:12, 32:6	basic [1] - 30:4
2004 [1] - 9:21	actions [1] - 34:24	allegations [1] - 41:20	argue [10] - 14:23, 19:22, 20:1, 22:1, 23:12, 23:19, 27:16, 28:16, 49:21, 50:5	basis [13] - 5:7, 8:11, 15:17, 16:13, 16:17, 20:15, 21:5, 21:12, 22:20, 23:1, 24:7, 24:13, 24:20
2013 [1] - 25:9	acts [1] - 6:8	alleged [10] - 4:7, 5:6, 8:9, 8:12, 16:1, 16:14, 16:15, 16:16, 25:21, 34:22	argued [1] - 22:20	beat [1] - 47:10
2014 [4] - 1:10, 3:2, 52:14, 52:18	actual [3] - 12:10, 19:25, 38:8	allegedly [1] - 15:11	argues [1] - 29:16	began [2] - 26:12, 35:12
20th [1] - 25:9	addition [4] - 11:3, 14:21, 15:1, 27:13	alleging [3] - 4:21, 18:4, 41:24	argument [16] - 15:16, 21:14, 21:19, 23:5, 23:16, 26:8, 27:17, 29:10, 29:24, 30:25, 32:21, 36:18, 39:17, 41:17, 43:3, 50:16	begin [1] - 3:9
22-3-550 [1] - 8:6	additional [8] - 13:20, 20:14, 21:14, 23:1, 27:1, 27:16, 27:17, 50:22	alleviate [1] - 17:8	arguments [3] - 11:8, 35:4, 39:16	believes [4] - 34:14, 34:25, 40:25, 41:1
22-3-950 [5] - 7:19, 10:1, 10:24, 11:5, 13:5	additionally [1] - 23:10	allow [1] - 50:18	arise [1] - 13:2	below [3] - 11:8, 49:3, 49:11
23 [1] - 25:12	address [9] - 4:10, 12:9, 12:25, 16:1, 17:16, 32:11, 38:7, 48:21, 50:17	allowed [2] - 28:12, 28:14	arrest [12] - 19:9, 19:12, 24:16, 30:8, 30:14, 30:19, 31:11, 31:16, 39:13, 46:1, 48:9, 48:18	bench [25] - 4:12, 16:5, 18:2, 18:18, 18:21, 18:22, 18:24, 19:9, 19:19, 28:11, 30:12, 30:17, 32:16, 38:6, 39:3, 40:25,
24 [1] - 26:6	addressed [8] - 9:16, 9:21, 19:7, 22:1, 26:14, 29:3, 42:7, 46:1	allows [1] - 42:24	arrested [1] - 39:19	
28 [1] - 2:16	addresses [3] - 28:24, 33:21, 34:11	alternative [1] - 35:3	arrive [1] - 44:15	
2nd [1] - 29:5	addressing [2] - 17:21, 29:9	Ambrea [2] - 35:17, 36:4	articulated [1] - 10:4	
3	adduced [1] - 20:18	Amendment [20] - 4:16, 4:17, 5:3, 16:9, 16:10, 16:20, 20:8, 20:10, 21:1, 21:7, 21:8, 21:10, 22:4, 22:6, 22:18, 22:21, 22:23, 27:4, 27:9, 28:1	ascertain [1] - 6:14	
3 [1] - 2:17	Administration [1] - 31:19	Amendments [1] - 19:22	asserted [1] - 10:22	
30 [4] - 12:2, 12:22, 14:25, 38:23	administration [2] - 33:25, 34:9	anarchy [1] - 34:9		
14:25, 38:23		animal [1] - 40:1		
3rd [1] - 29:6		answered [1] - 26:25		
4		apologize [4] - 5:19, 6:4, 6:25, 44:22		
4 [2] - 1:10, 3:2				
4th [1] - 52:14				
5				
5 [1] - 32:18				
5,000 [1] - 49:5				
6				
608(C) [1] - 20:15				

41:15, 41:18, 41:20, 43:8, 43:19, 46:15, 46:20, 47:7, 50:2 Bentham [1] - 9:19 best [1] - 6:19 between [2] - 26:17, 39:8 beyond [3] - 10:24, 14:12, 42:5 bias [2] - 20:16, 20:23 blt [1] - 49:15 bond [50] - 8:12, 11:6, 11:10, 12:10, 12:14, 12:17, 13:1, 13:8, 13:14, 14:18, 16:1, 17:15, 19:13, 24:16, 24:25, 25:21, 30:6, 30:13, 31:2, 31:13, 31:21, 33:1, 33:14, 34:2, 35:11, 36:25, 37:1, 37:12, 37:16, 38:20, 38:22, 42:25, 43:4, 43:17, 43:21, 45:9, 46:3, 46:10, 47:19, 47:20, 47:24, 48:6, 48:12, 48:13, 49:5, 49:16, 49:24, 50:4 bonds [1] - 45:22 book [1] - 18:21 Brief [3] - 2:16, 2:17, 22:11 brief [10] - 3:3, 3:12, 3:13, 28:21, 28:23, 28:25, 29:2, 29:8, 47:16, 51:5 bring [9] - 16:7, 17:2, 17:7, 32:5, 32:10, 37:20, 39:13, 45:16, 46:21 bringing [3] - 4:13, 16:3, 48:21 brought [5] - 19:4, 19:18, 28:22, 47:3, 49:7 business [1] - 10:15	32:2, 52:8, 52:13 CAROLINA [1] - 52:3 case [30] - 3:9, 3:25, 4:18, 5:10, 7:8, 7:10, 9:4, 9:18, 15:5, 15:9, 17:24, 18:6, 19:17, 21:25, 22:15, 23:2, 24:3, 28:8, 29:11, 30:5, 32:20, 33:13, 33:19, 37:13, 37:15, 43:12, 45:5, 46:14, 48:17 cases [17] - 5:16, 6:11, 14:16, 17:11, 17:14, 17:20, 17:23, 18:5, 18:10, 37:10, 38:24, 42:3, 42:15, 49:17, 49:18 causes [1] - 37:20 cautioned [1] - 20:21 CDV [3] - 30:14, 34:6, 49:18 certain [2] - 11:22, 16:18 certainly [1] - 15:15 certify [2] - 52:8, 52:15 chambers [1] - 44:20 change [2] - 6:22, 44:9 changed [1] - 29:7 chapter [1] - 12:20 charge [2] - 15:6, 19:10 charges [1] - 49:20 child [1] - 36:6 Circuit [5] - 1:25, 8:21, 52:6, 52:7, 52:21 circuit [2] - 37:15, 45:20 circumstances [9] - 8:14, 8:18, 14:4, 14:23, 18:25, 19:5, 23:4, 29:15, 48:6 cite [1] - 39:13 cited [1] - 9:18 cites [2] - 10:1, 10:2 citing [1] - 45:17 civil [5] - 16:22, 16:24, 16:25, 17:21, 39:9 Civil [1] - 52:12 claiming [1] - 15:7 Clause [6] - 22:4, 22:6, 22:18, 22:22, 22:24, 23:22 clear [4] - 22:5, 23:15, 44:23, 50:15 clearly [4] - 10:25,	34:21, 44:20, 49:22 co [1] - 36:4 co-worker [1] - 36:4 Code [2] - 7:19, 32:2 code [2] - 32:4, 32:6 Columbia [5] - 15:12, 36:1, 36:13, 42:18, 42:21 commits [1] - 34:5 committed [2] - 8:10, 9:1 Common [1] - 1:1 common [2] - 32:9, 32:14 complete [1] - 52:9 compliance [1] - 17:3 comply [2] - 19:4, 40:4 compulsory [4] - 4:16, 16:10, 18:17, 19:20 computer [1] - 42:14 concern [1] - 26:13 concerned [1] - 35:11 concerns [1] - 50:16 conclusion [1] - 27:21 condition [1] - 45:8 conditions [19] - 11:7, 11:10, 11:12, 11:13, 11:15, 12:10, 12:14, 12:16, 12:25, 13:8, 24:17, 29:19, 30:13, 31:10, 37:6, 47:20, 47:23, 48:5, 49:16 conduct [12] - 5:6, 9:16, 10:24, 14:20, 15:10, 16:13, 18:12, 32:12, 38:7, 41:7, 42:8, 50:7 conferred [3] - 12:6, 12:7, 12:21 conferring [1] - 13:9 confers [2] - 6:12, 10:2 confidence [1] - 40:21 confines [1] - 10:24 confirmed [2] - 8:22, 9:15 confirms [2] - 13:12, 14:1 conflated [4] - 19:8, 47:21, 48:15, 49:23 confront [1] - 20:9 Confrontation [6] - 22:4, 22:6, 22:18,	22:22, 22:24, 23:22 confrontation [7] - 5:3, 20:10, 21:9, 23:20, 27:5, 27:10, 28:2 confused [1] - 19:8 confusing [1] - 39:10 consecutive [1] - 15:2 consent [1] - 5:14 consequently [1] - 33:25 consider [2] - 11:15, 11:17 considered [3] - 6:19, 10:21, 33:11 conspicuous [1] - 13:6 constitute [1] - 21:9 constituting [1] - 5:7 constitution [1] - 44:10 constitutional [5] - 15:5, 16:18, 18:15, 19:14, 28:15 Constitutional [2] - 9:14, 10:5 construction [3] - 6:14, 29:25, 37:24 constructive [2] - 16:15, 16:16 construed [1] - 7:4 contact [9] - 25:8, 26:3, 27:3, 33:6, 34:3, 37:17, 38:10, 38:16, 42:16 contained [1] - 13:16 contemplated [3] - 44:21, 48:12, 49:22 contempt [120] - 4:2, 4:5, 4:7, 4:10, 4:14, 4:19, 5:6, 5:7, 6:11, 6:12, 7:18, 7:23, 8:4, 8:9, 8:10, 8:11, 8:13, 8:15, 8:19, 8:24, 9:1, 9:13, 10:2, 10:3, 10:13, 10:15, 10:20, 10:22, 10:23, 11:2, 11:6, 11:10, 12:3, 12:6, 12:13, 12:16, 12:19, 13:5, 13:14, 13:18, 13:20, 13:22, 13:24, 14:2, 14:3, 14:8, 14:9, 14:11, 14:17, 14:19, 14:23, 15:10, 15:17, 15:19, 15:21, 15:23, 16:2, 16:3, 16:14, 16:15, 16:17, 16:22, 16:24, 17:1, 17:4, 17:7,	17:17, 17:25, 18:12, 18:19, 19:23, 19:25, 24:3, 24:9, 26:4, 28:3, 28:8, 28:17, 29:21, 30:1, 30:6, 30:10, 30:20, 33:22, 34:8, 34:23, 35:19, 36:8, 37:5, 39:6, 39:9, 39:14, 42:12, 42:25, 44:23, 45:17, 45:18, 46:9, 46:11, 46:12, 46:13, 46:16, 46:25, 47:1, 47:21, 48:2, 48:5, 48:9, 48:10, 49:16, 49:24, 50:1, 50:7 contemptor [2] - 32:5, 37:21 contemptors [1] - 32:11 contemptuous [3] - 32:12, 38:7, 42:8 continue [1] - 37:10 continuing [1] - 23:4 contradicted [1] - 35:18 contrary [2] - 13:11, 13:25 conveyed [1] - 31:18 convicted [1] - 15:10 conviction [7] - 4:2, 15:23, 16:11, 19:23, 28:2, 28:16, 39:6 copies [1] - 17:12 copy [4] - 3:9, 3:10, 3:11, 28:23 correct [2] - 33:12, 48:25 counsel [14] - 23:11, 23:24, 25:14, 25:16, 26:22, 26:25, 29:24, 32:24, 35:7, 35:8, 35:10, 35:18, 36:17, 52:16 counsel's [1] - 25:6 counterargument [1] - 26:13 County [3] - 1:2, 37:16, 52:13 COUNTY [1] - 52:4 course [1] - 45:20 Court [32] - 1:1, 1:25, 3:12, 3:23, 4:1, 8:22, 9:6, 9:14, 10:5, 10:18, 14:5, 17:12, 20:21, 22:2, 22:3, 22:16, 22:17, 23:3, 28:20, 31:19, 32:23, 32:24, 33:12, 33:20, 35:2, 35:3, 35:6, 49:14,
Camden [2] - 35:25, 36:12 Camisha [2] - 25:2, 25:22 cannot [1] - 12:12 captioned [1] - 52:12 cardinal [1] - 6:13 Carolina [11] - 1:1, 1:11, 4:18, 7:19, 8:21, 9:14, 10:5, 20:14,	16:24, 16:25, 17:21, 39:9 Civil [1] - 52:12 claiming [1] - 15:7 Clause [6] - 22:4, 22:6, 22:18, 22:22, 22:24, 23:22 clear [4] - 22:5, 23:15, 44:23, 50:15 clearly [4] - 10:25,	40:21 confines [1] - 10:24 confirmed [2] - 8:22, 9:15 confirms [2] - 13:12, 14:1 conflated [4] - 19:8, 47:21, 48:15, 49:23 confront [1] - 20:9 Confrontation [6] - 22:4, 22:6, 22:18,	12:19, 13:5, 13:14, 13:18, 13:20, 13:22, 13:24, 14:2, 14:3, 14:8, 14:9, 14:11, 14:17, 14:19, 14:23, 15:10, 15:17, 15:19, 15:21, 15:23, 16:2, 16:3, 16:14, 16:15, 16:17, 16:22, 16:24, 17:1, 17:4, 17:7,	course [1] - 45:20 Court [32] - 1:1, 1:25, 3:12, 3:23, 4:1, 8:22, 9:6, 9:14, 10:5, 10:18, 14:5, 17:12, 20:21, 22:2, 22:3, 22:16, 22:17, 23:3, 28:20, 31:19, 32:23, 32:24, 33:12, 33:20, 35:2, 35:3, 35:6, 49:14,

52:7, 52:13, 52:21 COURT [42] - 3:5, 3:16, 3:17, 3:20, 3:22, 5:18, 5:20, 5:24, 6:2, 6:24, 7:6, 7:16, 22:8, 22:12, 28:18, 39:7, 39:22, 40:1, 40:7, 40:11, 41:4, 41:11, 42:11, 43:3, 43:7, 44:9, 44:22, 46:11, 46:18, 46:23, 46:25, 47:12, 47:14, 47:17, 48:23, 49:4, 50:10, 50:14, 50:23, 51:1, 51:4, 51:7 court [135] - 3:6, 4:2, 4:5, 4:8, 4:11, 4:14, 4:19, 5:8, 5:9, 5:13, 6:5, 6:7, 6:8, 7:12, 7:22, 7:24, 8:9, 8:11, 8:19, 9:1, 9:16, 9:22, 9:25, 10:2, 10:7, 10:9, 10:10, 10:13, 10:15, 11:2, 11:14, 11:17, 11:23, 11:24, 12:3, 12:11, 13:15, 13:17, 13:20, 14:1, 14:7, 14:10, 14:16, 14:20, 15:10, 15:15, 15:22, 15:23, 16:2, 16:3, 16:4, 16:7, 16:15, 16:18, 16:22, 17:3, 17:17, 17:25, 18:13, 18:19, 19:4, 19:19, 19:23, 20:1, 20:12, 20:19, 20:21, 21:11, 21:13, 21:20, 23:8, 23:13, 23:15, 23:21, 23:23, 24:2, 24:3, 24:11, 24:23, 25:5, 25:7, 25:13, 25:19, 25:24, 26:1, 26:4, 26:15, 26:17, 26:19, 26:22, 27:2, 27:7, 27:10, 27:22, 28:3, 28:6, 28:8, 28:17, 28:22, 29:3, 30:18, 32:5, 32:10, 32:13, 33:4, 33:25, 34:8, 34:18, 35:16, 35:22, 37:15, 37:21, 38:21, 38:22, 40:14, 41:8, 41:12, 41:23, 42:1, 42:4, 42:7, 42:8, 43:6, 43:18, 44:12, 45:13, 45:21, 46:22, 47:3, 47:22, 48:6, 48:11, 50:8 court's [5] - 10:15, 17:2, 17:8, 44:18, 47:19	Court's [7] - 2:17, 3:3, 3:13, 3:14, 5:16, 17:11, 43:24 courthouse [3] - 14:14, 38:9, 42:10 courtroom [4] - 14:12, 38:8, 42:6, 45:15 courts [18] - 5:5, 6:16, 6:22, 7:18, 8:6, 10:11, 10:17, 13:23, 13:24, 14:22, 21:21, 21:22, 30:1, 33:16, 33:17, 33:18, 33:21, 38:14 cover [1] - 24:20 create [1] - 36:7 credibility [4] - 21:6, 26:11, 27:6, 28:1 criminal [24] - 4:14, 4:19, 11:22, 15:6, 16:3, 16:17, 16:21, 16:23, 16:24, 16:25, 17:4, 17:15, 17:17, 17:20, 17:23, 17:24, 18:19, 18:23, 19:10, 19:15, 23:18, 34:2, 34:5, 39:9 Criminal [1] - 23:10 cross [18] - 4:23, 20:3, 20:11, 20:15, 20:20, 20:22, 20:24, 21:4, 21:12, 25:3, 25:23, 27:7, 27:23, 28:12, 34:12, 35:22, 35:24, 36:16 CROSS [1] - 2:2 cross-examination [15] - 4:23, 20:3, 20:11, 20:15, 20:20, 20:22, 20:24, 21:4, 21:12, 25:3, 25:23, 27:7, 27:23, 34:12, 36:16 cross-examine [2] - 28:12, 35:24 cross-examined [1] - 35:22 current [2] - 4:17, 30:16 curtilage [2] - 14:13, 38:8 custody [1] - 40:16	38:24, 50:25, 51:4 dead [1] - 47:10 deal [2] - 17:14, 50:3 dealing [1] - 33:13 dealt [1] - 49:19 Dean [1] - 9:5 December [1] - 52:18 deception [1] - 44:16 decide [2] - 48:23, 49:4 decision [7] - 6:16, 13:25, 22:2, 22:16, 40:24, 46:15, 50:10 decisions [1] - 17:11 declined [1] - 26:25 decorum [3] - 7:21, 29:22, 30:2 Defendant [2] - 1:8, 1:19 defendant [29] - 4:13, 4:24, 7:5, 12:9, 14:25, 17:1, 19:1, 19:2, 20:5, 27:20, 27:22, 28:11, 31:9, 33:8, 33:13, 34:2, 36:23, 37:2, 37:6, 37:7, 38:9, 38:16, 39:23, 40:2, 43:1, 44:7, 44:12, 45:8, 46:21 defendant's [6] - 4:15, 5:3, 12:14, 20:8, 21:1, 46:16 defendants [7] - 17:15, 29:19, 31:2, 33:3, 33:4, 33:8, 38:14 defense [14] - 18:17, 25:6, 25:14, 25:16, 26:22, 26:25, 29:24, 32:24, 35:7, 35:8, 35:10, 35:18, 36:2, 36:17 definite [1] - 17:5 delineate [1] - 34:22 demonstrate [1] - 34:24 demonstrates [2] - 13:8, 21:2 denied [3] - 24:1, 24:12, 27:12 department [1] - 45:11 DESCRIPTION [1] - 2:15 detective [1] - 44:14 determine [1] - 42:20 determined [2] - 36:22, 42:7	determines [1] - 35:3 determining [5] - 6:10, 6:16, 11:12, 11:13, 11:15 detrimental [1] - 27:20 devil's [1] - 40:7 dictum [1] - 9:15 differences [2] - 16:23, 39:8 different [7] - 6:23, 19:12, 31:3, 32:15, 35:8, 40:1, 46:6 direct [5] - 8:19, 14:3, 14:9, 14:11, 15:18, 16:16 DIRECT [1] - 2:2 directive [1] - 45:19 discharging [1] - 10:14 discretion [1] - 51:3 discussed [2] - 36:6, 42:2 discussion [2] - 35:15, 36:8 disingenuous [1] - 31:1 dispute [1] - 40:14 disputed [1] - 36:1 distinguished [1] - 16:25 disturbance [3] - 8:1, 8:17, 9:3 divulged [1] - 36:3 doctrine [3] - 21:17, 22:25, 23:2 dollar [1] - 49:5 domestic [3] - 30:8, 32:20, 34:3 done [8] - 10:15, 12:17, 13:1, 34:16, 47:8, 47:25, 50:1, 50:9 doubtful [1] - 21:22 down [9] - 5:18, 5:20, 5:22, 6:4, 7:7, 7:11, 7:12, 7:14, 29:12 drafted [1] - 12:18 draw [1] - 27:25 drew [1] - 25:5 drives [2] - 44:13, 44:14 dropping [1] - 44:16 drops [1] - 44:13 due [9] - 4:15, 16:8, 17:25, 19:20, 33:25, 39:18, 47:5, 50:16, 51:5 during [2] - 15:15,	19:6 duties [3] - 10:16, 12:8, 12:10 E ease [1] - 22:10 Edgefield [1] - 42:17 effect [2] - 6:23, 7:1 effectuate [1] - 6:15 effectuated [1] - 7:2 eight [1] - 15:11 either [4] - 11:23, 13:7, 13:14, 20:17 Eleventh [1] - 52:7 elicit [1] - 27:24 emphasized [1] - 10:9 END [1] - 51:9 enforce [12] - 7:21, 12:4, 29:13, 29:14, 29:17, 31:1, 32:25, 37:6, 37:9, 39:2, 47:20, 47:22 enforcement [7] - 11:20, 11:21, 12:7, 12:12, 12:14, 15:14, 33:24 enforcing [1] - 49:16 engage [1] - 44:16 engaging [2] - 21:3, 27:22 equating [1] - 9:24 err [1] - 38:5 erred [4] - 4:4, 4:11, 4:22, 20:2 error [4] - 21:9, 21:22, 34:22, 36:20 especially [1] - 37:10 Esquire [2] - 1:17, 1:18 essential [5] - 10:14, 10:16, 27:7, 27:9, 33:22 essentially [3] - 23:14, 26:24, 32:23 established [2] - 5:15, 18:5 EVD [1] - 2:15 events [1] - 26:2 Evidence [1] - 20:14 evidence [6] - 5:1, 6:19, 20:6, 20:13, 20:18, 52:11 evidenced [1] - 17:10 exact [1] - 21:16 examination [17] - 4:23, 20:3, 20:11, 20:15, 20:17, 20:20,

20:22, 20:24, 21:4, 21:12, 24:7, 25:3, 25:23, 27:7, 27:23, 34:12, 36:16 examine [2] - 28:12, 35:24 examined [1] - 35:22 examples [2] - 14:10, 18:24 excellent [1] - 47:9 exception [1] - 13:3 exceptions [2] - 32:14, 32:16 excluded [1] - 21:13 excusable [1] - 23:17 excused [1] - 23:9 Exhibit [5] - 3:3, 3:13, 3:15, 28:23, 28:25 exhibit [1] - 31:4 expand [2] - 13:14, 48:7 expanded [2] - 14:17, 48:4 expanse [1] - 30:1 expansion [2] - 14:19, 45:3 expansions [2] - 14:8, 14:11 expansive [2] - 14:6, 42:5 explicitly [2] - 8:13, 12:20 extend [2] - 42:9 extended [1] - 13:24 extends [1] - 42:5 extension [1] - 10:23 extreme [1] - 10:21	fair [3] - 21:20, 27:7, 27:11 fairly [2] - 24:11, 24:12 falls [1] - 15:17 family [4] - 17:21, 32:10, 32:13, 40:14 far [4] - 30:23, 32:22, 34:16, 49:19 fashion [1] - 42:5 favor [2] - 7:5, 21:23 felt [1] - 50:17 file [1] - 41:14 filed [3] - 29:4, 35:7, 35:10 finally [2] - 4:22, 19:25 fine [1] - 3:20 first [10] - 4:4, 5:12, 6:11, 9:10, 12:18, 24:4, 30:10, 41:5, 43:25, 50:6 five [2] - 24:10, 29:4 follow [1] - 6:2 followed [1] - 28:15 following [1] - 3:1 foregoing [1] - 52:9 form [7] - 31:7, 38:2, 39:4, 43:4, 48:8 formed [1] - 16:17 forming [1] - 16:13 forms [3] - 31:3, 31:6, 31:21 Forney [2] - 9:11, 18:9 forth [2] - 13:5, 32:24 four [1] - 26:7 Fourteenth [4] - 4:16, 16:9, 16:20, 19:21 Fourth [1] - 8:21 free [1] - 50:3 frequently [1] - 14:24 front [2] - 46:21, 50:21 fully [1] - 28:12 fundamental [2] - 5:10, 6:6 futile [1] - 21:14 23:5, 27:19 futility [1] - 22:25	9:9, 9:12, 9:19, 18:8, 31:20 generally [1] - 15:2 GILREATH [18] - 3:8, 3:18, 3:21, 3:23, 5:19, 5:23, 5:25, 6:4, 6:25, 7:15, 7:17, 22:13, 47:15, 47:18, 48:25, 49:9, 50:12, 51:2 Gillreath [6] - 1:18, 3:24, 33:12, 33:20, 34:11, 35:14 girlfriend [1] - 36:5 given [3] - 26:10, 27:14, 45:5 governed [1] - 7:19 governing [3] - 11:6, 13:8, 13:13 governs [1] - 31:13 graces [1] - 17:8 Graham [1] - 20:13 grant [2] - 12:15, 13:6 granted [5] - 11:4, 11:6, 24:11, 51:4 granting [1] - 13:19 grants [3] - 8:8, 11:9, 32:7 Greenwood [1] - 9:23 ground [2] - 21:19, 35:5 grounds [5] - 16:12, 19:24, 28:4, 34:20, 36:19 groundwork [1] - 24:24 guaranteed [1] - 19:15 guess [1] - 45:24 guides [1] - 43:6 guilty [5] - 8:1, 8:16, 9:2, 28:7 Guthrie [2] - 5:17, 6:5 guy [1] - 40:17	22:17, 23:21 head [1] - 38:20 hear [4] - 3:6, 5:10, 6:11, 40:15 heard [5] - 16:20, 23:13, 38:23, 43:3, 51:1 hearing [27] - 11:24, 12:3, 15:22, 16:2, 19:6, 20:1, 24:3, 24:9, 26:4, 30:18, 36:8, 39:15, 39:20, 39:25, 40:18, 42:12, 42:20, 45:1, 45:7, 45:13, 46:3, 46:4, 46:13, 46:24, 47:4, 48:1, 52:11 held [7] - 3:1, 16:21, 20:1, 22:3, 24:4, 46:24, 48:10 hereby [1] - 52:8 hereto [1] - 52:16 hiding [1] - 30:9 high [1] - 49:18 higher [1] - 10:17 historical [1] - 9:20 hold [8] - 15:21, 22:8, 29:19, 33:2, 33:7, 44:25, 46:8, 46:12 holding [4] - 7:22, 41:8, 45:17, 46:12 home [1] - 42:16 Honor [25] - 3:8, 3:18, 5:19, 5:23, 7:15, 9:5, 9:18, 15:9, 19:25, 22:13, 22:14, 28:21, 29:2, 31:5, 39:21, 42:23, 45:24, 47:13, 47:15, 48:25, 49:9, 50:12, 50:13, 50:15, 51:2 Honorable [2] - 1:14, 9:22 Hornsby [1] - 17:12 horse [1] - 47:10 hour [1] - 7:11 HOWLAND [23] - 28:20, 29:2, 39:21, 39:23, 40:2, 40:10, 40:20, 41:10, 41:22, 42:23, 43:5, 43:16, 44:11, 45:24, 46:17, 46:20, 46:24, 47:11, 47:13, 50:13, 50:15, 50:25, 51:6 Howland [2] - 1:17, 24:5 hundred [2] - 7:10, 42:14	I ID [1] - 2:15 Idea [1] - 41:22 Identification [4] - 3:4, 4:24, 20:4, 29:1 Immediately [1] - 31:16 Impeach [5] - 20:17, 21:7, 25:3, 25:14, 27:24 impeaching [2] - 4:25, 20:5 Impeachment [3] - 25:18, 26:12, 27:6 Implications [1] - 32:23 Important [2] - 18:14, 35:6 Impose [3] - 6:23, 12:8, 20:19 Imposed [3] - 8:5, 12:11, 17:5 imposition [1] - 8:4 Inappropriate [1] - 20:25 Incidences [1] - 8:25 Incident [1] - 33:5 Include [10] - 12:23, 14:12, 14:14, 14:17, 14:20, 18:25, 37:1, 48:4, 48:7 Included [2] - 14:11, 14:18 Includes [2] - 20:11, 21:7 Including [4] - 5:11, 5:16, 16:19, 24:15 Inconsistent [7] - 5:1, 13:21, 20:6, 25:4, 25:15, 25:18 Indicate [2] - 18:10, 37:7 Indicated [1] - 14:5 Indicates [1] - 17:21 Inferior [2] - 10:10, 10:11 Inferred [1] - 12:12 Inform [1] - 11:24 Informal [1] - 9:21 Information [8] - 11:16, 11:22, 11:25, 35:16, 36:21, 40:21, 40:23, 50:22 Inherent [3] - 13:23, 21:7, 33:21 Initiate [3] - 18:12, 18:23, 28:10 Initiated [2] - 4:19, 18:1
F fabricating [1] - 35:15 face [2] - 10:13, 15:3 facing [1] - 14:25 fact [13] - 18:21, 21:4, 25:10, 27:14, 30:2, 32:11, 33:21, 34:15, 35:10, 36:6, 44:15, 48:24, 49:23 factors [2] - 11:14, 11:17 facts [4] - 4:21, 18:4, 26:13, 30:4 falling [2] - 4:12, 30:12 falls [2] - 19:1, 39:23 failure [4] - 23:9, 23:16, 30:17, 43:19	G gain [1] - 40:16 general [5] - 13:3, 13:7, 37:12, 38:18, 49:17 General's [6] - 9:7,	H hallways [1] - 14:13 hand [2] - 3:12, 18:18 handing [1] - 3:10 handle [2] - 49:16, 50:6 handled [1] - 50:1 hanging [1] - 38:19 harmless [1] - 36:20 Harper [1] - 10:19 Haygood [3] - 22:3,	I	I

Initiating [3] - 17:17, 17:24, 18:19 Innocence [1] - 15:7 Instead [7] - 8:12, 16:5, 18:23, 19:18, 24:12, 25:17, 25:19 Instruction [5] - 24:6, 24:18, 25:25, 27:14, 27:16 Instructions [1] - 34:12 instructive [2] - 9:10, 17:19 instrumental [1] - 29:22 insult [2] - 7:24, 8:15 Intend [2] - 3:9, 13:13 Intended [7] - 12:15, 17:1, 26:11, 27:24, 31:22, 31:24, 37:19 Intent [7] - 6:15, 6:16, 6:19, 7:1, 13:9, 29:25, 37:24 Interest [2] - 27:20, 52:16 Interjected [1] - 25:24 Interpretation [1] - 9:20 Interpreted [1] - 13:3 Interpreting [4] - 6:13, 8:20, 13:19 Introduced [1] - 52:11 Involving [1] - 14:14 Issuance [1] - 19:9 Issuances [1] - 19:11 issue [41] - 4:23, 5:4, 5:9, 5:11, 6:6, 19:7, 19:8, 20:4, 21:18, 21:24, 21:25, 22:4, 22:18, 22:24, 23:24, 23:25, 24:2, 25:7, 26:16, 26:17, 27:1, 27:21, 29:9, 33:16, 34:15, 34:17, 34:19, 35:1, 37:9, 39:18, 40:16, 40:25, 41:6, 41:20, 43:7, 43:19, 44:2, 45:19, 47:18, 49:13, 50:20 Issued [15] - 4:12, 16:6, 18:11, 19:18, 28:10, 31:11, 31:16, 39:24, 40:6, 43:1, 46:1, 46:14, 48:8, 48:11, 48:18 Issues [17] - 14:14,	17:9, 21:21, 22:15, 23:2, 27:6, 27:8, 27:9, 27:17, 28:5, 29:4, 29:6, 29:7, 47:19, 48:15, 49:23, 51:5 Issuing [1] - 42:13 Itself [2] - 25:20, 26:18	K Kamisha [2] - 30:8, 37:17 keep [4] - 15:8, 23:16, 40:17, 46:25 Keesley [1] - 1:14 Kennerly [1] - 42:2 kin [1] - 52:15 kind [2] - 43:9, 44:8 knowledge [2] - 35:7, 35:8 known [1] - 36:11	9:8, 10:19, 13:4 limitations [2] - 9:12, 37:2 limited [7] - 8:14, 8:18, 8:25, 14:2, 25:5, 25:13, 27:2 limiting [12] - 4:23, 10:3, 12:21, 20:2, 24:6, 24:18, 25:16, 25:25, 27:14, 27:15, 34:11 limits [3] - 8:5, 8:13, 48:3 line [1] - 26:7 lines [3] - 24:10, 25:12, 26:6 Lining [1] - 9:19 list [1] - 11:14 listen [1] - 35:12 listening [1] - 36:22 lists [1] - 32:15 live [2] - 34:5, 37:3 location [1] - 33:5 lock [3] - 42:13, 45:7, 47:3 locked [5] - 40:17, 40:18, 41:12, 42:19, 43:13 locking [1] - 41:18 long-standing [1] - 8:22 longstanding [1] - 10:3 look [5] - 6:11, 6:17, 35:2, 37:23, 37:24 lower [1] - 34:17 lying [2] - 40:8, 40:12	37:21, 38:21 magistrates [19] - 6:12, 8:3, 8:8, 8:23, 13:7, 14:2, 18:22, 29:17, 30:25, 31:3, 32:25, 36:25, 37:3, 37:5, 37:8, 39:2, 42:24, 46:8, 50:3 maintain [1] - 37:10 maintaining [1] - 29:22 manner [1] - 34:20 March [2] - 26:2, 26:20 marked [5] - 3:3, 3:16, 3:17, 28:23, 28:25 matter [21] - 4:6, 4:10, 5:4, 5:5, 5:10, 6:7, 6:8, 15:21, 15:22, 21:15, 23:7, 23:12, 23:15, 26:1, 26:4, 26:15, 26:16, 28:6, 29:9, 30:23, 50:5 matters [6] - 12:3, 20:23, 24:15, 24:17, 24:23, 27:19 Meagan [2] - 25:2, 25:6 mean [3] - 33:15, 33:17, 49:17 meaning [4] - 6:18, 6:22, 31:9, 37:25 meaningful [1] - 20:11 means [2] - 9:17, 33:16 meanwhile [1] - 44:7 measure [1] - 10:21 meat [1] - 29:11 mechanism [11] - 16:2, 16:6, 18:19, 29:15, 32:5, 32:17, 37:20, 39:4, 42:13, 46:21, 47:2 memorandum [1] - 50:19 mentioned [5] - 12:13, 14:1, 18:8, 21:11, 22:7 mere [1] - 14:12 merely [1] - 33:16 merits [1] - 21:24 middle [1] - 40:14 might [3] - 24:19, 26:15, 41:13 miles [1] - 7:10 Miller [1] - 9:22 Mims [10] - 25:2, 25:8, 25:22, 25:23,
	J Jaël [2] - 1:18, 3:24 jail [11] - 14:25, 15:8, 33:10, 35:12, 35:13, 35:14, 36:3, 36:22, 45:1, 46:2, 48:21 Jeopardy [1] - 26:14 Job [3] - 41:6, 47:9, 49:7 Johnson [1] - 18:5 Judge [31] - 4:4, 4:11, 4:22, 9:22, 9:25, 10:22, 15:13, 15:20, 20:2, 22:9, 23:5, 23:6, 23:23, 24:16, 31:21, 32:11, 34:7, 38:15, 40:22, 40:23, 40:24, 40:25, 41:1, 41:2, 43:1, 44:19, 45:3, 45:4, 45:6, 46:8 Judge [2] - 1:14, 45:25 Judge's [1] - 23:7 Judges [7] - 4:6, 10:4, 10:9, 29:12, 33:2, 33:7, 41:2 Judgments [1] - 33:24 Judicial [1] - 52:7 Judicial [5] - 24:14, 29:23, 30:3, 33:23, 38:13 Jump [1] - 39:17 jurisdiction [17] - 4:6, 5:4, 5:5, 5:10, 6:7, 6:10, 7:17, 10:10, 10:11, 15:21, 28:6, 29:9, 30:23, 37:11, 37:14, 48:7, 50:6 Jurisdictions [1] - 10:17 Juror [2] - 7:25, 8:16 Jurors [2] - 14:14, 15:13 Jury [2] - 42:6, 42:9 Justice [2] - 34:1, 34:10 Justices [1] - 10:8	L lack [5] - 4:6, 5:5, 11:3, 29:18, 30:25 lacked [2] - 15:20, 28:6 lacks [1] - 5:9 lady [1] - 45:12 language [15] - 6:17, 6:21, 7:2, 8:7, 12:5, 13:21, 31:7, 31:23, 31:25, 32:3, 32:7, 37:22, 38:2, 38:3 law [11] - 3:9, 4:18, 8:21, 11:20, 11:21, 12:12, 15:14, 33:13, 33:19, 43:4, 43:18 lay [1] - 24:23 leave [1] - 51:2 Lee [1] - 9:22 legal [1] - 21:17 legislative [2] - 29:25, 37:24 Legislature [13] - 6:15, 6:16, 6:20, 7:2, 12:15, 12:23, 13:9, 13:13, 31:19, 37:19, 44:21, 48:4, 49:22 less [3] - 29:17, 37:8, 37:9 lessen [1] - 17:9 level [5] - 21:11, 37:13, 37:15, 38:18, 45:25 Lexington [5] - 1:2, 1:11, 37:16, 49:14, 52:13 LEXINGTON [1] - 52:4 liberal [2] - 14:6, 42:4 lightly [3] - 10:22, 41:3, 41:5 Ilmbo [1] - 44:8 limit [1] - 13:14 limitation [4] - 8:23,	M ma'am [2] - 3:22, 50:14 Magistrate [1] - 49:14 magistrate [40] - 4:4, 4:5, 4:9, 4:11, 4:22, 5:5, 6:10, 7:17, 7:20, 7:25, 8:2, 8:5, 8:13, 8:16, 8:24, 9:3, 9:13, 9:25, 10:4, 10:9, 10:20, 10:23, 13:4, 13:20, 14:19, 15:16, 15:18, 15:20, 15:25, 19:7, 20:2, 22:22, 28:6, 28:9, 37:12, 37:15, 37:16, 38:5, 38:6, 41:18 magistrate's [5] - 3:6, 11:2, 18:21,	

26:3, 26:8, 26:19, 30:8, 30:15, 37:17 mind [1] - 3:18 misrepresent [1] - 20:16 modification [3] - 47:24, 48:13, 50:4 modified [1] - 29:6 most [2] - 13:11, 31:14 motion [1] - 41:14 motive [2] - 20:16, 21:5 motives [1] - 40:13 move [1] - 38:24 MS [41] - 3:8, 3:18, 3:21, 3:23, 5:19, 5:23, 5:25, 6:4, 6:25, 7:15, 7:17, 22:13, 28:20, 29:2, 39:21, 39:23, 40:2, 40:10, 40:20, 41:10, 41:22, 42:23, 43:5, 43:16, 44:11, 45:24, 46:17, 46:20, 46:24, 47:11, 47:13, 47:15, 47:18, 48:25, 49:9, 50:12, 50:13, 50:15, 50:25, 51:2, 51:6 multiple [1] - 33:19 municipal [2] - 9:22, 9:24 murder [1] - 49:17 must [16] - 7:3, 9:16, 18:3, 18:11, 20:23, 30:2, 30:3, 33:7, 34:16, 34:17, 34:18, 34:19, 34:21, 40:4, 43:25, 44:18 mutual [1] - 36:4	night [3] - 15:12, 42:18, 42:22 nightmare [1] - 7:13 NO [1] - 2:15 nobody [1] - 36:17 noise [1] - 45:15 none [1] - 14:16 notably [3] - 8:7, 12:23, 13:11 noted [1] - 10:12 Nothing [1] - 13:15 nothing [6] - 8:7, 17:5, 37:7, 48:9, 48:10, 48:15 notice [10] - 16:19, 18:16, 19:1, 24:14, 24:22, 33:9, 40:3, 44:7, 45:18, 47:25 notify [2] - 45:10, 50:10 November [1] - 25:9 Number [2] - 3:3, 28:25 number [6] - 5:15, 12:17, 31:8, 34:13, 35:5, 43:20	9:21, 10:1, 10:7, 18:8, 18:9 opinions [1] - 9:9 opportunity [6] - 21:20, 27:8, 27:11, 35:23, 41:19, 50:19 opposed [3] - 12:20, 16:22, 50:2 opposition [1] - 28:21 oral [1] - 29:10 order [12] - 10:14, 17:3, 21:17, 31:10, 31:17, 33:23, 34:8, 34:21, 41:11, 42:19, 48:16, 48:17 orders [9] - 29:13, 29:14, 29:18, 31:1, 32:25, 33:24, 37:9, 39:3, 42:14 ordinary [1] - 6:18 original [1] - 29:4 otherwise [4] - 20:18, 20:24, 21:3, 45:14 out-of-court [1] - 9:16 outlier [1] - 49:15 outlined [1] - 14:4 outside [9] - 4:8, 5:8, 8:10, 14:20, 15:13, 16:14, 18:13, 45:14, 50:7 own [7] - 18:21, 29:13, 29:14, 29:18, 35:19, 36:1, 48:7	parties [1] - 5:14 party [3] - 9:2, 34:18, 52:16 past [2] - 39:17, 41:17 PCR [1] - 7:10 peace [1] - 10:8 penal [1] - 7:3 penalty [1] - 17:9 pending [2] - 15:6, 30:17 Penny [5] - 25:2, 25:6, 25:14, 25:17, 25:20 people [4] - 26:10, 33:1, 42:25, 46:2 performing [1] - 10:16 perhaps [3] - 13:11, 15:3, 27:19 permissible [3] - 12:25, 27:23, 43:12 permit [1] - 12:19 permitted [1] - 23:17 permitting [2] - 14:22 person [11] - 7:23, 8:15, 34:7, 39:13, 41:11, 42:19, 45:8, 45:16, 46:12, 46:13, 47:3 person's [1] - 31:15 pertinent [1] - 31:15 petitioner [1] - 32:19 phone [9] - 22:10, 30:22, 35:12, 35:13, 35:14, 36:3, 36:9, 36:22, 48:21 piece [1] - 35:23 place [5] - 16:14, 18:13, 24:19, 34:4, 50:6 placed [1] - 37:6 plain [6] - 6:17, 6:18, 7:2, 8:7, 12:5, 13:21, 37:25 Plaintiff [2] - 1:6, 1:17 playing [1] - 22:9 plea [1] - 15:4 pleadings [2] - 4:21, 18:4 Pleas [1] - 1:1 podium [1] - 3:19 point [3] - 25:19, 33:13, 40:24 police [1] - 26:9 policy [1] - 14:24 position [9] - 11:7, 14:25, 23:15, 28:19,	36:24, 38:4, 39:1, 43:24, 45:5 Poston [1] - 17:11 potatoes [1] - 29:11 potential [1] - 38:10 power [18] - 7:21, 8:24, 10:2, 10:17, 10:20, 10:21, 11:9, 13:10, 13:17, 13:20, 13:22, 13:23, 29:21, 30:1, 33:22, 37:5, 44:23, 48:2 powers [14] - 6:12, 8:13, 9:13, 10:4, 12:3, 12:6, 12:13, 12:16, 13:14, 13:23, 14:2, 14:17, 14:19, 15:18 practical [1] - 38:24 practice [3] - 32:10, 32:14, 43:11 precursor [1] - 10:8 prelief [2] - 28:22, 29:3 pregnant [1] - 36:5 prejudging [1] - 46:13 prejudice [1] - 20:16 preliminary [1] - 46:4 premarked [1] - 3:14 prepared [1] - 29:10 presence [22] - 4:8, 5:8, 7:24, 8:10, 8:19, 9:1, 14:7, 14:10, 14:20, 15:13, 16:14, 18:13, 33:11, 41:7, 41:23, 42:1, 42:3, 42:8, 44:18, 44:20, 45:2, 45:4 present [3] - 15:14, 18:16, 45:22 presented [13] - 27:10, 30:20, 31:4, 34:13, 35:13, 35:16, 35:17, 35:21, 36:16, 40:22, 40:23, 42:3, 46:6 presenting [2] - 4:25, 20:6 preservation [7] - 10:14, 21:22, 21:25, 22:15, 23:1, 33:23, 34:15 preserve [1] - 21:17 preserved [9] - 22:5, 22:19, 23:20, 23:22, 24:2, 34:15, 35:1, 35:5, 36:20 pretty [2] - 29:11, 34:16
N name [2] - 3:24, 21:16 nature [2] - 7:3, 16:23 Neal [2] - 9:11, 18:9 necessary [3] - 21:17, 29:21, 48:2 need [7] - 5:18, 5:22, 5:25, 7:6, 22:9, 48:21, 50:21 needs [1] - 19:3 negotiate [1] - 15:4 never [3] - 19:18, 41:4, 45:16 new [1] - 36:5 next [1] - 25:22 Nicole [1] - 1:17	O o'clock [1] - 15:11 objecting [1] - 23:4 objection [7] - 22:20, 23:9, 23:17, 24:1, 24:20, 25:5, 34:20 observances [1] - 7:21 observe [2] - 39:12, 45:2 occur [1] - 8:18 occurred [2] - 15:11, 50:7 occurs [4] - 4:7, 5:7, 10:13, 14:9 OF [3] - 51:9, 52:3, 52:4 offense [1] - 38:19 offer [1] - 7:24 offers [1] - 8:15 office [1] - 37:14 Office [5] - 9:7, 9:9, 9:12, 9:19, 31:20 officially [2] - 8:2, 9:4 once [3] - 23:14, 36:17, 37:18 one [10] - 6:23, 31:7, 31:8, 32:15, 32:18, 34:14, 43:20, 44:16, 44:24, 48:20 opinion [6] - 9:11,	P p.m. [1] - 15:11 page [5] - 24:10, 25:11, 25:12, 26:7 pages [1] - 26:6 paper [1] - 35:23 paperwork [3] - 42:25, 43:18, 43:21 paramount [1] - 32:21 parking [3] - 43:13, 44:13, 44:17 parks [1] - 44:13 part [9] - 31:4, 31:15, 41:17, 43:18, 47:18, 48:14, 49:2, 49:11, 49:25 participate [1] - 38:11 particular [1] - 50:20 particularly [1] - 9:10	P parties [1] - 5:14 party [3] - 9:2, 34:18, 52:16 past [2] - 39:17, 41:17 PCR [1] - 7:10 peace [1] - 10:8 penal [1] - 7:3 penalty [1] - 17:9 pending [2] - 15:6, 30:17 Penny [5] - 25:2, 25:6, 25:14, 25:17, 25:20 people [4] - 26:10, 33:1, 42:25, 46:2 performing [1] - 10:16 perhaps [3] - 13:11, 15:3, 27:19 permissible [3] - 12:25, 27:23, 43:12 permit [1] - 12:19 permitted [1] - 23:17 permitting [2] - 14:22 person [11] - 7:23, 8:15, 34:7, 39:13, 41:11, 42:19, 45:8, 45:16, 46:12, 46:13, 47:3 person's [1] - 31:15 pertinent [1] - 31:15 petitioner [1] - 32:19 phone [9] - 22:10, 30:22, 35:12, 35:13, 35:14, 36:3, 36:9, 36:22, 48:21 piece [1] - 35:23 place [5] - 16:14, 18:13, 24:19, 34:4, 50:6 placed [1] - 37:6 plain [6] - 6:17, 6:18, 7:2, 8:7, 12:5, 13:21, 37:25 Plaintiff [2] - 1:6, 1:17 playing [1] - 22:9 plea [1] - 15:4 pleadings [2] - 4:21, 18:4 Pleas [1] - 1:1 podium [1] - 3:19 point [3] - 25:19, 33:13, 40:24 police [1] - 26:9 policy [1] - 14:24 position [9] - 11:7, 14:25, 23:15, 28:19,	36:24, 38:4, 39:1, 43:24, 45:5 Poston [1] - 17:11 potatoes [1] - 29:11 potential [1] - 38:10 power [18] - 7:21, 8:24, 10:2, 10:17, 10:20, 10:21, 11:9, 13:10, 13:17, 13:20, 13:22, 13:23, 29:21, 30:1, 33:22, 37:5, 44:23, 48:2 powers [14] - 6:12, 8:13, 9:13, 10:4, 12:3, 12:6, 12:13, 12:16, 13:14, 13:23, 14:2, 14:17, 14:19, 15:18 practical [1] - 38:24 practice [3] - 32:10, 32:14, 43:11 precursor [1] - 10:8 prelief [2] - 28:22, 29:3 pregnant [1] - 36:5 prejudging [1] - 46:13 prejudice [1] - 20:16 preliminary [1] - 46:4 premarked [1] - 3:14 prepared [1] - 29:10 presence [22] - 4:8, 5:8, 7:24, 8:10, 8:19, 9:1, 14:7, 14:10, 14:20, 15:13, 16:14, 18:13, 33:11, 41:7, 41:23, 42:1, 42:3, 42:8, 44:18, 44:20, 45:2, 45:4 present [3] - 15:14, 18:16, 45:22 presented [13] - 27:10, 30:20, 31:4, 34:13, 35:13, 35:16, 35:17, 35:21, 36:16, 40:22, 40:23, 42:3, 46:6 presenting [2] - 4:25, 20:6 preservation [7] - 10:14, 21:22, 21:25, 22:15, 23:1, 33:23, 34:15 preserve [1] - 21:17 preserved [9] - 22:5, 22:19, 23:20, 23:22, 24:2, 34:15, 35:1, 35:5, 36:20 pretty [2] - 29:11, 34:16

preventing [1] - 48:16 Price [18] - 1:7, 3:25, 4:5, 15:9, 16:7, 25:8, 26:3, 26:17, 26:20, 28:7, 30:5, 30:14, 30:16, 35:24, 35:25, 36:5, 36:9, 37:16 price [1] - 19:18 price's [8] - 4:2, 15:22, 16:8, 24:15, 28:15, 35:12, 35:19, 38:19 principle [1] - 5:14 private [1] - 15:12 probable [1] - 46:2 problem [2] - 48:14, 49:25 procedural [4] - 4:15, 16:8, 19:20, 44:2 Procedure [1] - 23:11 procedure [3] - 17:22, 23:18, 47:24 procedures [3] - 17:17, 19:10, 28:14 proceeded [3] - 24:14, 25:20, 26:18 proceeding [15] - 4:11, 4:14, 4:19, 15:15, 16:4, 16:18, 16:22, 18:1, 18:16, 19:2, 31:6, 34:23, 35:20, 49:3, 49:11 PROCEEDINGS [1] - 51:9 proceedings [12] - 3:1, 7:18, 8:1, 8:17, 9:3, 17:18, 18:12, 18:20, 28:11, 30:20, 33:23, 52:10 process [17] - 4:15, 4:17, 16:8, 16:10, 17:25, 18:17, 19:16, 19:20, 19:21, 29:23, 30:3, 38:11, 38:12, 39:18, 47:5, 50:16, 51:5 prohibit [1] - 20:22 prohibited [3] - 20:4, 21:2, 27:22 prohibiting [1] - 4:24 prohibits [1] - 23:11 pronounced [2] - 5:15, 23:14 proper [4] - 16:2, 17:16, 18:18, 19:1 property [8] - 22:5, 22:19, 24:2, 34:14,	34:25, 35:1, 35:5, 36:19 proposition [1] - 18:7 protect [1] - 45:12 protection [1] - 48:17 protections [1] - 19:14 protects [1] - 18:15 provide [5] - 11:22, 20:14, 21:5, 23:1, 44:5 provided [4] - 9:6, 17:12, 21:13, 33:20 provides [5] - 7:20, 11:11, 11:12, 11:14, 18:24 provisions [2] - 11:1, 12:4 public [1] - 14:24 pull [1] - 42:14 punish [17] - 4:6, 5:6, 7:23, 8:4, 8:9, 8:14, 8:23, 11:5, 11:9, 13:4, 13:18, 13:22, 14:22, 15:18, 17:1, 33:22, 48:5 punishable [1] - 11:1 punishing [2] - 10:12, 14:3 punishment [4] - 12:19, 12:21, 14:17, 17:4 purge [1] - 17:6 purpose [2] - 4:13, 7:23 purposes [2] - 14:7, 26:12 put [2] - 24:19, 44:25 puts [2] - 11:21, 14:24 putting [3] - 32:24, 45:18, 47:9	23:25, 27:17 raised [7] - 5:11, 5:12, 24:1, 30:24, 34:17, 34:18, 34:19 raising [2] - 23:16, 27:5 rather [1] - 17:2 Raymar [2] - 1:7, 3:25 reaching [3] - 21:24, 32:22 read [2] - 5:21, 43:9 real [1] - 41:13 realize [1] - 45:20 realizing [1] - 43:17 really [4] - 24:11, 24:20, 44:4, 46:6 reason [3] - 10:19, 15:24, 41:13 reasonable [2] - 20:20, 49:6 reasons [2] - 4:3, 11:25 rebuttal [1] - 47:16 recent [2] - 22:2, 22:16 recently [1] - 9:21 Recess [1] - 22:11 recognized [2] - 9:8, 23:3 recognizes [1] - 30:24 record [7] - 11:23, 20:23, 21:19, 49:2, 49:10, 49:12, 52:10 Record [1] - 1:6 RECROSS [1] - 2:2 REDIRECT [1] - 2:2 Reese [4] - 35:17, 35:21, 36:4, 36:9 refer [1] - 42:23 reference [1] - 3:10 referenced [3] - 9:12, 10:11, 18:7 references [1] - 10:7 referencing [2] - 9:5, 12:22 refers [1] - 47:6 reflect [1] - 21:19 refusing [1] - 38:5 refute [1] - 41:19 regarding [5] - 21:4, 24:6, 25:17, 25:21, 27:1 Reinhart [1] - 46:1 reiterated [1] - 9:20 relate [2] - 12:11, 12:13 relates [1] - 20:22 relating [1] - 26:13	relative [1] - 52:12 release [9] - 11:13, 13:1, 13:8, 29:20, 30:7, 31:18, 33:4, 40:5 released [3] - 33:1, 33:9, 34:2 reliability [1] - 21:6 remain [1] - 25:9 repeat [1] - 5:25 repeatedly [1] - 27:15 reporter [1] - 7:12 REPORTER [1] - 3:17 Reporter [3] - 1:25, 52:7, 52:21 represent [1] - 3:24 represented [1] - 24:5 request [1] - 24:12 requested [3] - 24:6, 24:13, 24:23 require [1] - 44:3 required [1] - 21:18 requirement [4] - 11:21, 18:10, 18:11, 37:23 requirements [2] - 12:8, 14:7 requires [3] - 4:18, 17:25, 44:6 requiring [1] - 44:18 reserved [1] - 10:17 residence [1] - 15:12 resolve [1] - 21:23 respect [3] - 6:8, 7:18, 30:3 respond [1] - 39:21 responded [1] - 26:21 restraining [1] - 48:17 restrictions [4] - 12:9, 20:20, 37:1 result [3] - 15:20, 16:8, 19:22 resulted [2] - 30:11, 30:13 results [1] - 34:6 reverse [1] - 4:1 reversed [5] - 15:23, 16:11, 19:23, 28:3, 28:17 reversible [1] - 21:9 revocation [4] - 38:20, 47:25, 48:13, 50:4 revoking [1] - 38:21 rights [14] - 4:16,	4:17, 15:6, 16:8, 16:10, 16:18, 16:19, 17:16, 18:15, 19:20, 19:21, 21:1, 21:8, 28:15 room [1] - 42:9 rooms [1] - 42:6 RPR [2] - 1:24, 52:20 Rule [1] - 23:11 rule [31] - 4:20, 6:13, 16:4, 16:5, 18:1, 18:2, 18:11, 18:14, 19:17, 20:15, 21:20, 22:23, 23:24, 27:8, 27:11, 28:9, 31:11, 31:22, 31:24, 32:3, 32:4, 32:9, 32:13, 32:17, 37:19, 39:24, 43:25, 44:2, 44:5, 50:2, 50:9 ruled [3] - 23:6, 33:17, 34:17 rules [2] - 20:13, 23:18 Rules [2] - 20:14, 23:10 ruling [1] - 23:13
S				
safety [3] - 32:19, 32:21, 35:11 saw [2] - 26:20, 27:2 scene [1] - 15:14 scope [1] - 24:6 sealed [1] - 49:12 second [5] - 4:9, 22:8, 22:10, 30:7, 30:10 Section [1] - 7:19 section [9] - 11:1, 12:2, 12:4, 12:11, 12:22, 12:24, 13:12, 13:15 sections [1] - 13:16 see [4] - 41:25, 42:22, 44:19, 44:22 sees [2] - 44:15 sentence [4] - 15:2, 15:4, 17:9, 38:23 sentences [1] - 8:5 sentencing [1] - 19:4 separate [1] - 48:19 September [4] - 1:10, 3:2, 29:5, 52:14 serious [1] - 49:20 seriously [1] - 41:6 served [2] - 15:1, 44:6 sessions [3] - 37:12, 38:18, 49:17				

set [12] - 8:14, 13:5, 24:13, 24:16, 31:2, 36:25, 37:12, 37:16, 39:15, 42:15, 45:22, 46:3 setting [3] - 31:13, 31:21, 49:4 settled [2] - 17:10, 21:16 shall [4] - 7:20, 7:24, 11:17, 13:17 Sheppard [3] - 1:24, 52:6, 52:20 sheriff's [1] - 45:10 Shlrer [2] - 9:5, 13:25 shorten [1] - 17:8 show [27] - 4:20, 16:4, 16:5, 18:1, 18:2, 18:11, 18:14, 19:17, 20:23, 28:10, 31:11, 31:22, 31:24, 32:3, 32:4, 32:9, 32:13, 32:17, 33:3, 37:19, 39:24, 43:22, 43:25, 44:3, 44:5, 50:2, 50:9 shower [2] - 30:9, 49:6 shown [1] - 20:17 signed [1] - 43:21 signs [1] - 43:1 silence [1] - 33:16 similar [4] - 12:24, 22:1, 22:16, 24:17 similarly [1] - 23:20 simple [1] - 29:12 simply [6] - 14:24, 15:8, 27:19, 36:24, 39:1, 40:3 single [1] - 45:5 sit [1] - 38:22 sitting [4] - 8:2, 9:4, 14:15, 21:22 situation [2] - 37:11, 43:17 situations [2] - 41:3, 44:12 slx [2] - 29:6, 32:15 Sixth [18] - 4:17, 5:3, 16:10, 19:21, 20:8, 20:10, 21:1, 21:6, 21:8, 21:10, 22:4, 22:6, 22:18, 22:21, 22:23, 27:4, 27:9, 28:1 slow [6] - 5:18, 5:22, 6:4, 7:7, 7:12, 7:14 slowing [1] - 7:11 sole [1] - 27:1 solely [2] - 4:23, 20:3	solicitor's [1] - 37:14 someone [3] - 17:3, 46:9, 48:16 something's [2] - 45:14, 45:15 sorry [1] - 7:7 sort [5] - 15:4, 19:8, 28:5, 48:15, 49:24 sorts [1] - 48:22 South [11] - 1:1, 1:11, 4:18, 7:19, 8:21, 9:14, 10:5, 20:13, 32:2, 52:8, 52:13 SOUTH [1] - 52:3 specific [2] - 19:14, 27:4 specifically [7] - 10:25, 12:25, 21:11, 22:7, 22:23, 23:24, 31:8 specificity [1] - 34:21 speeding [2] - 6:24, 7:6 sponte [1] - 5:13 Stacy [3] - 1:24, 52:6, 52:20 stand [1] - 18:6 standard [1] - 34:16 standing [1] - 8:22 standpoint [1] - 44:2 start [1] - 31:2 STATE [1] - 52:3 state [2] - 11:17, 31:22 State [27] - 1:1, 1:5, 3:11, 5:17, 7:4, 10:5, 10:18, 13:17, 18:5, 20:13, 22:2, 22:17, 24:5, 24:7, 24:13, 24:23, 25:1, 25:5, 25:24, 26:12, 29:24, 30:24, 34:13, 34:14, 34:25, 50:17, 52:8 State's [14] - 2:16, 4:25, 5:2, 11:7, 20:3, 20:7, 25:22, 28:19, 28:23, 28:25, 36:14, 36:24, 38:4, 39:1 statement [1] - 30:4 statements [6] - 5:1, 20:6, 25:4, 25:16, 25:18, 26:14 states [2] - 12:2, 13:15 stating [2] - 25:7, 25:25 statute [25] - 6:11, 6:17, 6:21, 7:3, 7:20, 8:3, 8:8, 8:12, 8:21, 8:25, 10:1, 11:6, 12:5, 13:7, 13:13, 13:21, 14:4, 31:13, 31:24, 38:1, 38:3, 42:24, 43:6, 46:10, 47:6 statutes [3] - 6:13, 7:3, 39:5 statutory [5] - 6:14, 11:3, 29:25, 32:7, 37:23 stems [3] - 30:5, 30:11, 41:22 step [1] - 38:21 steps [3] - 14:13, 42:10, 45:11 still [1] - 23:22 stories [2] - 26:9, 36:10 straight [1] - 36:10 street [2] - 44:14, 44:17 strict [1] - 10:19 strictly [1] - 7:4 sua [1] - 5:12 subject [10] - 4:6, 5:4, 5:5, 5:9, 6:7, 15:21, 28:6, 29:9, 30:23, 50:5 submit [1] - 50:19 subsection [7] - 11:11, 11:16, 11:19, 12:2, 12:18, 12:24, 32:18 subsections [1] - 11:20 subsequent [2] - 30:18, 36:3 subsequently [2] - 36:21, 46:5 sufficient [2] - 4:21, 18:4 suggested [1] - 9:15 suggesting [1] - 43:11 sum [1] - 28:5 Sunday [3] - 15:12, 42:17, 42:22 supplemental [1] - 50:19 supported [1] - 4:20 supporting [1] - 34:20 supposed [2] - 33:2, 41:9 Supreme [6] - 5:16, 10:18, 14:5, 17:10, 20:21, 23:3 suspended [1] - 15:4 sworn [2] - 24:8, 26:14	system [1] - 38:13 T tag [1] - 22:10 taught [2] - 39:8, 39:9 teeth [2] - 40:8, 40:13 ten [4] - 38:19, 44:7, 50:25, 51:4 ten-day [1] - 44:7 tend [1] - 21:4 tenure [2] - 23:8, 27:15 term [1] - 32:8 terms [8] - 30:6, 30:12, 31:17, 33:4, 33:14, 40:4, 46:9, 49:15 testified [1] - 35:25 testifying [1] - 7:10 testimony [3] - 24:8, 27:24, 35:19 THE [41] - 3:5, 3:16, 3:20, 3:22, 5:18, 5:20, 5:24, 6:2, 6:24, 7:6, 7:16, 22:8, 22:12, 28:18, 39:7, 39:22, 40:1, 40:7, 40:11, 41:4, 41:11, 42:11, 43:3, 43:7, 44:9, 44:22, 46:11, 46:18, 46:23, 46:25, 47:12, 47:14, 47:17, 48:23, 49:4, 50:10, 50:14, 50:23, 51:1, 51:4, 51:7 themselves [3] - 15:8, 17:6, 17:7 thereby [2] - 4:24, 20:4 therefore [2] - 15:16, 35:2 threatening [2] - 30:19, 30:21 three [3] - 4:3, 29:7, 35:5 timely [1] - 34:19 title [1] - 12:20 TO [2] - 9:11, 16:9 today [5] - 4:1, 25:7, 26:1, 26:5, 30:21 today's [1] - 29:23 together [2] - 43:10, 44:15 tone [2] - 23:8, 27:15 totally [1] - 38:12 toward [1] - 26:23 towards [1] - 27:18	tradition [1] - 10:3 training [2] - 39:8, 41:23 Transcript [1] - 1:6 transcript [5] - 7:9, 24:9, 25:11, 34:23, 52:10 transferred [1] - 37:13 transferring [1] - 37:14 trial [11] - 14:15, 20:19, 21:11, 21:20, 23:5, 23:14, 27:22, 34:19, 38:23, 45:25, 46:5 tried [1] - 19:3 true [1] - 52:9 try [1] - 7:14 trying [3] - 7:13, 27:17, 40:15 two [10] - 9:8, 25:1, 31:3, 31:7, 34:12, 36:14, 36:16, 43:21, 48:14, 49:23 type [1] - 7:13 types [1] - 17:23 typically [2] - 14:8, 17:22 typing [1] - 6:3 U ulterior [1] - 40:13 unambiguous [1] - 6:22 unclear [1] - 24:18 under [17] - 4:16, 4:17, 8:21, 8:25, 16:9, 16:10, 16:20, 19:21, 23:2, 23:18, 29:15, 30:21, 31:14, 32:14, 37:4, 48:6 underlying [2] - 22:20, 23:25 undermines [1] - 38:12 undersigned [1] - 52:6 undue [3] - 8:1, 8:17, 9:2 unless [2] - 15:3, 49:7 up [22] - 3:12, 6:24, 7:6, 8:5, 15:5, 28:5, 33:3, 40:17, 40:18, 41:12, 41:18, 42:14, 42:19, 43:13, 43:22, 44:13, 44:19, 45:7, 45:25, 47:4, 48:21

upheld [1] - 39:6 uses [1] - 32:8 usual [1] - 19:15	43:2, 43:7, 43:8, 43:19, 44:1, 46:15, 46:20, 48:8, 48:11, 48:18, 50:2 warrants [3] - 18:22, 46:1, 47:7 ways [1] - 12:17 well-established [1] - 5:15 well-settled [2] - 17:10, 21:16 West [5] - 15:12, 36:1, 36:12, 42:17, 42:21 whereas [1] - 10:12 whole [4] - 26:16, 38:12, 38:13, 43:17 wide [1] - 42:2 willfully [3] - 7:25, 8:16, 9:2 William [1] - 1:14 willingness [1] - 14:6 witness [10] - 20:17, 20:18, 21:8, 24:5, 25:19, 25:22, 26:11, 26:18, 27:24, 30:19 witness' [2] - 21:5, 27:25 WITNESSES [1] - 2:2 witnesses [13] - 2:5, 4:25, 5:2, 20:3, 20:5, 20:7, 20:9, 20:12, 25:1, 25:4, 28:13, 34:13, 36:15 wording [1] - 37:25 words [4] - 6:18, 27:4, 41:8, 46:19 worker [1] - 36:4 writing [1] - 50:11 writs [1] - 33:24 written [2] - 29:8, 45:19
V	Y
vacate [3] - 4:12, 38:5, 41:14 variety [1] - 42:2 various [3] - 24:15, 24:22, 26:10 verified [2] - 4:21, 18:3 victim [10] - 33:6, 34:4, 35:12, 38:10, 38:11, 40:8, 40:9, 40:12, 44:8, 44:14 victim's [1] - 34:4 victims [2] - 32:21, 38:15 view [1] - 14:6 viewed [1] - 42:4 vIndicate [1] - 17:2 vIolate [3] - 10:25, 31:10, 33:4 violated [5] - 16:11, 21:2, 28:2, 28:16, 45:8 violating [5] - 29:19, 30:6, 33:14, 34:8, 46:9 violation [16] - 4:15, 5:2, 8:12, 12:19, 16:1, 19:19, 20:8, 24:14, 24:24, 24:25, 25:21, 31:17, 39:18, 47:5, 48:19, 49:24 violations [8] - 8:18, 11:9, 12:16, 12:22, 14:18, 17:15, 21:8, 48:5 violence [3] - 30:8, 32:20, 34:3 vital [1] - 29:21 vold [1] - 6:9	y'all [3] - 45:12, 47:8, 47:14 years [1] - 38:19 yesterday [1] - 29:5
W	
waived [1] - 5:13 warrant [46] - 4:12, 16:6, 18:2, 18:18, 18:24, 19:9, 19:10, 19:12, 19:19, 28:11, 30:12, 30:14, 30:17, 30:19, 31:10, 31:12, 31:15, 32:8, 32:16, 34:6, 38:3, 38:6, 39:3, 39:19, 40:6, 40:23, 41:1, 41:15, 41:18, 41:21, 42:13, 42:25,	

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STATE OF SOUTH CAROLINA) **FILED** IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)
2014 SEP 12 P. 2:56 MAGISTRATE COURT
STATE OF SOUTH CAROLINA)
Respondent,) BETH A. CARRIGG
) CLERK OF COURT Case No. 2014-CP-32-01449
v.) LEXINGTON SC WARRANT #: 2013A3210202227
) **Supplemental Argument of Respondent**
QUENTIN RAYMAR PRICE,)
Appellant)

This Supplemental Argument of Respondent is being filed as allowed by the Honorable William P. Keesley, Circuit Court Judge of the Eleventh Judicial Circuit, to address whether the Magistrate Court's exercise of its contempt power in this case – for a violation of a condition of bond – through the use of a bench warrant violated Appellant's right to due process.

"The disobedience of any order, judgment, or decree of a court having jurisdiction to issue it is contempt of that court...." *State v. Nathans*, 49 S.C. 199, 27 S.E. 52, 53 (1897). The authority of the Magistrate Court to enforce its orders, such as a bond order, through contempt proceedings is based upon common law.

The power to punish for contempt is inherent in *all* courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.

(Emphasis added.) *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982). See also *In re Terry*, 128 U.S. 289, 303 (1888) ("The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity; implied, because it is necessary to the exercise of all

other powers.' Without such power ... the administration of the law would be in continual danger of being thwarted by the lawless."); *Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (Ct. App. 2007); *State v. Goff*, 228 S.C. 17, 22-23, 88 S.E.2d 788, 790-91 (1955). A court's contempt powers are not limited to any particular jurisdictional level, and therefore, apply equally to all courts of this State's unified judicial system, including the magistrates' and municipal courts. 2013 Op. S.C. Atty. Gen., March 1, 2013 (to Hon. Ernest M. O'Brien) (2013 WL 1695519). Thus while contempt "is an extreme measure and the power to adjudge a person in contempt is not to be lightly asserted," *State v. Harper*, 297 S.C. 257, 258, 376 S.E.2d 272, 273 (1989), magistrates and municipal court judges also possess inherent authority to punish conduct calculated to obstruct, degrade, and undermine the administration of justice. To allow a defendant to avoid compliance with an order of the court only serves to undermine this authority.

Inasmuch as the contempt in this case is constructive – because it the conduct did not occur in the presence of the court – the proceedings in this case were required to be initiated by a rule to show cause, attachment, verified petition, **or other process** supported by an affidavit. *State v. Johnson*, 249 S.C. 1, 7-8, 152 S.E.2d 669, 672-73 (1967), *overruled on other grounds by State v. Kennerly*, 337 S.C. 617, 524 S.E.2d 837 (1999) (overruled *Johnson* to extent *Johnson* holds that tampering with jury pool is constructive contempt rather than direct contempt); *State v. Nathans*, 27 S.E. at 57.

"...[T]he almost universal method by which contempt proceedings are begun is by affidavit, and an examination of the authorities will generally disclose that in all contempt proceedings, save for such as are committed in the court's immediate presence, an affidavit is essential."

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2014 SEP 12 P 2:57

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State v. Nathans, 27 S.E. at 57. A bench warrant supported by an affidavit or its functional equivalent would satisfy this requirement.¹ *Id.* See also *State v. Johnson*, 152 S.C. at 8, 249 S.E.2d at 672-673 (transcript of sworn testimony satisfied affidavit requirement); *Hornsby v. Hornsby*, 187 S.C. 463, 198 S.E. 29, 32 (1938) (verified petition satisfies affidavit requirement if it alleges facts sufficient upon which to issue order).

The contempt in this case is criminal.

"Criminal contempt is a crime in the ordinary sense," *Bloom v. Illinois*, 391 U.S. 194, 201, 88 S.Ct. 1477, 1481, 20 L.Ed.2d 522 (1968), and "criminal penalties may not be imposed on someone who has not been afforded the

¹ It should be noted that the failure to initiate constructive contempt proceedings correctly goes to personal jurisdiction and may be waived. In *State v. Nathan*, 27 S.E. at 57, the Court held that a party may waive the requirement that whatever legal process utilized to initiate contempt proceedings be supported by an affidavit or its functional equivalent by responding or failing to object to the absence of such. In *Ex parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009), constructive contempt proceedings were initiated with an "oral subpoena" issued by the judge in court rather than an affidavit. The Court of Appeals held that a defendant may waive any challenge he has to personal jurisdiction in a constructive contempt case by failing to object to a lack of such and appearing to defend his case. *Bakala v. Bakala*, 352 S.C. 612, 629, 576 S.E.2d 156, 165 (2003), was a constructive contempt proceeding commenced by a rule to show cause with improper service. The Court held that Bakala's objection to personal jurisdiction was waived because he never raised the issue.

While Appellant has challenged the use of a bench warrant to initiate contempt proceedings against him (by arguing that proceedings for constructive contempt may only be initiated by a rule to show cause), he has not challenged the sufficiency of the bench warrant used to initiate these proceedings or any issue related to personal jurisdiction. His failure to do so resulted in the absence of any evidence on that point, the failure of the magistrate to address the issue, and the waiver of any possible challenge to the sufficiency of bench warrant in this case on appeal. *Id.*; see *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (reversing Court of Appeals, stating it is error for an appellate court to address issues not properly presented in the trial court); *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001) ("In criminal appeals from magistrate or municipal court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved errors raised to it by appropriate exception").

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protections that the Constitution requires of such criminal proceedings," *Hicks v. Feiock*, 485 U.S. 624, 632, 108 S.Ct. 1423, 1429-1430, 99 L.Ed.2d 721 (1988). See *In re Bradley*, 318 U.S. 50, 63 S.Ct. 470, 87 L.Ed. 608 (1943) (double jeopardy); *Cooke v. United States*, 267 U.S. 517, 537, 45 S.Ct. 390, 395, 69 L.Ed. 767 (1925) (rights to notice of charges, assistance of counsel, summary process, and to present a defense); *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 444, 31 S.Ct. 492, 499, 55 L.Ed. 797 (1911) (privilege against self-incrimination, right to proof beyond a reasonable doubt). For "serious" criminal contempts involving imprisonment of more than six months, these protections include the right to jury trial. In contrast, civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required.

International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 826-27 (1994). Because this contempt involves punishment of only 30 days, it is not considered "serious."

Due process requires that a litigant both be placed on notice of the charge against him and be afforded an opportunity to be heard before the court rules on whether he is guilty of contempt. The general rule as to the due process requirements to be afforded one cited for contempt is best stated in *In re Oliver*, 333 U.S. 267, 277 (1948):

'Except for a narrowly limited category of contempts, process of law as explained in the *Cooke Case* (*Cooke v. United States*, 267 U.S. 517, 45 S.Ct. 390, 69 L.Ed. 767), requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open

BEA A. CARRIGG
CLERK OF COURT
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2013 SEP 12 P 2:51

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court in the presence of the judge, which disturbs the court's business, where all the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the *Cooke Case*, that the accused be accorded notice and a fair hearing as above set out.'

Accord International Union, United Mine Workers of America v. Bagwell, 512 U.S. at 826-27 (because criminal contempt is a crime, criminal penalties cannot be imposed where defendant has not been afforded protections the Constitution requires in criminal proceedings).

Here, a bench warrant was issued for Appellant based upon his violation of the "no contact with the victim" condition of the bond on his CDV charge. At the same time arrest warrants were issued for him for crimes arising out of the same course of conduct. The bench warrant put Appellant on notice of the basis of the contempt charge, and he was given a hearing at which he had a right to counsel, and an opportunity to defend himself and to call witnesses on his own behalf. This was sufficient to meet the due process requirements for the criminal contempt charge. See *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) ("Procedural due process requirements are not technical; no particular form of procedure is necessary.... [A]t a minimum certain elements must be present. These include (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence, and (4) the right to confront and cross-examine witnesses"); *Kurschner v. Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (stating "[t]he fundamental

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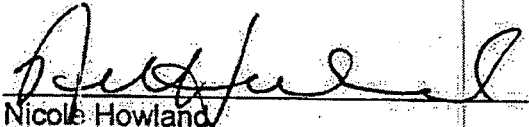
2014 SEP 2 2:57

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requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review"); cf. *Zaman v. S.C. State Bd. of Med. Exam'rs*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("[o]ne cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it").

For the foregoing reasons, the findings and ruling of the Magistrate Court should be affirmed and Appellant's issues as presented should be dismissed.

Respectfully Submitted,



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September 11, 2014

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CLERK OF COURT
LEXINGTON SC

2014 SEP 12 P 2:57

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

v.

QUENTIN RAYMAR PRICE

DEFENDANT.

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2014 SEP 24 A 8:39

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SCIN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUITAPPEAL FROM LEXINGTON COUNTY
MAGISTRATE COURTREPLY TO SUPPLEMENTAL ARGUMENT
OF RESPONDENT

Case No.: 2014-CP-32-01449

Warrant No: 2013A3210202227

TO: The Honorable William P. Keesley**INTRODUCTION**

The Appellant, Quentin Raymar Price, submits the following brief in reply to the Supplemental Argument filed by the Respondent and respectfully moves this Court to reverse the decision of the Magistrate Court finding the Appellant in contempt of court. In addition to the reasons outlined in the brief previously submitted and argued on appeal before the Honorable William P. Keesley on September 4, 2014, the Appellant offers the following additional reasons in reply to the Respondent's supplemental brief:

- I. Respondent's arguments raised in the supplemental brief as to a magistrate's authority to punish for constructive contempt and personal jurisdiction are untimely and unpreserved, as they were not argued at trial or during the arguments on appeal, are not within the scope of the subject matter that was submitted to the Court as the basis for the filing of the supplemental brief, and therefore are procedurally barred and should not be considered for the first time at this stage in the appeal.
- II. Should the Court take into consideration the new arguments raised by Respondent in the supplemental brief, Respondent offers neither any statutory nor common law authority granting magistrate courts subject matter jurisdiction to punish for constructive contempt or to punish for contempt where the conduct that forms the basis for the contempt is an

alleged bond violation.

- III. Respondent's contention that no challenge was made to the sufficiency of the bench warrant is unfounded, as the original motion made to vacate the bench warrant that initiated the proceedings below was based on the insufficiency of a bench warrant to initiate this type of proceeding.
- IV. Respondent offers no authority supporting the argument that the issuance of a bench warrant is the appropriate mechanism for bringing a defendant before a court for a criminal contempt of court proceeding in satisfaction of the due process requirements of the Fourteenth Amendment, compulsory process rights of the Sixth Amendment, or in compliance with South Carolina law.

PROCEDURAL BACKGROUND

On November 19, 2013, Quentin Raymar Price was arrested on warrant number 2013A3210202227, and charged with Criminal Domestic Violence, First Offense. Price's bond, which was set by the Honorable Brian Jeffcoat on November 20, 2013, included a condition of no contact with the alleged victim, Camisha Mims. On March 27, 2014, while incarcerated in the Lexington County Detention Center (LCDC) serving a thirty (30) day sentence on an unrelated offense, Price was served with Bench Warrant 2013A3210202227, signed by the Honorable Scott Whittle, Presiding Magistrate Judge of the Swansea Magistrate Court. The basis for the issuance of the Bench Warrant was an alleged violation of the conditions of Price's bond.

On Monday, April 7, 2014, the issue of the alleged bond violation was brought before the Honorable Gary Reinhart in a contempt of court proceeding. Defense counsel moved to vacate the bench warrant on the grounds that the issuance of a bench warrant for the purpose of bringing

Price before the court in a criminal contempt proceeding for conduct that allegedly occurred outside the presence of the Court violated Price's procedural due process rights under the Fourteenth Amendment, compulsory process rights under the Sixth Amendment, and current South Carolina procedure, which requires that a criminal contempt of court proceeding be properly noticed by a rule to show cause supported by affidavits or verified pleadings alleging sufficient facts. The motion was denied, and the contempt of court hearing was delayed until April 9, 2014. Price was found in contempt of court and subsequently appealed.

The Notice of Appeal was filed on April 15, 2014, and the Magistrate's return was filed on July 10, 2014. Oral arguments were heard by the Honorable William P. Keesley on September 4, 2014. After the close of oral arguments, counsel for the Respondent asked the Court if she could ask a question, and, after being permitted to go back on the record by Judge Keesley, requested to file a supplemental memorandum addressing the issue of due process. Counsel for Appellant deferred to the Court's discretion on the matter, and the Respondent was granted ten (10) days to submit a supplemental memorandum on the issue of due process. No other issues were raised as the basis for the supplemental memorandum at that time.

- I. Respondent's arguments raised in the supplemental brief as to a magistrate's authority to punish for constructive contempt and personal jurisdiction are untimely and unpreserved, as they were not argued at trial or during the arguments on appeal, are not within the scope of the subject matter that was submitted to the Court as the basis for the filing of the supplemental brief, and therefore are procedurally barred and should not be considered for the first time at this stage in the appeal.

Courts sitting as Courts of Appeals are limited to addressing issues raised at trial and argued in initial briefs. *State v. Wakefield*, 323 S.C. 189, 191, 473 S.E.2d 831, 832 (Ct. App. 1997). New arguments may not be raised for the first time on appeal. *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005). Issues and arguments not raised at the trial court level, in initial appellate briefs, or during oral arguments are not properly preserved for appeal. *See Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285-86, 543 S.E.2d 563, 566 (2001). The unfair prejudice of permitting a party to advance new arguments as to an issue that was neither raised at the trial court level nor included in initial briefs is particularly high in this case because oral arguments have already been heard.

In this case, Respondent requested permission from the Court to submit a supplemental memorandum on the issue of due process only. Counsel for Appellant deferred to the Court's discretion on this issue. No other issue was raised by Respondent as grounds for filing the supplemental memorandum. However, the supplemental brief filed by Respondent is essentially being used to advance completely new arguments and issues not previously raised by Respondent, only mentioning due process in one paragraph and devoting the rest of the brief to arguments regarding the authority of a magistrate to punish for contempt, the sufficiency of a bench warrant as a means of initiating criminal contempt proceedings, and personal jurisdiction.

Although the issues of magistrate authority and the sufficiency of a bench warrant were brought before the court by Appellant in the initial appellate brief and during oral arguments,

these matters, along with the new issue raised as to personal jurisdiction, were not included within the scope of the supplemental brief authorized by the Court. Respondent's failure to address these issues prior to filing the supplemental brief functions as a procedural bar to their introduction now. Therefore, the new arguments regarding these subjects in the supplemental brief are not properly before the Court and should not be considered either at this stage or as part of any subsequent appellate record.

Additionally, footnote 1 of Respondent's supplemental brief provides a lengthy argument as to personal jurisdiction and waiver. Neither of these issues was ever raised by Respondent prior to the inclusion of this footnote in the supplemental brief. These issues were not included in any arguments at the trial level, in Respondent's initial brief, or during oral arguments. Furthermore, the Court did not grant any permission to Respondent to address these new matters in its supplemental memorandum on due process. Simply stated, the issues advanced by the State in its supplemental brief are beyond the scope of both what the State requested and what the Court permitted. As a result, these issues are procedurally barred from introduction at this time because they are not properly preserved, not properly before this Court, and should not be included as part of the record on any subsequent appeal.

II. Should the Court take into consideration the new arguments raised by the Respondent in the supplemental brief, the Respondent's brief offers neither any statutory nor any common law authority granting magistrate courts subject matter jurisdiction to punish for constructive contempt or to punish for contempt where the conduct that forms the basis for the contempt is an alleged bond violation.

In the supplemental brief, Respondent argues that magistrate authority to punish for contempt is rooted in common law and based on the notion that all courts inherently have the power to punish for contempt. (See Supplemental Argument of Respondent, 1-2) Although "[t]he power to punish for contempt is inherent in all courts," magistrate contempt authority is specifically outlined by Section 22-3-950 of the South Carolina Code of Laws, which authorizes magistrates to punish for direct contempt only. This black-letter limitation was confirmed by the Fourth Circuit Court of Appeals in *Dean v. Shirer*, 547 F.2d 227 (4th Cir. 1976), and reiterated by the Attorney General's Office in multiple opinions. Appellant incorporates by reference all arguments made as to this issue in the original appellate brief and during oral arguments.

Respondent's supplemental brief references a later Attorney General Opinion to the Honorable Ernest M. O'Brien that initially advances the same arguments it made in *TO: Neal Forney*, 1978 S.C. Op. Atty. Gen. 214 (1978) and in its informal opinion to The Honorable B. Lee Miller, 2004 WL 3058232 (2004), which asserted that magistrates did not have the power to punish for constructive contempt. After reiterating its prior analyses of the issues and coming to the same conclusions, the Attorney General's opinion goes on to, in essence, ignore these conclusions and states that the Supreme Court's "liberal and expansive view of the 'presence' and 'court' requirements," coupled with the notion that all courts have the power to punish for contempt expands magistrate authority. In making this argument, the Attorney General's Office ignores the fact that the Supreme Court's expansions of the "presence" and "court" requirements have almost exclusively applied to direct contempt proceedings. See *State v. Kennerly*, 337 S.C.

619, 524 S.E.2d 837 (1999); *see also State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955); *Brandt v. Gooding*, 636 F.3d 124 (4th Cir. 2011) (holding that the South Carolina view of direct contempt occurring outside presence of court violates Due Process). Notably, none of these cases address these issues in the context of an alleged bond violation, nor do they include any explicit expansion of magistrate authority.

The opinion also erroneously interprets Sections 17-15-30 and 17-15-100 as granting authority to punish for contempt. Because the arguments regarding statutory construction and the proper interpretations of Sections 17-15-30 and 17-15-100 were previously made in Appellant's initial appellate brief and during oral arguments, Appellant incorporates by reference those arguments, and reiterates that such an interpretation is completely contrary to a plain language reading of these sections. Nothing in either Section 17-15-30 or 17-15-100 may be construed as either explicitly or implicitly granting additional authority to magistrate courts or any other courts. To the contrary, Section 17-15-100 specifically states that "[n]othing contained in Sections 17-15-10 through 17-15-60 shall *affect* the power of any court to punish for contempt. S.C. Code Ann. § 17-15-100 (Supp. 1976) (emphasis added). Interpreting Section 17-15-30 to increase magistrate contempt authority is inconsistent with legislative intent, as evidenced by the plain language of the statute. *See Peake v. South Carolina Dept. of Motor Vehicles*, 375 S.C. 589, 598, 654 S.E.2d 284, 289 (2007) (finding that courts must look to the plain language of the statute in order to ascertain and effectuate the intent of the legislature).

It should also be noted that the Attorney General's opinions are merely persuasive and not binding authority. *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560-61, 713 S.E.2d 604, 609 (2011). Furthermore, the Attorney General's Office is itself a prosecuting agency. As a prosecuting agency, the Attorney General's Office has a vested interest in advancing any

argument that serves its purpose, whether consistent with its own interpretations in other cases or not. As a result, it may be presumed that the Attorney General's Office may at times advance flawed arguments if it ultimately serves its own purposes, and that appears to be what is done in this case. The Attorney General's Ernest M. O'Brien opinion essentially ignores the Office's own interpretation of statutory and case law and attempts to impermissibly use misinterpreted and misconstrued quotes from cases dealing with entirely different matters to expand magistrate authority beyond that which is allowed by statute and the case law interpreting that statute.

- III. Respondent's contention that no challenge was made to the sufficiency of the bench warrant is unfounded, as the original motion made to vacate the bench warrant that initiated the proceedings below was based on the insufficiency of a bench warrant to initiate this type of proceeding.

Respondent contends, again for the first time in the supplemental brief, that the sufficiency of the bench warrant in this case was not challenged in the trial court below. (See Resp. Supp. Argument, Footnote 1). This argument is untimely, as it was not argued at trial, in Respondent's initial brief, or during oral arguments, and it is beyond the scope of the purpose for which the brief was permitted, which was to address due process. As a result, this argument is unpreserved and, having been waived by Respondent, is procedurally barred from consideration.

In addition, this argument is also unfounded. The original motion made by Appellant at trial and renewed during the contempt of court proceeding was to vacate the bench warrant based on the fact that a bench warrant is inherently insufficient to initiate criminal contempt of court proceedings because it is a violation of a defendant's due process and compulsory process rights under the federal and state constitutions. Because Appellant already presented arguments on these issues in the initial appellate brief and during oral arguments, Appellant incorporates those arguments by reference here.

- IV. Respondent offers no authority supporting the argument that the issuance of a bench warrant is the appropriate mechanism for bringing a defendant before a court for a criminal contempt of court proceeding in satisfaction of the due process requirements of the Fourteenth Amendment, compulsory process rights of the Sixth Amendment, or in compliance with South Carolina law.

The new argument offered by Respondent as a justification for the issuance of a bench warrant to initiate criminal contempt of court proceedings appears to be based on *State v. Johnson*, 249 S.C. 1, 7-8, 152 S.E.2d 669, 672-73 (1967). Respondent asserts that "the proceedings in this case were required to be initiated by a rule to show cause, attachment, verified petition, or other process supported by an affidavit," emphasizing the "other process," and citing to *State v. Johnson* for this proposition. (Resp. Supp. Argument, 2) This is actually a reference to 13 C.J. 68, which is referenced by the Supreme Court in both *State v. Johnson* and *Hornsby v. Hornsby*, 187 S.C. 463, 198 S.E. 29 (1938). In both cases, the Supreme Court found that constructive contempt proceedings are "properly begun by a rule to show cause which must be based upon an affidavit or verified petition alleging facts sufficient to warrant the issuance of such order." *Johnson*, 249 S.C. at 7, 152 S.E.2d at 672. The citation to 13 C.J. 68 is included as a reference to general principles of constructive contempt proceedings. In both *Johnson* and *Hornsby*, a rule to show cause was issued, and the challenges made were to the sufficiency of the affidavits or verified pleadings submitted to procure the issuance of the rule to show cause. In neither case did the Court address the sufficiency of a bench warrant to bring a defendant before a court in a criminal contempt of court proceeding, and especially where the issuance of the bench warrant is based on unverified oral statements made to a magistrate without the support of an affidavit or verified pleading.

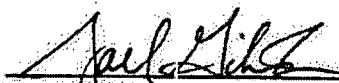
Additionally, it is instructive that none of the cases addressing criminal contempt proceedings provide any authority to conduct such a proceeding where the conduct that forms the

basis for the contempt proceeding is an alleged bond violation. Nor do the cases create any authority to bring a defendant before the court by the issuance of a bench warrant in these circumstances. Because the remaining issues addressed in the supplemental brief have already been addressed in Appellant's initial brief and during oral arguments, Appellant incorporates by reference those arguments here.

CONCLUSION

For the foregoing reasons and those submitted in the Appellant's initial appellate brief and during oral arguments, the Appellant's conviction for contempt of court should be reversed.

Respectfully Submitted,



Jael D. Gilreath
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Lexington, SC 29072
(803) 785-8873
ATTORNEY FOR DEFENDANT

Lexington, South Carolina

Date: September 24, 2014

ORIGINAL

FILED THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas2014 SEP 24 A 8:30
APPEAL FROM LEXINGTON COUNTY
Magistrate Court
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC
Honorable Gary Reinhart, Chief Magistrate JudgeCase No. 2014-CP-32-01449
Warrant No. 2013A3210202227

The State,

Respondent,

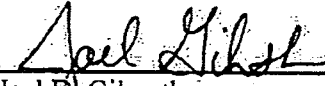
v.

Quentin Raymar Price

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to the Respondent's Supplemental Brief on Nicole Howland, by depositing a copy of it in the United States Mail, postage prepaid, on ⁹September 24, 2014 addressed to Nicole Howland, Criminal Domestic Violence Prosecutor, Lexington County Sheriff's Department, 521 Gibson Road, Lexington, SC 29072.


Jael D. Gilreath
Assistant Public Defender
407 1/2 W. Main Street
Lexington, SC 29072Date: 09/24/2014

ORIGINAL

OFFICE OF THE PUBLIC DEFENDER

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September 24, 2014

The Honorable William P. Keesley
Eleventh Judicial Circuit
Lexington County Court of Common Pleas
205 East Main Street
Lexington, SC 29072

Re: The State vs. Quentin Raymar Price

Dear Judge Keesley:

I have enclosed the original and one copy of the Appellant's Reply to the Respondent's Supplemental Brief. I am, by copy of this letter, serving a copy of this Notice of Appeal Criminal Domestic Violence Prosecutor Nicole Howland, together with my Certificates of Service. The Certificates of Service are enclosed.

Thank you for your assistance in this matter.

Sincerely,


Jael D. Gilreath
Assistant Public Defender
407 ½ West Main Street
Lexington, SC 29072

Enclosures

cc: Nicole Howland, Criminal Domestic Violence Prosecutor
Lexington County Sheriff's Department
521 Gibson Road
Lexington, SC 29072

LEXINGTON, SC
CLERK OF COURT
BETH A. CARRICO

2014 SEP 24 A 8:40

FILED

ORIGINAL

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

STATE OF SOUTH CAROLINA,)

Respondent,)

-vs-)

QUENTIN PRICE,)

Appellant - Defendant.)

) IN THE COURT OF COMMON PLEAS

ORDER ON APPEAL

Case Number: 2014-CP-32-01449

WPC
#1

This is an appeal from the Magistrate's Court wherein the appellant-defendant challenges a citation for contempt of court, the procedure whereby he was cited and tried for contempt, the finding of contempt, and the imposition of a criminal sentence.¹ The court determines: 1) that Magistrates have the power to cite and punish a defendant for constructive contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of the summary courts; 2) that the use of a bench warrant in this instance was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant; and, 3) that the lack of a proper procedural framework and opportunity to be heard requires this court to reverse the finding of contempt of court and the sentence imposed, based on due process concerns.²

¹ In his Supplemental Statement of Issues on Appeal, the appellant sets out six specific assertions of error. Assertions 3 and 4 are challenges involving the conduct of the trial. Since the court is vacating the finding of contempt, it is not necessary to rule on those assertions other than to state, had the reversal not been entered on other grounds, the case would have to be reversed and remanded to allow the appellant to develop the record more fully.

² The court has concerns about whether a harmless error analysis should be conducted, since the defendant was in jail on other charges when served with the bench warrant, ultimately was given notice when brought before the Magistrate (with counsel), and was given two days to prepare to address the allegation of contempt. Because of the court's determination that fundamental due process was violated, however, the court has determined that a harmless error analysis is not proper.

FACTUAL BACKGROUND

The defendant was charged with Criminal Domestic Violence, First Offense, and he was released on bail on November 30, 2013. The offense is not a General Sessions offense. His release was subject to the condition that he was to have no contact with the purported victim. According to the State in its oral argument, he violated that condition earlier and was punished for contempt. On the previous occasion, he had been found hiding in the victim's shower and was found to be in contempt of court. It is not clear to this court what charges the defendant picked up after the arrest for the instant CDV 1st.

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As to the instant case, the State went to a Magistrate and obtained a bench warrant for the defendant's arrest based on an oral statement that the defendant had violated the conditions of his bond. At the time of the service of the bench warrant in this case on March 27, 2014, the defendant was incarcerated on unrelated charges. He was taken before another Magistrate, the Chief Magistrate, on April 7, 2014, pursuant to the bench warrant and treated as being charged with contempt of court. The defense attorney moved to vacate the bench warrant and objected to the consideration of the charge of contempt of court based on various constitutional and procedural grounds. She demanded that any contempt citation be supported by a Rule to Show Cause, issued pursuant to pleadings and/or affidavit, with proper notice and an opportunity to be heard.

Upon hearing that the defense attorney needed more time to prepare to address the charges, the Magistrate delayed the proceedings for an additional two days, asking her if the amount of time was sufficient. The parties appeared for a hearing on the issue of contempt of court. The transcripts of both proceedings are in the file, as well as the Return of the Magistrate. The defendant's motions to vacate the bench warrant were

denied, and the objections to the procedural method of citing the defendant for contempt of court were overruled. The Magistrate found the defendant to be in contempt and sentenced him to serve 30 days in jail. There is a dispute as to whether the Magistrate gave the defendant proper credit for time served, but this court finds no error in that regard. This appeal followed.

There is nothing in the file indicating that a written document was presented to the issuing Magistrate to request the bench warrant or to seek revocation of bond. There is not an affidavit, petition, motion, or any sworn testimony in this file reflecting that it was presented to the issuing Magistrate in order to obtain the bench warrant. It is undisputed that this alleged misconduct took place outside the Magistrate's presence. Based on the file, it appears that the issuing Magistrate was contacted and advised orally that the defendant had violated a no-contact order in his bond. The Magistrate issued a bench warrant for the defendant's arrest. A copy of the bench warrant is not in the file, so the court is of the opinion that the bench warrant does not set forth with specificity the date, time, and place of the allegedly contemptuous conduct. Nonetheless, it appears that defense counsel knew essential aspects of the alleged contempt, including the time and place of the alleged violation, prior to the hearing.

THE POWER TO HOLD SOMEONE IN CONTEMPT OF COURT

Several principles seem to be in play. The State's basic argument is that courts have an inherent power to enforce their orders, and the inherent powers of a Magistrate include the power to punish for constructive contempt. The appellant's position is that fundamental due process requires notice and an opportunity to be heard before a person is

incarcerated. The court agrees with both propositions. However, the court does not agree with all the interpretations that the parties advance from those principles.

The Criminal Trial Benchbook provided to all circuit judges in South Carolina contains the following section dealing with contempt of court.

CONTEMPT POWER

The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings. Direct contempt occurs when a person's conduct interferes with judicial proceedings, when a person exhibits disrespect for the court, or when one hampers judicial proceedings. State v. Havelka, 285 S.C. 388, 330 S.E.2d 288 (1985) (the trial court's finding of contempt for inappropriate dress was reversed when the defendant was not disruptive and had no notice that the attire was inappropriate).

Constructive contempt occurs outside the court's presence or hearing but nevertheless tends to impede or prevent the due administration of justice. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).

The court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to the law. The jury pool constitutes an integral constituent part of the court and contemptuous acts within their sight or hearing will constitute direct contempt. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).

The appellant argues that a South Carolina Magistrate cannot punish for contempt of court, except for direct contempt. He cites various cases, including State v. Harper (376 S.E. 2d 272, 297 S.C. 257 (1989), S.C. Code Ann. §22-3-950, as well as opinions of the South Carolina Attorney General. While the court is impressed with the extent of authority and the content of it, the court disagrees with the assertion that Magistrates have no power to punish for constructive contempt of court.

State v. Harper involved a Magistrate who cited an attorney for multiple counts of contempt of court when the attorney stood to raise objections to the jury selection process in court. The opinion states, "South Carolina Code Annotated Section 22-3-950 (1976) sets forth the magistrate's power to punish for contempt." This court believes that the defendant is reading that sentence too broadly. It does not state that the statute is the only method by which a Magistrate may hold someone in contempt of court.

The language of §22-3-950 has been modified somewhat concerning the penalty for contempt since Harper was decided, but the language that is critical to the analysis relevant in this appeal has not changed.

SECTION 22-3-950. Power to punish for contempt.

Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

The Supreme Court in Harper was not dealing with a constructive contempt situation, so the language of the opinion and its reference to the statute should be read in that context. The Supreme Court was acknowledging a statute that was applicable to the situation before it. Since it was not considering constructive contempt, there was no need for it to determine that a Magistrate lacks contempt powers for conduct outside a Magistrate's observation.

The appellant also cites the Fourth Circuit Court of Appeals in Dean v. Shirer, 547 F.2d 227 (4th Cir. 1976), for the proposition that a Magistrate's contempt powers are

limited to instances where the contemptuous conduct occurs in the presence of the court. The Fourth Circuit was dealing with a summary judgment ruling in a civil suit arising from alleged state action in finding a person in contempt. The quotation cited in the appellant's brief is correct in stating that the contempt power under the statute (now §22-3-950) is limited to events occurring in the Magistrate's presence (or direct contempt).

Dean is not binding on this court, but even if it were, it does not definitively state that a Magistrate lacks inherent contempt powers. Again, the federal court was dealing with whether there was a clear lack of jurisdiction in a case alleging misconduct by a judge, and the federal court found no clear absence of jurisdiction where contemptuous events occurred outside the municipal judge's presence.

It is this court's view that the cases and opinions cited by the appellant do not actually state that South Carolina Magistrates lack jurisdiction in situations of constructive contempt. They may hint at it. It may be in dictum. But, it is this court's view that those cases either were dealing with situations of direct contempt, so the language must be viewed in that context, or they were dealing with tangential issues.

In a well-written opinion cited by the appellant, the office of the South Carolina Attorney General responded to a request from South Carolina Court Administration [To: Neal Forney, 1978 S.C. Op. Atty. Gen. 214 (1978)]. The question posed was, "Is the power of the magistrate to punish for contempt of court limited to trial situations or does it include such activities as bond proceedings, preliminary examinations, and warrant issuing proceedings?" The answer given by the Assistant Attorney General seems to this court to construe the question as being one that deals with contemptuous behavior committed in the Magistrate's presence, but not in an actual trial. So, the conclusion

reached was stated, as follows: "Pursuant to Section 22-3-950, magistrates may punish all behavior within the definition of contemptuous done in their presence while performing the duties of their office as contempt of court. This would include contemptuous actions during bond proceedings, preliminary examinations, and warrant issuing proceedings. This court agrees with that statement; but, that conclusion does not state that a Magistrate lacks the ability to punish for contempt committed outside the judge's presence.

That Attorney General's opinion includes an excellent explanation of some issues currently before this court, including the following language:

In your question you asked whether the power of a magistrate to punish for contempt of court is limited to trial situations or does it include other activities, such as bond proceedings, preliminary examinations, and warrant issuing proceedings. A review of early court decisions appears to indicate wide authority. In Lining v. Bentham, a Justice of the Peace, 2 S.C.L. (2Bay) 1, (1796), a justice of the peace had ordered a man imprisoned for accusing the justice of gross impartiality [sic] and abuse of power during a bail proceeding. The South Carolina Constitutional Court of Appeals affirmed the action and referenced '... the power of a magistrate to commit for insults or contempts ...' offered in the presence of the court. The Court by dictum stated however that as to any contempts offered out of the presence of the court, such 'ought to' be prosecuted by indictments. (More recent cases reference the fact that for contempts committed out of the presence of the court, 'constructive contempt', such should be initiated pursuant to a rule to show cause. State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956); State v. Johnson, 249 S.C. 1, 152 S.E.2d 669 (1967).) In State v. Johnson, 3 S.C.L. (1 Brev.) 155 (1802) a justice of the peace had ordered a particular woman imprisoned for an unspecified period of time for coming to his office, treating him contemptuously and threatening him. The Charleston Constitutional Court held that a 1731 Act which provided punishment by fine instead of imprisonment for contempt of court and which was argued to apply did not apply to a justice of the peace. Instead, it was stated that:

*2 Justices of peace have a power derived from the common law, and necessarily attached to their offices, of committing and confining for gross behavior in their presence while engaged in the proper discharge of their duties, as public magistrates. This power has always been recognized and respected, as lawful, and indispensably requisite, for the maintenance of their offices and jurisdiction ... 1 Brev. At 159

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Therefore, with reference to the above case authority indicating broad contempt powers, it is the opinion of this Office that Section 22-3-950, supra, which grants a magistrate the power to enforce the observance of decorum in his court while holding the same should be construed to allow the magistrate to punish for all behavior within the definition of contemptuous done in his presence while in the performance of the duties of his office.

In Lining v. Bentham cited above, it is true that the Constitutional Court of Appeals of South Carolina stated in dictum: "The true rule of distinction seems to be this, that where contumelious words are spoken, or other insult is offered to a justice of the peace, and in his presence, he may commit; but when spoken behind his back, he ought to proceed by indictment. 3 Burn. 33. Salk. 698. 3 Mod. 139. 2 Show. 207." Taking into consideration the differences in procedure and court structure between the 18th Century and the 21st, this dictum can be read to support both the State's argument that a proceeding may be pursued for constructive contempt, as well as the appellant's position that the procedure to be utilized would not be a bench warrant.

The rest of the opinion seems to support a broad view of contempt powers for justices of the peace. A major portion of the opinion dealt with whether the officer was performing in a ministerial or judicial capacity at various times, so as to be immune.

Lining includes the following language:

With regard to the power of a magistrate to commit for insults or contempts offered to him while in the due execution of his office, it is incidental to magisterial authority; and without such power, he could never vindicate or support the laws, which are intrusted to his management, and over which he has jurisdiction. That a magistrate, sitting in judgment touching a matter within his jurisdiction, constituted a court in law, though an inferior one, and he was bound to protect the authority of such court. And one general principle, incidental to all courts, as well superior as inferior, was a power to commit for contempts, either by *word or deed*, offered in the presence of the judge, and in the face of such court. And this is not against *magna charta*, or the law of the land, but forms a

part of the common law, which is recognised by the terms of our constitution. 5 Vin. tit. *Contempts*, 447. Lill. *Pract. Reg.* 305. *Gilb. Hist. C.* B. 20, 21. 2 Hawk 96; 112, 113.

Again, a statement that a Magistrate may punish for contemptuous behavior done in the judge's presence is not a statement that a Magistrate may only punish for behavior committed in the court's presence. As noted earlier, the charge of Criminal Domestic Violence, First Offense, is within the jurisdiction of the Magistrate's Court. The Magistrates here were dealing with cases where the jurisdiction would not be going to the circuit court after the bond hearing, so this court believes that they must have the inherent power to enforce their orders, including conditions of bond.

There are other sections of the Code that deal with situations where Magistrates have contempt powers in matters where the jurisdiction remains in Magistrate's Court.

Section 22-3-930 discusses contempt powers related to compelling witnesses to testify. It provides, in part:

If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section 22-3-550.

Section 22-3-550 discusses the contempt power of the Magistrate concerning restitution. It reads, in part, in Subsection (A):

In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs,

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fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C).

In determining the meaning of statutes, the courts are directed to give a reading that harmonizes various statutes dealing with the same subject matter. The statutes above indicate that Magistrates have other contempt powers. They may review and punish for contempt for certain violations related to compelling attendance of witnesses and restitution. While these may be issues of direct contempt, it seems that they may also involve situations where the alleged misconduct took place in a constructive contempt context.

In addition, there are statutes in South Carolina dealing with bail and the power to punish violations by using contempt of court which seem applicable to any court with jurisdiction. Sections of the South Carolina Code dealing with bail contain provisions discussing the interaction between conditions of bail, the need to monitor them, and the power to enforce them through contempt of court.

SECTION 17-15-20. Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.

(A) An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing . . . and to do and receive what is enjoined by the court, and . . . be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

SECTION 17-15-30. Matters to be considered in determining conditions of release; contempt. . . .

(D) A court hearing these matters has contempt powers to enforce the provisions of this section.

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SECTION 17-15-50. Amendment of order.

The court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release.

SECTION 17-15-100. Power to punish for contempt not affected.

Nothing contained in Sections 17-15-10 through 17-15-60 shall affect the power of any court of the State to punish for contempt. [Emphasis added.]

It is this court's finding that the General Assembly has not restricted Magistrate's Court to punish only situations of direct contempt. The power to punish for contempt is an inherent power of a court, a power that is too important and essential to be eliminated by reference to language that does not specifically provide for elimination or restriction of the power. As the State repeatedly argued, a court must be allowed to enforce its orders. If the intent of the General Assembly was to restrict the power of Magistrates to situations of direct contempt only, it is this court's belief that the legislature would have done so with definite and precise language.

**USE OF THE BENCH WARRANT TO INSTITUTE
AND MAINTAIN CONTEMPT PROCEEDINGS**

The State argues that there must be a provision to allow the issuance of a bench warrant to protect victims who are endangered by a defendant's violation of the conditions of bail.³ The appellant counters that he has fundamental due process rights that must be honored before he can be incarcerated, and that the opportunity for misuse is too great to allow law enforcement officials and/or purported victims to obtain bench warrants based merely on ex parte assertions that a condition of bond has been violated.

³ Of course, if the defendant violates the law in doing so, he may be subject to arrest on new charges.

The court agrees that victims must be protected, but the procedure used here is not appropriate. It violates fundamental due process rights.

South Carolina's statutes do provide a specific mechanism to revoke or modify bond in situations where a Magistrate sets bond, but it is for a General Sessions offense.

Subsection (B) of §17-15-55 reads:

(B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any.

(3) If the state's motion to revoke or modify bond includes a prima facie showing of **imminent danger** to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge within forty-eight hours of receiving service of the state's motion or as soon as practical. The chief judge shall order the solicitor to notify the defense counsel of record and bond surety of the time and date of the hearing, and the solicitor shall provide proof reasonable efforts were made to affect the notice. Upon notice by the State, the defense counsel of record and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing. The court may proceed with the hearing despite the absence of the defendant or bond surety. The court may not proceed with the hearing if the defense counsel of record is not present. If an emergency bond hearing is held without the presence of the defendant and bond is revoked, the judge having heard the matter may conduct the hearing on the defendant's motion to reconsider the revocation. Defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety. [Emphasis added.]

While this procedure is not a contempt citation, it is analogous to the underlying situation here. This procedure does not support the State's position that a bench warrant can be issued for the immediate arrest of this defendant for violation of the conditions of bond, based solely on an unsworn, ex parte claim that such an event occurred. As discussed below, this court might be able to

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#12

accept an exception for an emergency situation, but none was shown here.

The procedure applicable to General Sessions offenses recognizes that there must be a motion and a reasonable effort to provide notice to the defendant, with an opportunity to be heard, before a defendant can be judged to have done something that requires revocation based on a violation of the bond order. There have to be specific allegations of how the conditions of bond have been violated. This procedure balances the emergency situation by providing that a hearing can be held in the defendant's absence and a bench warrant could issue thereafter, with the ability of the defendant to move to reconsider and vacate the bench warrant. But, the hearing in the defendant's absence could take place only after there is a specific motion and proof provided to the court of reasonable efforts to notify the defendant, defense counsel, and any bail bonding company or surety. The hearing could not go forward in the General Sessions scenario if the defense attorney was not present.

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The State also points to the uniform bond form that is issued by South Carolina Court Administration. On the form, a notice is provided that a bench warrant will be issued for the defendant if he violates a condition of bond. The court acknowledges that the form contains that language. The court believes that the form comports with state law, particularly as it relates to General Sessions cases. But, in this court's view, that notice alone is not sufficient to withstand a due process analysis. If it were, there would be no need for §17-15-55(B).

In another well-written opinion, the office of the Attorney General discussed an inquiry by a Municipal Judge as to whether a law enforcement officer, knowing of a no-

contact provision in a bond, could arrest a defendant for violation of a condition of bond, without a warrant [2004 WL 3058232 (S.C.A.G.)]. The opinion discussed freshly-committed offenses, which the Municipal Judge mentioned. The Assistant Attorney General referenced a 1996 opinion of the Attorney General's office, which is said to assert that a Municipal Judge can issue a bench warrant for a violation of a condition of bond, and stated:

Consistent with such opinion, a bench warrant **could** be issued for a defendant violating a condition of a bond. [emphasis added] I do not know of any authority for a law enforcement officer to arrest for violation of a condition of a bond committed in his presence. Of course, such conduct . . . by a defendant may give rise to possible other criminal violations for which an arrest may be made at the location . . .

In discussing the 1996 opinion of the Attorney General, the following language appears:

This office has indicated in a prior opinion dated October 21, 1996 that "(w)here a defendant fails to perform a condition required of him by a bond, the bonding judge may bring the defendant back before him for further action. Such is typically done by virtue of a bench warrant." That opinion commented further that

I know of no reason why the issuance of a bench warrant would not be the appropriate procedural mechanism to bring the defendant back generally before the court where he or she has violated a special condition of his or her bond...(Citing People ex rel. Shaw v. Lombard, 408 N.Y.S.2d 664 (1978))... it has been generally stated that "the proper procedure is to require the defendant to appear before the court, by a bench warrant if necessary, in order for the court to review its release of the defendant on recognizance or bail."...Such is consistent with Section 17-15-40 stating that "a warrant for the person's arrest will be issued immediately" upon violation of a condition of release.

In discussing these issues, the opinion uses terms that a Magistrate "could" or that

a Magistrate "may" issue a bench warrant. The opinion relies upon a case from another jurisdiction that approved the issuance of a bench warrant if necessary. The opinion gives import to the word "immediately" in §17-15-40.⁴ In this court's view, there may be situations where it is appropriate to issue a bench warrant to have a defendant brought to court on an allegation that a condition of bond was violated, but it seems to this court that citing someone for criminal contempt in the context of constructive contempt would involve more due process protections than considering whether to revoke bond on a pending criminal charge. The contempt citation is a new criminal proceeding.

It may be that a higher court would focus on the defendant's being released on bail as a matter of favor, rather than of right, where his freedom can be taken away more easily than someone who was not already under arrest. However, it seems to this court that issuing a bench warrant as a substitute for a motion to revoke bond or as a citation of contempt is not the proper method in most cases. If it is allowed at all, due process would require some exigent circumstance that did not exist here. Moreover, if a bench warrant is allowable, fundamental due process seems to require that the allegation be supported at a minimum by oath or affirmation, and some safeguards for a prompt hearing would need to be in place. This seems to be particularly true when citing someone with a new criminal contempt charge.

This record reflects no such emergency, so there is no need for the court to decide if a bench warrant would be proper in a situation of emergency. The court's

⁴ §17-15-40: On releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person's arrest will be issued immediately upon any such violation. The person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation thereof on a form to be prescribed by the Attorney General.

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understanding is that the defendant was arrested on other charges, he was in jail when he was served with this bench warrant, and there was no indication that he was about to be released.

If this court were to agree that a bench warrant "may" or "could" be issued to bring a defendant back before the court for an alleged violation of a condition of bond, it disagrees with the statement in the opinions of the Attorney General that the typical method of bringing a defendant back before the court would be through issuance of a bench warrant. The court's understanding is that the typical method is to serve the defendant with a motion to revoke the bond or modify its conditions.

In fact, the 1996 opinion of the Attorney General acknowledges the need for notice and an opportunity to be heard when deciding whether or not to revoke bond. In the very same opinion, when discussing the Municipal Judge's question about whether contempt of court is the proper "charge," the opinion turns to revocation of bond. Absent an emergency situation, with protections for a speedy hearing, this court has difficulty in seeing how issuing a bench warrant ex parte in this instance would involve less protection under due process principles than a procedure to revoke the defendant's bond. The 1996 opinion states:

Where a defendant is brought back before the court for violation of the condition of a bond, the bond may be revoked or new, additional conditions may be imposed. As stated at 8 C.J.S. Bail Section 83, p. 105, "(a)ccused's violation of a condition of release is a legitimate reason to impose additional or more restrictive conditions, to increase the amount of bail, or to revoke release on bail or recognizance... Whether to revoke bail or to impose more restrictive conditions is discretionary with the judicial officer." **Of course, in order for bail to be revoked, the defendant must be provided notice and an opportunity to be heard.** Ibid. As stated at S.C. Code Ann. §17-15-50 (2003), "(t)he court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release." [emphasis added]

State v. Harper was cited on page 4 of this order dealing with the appellant's assertion that the Magistrate's contempt powers are limited to direct contempt. The court in Harper wrote:

Contempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted. Brasington v. Shannon, 288 S.C. 183, 341 S.E. (2d) 130 (1986); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). It is well settled that contempt results from willful disobedience of an order of the court; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which such finding is based. Curlee v. Howle, 277 S.C. 377, 287 S.E. (2d) 915 (1982).

The Brasington case, cited in Harper, involved a Family Court determination of contempt. It includes the following language:

In an action for contempt, the burden of proof is on the moving party. See, e.g., State v. Bowers, 270 S.C. 124, 241 S.E. (2d) 409 (1978). The use of a rule to show cause to initiate the proceeding does not shift the burden of proof to the respondent. 60 C.J.S., Motions & Orders, Section 37(5).

Contempt results from the willful disobedience of a court order. Before a court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. Moseley v. Mosier, 279 S.C. 348, 306 S.E. (2d) 624 (1983); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. Means v. Means, 277 S.C. 428, 288 S.E. (2d) 811 (1982). The burden then shifts to the respondent to establish his defense and inability to comply with the order. Id.; Pratt v. South Carolina Department of Social Services, 283 S.C. 550, 324 S.E. (2d) 97 (Ct. App. 1984).

In a Rule 53 proceeding, the clerk of court must identify the court order which the respondent has allegedly violated, and must identify the specific acts or omissions which constitute noncompliance. These facts must be alleged in the affidavit which supports the rule. See, e.g., State v. Johnson, 249 S.C. 1, 152 S.E. (2d) 669 (1967); Hornsby v. Hornsby, 187 S.C. 463, 198 S.E. 29 (1938).

In the present case, the affidavit which supported the rule asserted Shannon had failed to obey an order of the court, but it did not identify the order or the *185 manner in which the order had been violated. The

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affidavit was insufficient to put Shannon on notice of the charges to which he was required to respond.

Because of the insufficiency of the affidavit and the improper shifting of the burden of proof, the orders of the trial judge are reversed.

In oral argument, counsel for the State asserted that the Family Court allows for the issuance of a bench warrant where the safety of a victim is in issue. There was no citation of authority, but there are provisions related to contempt of court in Rule 14, SCRFC, and the procedure there deals with issuance of a Rule to Show Cause. The official notes following Rule 14, SCRFC,⁵ do not seem to support the State's contention that issuance of a bench warrant was appropriate here. Rule 13, SCRFC, which deals with bench warrants in Family Court, also does not seem to support the State's argument.

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Moreover, as this record reflects, a defendant who commits a new offense that also constitutes a violation of his bond on a pending charge can be arrested for the new offense. The judge who considers setting bond on the new offense would be made aware of the fact that the defendant was on bond, what the conditions of the existing bond are, and what dangers the defendant might pose to the victim and to the community.

CONCLUSION

For the foregoing reasons, the court has determined that the Magistrate's power to punish for contempt is not limited to situations of direct contempt. The court has also

⁵ Rule 14 provides for a Rule to Show Cause for contempt situations, except for direct contempt. The official notes begin by stating, "The long established procedural vehicle to bring a party into court for contempt proceedings has been the rule to show cause." The notes then provide citations and explanations about direct and constructive contempt.

concluded that a bench warrant was not properly obtained or used to cite the defendant for contempt of court.

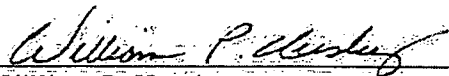
THEREFORE, IT IS ORDERED:

- 1) that the appeal is denied insofar as it is based on a claim that the Magistrate lacked jurisdiction to deal with constructive contempt of court for a violation of a condition of bond; and,
- 2) that the appeal is granted as to the claim that the use of a bench warrant in this instance was improper and violated due process.

IT IS FURTHER ORDERED that the citation for contempt of court is overturned and the sentence is vacated.

AND IT IS SO ORDERED.

#19
September 30, 2014


William P. Keesley
Judge

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201449

State

Quentin Raymar Price

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), 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: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

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)

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

Judge Code

10/7/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on **7th of October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **7th of October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Nicole Howland PO Box 639 Lexington, SC 29071/LCSD
Rich Roberson PO Box 639 Lexington SC 29071/LCSD

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jael Denise Gilreath
407 1/2 West Main Street Lexington, SC 29072

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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BETH ACCORD
CLERK OF COURT

2014 OCT 17 P 1:35

FILED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

CRIMINAL APPEAL FROM
MAGISTRATE COURT

STATE OF SOUTH CAROLINA)

Respondent,)

v.)

Case No. 2014-CP-32-01449
WARRANT #: 2013A3210202227

QUENTIN RAYMAR PRICE,)

Appellant)

PETITION FOR REHEARING

In an Order dated October 7, 2014, this Court overturned Appellant's citation for contempt in the Magistrate Court and vacated his sentence. Although this Court affirmed the Magistrate's jurisdiction to find Appellant in constructive contempt for a violation of a condition of bond, it found the use of a bench warrant in this instance violated Appellant's right to due process. For the reasons stated below, Respondent respectfully requests a rehearing to address points this Court overlooked or misapprehended.

I.

Appellant filed three notices of appeal. The first "Notice of Appeal Statement of Issues on Appeal" was filed on April 15, within 30 days of the conviction. On September 3, Appellant filed a "Notice of Appeal Supplemental Statement of Issues on Appeal" and, later that same day, he filed a "Notice of Appeals Amended Statement of Issues on Appeal." The only timely notice of appeal is the first. See Rule 18, SCRMC ("....Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered...."). In that Notice of Appeal, the issue is framed thusly:

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"The Magistrate Judge erred in failing to vacate the bench warrant that was issued for the purpose of bringing the Defendant before the Court in a criminal contempt of court proceeding, in violation of the Defendant's procedural Due process rights under the Fourteenth Amendment, compulsory process rights under the Sixth Amendment, and current South Carolina procedure, which requires that a criminal contempt of court proceeding be properly noticed by a rule to show cause supported by affidavits or verified pleadings alleging sufficient facts."

Thus, the sole issue related to the issuance of the bench warrant in this case that has been properly preserved and presented by Appellant to this Court is whether contempt proceedings can only be instituted through the issuance of a Rule to Show Cause. While Appellant attacked the ability of the state to use of a bench warrant instead of a rule to show cause, he did not either in the trial court or in his notice of appeal to this Court attack the specific bench warrant in this case. In other words, he did not challenge the circumstances under which it was issued – e.g., whether there were emergency circumstances or whether it was supported by an affidavit, verified pleadings or the functional equivalent.

II.

This Court may have overlooked the fact that, while an appellate court may affirm for any ground supported by the record, it may only reverse a lower court's ruling on grounds preserved by an appellant. See Rule 209(h), SCACR (stating that the appellate court will not consider any fact which does not appear in the Record on Appeal); *State v. Dunbar*, 356 S.C. 138, 142-43, 587 S.E.2d 691, 693 (2003) (finding it was error for Court of Appeals to *sua sponte* address an issue which was not properly preserved for appellate review). Appellant failed to set forth either before the Magistrate or in his Motion to this Court specific circumstances which constituted a denial of due process from the issuance of the bench warrant in his case. In fact, there is an absence of any grounds raised by Appellant to support his contention that he was

denied due process by issuance of the bench warrant. It is well-settled that a circuit court, acting as the appellate court, reviews matters raised in the notice of appeal. S.C. Code Ann. §18-3-70 ("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...."); see *State v. Branham*, 392 S.C. 225, 228, 708 S.E.2d 806, 808 (Ct. App. 2011) ("The appeal must be heard by the circuit court upon the grounds of exceptions made and the record on appeal, without the examination of witnesses"). "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). An issue is not preserved when one ground is raised to the trial court and another ground is raised on appeal. *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005). "Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal." *In re Care & Treatment of Corley*, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005). In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The circuit court is bound by the magistrate court's findings of fact if any evidence in the record reasonably supports them. *City of Greer v. Humble*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013). Based upon the foregoing, it was improper for this Court to consider circumstances presented in the record, which were not properly raised by Appellant on appeal, and to overturn Appellant's contempt citation and sentence on these grounds. *State v. Dunbar, supra*.

III.

In issuing its order, this Court has essentially ruled that – except for an emergency situation with protections for a speedy hearing – a proceeding for constructive contempt can only

be initiated through a rule to show cause. It apparently finds that *only* in emergency situations may a bench warrant may be used, but in such cases there must be a supporting affidavit. This Court then concluded that no emergency situation existed in this case because there was no evidence of such.

IV.

This Court may have overlooked the fact that – because Appellant neither properly preserved nor presented any challenge to defects in the specific bench warrant in this case – once it concluded that a bench warrant may be used, it should have stopped its analysis and affirmed the Magistrate's ruling.

A.

Appellant *actually appeared* before the Magistrate to challenge the availability of bench warrants as a mechanism to initiate constructive contempt proceedings and defend himself against the contempt charge. He *never* challenged the circumstances surrounding the specific bench warrant issued in this case. No evidence was *ever* presented as to the facts surrounding the application for or issuance of the bench warrant. No ruling on the correctness of the specific bench warrant in this case was *ever* made by the Magistrate. And, in his notice of appeal, Appellant *never* challenged the specific bench warrant in this case.

The failure to initiate constructive contempt proceedings correctly goes to personal jurisdiction and may be waived. In *State v. Nathan*, 27 S.E. at 57, the Court held that a party may ~~waive the requirement that whatever legal process utilized to initiate contempt proceedings be~~ supported by an affidavit or its functional equivalent by responding or failing to object to the absence of such. In *Ex parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009), constructive contempt proceedings were initiated with an "oral subpoena" issued by the judge in

court rather than an affidavit. The Court of Appeals held that a defendant may waive any challenge he has to personal jurisdiction in a constructive contempt case by failing to object to a lack of such and appearing to defend his case. *Bakala v. Bakala*, 352 S.C. 612, 629, 576 S.E.2d 156, 165 (2003), was a constructive contempt proceeding commenced by a rule to show cause with improper service. The Court held that Bakala's objection to personal jurisdiction was waived because he never raised the issue.

By his appearance before the Magistrate and failure to challenge the sufficiency of the specific bench warrant issued in this case, he has waived the right to challenge such on appeal. *Id.*; see *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (reversing Court of Appeals, stating it is error for an appellate court to address issues not properly preserved in the trial court); *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001) ("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"). And, because this issue was never raised below and not preserved for appeal, it cannot serve as a ground upon which to reverse the lower court's rulings. See S.C. Code Ann. §18-3-70; *State v. Baccus*, *supra*; *State v. Freiburger*, *supra*; *State v. Henderson*, *supra*; *State v. Branham*, *supra*; *State v. Freiburger*, *supra*; *In re Care & Treatment of Corley*, *supra*.

B.

In addition to Appellant's waiver of any challenge to the sufficiency of the bench warrant, Appellant failed to include a copy of the bench warrant and any evidence pertaining to the circumstances of its issuance in the record. Therefore, it was error for this Court to consider such.

In its Order, this Court held that, even if a bench warrant was allowable to initiate the

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contempt proceedings against Appellant, fundamental due process required the allegations were supported, at a minimum, by oath or affirmation, and that safeguards for a prompt hearing were needed to be in place. Even while noting that a copy of the bench warrant was not in the file and that nothing in the file indicated a written document, *i.e.*, an affidavit, petition, motion, or sworn testimony, was presented to the Magistrate supporting the issuance of the bench warrant, this Court found the bench warrant did not set forth with specificity the date, time, and place of the allegedly contemptuous conduct."

In considering and reaching a conclusion as to the legal sufficiency of the bench warrant, this Court overlooked that the burden of presenting a sufficient record on appeal rested on Appellant and the omission of the bench warrant and any evidence related to its issuance from the magistrate's return prohibited this Court from engaging in an evaluation of its legal sufficiency. *See, e.g.*, S.C. Code Ann. §18-3-70 (providing the circuit court must review criminal appeals from the magistrate's court based solely upon the record and exceptions made); *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005) (finding appellant has the burden of presenting a sufficient record to allow review); *State v. Brown*, 358 S.C. 382, 596 S.E.2d 39 (2004) (error for Court of Appeals to consider affidavits not included in the magistrate's return); *State v. Osborne*, 335 S.C. 172, 176 n. 6, 516 S.E.2d 201, 203 n. 6 (1999) (holding that it was error for the Court of Appeals to rely on the recitation of facts contained in an appellate order instead of restricting itself to the facts contained in the magistrate's return); ~~*South Carolina State Highway Dept. v. Meredith*, 241 S.C. 306, 311, 128~~
S.E.2d 179, 181 (1962) ("The transcript of record is the source of our information as to what occurred in the trial of the case below; its very object is to inform the Court authoritatively of the legal questions contested below and of the facts pertaining thereto"); *Rogers v. State*, 358 S.C.

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266, 270, 594 S.E.2d 278, 280 (Ct. App. 2004) (“[T]he circuit court, sitting in its appellate capacity, may not engage in fact finding”); *State v. Brown*, 358 S.C. 382, 387-88, 596 S.E.2d 39, 41 (2004) (finding error when an appellate court considered facts not included in the magistrate's return).

V.

This Court may have overlooked the fact that it was improper for this Court to consider circumstances presented in the record, which were not properly raised by Appellant on appeal, and to overturn Appellant's contempt citation and sentence on these grounds.

Due process simply requires that a litigant both be placed on notice of the charge against him and be afforded an opportunity to be heard before the court rules on whether he is guilty of contempt. The bench warrant was issued for Appellant based upon his violation of the “no contact with the victim” condition of the bond on his CDV charge. At the same time arrest warrants were issued for him for crimes arising out of the same course of conduct. The bench warrant put Appellant on notice of the basis of the contempt charge, and he was given a hearing at which he had a right to counsel, and an opportunity to defend himself and to call witnesses on his own behalf. This was sufficient to meet the due process requirements for the criminal contempt charge. *See In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) (“Procedural due process requirements are not technical; no particular form of procedure is necessary.... [A]t a minimum certain elements must be present. These include (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses”); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (stating “[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review”); *cf. Zaman v. S.C.*

State Bd. of Med. Exam'rs, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("[o]ne cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it").

VI.

This Court may have overlooked the opinions cited by the prosecution that provide that a rule to show cause may be used to initiate constructive contempt proceedings, but does not exclude the use of other legal process. See *State v. Johnson*, 249 S.C. 1, 7-8, 152 S.E.2d 669, 672-73 (1967), *overruled on other grounds by State v. Kennerly*, 337 S.C. 617, 524 S.E.2d 837 (1999) (overruled *Johnson* to extent *Johnson* holds that tampering with jury pool is constructive contempt rather than direct contempt); *State v. Nathans*, 49 S.C. 199, 27 S.E. 52, 57 (1897). See also *Op. S.C. Atty. Gen.*, filed October 21, 1996 (1996 WL 679497)¹ ("Where a defendant fails to perform a condition required of him by a bond, the bonding judge may bring the defendant back before him for further action. Such is typically done by virtue of a bench warrant"); *Op. S.C. Atty. Gen.*, filed December 6, 2004 (2004 WL 3058232). Such other process necessarily includes attachments, verified petitions, and bench warrants supported by an affidavit.²

VII.

This Court may have misapprehended or misapplied the requirements of due process. Due process requires that a litigant both be placed on notice of the charge against him and be

¹ While an attorney general opinion is not binding precedent, it is recognized as persuasive authority on how appellate courts may rule if presented with the issue. See *Anders v. South Carolina Parole & Community Corrections Bd.*, 279 S.C. 206, 305 S.E.2d 229 (1983).

² As noted earlier, the question of whether the bench warrant in this case was or was not supported by an affidavit or its functional equivalent was never presented by Appellant. (Nor did Appellant ever argue that emergency situation did not exist.) Thus, no evidence on this point was ever introduced, no arguments were ever made, the Magistrate did not rule upon such, and such was not covered by the Notice of Appeal filed by Appellant. Therefore, it is not properly before this Court.

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afforded an opportunity to be heard before the court rules on whether he is guilty of contempt.

The general rule as to the due process requirements to be afforded one cited for contempt is best stated in *In re Oliver*, 333 U.S. 257, 275 (1948):

'Except for a narrowly limited category of contempts, due process of law as explained in the *Cooke* Case (*Cooke v. U.S.*, 267 U.S. 517, 45 S.Ct. 390, 69 L. Ed. 767), requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court in the presence of the judge, which disturbs the court's business, where all the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate publishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the *Cooke* Case, that the accused be accorded notice and a fair hearing as above set out.'

Accord International Union, United Mine Workers of America v. Bagwell, 512 U.S. at 826-27

(because criminal contempt is a crime, criminal penalties cannot be imposed where defendant has not been afforded protections the Constitution requires in criminal proceedings).

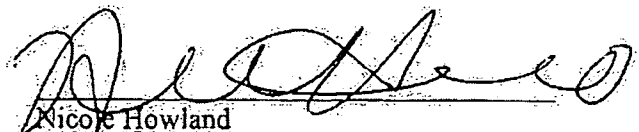
Here, a bench warrant was issued for Appellant based upon his violation of the "no contact with the victim" condition of the bond on his CDV charge. At the same time, arrest warrants were issued for him for crimes arising out of the same course of conduct. The bench warrant issued by the Magistrate put Appellant on notice of the basis of the contempt charge, and he was given a hearing at which he had both a right to counsel (he was in fact represented) and an opportunity to defend himself, including calling witnesses on his own behalf. This was sufficient to meet the due process requirements for the criminal contempt charge. *See In re Vora*,

354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003) ("Procedural due process requirements are not technical; no particular form of procedure is necessary.... [A]t a minimum certain elements must be present. These include (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses"); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (stating "[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review"); cf. *Zaman v. S.C. State Bd. of Med. Exam'rs*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) ("[o]ne cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it").

Much like an arrest warrant – which is also issued *ex parte*, without a full evidentiary, adversarial hearing – the proceedings in this case were sufficient for due process purposes.

For the foregoing reasons, Respondent requests that this Court grant the Petition for Rehearing, reconsider its Order, and affirm the rulings of the lower court.

Respectfully Submitted,



Nicole Howland
Attorney for Respondent
521 Gibson Road
Lexington, South Carolina 29073
803-785-2466

October 17, 2014

BETH A. GARRIGS
CLERK OF COURT
LEXINGTON

2014 OCT 17 P 1:35

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Page | 10

ORIGINAL

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON ELEVENTH JUDICIAL CIRCUIT
 2014 OCT 22 P 3 4:30
 APPEAL FROM MAGISTRATE COURT

v.

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

Reply to Respondent's Petition for Rehearing

QUENTIN RAYMAR

APPELLANT.

Case No.: 2014-CP-32-01449

Warrant No.: 2013A3210202227

TO: The Honorable William P. Keesley, Common Pleas Administrative Judge

The Appellant, Quentin Raymar Price, requests that this Court deny the Respondent's Petition for Rehearing based on the following reasons:

- I. The statute of limitations set forth in Rule 59(e), SCRCP, bars the Respondent's request for this Court to rehear the Order on Appeal because the Respondent failed to file and serve a Motion to Alter or Amend Judgment within "10 days after receipt of written notice of the entry of the order." *See* S.C. Code § 18-3-10 (2014); *see also* Rule 81, SCRCP; *Cf.* Rule 203(b)(1), SCACR.
- II. Respondent's Petition for Rehearing is improper because the South Carolina Rules of Civil Procedure apply in criminal appeals from Magistrate's Court, not the South Carolina Appellate Court Rules. *See* Rules 203(b)(1) and 221(a), SCACR.
- III. Respondent's arguments raised in the Petition for Rehearing are untimely, unpreserved, and should not be considered by this Court, as those arguments were not presented to the Magistrate at the hearing or to this Court until after the oral argument on appeal.

PROCEDURAL HISTORY

On November 19, 2013, Quentin Raymar Price was arrested on warrant number 2013A3210202227, and charged with Criminal Domestic Violence, First Offense. Price's bond, which was set by the Honorable Brian Jeffcoat on November 20, 2013, included a condition of

no contact with the alleged victim, Camisha Mims. On March 27, 2014, while incarcerated in the Lexington County Detention Center (LCDC), serving a thirty (30) day sentence on an unrelated offense, Price was served with Bench Warrant 2013A3210202227, signed by the Honorable Scott Whittle, Presiding Magistrate Judge of the Swansea Magistrate Court. The basis for the issuance of the Bench Warrant was an alleged violation of the conditions of Price's bond.

On Monday, April 7, 2014, the issue of the alleged bond violation was brought before the Honorable Gary Reinhart in a contempt of court proceeding. Defense counsel moved to vacate the bench warrant on the grounds that the issuance of a bench warrant for the purpose of bringing Price before the court in a criminal contempt proceeding for conduct that allegedly occurred outside the presence of the Court violated Price's procedural due process rights under the Fourteenth Amendment, compulsory process rights under the Sixth Amendment, and current South Carolina procedure, which requires that a criminal contempt of court proceeding be properly noticed by a rule to show cause supported by affidavits or verified pleadings alleging sufficient facts. The motion was denied, and the contempt of court hearing was delayed until April 9, 2014. Price was found in contempt of court and subsequently appealed.

The Notice of Appeal was filed on April 15, 2014, and the Magistrate's return was filed on July 10, 2014. Oral arguments were heard by the Honorable William P. Keesley on September 4, 2014. After the close of oral arguments, counsel for the Respondent asked the Court if she could ask a question, and, after being permitted to go back on the record by Judge Keesley, requested to file a supplemental memorandum addressing the issue of due process. Counsel for Appellant deferred to the Court's discretion on the matter, and the Respondent was granted ten (10) days to submit a supplemental memorandum on the issue of due process. No

other issues were raised as the basis for the supplemental memorandum at that time.

On September 12, 2014, Respondent filed a Supplemental Brief after this Court heard oral argument on this appeal, and the Appellant filed the Reply to the Supplemental brief on September 24, 2014. This Court filed the Order on Appeal on October 6, 2014 (signed and dated September 30, 2014). Respondent filed the Petition for Rehearing on October 17, 2014.

1. **The statute of limitations set forth in Rule 59(e), SCRCP, bars the Respondent's request for this Court to rehear the Order on Appeal because the Respondent failed to file and serve a Motion to Alter or Amend Judgment within "10 days after receipt of written notice of the entry of the order." See S.C. Code § 18-3-10 (2014); see also Rule 81, SCRCP; Cf. Rule 203(b)(1), SCACR.**

Section 18-3-10 of the South Carolina Code of Laws provides, "Every person convicted before a magistrate of any offense whatever and sentenced may appeal the sentence to the Court of Common Pleas for the County." Rule 81 of the South Carolina Rules of Civil Procedure states:

These rules, or any of them, *shall apply to every trial court of civil jurisdiction within this state*, within the limits of the jurisdiction and powers of the court provided by law, and *the procedure therein shall conform to these rules insofar as practicable*. They shall apply insofar as practicable in magistrate's courts, probate courts, and family courts to the extent they are not inconsistent with the statutes and rules governing those courts. In any case where no provision is made by statute or these Rules, the procedure shall be according to the practice as it has heretofore existed in the courts of this State.

Rule 81, SCRCP (emphasis added).

In this case, the Appellant filed an appeal from the Lexington County Magistrate's Court, which gave this Court jurisdiction to hear the appeal in the Lexington County Court of Common Pleas. See S.C. Code § 18-3-10 (2014). As a trial court of civil jurisdiction, this Court shall apply the Rules of Civil Procedure and "the procedure therein shall conform to these rules insofar as practicable." Rule 81, SCRCP.

Rule 59(e), SCRCP, specifically instructs that a party in the Court of Common Pleas shall serve a motion to alter or amend judgment "not later than 10 days after receipt of written notice of the entry of the order." The Court filed the Order on Appeal on October 6, 2014 (signed and dated September 30, 2014), and the Respondent filed the Petition for Rehearing on October 17, 2014. Accordingly, the statute of limitations set forth in Rule 59(e), SCRCP, bars the Respondent's request for this Court to rehear the Order on Appeal. *Cf.* Rule 203(b)(1), SCACR.

II. Respondent's Petition for Rehearing is improper because the South Carolina Rules of Civil Procedure apply in criminal appeals from Magistrate's Court, not the South Carolina Appellate Court Rules. See Rules 203(b)(1) and 221(a), SCACR.

Rule 203(b)(1) of the South Carolina Appellate Court Rules provides, in pertinent part, "Appeals From the Court of Common Pleas . . . When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." In contrast, Rule 221(a), SCACR, states, in pertinent part, "Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court."

Here, after reviewing Rules 203(b)(1) and 221(a), SCACR, the Rules of Civil Procedure unequivocally apply in criminal appeals from Magistrate's Court, not the Appellate Court Rules. Therefore, Respondent's Petition for Rehearing is improper. *See* S.C. Code § 18-3-10 (2014).

III. Respondent's arguments raised in the Petition for Rehearing are untimely, unpreserved, and should not be considered by this Court, as those arguments were not presented to the Magistrate at the hearing or to this Court until after the oral argument on appeal.

Courts sitting as Courts of Appeals are limited to addressing issues raised at trial and argued in initial briefs. *State v. Wakefield*, 323 S.C. 189, 191, 473 S.E.2d 831, 832 (Ct. App.

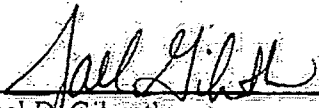
1997). New arguments may not be raised for the first time on appeal. *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005). Issues and arguments not raised at the trial court level, in initial appellate briefs, or during oral arguments are not properly preserved for appeal. *See Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285-86, 543 S.E.2d 563, 566 (2001). The unfair prejudice of permitting a party to advance new arguments as to an issue that was neither raised at the trial court level nor included in initial briefs is particularly high in this case because oral arguments have already been heard.

In this case, although the issues of magistrate authority and the sufficiency of a bench warrant were brought before the court by Appellant in the initial Appellant's brief and during oral arguments, these matters, along with the new issue raised as to personal jurisdiction, were not included within the scope of the supplemental brief authorized by the Court. Respondent's failure to address these issues prior to filing the supplemental brief functions as a procedural bar to their introduction now. Therefore, the Respondent's arguments raised in the Supplemental Brief and the Petition for Rehearing are untimely, unpreserved, and should not be considered on appeal, as those arguments were not presented to the Magistrate at the hearing or to this Court until after the oral argument on appeal.

CONCLUSION

Based on the foregoing reasons, this Court should deny the Respondent's Petition for Rehearing.

Respectfully Submitted,



Jael D. Gilreath
407 1/2 W. Main St.
Lexington, SC 29072
(803) 785-8873
ATTORNEY FOR APPELLANT

Lexington, South Carolina

Date: October 22, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM LEXINGTON COUNTY
Magistrate Court

The Honorable Gary Reinhart, Chief Magistrate Judge

Case No. 2014-CP-32-01449
Warrant No. 2013A3210202227

The State,

Respondent,

v.

Quentin Raymar Price

Appellant,

FILED

2014 OCT 22 P 3:49

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

PROOF OF SERVICE

I certify that I have served the Appellant's Reply to the Respondent's Petition for Rehearing on Nicole Howland, by depositing a copy of it in the United States Mail, postage prepaid, on October 22, 2014, addressed to Nicole Howland, Criminal Domestic Violence Prosecutor, Lexington County Sheriff's Department, 521 Gibson Road, Lexington, SC 29072.



Jael D. Gilreath
Assistant Public Defender
407 ½ W. Main Street
Lexington, SC 29072

Date: 10/22/2014

OFFICE OF THE PUBLIC DEFENDER

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

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

ROBERT M. MADSEN
Circuit Public Defender

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

October 22, 2014

The Honorable William P. Keesley
Eleventh Judicial Circuit
Lexington County Court of Common Pleas
205 East Main Street
Lexington, SC 29072

Re: **The State vs. Quentin Raymar Price**
Case No.: 2014-CP-32-01449
Warrant No.: 2013A3210202227

Dear Judge Keesley:

I have enclosed the Appellant's Reply to the Respondent's Petition for Rehearing. I am, by copy of this letter, serving a copy of this Notice of Appeal Criminal Domestic Violence Prosecutor Nicole Howland, together with my Certificate of Service. The Certificate of Service is enclosed.

Thank you for your assistance in this matter.

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2014 OCT 22 P 3:48

BEITH A. CARHIGG
CLERK OF COURT
LEXINGTON, SC

Sincerely,



Jacl D. Gilreath
Assistant Public Defender
407 ½ West Main Street
Lexington, SC 29072

Enclosures

cc: Nicole Howland, Criminal Domestic Violence Prosecutor
Lexington County Sheriff's Department
521 Gibson Road
Lexington, SC 29072



ALAN WILSON
ATTORNEY GENERAL

April 3, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Quentin Price
Appellate Case No: 2014-002208

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss Appeal or, Alternatively, to Remand to Circuit Court Ruling on Pending Petition along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: Assistant Public Defender Jael D. Gilreath
Ms. Trisha Allen

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

Appellate Case No. 2014-002208

THE STATE,

Respondent,

vs.

QUENTIN RAYMAR PRICE,

Appellant.

**MOTION TO DISMISS APPEAL OR, ALTERNATIVELY, TO REMAND TO CIRCUIT
COURT FOR RULING ON PENDING PETITION**

Respondent, by and through undersigned counsel, would respectfully show unto this
Court:

1. Appellant was charged with a magistrate's court offense of criminal domestic violence, first offense, and was released on bail subject to the condition that Appellant refrains from contact with the victim. A bench warrant was issued and hearing held on the issue of Appellant's contempt of court for violating conditions of bail. Appellant moved to vacate the bench warrant which was denied by the magistrate. Appellant also objected to the procedural method used to initiate the contempt proceedings but the objections were overruled. The magistrate found Appellant in contempt of court for violating conditions of bail and imposed a criminal sentence.

2. Appellant appealed to the Lexington County Court of Common Pleas. A hearing

respecting the appeal was convened before the Honorable William P. Keesley. Judge Keesley subsequently issued an order finding that magistrates have the power to cite and punish a defendant for constructive contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of summary courts but that use of a bench warrant in this particular case was improper because exigent circumstances were not established to support an immediate arrest. Judge Keesley overturned the finding of contempt and vacated the sentence finding the procedural framework and opportunity to be heard was inadequate in this case. Judge Keesley's order was dated September 30, 2014 and judgement was entered on October 7, 2014. (See attached Order on Appeal with Form 4 Judgement in a Civil Case indicating the judgment was entered October 7, 2014). The information on the judgment form indicates that a copy of the order was mailed by the Lexington County Clerk of Court to counsel for the parties on October 7, 2014. Id.

3. Appellant filed and served Notice of Appeal from Judge Keesley's order on October 14, 2014. On October 17, 2014, Respondent filed and served a Petition for Rehearing in the Lexington County Court of Common Pleas asking Judge Keesley to reconsider his order, alter or amend the findings, and affirm the finding of contempt. Appellant submitted a Reply to the Petition on October 22, 2014. Respondent's petition to reconsider the order on appeal is still pending in the circuit court for resolution.

4. Respondent herein moves this Court to dismiss Appellant's appeal or, alternatively, to ~~hold Appellant's appeal in abeyance and to remand the matter to the Lexington County Court of~~ Common Pleas for a ruling on the outstanding and timely request to reconsider the order on appeal. Rule 59, SCRCF, provides that a motion to alter or amend the judgment must be served no "later than ten (10) days after the receipt of written notice of the entry of the order." Rule 59(b),

SCRCP (emphasis added); see also Rule 29 (a), SCRCrimP ("In cases involving appeals from convictions in magistrate's or municipal court, post-trial motions shall be made within ten (10) days after receipt of written notice of entry of the order or judgment disposing of the appeal.") (Emphasis added). Notice of entry of the order was forwarded by the Lexington County Clerk of Court to the parties on October 7, 2014. (See judgment form attached to order). The motion was timely filed and served by Respondent on October 17, 2014.

5. When a timely post-trial motion is made, the time for appeal for all parties is stayed and runs from receipt of written notice of entry of the order granting or denying the motion. See Rule 203 (b) (1), SCACR; State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000) (a timely Rule 59 motion stays the time to appeal for all parties until the motion is resolved); Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986) (service and filing of the notice of appeal before the filing of a timely post-trial motion under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motion). As in this case, where a timely post-trial motion is made but is filed subsequent to the filing of a notice of appeal, the appeal must be dismissed without prejudice, and the case remanded to the lower court to consider the post-trial motion. Wicker v. Anderson County Council, 289 S.C. 479, 347 S.E.2d 96 (1986). Any party may appeal after the ruling on the motion pending in the circuit court. Rule 203 (b) (1), SCACR.

6. Additionally, once an appeal is properly before the circuit court from magistrate's court and the circuit court renders its final judgment, the right to appellate review thereafter is controlled by statute. ~~Only an aggrieved party may appeal the circuit court's order. See Rule 201 (b),~~ SCACR; S.C. Code Ann. §18-1-30 (2014); S.C. Code § 18-9-10 (2014); State v. Gregorie, 339 S.C. 2, 528 S.E.2d 77 (2000). In State v. Gregorie, our supreme court opined that a criminal defendant may only appeal as an aggrieved party from a circuit court order vacating a magistrate's

court conviction and sentence when the case is remanded by the circuit court for a new trial and the facts of the particular case reflect that the new trial would violate the defendant's right against double jeopardy because the State did not appeal the circuit court's finding that the State failed to meet its burden of proof. The order appealed by Appellant overturns the finding of contempt entered against Appellant and vacates the sentence. Appellant is not an aggrieved party within the meaning of the law.

7. Respondent submits, first, that because the finding of criminal contempt was overturned and Appellant's sentence was vacated without ordering a new contempt proceeding, Appellant is not aggrieved and his appeal is not proper. This Court must dismiss Appellant's appeal because it was initiated by a party who is not aggrieved as designated by law. Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970).¹

8. Alternatively and as set forth herein, Respondent submits that this Court must dismiss Appellant's appeal without prejudice because the time for appeal for all parties was stayed when Respondent timely made the motion or petition to reconsider, alter, or amend the order on appeal and the petition is still pending before the circuit court for resolution. Rule 203(b)(1), SCACR; Rule 59, SCRCP; Rule 29(a), SCRCrimP; Wicker v. Anderson County Council, 289 S.C. 479, 347 S.E.2d 96 (1986).

9. Alternatively, if this Court prefers not to dismiss the appeal at this time, Respondent moves this Court to hold Appellant's appeal in abeyance and to remand the case to the circuit court for a ruling on the pending post-trial petition to reconsider, alter or amend the order on appeal. The circuit court's ruling on the motion is necessary for finality of the judgment.

¹ On information and belief, Appellant has also entered a guilty plea to the criminal domestic violence charge for which he was released on bail.

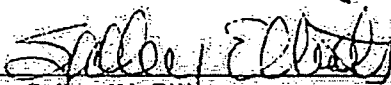
WHEREFORE, Respondent moves this Court to dismiss Appellant's appeal or, alternatively, to remand the case to the circuit court for resolution of the pending petition to reconsider, alter or amend the order on appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

NICOLE HOWLAND
CDV Special Prosecutor
Lexington County Sheriff's Department

BY: 
Salley W. Elliott
Office of the Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 3, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2014-002208

THE STATE,

Respondent,

vs.

QUENTIN RAYMAR PRICE,

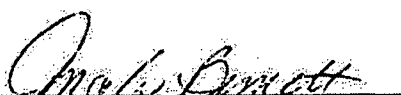
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal or, Alternatively, to Remand to Circuit Court Ruling on Pending Petition on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Jacl D. Gilreath, Esquire, 407 ½ West Main Street, Lexington, South Carolina 29072.

I further certify that all parties required by Rule to be served have been served.

This 3rd day of April, 2015.


ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ORIGINAL

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA,)
Respondent,)
-vs-) ORDER ON APPEAL
QUENTIN PRICE,) Case Number: 2014-CP-32-01449
Appellant - Defendant.)

Will #1

This is an appeal from the Magistrate's Court wherein the appellant-defendant challenges a citation for contempt of court, the procedure whereby he was cited and tried for contempt, the finding of contempt, and the imposition of a criminal sentence.¹ The court determines: 1) that Magistrates have the power to cite and punish a defendant for constructive contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of the summary courts; 2) that the use of a bench warrant in this instance was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant; and, 3) that the lack of a proper procedural framework and opportunity to be heard requires this court to reverse the finding of contempt of court and the sentence imposed, based on due process concerns.²

¹ In his Supplemental Statement of Issues on Appeal, the appellant sets out six specific assertions of error. Assertions 3 and 4 are challenges involving the conduct of the trial. Since the court is vacating the finding of contempt, it is not necessary to rule on those assertions other than to state, had the reversal not been entered on other grounds, the case would have to be reversed and remanded to allow the appellant to develop the record more fully.

² The court has concerns about whether a harmless error analysis should be conducted, since the defendant was in jail on other charges when served with the bench warrant, ultimately was given notice when brought before the Magistrate (with counsel), and was given two days to prepare to address the allegation of contempt. Because of the court's determination that fundamental due process was violated, however, the court has determined that a harmless error analysis is not proper.

FACTUAL BACKGROUND

The defendant was charged with Criminal Domestic Violence, First Offense, and he was released on bail on November 30, 2013. The offense is not a General Sessions offense. His release was subject to the condition that he was to have no contact with the purported victim. According to the State in its oral argument, he violated that condition earlier and was punished for contempt. On the previous occasion, he had been found hiding in the victim's shower and was found to be in contempt of court. It is not clear to this court what charges the defendant picked up after the arrest for the instant CDV 1st.

WAL #2
As to the instant case, the State went to a Magistrate and obtained a bench warrant for the defendant's arrest based on an oral statement that the defendant had violated the conditions of his bond. At the time of the service of the bench warrant in this case on March 27, 2014, the defendant was incarcerated on unrelated charges. He was taken before another Magistrate, the Chief Magistrate, on April 7, 2014, pursuant to the bench warrant and treated as being charged with contempt of court. The defense attorney moved to vacate the bench warrant and objected to the consideration of the charge of contempt of court based on various constitutional and procedural grounds. She demanded that any contempt citation be supported by a Rule to Show Cause, issued pursuant to pleadings and/or affidavit, with proper notice and an opportunity to be heard.

Upon hearing that the defense attorney needed more time to prepare to address the charges, the Magistrate delayed the proceedings for an additional two days, asking her if the amount of time was sufficient. The parties appeared for a hearing on the issue of contempt of court. The transcripts of both proceedings are in the file, as well as the Return of the Magistrate. The defendant's motions to vacate the bench warrant were

denied, and the objections to the procedural method of citing the defendant for contempt of court were overruled. The Magistrate found the defendant to be in contempt and sentenced him to serve 30 days in jail. There is a dispute as to whether the Magistrate gave the defendant proper credit for time served, but this court finds no error in that regard. This appeal followed.

There is nothing in the file indicating that a written document was presented to the issuing Magistrate to request the bench warrant or to seek revocation of bond. There is not an affidavit, petition, motion, or any sworn testimony in this file reflecting that it was presented to the issuing Magistrate in order to obtain the bench warrant. It is undisputed that this alleged misconduct took place outside the Magistrate's presence. Based on the file, it appears that the issuing Magistrate was contacted and advised orally that the defendant had violated a no-contact order in his bond. The Magistrate issued a bench warrant for the defendant's arrest. A copy of the bench warrant is not in the file, so the court is of the opinion that the bench warrant does not set forth with specificity the date, time, and place of the allegedly contemptuous conduct. Nonetheless, it appears that defense counsel knew essential aspects of the alleged contempt, including the time and place of the alleged violation, prior to the hearing.

THE POWER TO HOLD SOMEONE IN CONTEMPT OF COURT

Several principles seem to be in play. The State's basic argument is that courts have an inherent power to enforce their orders, and the inherent powers of a Magistrate include the power to punish for constructive contempt. The appellant's position is that fundamental due process requires notice and an opportunity to be heard before a person is

incarcerated. The court agrees with both propositions. However, the court does not agree with all the interpretations that the parties advance from those principles.

The Criminal Trial Benchbook provided to all circuit judges in South Carolina contains the following section dealing with contempt of court.

CONTEMPT POWER

The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings. Direct contempt occurs when a person's conduct interferes with judicial proceedings, when a person exhibits disrespect for the court, or when one hampers judicial proceedings. State v. Havelka, 285 S.C. 388, 330 S.E.2d 288 (1985) (the trial court's finding of contempt for inappropriate dress was reversed when the defendant was not disruptive and had no notice that the attire was inappropriate).

Constructive contempt occurs outside the court's presence or hearing but nevertheless tends to impede or prevent the due administration of justice. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).

The court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to the law. The jury pool constitutes an integral constituent part of the court and contemptuous acts within their sight or hearing will constitute direct contempt. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).

The appellant argues that a South Carolina Magistrate cannot punish for contempt of court, except for direct contempt. He cites various cases, including State v. Harper (376 S.E. 2d 272, 297 S.C. 257 (1989), S.C. Code Ann. §22-3-950, as well as opinions of the South Carolina Attorney General. While the court is impressed with the extent of authority and the content of it, the court disagrees with the assertion that Magistrates have no power to punish for constructive contempt of court.

State v. Harper involved a Magistrate who cited an attorney for multiple counts of contempt of court when the attorney stood to raise objections to the jury selection process in court. The opinion states, "South Carolina Code Annotated Section 22-3-950 (1976) sets forth the magistrate's power to punish for contempt." This court believes that the defendant is reading that sentence too broadly. It does not state that the statute is the only method by which a Magistrate may hold someone in contempt of court.

The language of §22-3-950 has been modified somewhat concerning the penalty for contempt since Harper was decided, but the language that is critical to the analysis relevant in this appeal has not changed.

SECTION 22-3-950. Power to punish for contempt.

Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

The Supreme Court in Harper was not dealing with a constructive contempt situation, so the language of the opinion and its reference to the statute should be read in that context. The Supreme Court was acknowledging a statute that was applicable to the situation before it. Since it was not considering constructive contempt, there was no need for it to determine that a Magistrate lacks contempt powers for conduct outside a Magistrate's observation.

The appellant also cites the Fourth Circuit Court of Appeals in Dean v. Shirer, 547 F.2d 227 (4th Cir. 1976), for the proposition that a Magistrate's contempt powers are

limited to instances where the contemptuous conduct occurs in the presence of the court. The Fourth Circuit was dealing with a summary judgment ruling in a civil suit arising from alleged state action in finding a person in contempt. The quotation cited in the appellant's brief is correct in stating that the contempt power under the statute (now §22-3-950) is limited to events occurring in the Magistrate's presence (or direct contempt).

Dean is not binding on this court, but even if it were, it does not definitively state that a Magistrate lacks inherent contempt powers. Again, the federal court was dealing with whether there was a clear lack of jurisdiction in a case alleging misconduct by a judge, and the federal court found no clear absence of jurisdiction where contemptuous events occurred outside the municipal judge's presence.

It is this court's view that the cases and opinions cited by the appellant do not actually state that South Carolina Magistrates lack jurisdiction in situations of constructive contempt. They may hint at it. It may be in dictum. But, it is this court's view that those cases either were dealing with situations of direct contempt, so the language must be viewed in that context, or they were dealing with tangential issues.

In a well-written opinion cited by the appellant, the office of the South Carolina Attorney General responded to a request from South Carolina Court Administration [To: Neal Forney, 1978 S.C. Op. Atty. Gen. 214 (1978)]. The question posed was, "Is the power of the magistrate to punish for contempt of court limited to trial situations or does it include such activities as bond proceedings, preliminary examinations, and warrant issuing proceedings?" The answer given by the Assistant Attorney General seems to this court to construe the question as being one that deals with contemptuous behavior committed in the Magistrate's presence, but not in an actual trial. So, the conclusion

reached was stated, as follows: "Pursuant to Section 22-3-950, magistrates may punish all behavior within the definition of contemptuous done in their presence while performing the duties of their office as contempt of court. This would include contemptuous actions during bond proceedings, preliminary examinations, and warrant issuing proceedings."

This court agrees with that statement; but, that conclusion does not state that a Magistrate lacks the ability to punish for contempt committed outside the judge's presence.

That Attorney General's opinion includes an excellent explanation of some issues currently before this court, including the following language:

In your question you asked whether the power of a magistrate to punish for contempt of court is limited to trial situations or does it include other activities, such as bond proceedings, preliminary examinations, and warrant issuing proceedings. A review of early court decisions appears to indicate wide authority. In Lining v. Bentham, a Justice of the Peace, 2 S.C.L. (2Bay) 1, (1796), a justice of the peace had ordered a man imprisoned for accusing the justice of gross impartiality [sic] and abuse of power during a bail proceeding. The South Carolina Constitutional Court of Appeals affirmed the action and referenced "... the power of a magistrate to commit for insults or contempts ... offered in the presence of the court. The Court by dictum stated however that as to any contempts offered out of the presence of the court, such 'ought to' be prosecuted by indictments. (More recent cases reference the fact that for contempts committed out of the presence of the court, 'constructive contempt', such should be initiated pursuant to a rule to show cause. State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956); State v. Johnson, 249 S.C. 1, 152 S.E.2d 669 (1967).) In State v. Johnson, 3 S.C.L. (1 Brev.) 155 (1802) a justice of the peace had ordered a particular woman imprisoned for an unspecified period of time for coming to his office, treating him contemptuously and threatening him. The Charleston Constitutional Court held that a 1731 Act which provided punishment by fine instead of imprisonment for contempt of court and which was argued to apply did not apply to a justice of the peace. Instead, it was stated that:

*2 Justices of peace have a power derived from the common law, and necessarily attached to their offices, of committing and confining for gross behavior in their presence while engaged in the proper discharge of their duties, as public magistrates. This power has always been recognized and respected, as lawful, and indispensably requisite, for the maintenance of their offices and jurisdiction ... 1 Brev. At 159

WPA
#7

Therefore, with reference to the above case authority indicating broad contempt powers, it is the opinion of this Office that Section 22-3-950, supra, which grants a magistrate the power to enforce the observance of decorum in his court while holding the same should be construed to allow the magistrate to punish for all behavior within the definition of contemptuous done in his presence while in the performance of the duties of his office.

In Lining v. Bentham cited above, it is true that the Constitutional Court of Appeals of South Carolina stated in dictum: "The true rule of distinction seems to be this, that where contumelious words are spoken, or other insult is offered to a justice of the peace, and in his presence, he may commit; but when spoken behind his back, he ought to proceed by indictment. 3 Burn. 33. Salk. 698. 3 Mod. 139. 2 Show. 207." Taking into consideration the differences in procedure and court structure between the 18th Century and the 21st, this dictum can be read to support both the State's argument that a proceeding may be pursued for constructive contempt, as well as the appellant's position that the procedure to be utilized would not be a bench warrant.

The rest of the opinion seems to support a broad view of contempt powers for justices of the peace. A major portion of the opinion dealt with whether the officer was performing in a ministerial or judicial capacity at various times, so as to be immune.

Lining includes the following language:

With regard to the power of a magistrate to commit for insults or contempts offered to him while in the due execution of his office, it is incidental to magisterial authority; and without such power, he could never vindicate or support the laws, which are intrusted to his management, and over which he has jurisdiction. That a magistrate, sitting in judgment touching a matter within his jurisdiction, constituted a court in law, though an inferior one, and he was bound to protect the authority of such court. And one general principle, incidental to all courts, as well superior as inferior, was a power to commit for contempts, either by *word or deed*, offered in the presence of the judge, and in the face of such court. And this is not against *magna charta*, or the law of the land, but forms a

part of the common law, which is recognised by the terms of our constitution. 5 Vin. tit. *Contempts*, 447. *Lill. Pract. Reg.* 305. *Gilb. Hist. C. B.* 20, 21. 2 Hawk. 96. 112, 113.

Again, a statement that a Magistrate may punish for contemptuous behavior done in the judge's presence is not a statement that a Magistrate may only punish for behavior committed in the court's presence. As noted earlier, the charge of Criminal Domestic Violence, First Offense, is within the jurisdiction of the Magistrate's Court. The Magistrates here were dealing with cases where the jurisdiction would not be going to the circuit court after the bond hearing, so this court believes that they must have the inherent power to enforce their orders, including conditions of bond.

There are other sections of the Code that deal with situations where Magistrates have contempt powers in matters where the jurisdiction remains in Magistrate's Court.

Section 22-3-930 discusses contempt powers related to compelling witnesses to testify. It provides, in part:

If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section 22-3-550.

Section 22-3-550 discusses the contempt power of the Magistrate concerning restitution. It reads, in part, in Subsection (A):

In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs,

WPM
#9

fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C).

In determining the meaning of statutes, the courts are directed to give a reading that harmonizes various statutes dealing with the same subject matter. The statutes above indicate that Magistrates have other contempt powers. They may review and punish for contempt for certain violations related to compelling attendance of witnesses and restitution. While these may be issues of direct contempt, it seems that they may also involve situations where the alleged misconduct took place in a constructive contempt context.

In addition, there are statutes in South Carolina dealing with bail and the power to punish violations by using contempt of court which seem applicable to any court with jurisdiction. Sections of the South Carolina Code dealing with bail contain provisions discussing the interaction between conditions of bail, the need to monitor them, and the power to enforce them through contempt of court.

SECTION 17-15-20. Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety:

(A) An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing . . . and to do and receive what is enjoined by the court, and . . . be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

SECTION 17-15-30. Matters to be considered in determining conditions of release; contempt. . . .

(D) A court hearing these matters has contempt powers to enforce the provisions of this section.

WPK
#10

SECTION 17-15-50. Amendment of order.

The court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release.

SECTION 17-15-100. Power to punish for contempt not affected.

Nothing contained in Sections 17-15-10 through 17-15-60 shall affect the power of any court of the State to punish for contempt. [Emphasis added.]

It is this court's finding that the General Assembly has not restricted Magistrate's Court to punish only situations of direct contempt. The power to punish for contempt is an inherent power of a court, a power that is too important and essential to be eliminated by reference to language that does not specifically provide for elimination or restriction of the power. As the State repeatedly argued, a court must be allowed to enforce its orders. If the intent of the General Assembly was to restrict the power of Magistrates to situations of direct contempt only, it is this court's belief that the legislature would have done so with definite and precise language.

USE OF THE BENCH WARRANT TO INSTITUTE AND MAINTAIN CONTEMPT PROCEEDINGS

The State argues that there must be a provision to allow the issuance of a bench warrant to protect victims who are endangered by a defendant's violation of the conditions of bail.³ The appellant counters that he has fundamental due process rights that must be honored before he can be incarcerated, and that the opportunity for misuse is too great to allow law enforcement officials and/or purported victims to obtain bench warrants based merely on ex parte assertions that a condition of bond has been violated.

³ Of course, if the defendant violates the law in doing so, he may be subject to arrest on new charges.

The court agrees that victims must be protected, but the procedure used here is not appropriate. It violates fundamental due process rights.

South Carolina's statutes do provide a specific mechanism to revoke or modify bond in situations where a Magistrate sets bond, but it is for a General Sessions offense.

Subsection (B) of §17-15-55 reads:

(B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any.

(3) If the state's motion to revoke or modify bond includes a prima facie showing of **imminent danger** to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge within forty-eight hours of receiving service of the state's motion or as soon as practical. The chief judge shall order the solicitor to notify the defense counsel of record and bond surety of the time and date of the hearing, and the solicitor shall provide proof reasonable efforts were made to affect the notice. Upon notice by the State, the defense counsel of record and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing. The court may proceed with the hearing despite the absence of the defendant or bond surety. The court may not proceed with the hearing if the defense counsel of record is not present. If an emergency bond hearing is held without the presence of the defendant and bond is revoked, the judge having heard the matter may conduct the hearing on the defendant's motion to reconsider the revocation. Defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety. [Emphasis added.]

While this procedure is not a contempt citation, it is analogous to the underlying situation here. This procedure does not support the State's position that a bench warrant can be issued for the immediate arrest of this defendant for violation of the conditions of bond, based solely on an unsworn, ex parte claim that such an event occurred. As discussed below, this court might be able to

WPK
#12

accept an exception for an emergency situation, but none was shown here.

The procedure applicable to General Sessions offenses recognizes that there must be a motion and a reasonable effort to provide notice to the defendant, with an opportunity to be heard, before a defendant can be judged to have done something that requires revocation based on a violation of the bond order. There have to be specific allegations of how the conditions of bond have been violated. This procedure balances the emergency situation by providing that a hearing can be held in the defendant's absence and a bench warrant could issue thereafter, with the ability of the defendant to move to reconsider and vacate the bench warrant. But, the hearing in the defendant's absence could take place only after there is a specific motion and proof provided to the court of reasonable efforts to notify the defendant, defense counsel, and any bail bonding company or surety. The hearing could not go forward in the General Sessions scenario if the defense attorney was not present.

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#13

The State also points to the uniform bond form that is issued by South Carolina Court Administration. On the form, a notice is provided that a bench warrant will be issued for the defendant if he violates a condition of bond. The court acknowledges that the form contains that language. The court believes that the form comports with state law, particularly as it relates to General Sessions cases. But, in this court's view, that notice alone is not sufficient to withstand a due process analysis. If it were, there would be no need for §17-15-55(B).

In another well-written opinion, the office of the Attorney General discussed an inquiry by a Municipal Judge as to whether a law enforcement officer, knowing of a no-

contact provision in a bond, could arrest a defendant for violation of a condition of bond, without a warrant [2004 WL 3058232 (S.C.A.G.)]. The opinion discussed freshly-committed offenses, which the Municipal Judge mentioned. The Assistant Attorney General referenced a 1996 opinion of the Attorney General's office, which is said to assert that a Municipal Judge can issue a bench warrant for a violation of a condition of bond, and stated:

Consistent with such opinion, a bench warrant could be issued for a defendant violating a condition of a bond. [emphasis added] I do not know of any authority for a law enforcement officer to arrest for violation of a condition of a bond committed in his presence. Of course, such conduct . . . by a defendant may give rise to possible other criminal violations for which an arrest may be made at the location . . .

In discussing the 1996 opinion of the Attorney General, the following language

WPM
#14
appears:

This office has indicated in a prior opinion dated October 21, 1996 that "(w)here a defendant fails to perform a condition required of him by a bond, the bonding judge may bring the defendant back before him for further action. Such is typically done by virtue of a bench warrant." That opinion commented further that

I know of no reason why the issuance of a bench warrant would not be the appropriate procedural mechanism to bring the defendant back generally before the court where he or she has violated a special condition of his or her bond...(Citing People ex rel. Shaw v. Lombard, 408 N.Y.S.2d 664 (1978))... it has been generally stated that "the proper procedure is to require the defendant to appear before the court, by a bench warrant if necessary, in order for the court to review its release of the defendant on recognizance or bail."...Such is consistent with Section 17-15-40 stating that "a warrant for the person's arrest will be issued immediately" upon violation of a condition of release.

In discussing these issues, the opinion uses terms that a Magistrate "could" or that

a Magistrate "may" issue a bench warrant. The opinion relies upon a case from another jurisdiction that approved the issuance of a bench warrant if necessary. The opinion gives import to the word "immediately" in §17-15-40.⁴ In this court's view, there may be situations where it is appropriate to issue a bench warrant to have a defendant brought to court on an allegation that a condition of bond was violated, but it seems to this court that citing someone for criminal contempt in the context of constructive contempt would involve more due process protections than considering whether to revoke bond on a pending criminal charge. The contempt citation is a new criminal proceeding.

It may be that a higher court would focus on the defendant's being released on bail as a matter of favor, rather than of right, where his freedom can be taken away more easily than someone who was not already under arrest. However, it seems to this court that issuing a bench warrant as a substitute for a motion to revoke bond or as a citation of contempt is not the proper method in most cases. If it is allowed at all, due process would require some exigent circumstance that did not exist here. Moreover, if a bench warrant is allowable, fundamental due process seems to require that the allegation be supported at a minimum by oath or affirmation, and some safeguards for a prompt hearing would need to be in place. This seems to be particularly true when citing someone with a new criminal contempt charge.

This record reflects no such emergency, so there is no need for the court to decide if a bench warrant would be proper in a situation of emergency. The court's

⁴ §17-15-40: On releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person's arrest will be issued immediately upon any such violation. The person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation thereof on a form to be prescribed by the Attorney General.

WPK
#15

understanding is that the defendant was arrested on other charges, he was in jail when he was served with this bench warrant, and there was no indication that he was about to be released.

If this court were to agree that a bench warrant "may" or "could" be issued to bring a defendant back before the court for an alleged violation of a condition of bond, it disagrees with the statement in the opinions of the Attorney General that the typical method of bringing a defendant back before the court would be through issuance of a bench warrant. The court's understanding is that the typical method is to serve the defendant with a motion to revoke the bond or modify its conditions.

WPA
#16

In fact, the 1996 opinion of the Attorney General acknowledges the need for notice and an opportunity to be heard when deciding whether or not to revoke bond. In the very same opinion, when discussing the Municipal Judge's question about whether contempt of court is the proper "charge," the opinion turns to revocation of bond. Absent an emergency situation, with protections for a speedy hearing, this court has difficulty in seeing how issuing a bench warrant ex parte in this instance would involve less protection under due process principles than a procedure to revoke the defendant's bond. The 1996 opinion states:

Where a defendant is brought back before the court for violation of the condition of a bond, the bond may be revoked or new, additional conditions may be imposed. As stated at 8 C.J.S. Bail Section 83, p. 105, "(a)ccused's violation of a condition of release is a legitimate reason to impose additional or more restrictive conditions, to increase the amount of bail, or to revoke release on bail or recognizance... Whether to revoke bail or to impose more restrictive conditions is discretionary with the judicial officer." **Of course, in order for bail to be revoked, the defendant must be provided notice and an opportunity to be heard.** *Ibid.* As stated at S.C. Code Ann. §17-15-50 (2003), "(t)he court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release." [emphasis added]

State v. Harper was cited on page 4 of this order dealing with the appellant's assertion that the Magistrate's contempt powers are limited to direct contempt. The court in Harper wrote:

Contempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted. Brasington v. Shannon, 288 S.C. 183, 341 S.E. (2d) 130 (1986); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). It is well settled that contempt results from willful disobedience of an order of the court; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which such finding is based. Curlee v. Howle, 277 S.C. 377, 287 S.E. (2d) 915 (1982).

The Brasington case, cited in Harper, involved a Family Court determination of contempt. It includes the following language:

WSP
#17
In an action for contempt, the burden of proof is on the moving party. See, e.g., State v. Bowers, 270 S.C. 124, 241 S.E. (2d) 409 (1978). The use of a rule to show cause to initiate the proceeding does not shift the burden of proof to the respondent. 60 C.J.S., Motions & Orders, Section 37(5).

Contempt results from the willful disobedience of a court order. Before a court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. Moseley v. Mosier, 279 S.C. 348, 306 S.E. (2d) 624 (1983); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. Means v. Means, 277 S.C. 428, 288 S.E. (2d) 811 (1982). The burden then shifts to the respondent to establish his defense and inability to comply with the order. Id.; Pratt v. South Carolina Department of Social Services, 283 S.C. 550, 324 S.E. (2d) 97 (Ct. App. 1984).

In a Rule 53 proceeding, the clerk of court must identify the court order which the respondent has allegedly violated, and must identify the specific acts or omissions which constitute noncompliance. These facts must be alleged in the affidavit which supports the rule. See, e.g., State v. Johnson, 249 S.C. 1, 152 S.E. (2d) 669 (1967); Hornsby v. Hornsby, 187 S.C. 463, 198 S.E. 29 (1938).

In the present case, the affidavit which supported the rule asserted Shannon had failed to obey an order of the court, but it did not identify the order or the *185 manner in which the order had been violated. The

affidavit was insufficient to put Shannon on notice of the charges to which he was required to respond.

Because of the insufficiency of the affidavit and the improper shifting of the burden of proof, the orders of the trial judge are reversed.

In oral argument, counsel for the State asserted that the Family Court allows for the issuance of a bench warrant where the safety of a victim is in issue. There was no citation of authority, but there are provisions related to contempt of court in Rule 14, SCRFC, and the procedure there deals with issuance of a Rule to Show Cause. The official notes following Rule 14, SCRFC,⁵ do not seem to support the State's contention that issuance of a bench warrant was appropriate here. Rule 13, SCRFC, which deals with bench warrants in Family Court, also does not seem to support the State's argument.

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#18
Moreover, as this record reflects, a defendant who commits a new offense that also constitutes a violation of his bond on a pending charge can be arrested for the new offense. The judge who considers setting bond on the new offense would be made aware of the fact that the defendant was on bond, what the conditions of the existing bond are, and what dangers the defendant might pose to the victim and to the community.

CONCLUSION

For the foregoing reasons, the court has determined that the Magistrate's power to punish for contempt is not limited to situations of direct contempt. The court has also

⁵ Rule 14 provides for a Rule to Show Cause for contempt situations, except for direct contempt. The official notes begin by stating, "The long established procedural vehicle to bring a party into court for contempt proceedings has been the rule to show cause." The notes then provide citations and explanations about direct and constructive contempt.

concluded that a bench warrant was not properly obtained or used to cite the defendant for contempt of court.

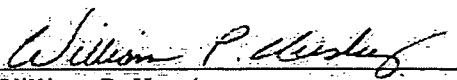
THEREFORE, IT IS ORDERED:

- 1) that the appeal is denied insofar as it is based on a claim that the Magistrate lacked jurisdiction to deal with constructive contempt of court for a violation of a condition of bond; and,
- 2) that the appeal is granted as to the claim that the use of a bench warrant in this instance was improper and violated due process.

IT IS FURTHER ORDERED that the citation for contempt of court is overturned and the sentence is vacated.

AND IT IS SO ORDERED.

#19
September 30, 2014


William P. Keesley
Judge

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3201449

State

Quentin Raymar Price

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), 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: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

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)

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.**

10/7/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **7th of October 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **7th of October 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Nicole Howland PO Box 639 Lexington, SC 29071/LCSD
Rich Roberson PO Box 639 Lexington SC 29071/LCSD

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jael Denise Gilreath
407 1/2 West Main Street Lexington, SC 29072

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

OFFICE OF THE PUBLIC DEFENDER

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Eleventh Judicial Circuit
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April 24, 2015

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

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

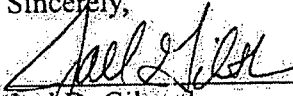
Dear Ms. Kitchings:

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

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

Thank you for your assistance in this matter.

Sincerely,


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

enclosures

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

OFFICE OF THE PUBLIC DEFENDER

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Eleventh Judicial Circuit
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April 24, 2015

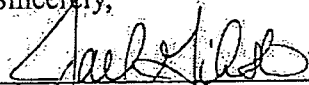
Salley W. Elliot, Esquire
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211

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

Dear Ms. Elliot:

I have enclosed two copies of the Appellant's Return to Respondent's Motion to Dismiss Appeal or, Alternatively, to Remand to Circuit Court for Ruling on Pending Petition and Certificate of Service in the above matter. If you have any questions, please do not hesitate to contact me.

Sincerely,


Jael D. Gilreath
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enclosures

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 24 2015

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

SC Court of Appeals

Appellate Case No. 2014-002208

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

QUENTIN RAYMAR PRICE,

Appellant.

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

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

I. PROCEDURAL HISTORY

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

A. Contempt Proceedings

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

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

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

B. Appellate Proceedings

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

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

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

C. Underlying Criminal Charges

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

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

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

D. Respondent's Motion

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

II. MOTION TO REMAND

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

III. MOTION TO DISMISS APPEAL

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

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

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

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

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

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

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

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

Respondent relies on *Gregorie* for the following proposition:

[A] criminal defendant may only appeal as an aggrieved party from a circuit court order vacating a magistrate's court conviction and sentence when the case is remanded by the circuit court for a new trial and the facts of the particular case reflect that the new trial would violate the defendant's right against double jeopardy because the State did not appeal the circuit court's finding that the State failed to meet its burden of proof.

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

Respondent emphasizes that because Appellant's conviction for contempt was vacated by the circuit court on other grounds, Appellant has not been aggrieved. Respondent Motion, 4.

This argument presumes that the only way that a criminal defendant can be aggrieved is by having his conviction affirmed. However, the test set forth in *Gregorie* makes no mention of the need for an upheld conviction, but instead focuses on whether a party has been aggrieved, which, under the definition set forth in *Bivens*, requires only that the court's "judgment or decree . . .

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

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

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

1. Mootness

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

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

2. Exceptions to Mootness

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

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

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

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

a. Capable of Repetition But Evading Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When considering this exception to mootness, this Court should also look to the effect of the circuit court's order in this case. Because the court's order overturning Appellant's conviction was based solely on the holding that "the use of a bench warrant *in this instance* was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant," the order has been, and will likely continue to be, construed as not binding on future cases. *See Order on Appeal*, p. 1 (emphasis added). This creates a scenario where the State could continue to use bench warrants

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

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

b. Matters of Important Public Interest

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Collateral or Future Consequences

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

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

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

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

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

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

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

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

CONCLUSION

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



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

Date: 04/24/2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 24 2015

SC Court of Appeals

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

THE STATE,

RESPONDENT,

V.

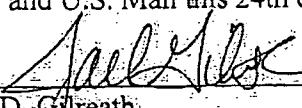
QUENTIN RAYMAR PRICE,

APPELLANT

APPELLATE CASE NO. 2014-002208

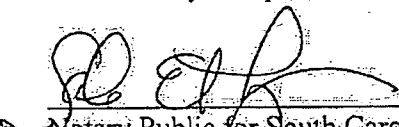
CERTIFICATE OF SERVICE

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


Jael D. Gilreath
Assistant Public Defender

ATTORNEY FOR APPELLANT

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


Notary Public for South Carolina
My Commission Expires: 3-25-2024

The South Carolina Court of Appeals

The State, Respondent,

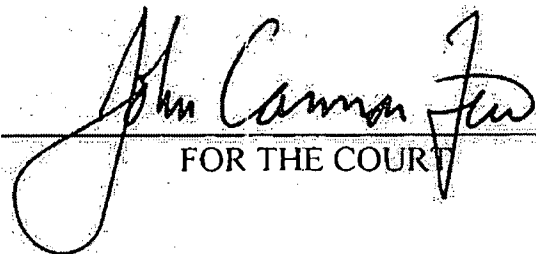
v.

Quentin Price, Appellant.

Appellate Case No. 2014-002208

ORDER

Respondent has filed a motion to dismiss this appeal or, alternatively, to remand this appeal to the circuit court, arguing its motion to reconsider, alter or amend the circuit court's order is pending before the circuit court. After review of the motion and Appellant's return, this appeal is dismissed without prejudice. *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions.").


FOR THE COURT

Columbia, South Carolina

cc:

Jael Denise Gilreath, Esquire
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

FILED
6/5/15

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2014 CP-32-01449

359
ORIGINAL

STATE OF SOUTH CAROLINA

QUENTIN RAYMAR PRICE

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (format order to follow) ☒ Statement of Judgment by the Court:

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

For Clerk of Court Office Use Only

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

Nicole Howland

Jael Gilreath

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



ALAN WILSON
ATTORNEY GENERAL

October 23, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Quentin Price
Appellate Case No: 2015-001799

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss Appeal along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: ~~Assistant Public Defender Jael D. Gilreath~~
Robert M. Dudek, Chief Appellate Defender
Ms. Trisha Allen

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2015-001779

THE STATE.

Respondent,

vs.

QUENTIN RAYMAR PRICE,

Appellant.

MOTION TO DISMISS APPEAL

Respondent, by and through undersigned counsel, respectfully moves to dismiss Appellant's appeal because Appellant is not an aggrieved party as is required by Rule 201(b), SCACR, and S.C. Code Ann. § 18-1-30 (1976).

I.

Appellant was charged with a magistrate's court offense of criminal domestic violence, first offense, and was released on bail on November 30, 2013, subject to the condition that ~~Appellant refrain from contact with the victim. The State subsequently sought a bench warrant~~ from the magistrate based upon Appellant's breach of that condition. A bench warrant was issued and hearing held by the magistrate on the issue of Appellant's contempt of court for violating

conditions of bail. Appellant moved to vacate the bench warrant which was denied by the magistrate. Appellant also objected to the procedural method used to initiate the criminal contempt proceedings but the objections were overruled. The magistrate found Appellant in criminal contempt of court for violating conditions of bail and imposed a criminal sentence.

Appellant appealed to the Lexington County Court of Common Pleas. A hearing respecting the appeal was convened before the Honorable William P. Keesley. Judge Keesley issued an order finding that magistrates have the power to cite and punish a defendant for constructive contempt of court for violating conditions of bail concerning an offense within the jurisdiction of summary courts but that use of the bench warrant in this particular case was improper because exigent circumstances were not established to support an immediate arrest. Judge Keesley concluded that the contempt proceeding conducted in this case lacked the proper procedural framework and failed to provide Appellant with the opportunity to be heard. Judge Keesley granted Appellant's appeal, overturned the criminal contempt determination by the magistrate, and vacated Appellant's criminal contempt sentence. Judge Keesley's order was dated September 30, 2014, and judgment was entered on October 7, 2014. The information on the judgment form indicates that a copy of the order was mailed by the Lexington County Clerk of Court to counsel for the parties on October 7, 2014.

II.

On October 14, 2014, Appellant filed and served Notice of Appeal from the portion of Judge Keesley's order finding that the magistrate had "jurisdiction to punish a defendant for contempt of court for violating a condition of the defendant's bond." (See Appellate Case No. 2014-002208). On October 17, 2014, Respondent filed and served a timely petition for rehearing

in the Lexington County Court of Common Pleas asking Judge Keesley to reconsider his order, to alter or amend the findings, and to affirm the finding of contempt. Appellant submitted a reply to the petition on October 22, 2014.

Respondent moved this Court to dismiss Appellant's appeal on the ground Appellant was not an aggrieved party and, alternatively, to remand the case to the Lexington County Court of Common Pleas for a ruling on the outstanding and timely request to rehear or reconsider the order on appeal. On April 24, 2015, Appellant submitted a Return to Respondent's Motion to Dismiss Appeal or Remand. On June 5, 2015, this Court dismissed the appeal without prejudice and remanded the case to the circuit court for a ruling on the outstanding motion to reconsider. This Court did not address the issue whether dismissal of the appeal was warranted because Appellant was not an aggrieved party. The case was remitted to the Lexington County Court of Common Pleas.

Upon remand to the circuit court, Respondent withdrew its petition for rehearing. On August 5, 2015, Judge Keesley issued a Form 4 Judgment of a Civil Case finding that the petition for rehearing was withdrawn. Appellant again filed and served Notice of Appeal from the portion of Judge Keesley's earlier order finding that the magistrate had "jurisdiction to punish a defendant for contempt of court for violating a condition of the defendant's bond" in a case within the magistrate's trial jurisdiction. This appeal is currently pending before this Court.

III.

The order appealed by Appellant overturns Appellant's criminal contempt sanction and

vacates the associated criminal contempt sentence. Respondent moves this Court to dismiss the appeal on the ground Appellant is not an aggrieved party and cannot appeal the order which

resulted in his criminal contempt sanction and sentence being vacated.

“The right to appeal a criminal conviction is conferred by section 14-3-330 of the South Carolina Code [1977 & Supp. 2014].” State v. Isaac, 405 S.C. 177, 181, 747 S.E.2d 677, 679 (2013). “Rule 201(b), SCACR ‘limits the ability to appeal to ‘[o]nly a party aggrieved by an order, judgment . . . or decision’ This court has previously explained that under Rule 201(b), ‘[t]he word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct.App. 2008), citing Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct.App. 2001). “An aggrieved party is aggrieved by a judgment or decree when it operates on **his or her** rights of property or **bears directly on his or her** interest.” Beaufort Realty Co. v. Beaufort County, at 301, 551 S.E.2d at 589 (emphasis added); see also Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct.App. 2008) (stating bank is not an aggrieved party necessary to initiate an appeal from an order where the bank was not a party to the severed action, had no interest in the escrowed funds, and was not aggrieved by the trial court’s apportionment of the funds between plaintiffs). “A party . . . cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.” Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970); First Union Nat. Bank of South Carolina v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct.App. 1998); see also Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (Ct.App. 1997) (stating that appellant may not challenge the imposition of sanctions against his attorney because the attorney and not appellant is aggrieved by the assessment of sanctions). “The law recognizes that that despite having been a ‘winning’ party below, a party can still be aggrieved by a judgment

of the court. See Cobb v. Benjamin, 325 S.C. 573, 580, 482 S.E.2d 589, 592-93 (Ct.App. 1997). However, "a mere interest in a problem is not enough" to establish that an appellant suffered an individualized injury. Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 551 S.E.2d 588 (Ct.App. 2001), citing Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing & Regulation, 337 S.C. 476, 487, 523 S.E.2d 795, 800 (Ct.App. 1999).

Our supreme court has held that, generally, a criminal defendant may not appeal until sentence is imposed. Id. at 183, 747 S.E. 2d at 660." State v. Looper, 412 S.C. 363, 364, 772 S.E.2d 516, 516 (Ct.App. 2015); State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986) (same); see also State v. Timmons, 68 S.C. 258, 47 S.E. 140 (1904) (stating that a criminal defendant may not appeal except from the final criminal sentence); Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (same). Once an appeal is properly before the circuit court from magistrate's court and the circuit court renders its final judgment, the right to appellate review thereafter is controlled by statute. Only an aggrieved party may appeal the circuit court's order. See Rule 201 (b), SCACR; S.C. Code Ann. §18-1-30 (2014); S.C. Code § 18-9-10 (2014); State v. Gregorie, 339 S.C. 2, 528 S.E.2d 77 (2000); State v. Looper, at 364, 772 S.E.2d at 516. In State v. Gregorie, our supreme court opined that a criminal defendant may only appeal as an aggrieved party from a circuit court order vacating a magistrate's court conviction and sentence when the case is remanded by the circuit court for a new trial and the facts of the particular case reflect that the new trial would violate the defendant's right against double jeopardy because the State did not appeal the circuit court's finding that the State failed to meet its burden of proof.

The order in question overturns the finding of criminal contempt entered against Appellant and vacates Appellant's criminal contempt sentence without ordering a new contempt proceeding.

All of the magistrate's court charges arising from and related to this incident have been resolved and Respondent has not and will not revisit the violation by Appellant of the bail condition which resulted in the now overturned contempt sanction. Appellant suffers no injury from the order he appeals. The order does not deny a personal or property right of Appellant, impose a burden or obligation upon Appellant, or bear directly on Appellant's interest in the case before this Court on appeal. As was stated in our supreme court in Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970):

Our statutory provision limiting appellate review to those who have been aggrieved by the judgment below is, in our opinion, a wise and well reasoned requirement, as our court is concerned with correcting errors that have practically wronged the appealing party. It, therefore, follows that it is our duty to reject an appeal that is prosecuted by a party who is not aggrieved in a legal sense by the judgment of the trial court. Cisson v. McWhorter, at 177 – 78; 177 S.E.2d at 605.

"This Court is concerned with correcting errors that have practically wronged the appealing party and, where, as here, the appeal is prosecuted by a party who is not aggrieved in the legal sense by the order below, it becomes (the appellate court's) duty to reject that appeal." Knight v. Autumn Co., Inc., 271 S.C. 112, 115, 245 S.E.2d 602, 604 (1978), citing Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970). The order on appeal vacates the criminal contempt finding and sentence and ends the matter. There can be no benefit or improvement in Appellant's position should this Court consider and reverse the contempt finding and sanction on the alternative ground advanced by Appellant. In actuality, Appellant urges this Court to consider arguments he wishes to advance on appeal for the benefit of future litigants and speculates as to the findings and outcome of those future proceedings. Appellant asks this Court for an improper advisory opinion on a matter that may or may not arise in future proceedings but that will have no impact on him. This is

contrary to the law. See Bivens v. Knight, at 13, 173 S.E.2d at 150 ("A party, therefore, cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person."). The contempt proceedings regarding Appellant's bail violation has been declared a nullity. The ground Appellant advances for consideration on appeal, at most, is a matter for another litigant on another day. Appellant cannot appeal an issue which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other defendant at some later time. Appellant is not an aggrieved party within the meaning of the law and his appeal is not proper. See Dunson v. Dunson, 278 S.C. 210, 294 S.E.2d 39 (1982)(Wife is not an aggrieved party where wife sought a divorce and the family court granted it on the ground of separation for one year as opposed to desertion and wife was not prejudiced by the determination. The award of the divorce on the ground of separation for one year did not deny wife any personal or property right nor did it impose a burden or obligation on wife).

This Court must dismiss Appellant's appeal because it was initiated by a party who is not aggrieved as designated by law. Cisson v. McWhorter, at 174, 177 S.E.2d at 603.

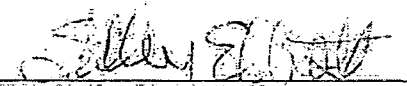
WHEREFORE, Respondent moves this Court to dismiss Appellant's appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

NICOLE HOWLAND
CDV Special Prosecutor
Lexington County Sheriff's Department

BY: 

Salley W. Elliott
Office of the Attorney General
S.C. Bar No. 1871

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 23, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2015-001779

THE STATE,

Respondent.

vs.

QUENTIN RAYMAR PRICE.

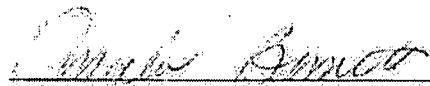
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorneys, Jael D. Gilreath, Esquire, 407 ½ West Main Street, Lexington, South Carolina 29072 and Robert M. Dudek, Chief Appellate Defender, P. O. Box 11589, Columbia, S.C. 29211.

I further certify that all parties required by Rule to be served have been served.

This 23rd day of October, 2015.


ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

OFFICE OF THE PUBLIC DEFENDER

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

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

ROBERT M. MADSEN
Circuit Public Defender

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

November 2, 2015

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

Re: The State vs. Quentin Price (Return to Respondent's Motion)
Appellate Case No.: 2015-00179

Dear Ms. Kitchings:

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

Thank you for your assistance in this matter.

Sincerely,


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

enclosures

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

V.

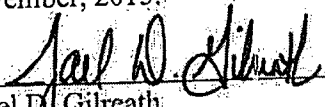
QUENTIN RAYMAR PRICE,

APPELLANT

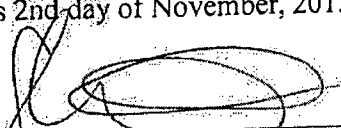
APPELLATE CASE NO. 2015-001779

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of Appellant's Return to Respondent's Motion to Dismiss Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, via U.S. Mail this 2nd day of November, 2015.


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

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


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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-001779

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

QUENTIN RAYMAR PRICE,

Appellant.

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

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

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

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

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

I. PROCEDURAL HISTORY

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

A. Contempt Proceedings

Appellant was arrested on November 19, 2013, and charged with criminal domestic violence (CDV), first offense.¹ Exhibit A (Order on Appeal, p. 2). Appellant's bond, which was

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

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

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

Exhibit A (Order on Appeal, pp. 2-3). After a hearing, Appellant was found in contempt of court and sentenced to thirty days in jail. Exhibit A (Order on Appeal, p. 3). At each of the

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

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

B. Appellate Proceedings

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

Oral arguments were heard in the Court of Common Pleas before the Honorable William P. Keesley on September 4, 2014. In an order dated October 6, 2014, Judge Keesley held that "Magistrates have the power to cite and punish a defendant for constructive criminal contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of the summary courts." Exhibit A (Order on Appeal, p. 1). The court also held, however, that the use of a bench warrant for the purpose of bringing Appellant before the court in a criminal contempt of court proceeding was improper in this case because "no exigent circumstances [were] shown to the court, supported by oath or affirmation, that required the immediate arrest of [Appellant]." *Id.*

On October 14, 2014, Appellant timely filed a notice of appeal in this Court as to the circuit court's holding regarding the issue of whether magistrates possess subject matter jurisdiction to cite and punish a defendant for constructive contempt of court where the alleged contemptuous conduct is a violation of conditions of bond. Respondent, represented again by Prosecutor Howland during all proceedings before the circuit court, subsequently filed a Petition for Rehearing on October 17, 2014, asking Judge Keesley to reconsider his order with respect to his holding regarding the use of a

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

II. RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL

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

The right of a party to appeal is conferred by statute: "Any party aggrieved may appeal in the cases prescribed in this title." S.C. Code § 18-1-30 (2003). The South Carolina Supreme Court has set forth the definition of aggrieved party:

an aggrieved party within statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.

Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (emphasis added) (citing *Bowles v. Dannin*, 62 R.I. 36, 2 A.2d 892).

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

Respondent relies on *Gregorie* for the following proposition:

[A] criminal defendant may only appeal as an aggrieved party from a circuit court order vacating a magistrate’s court conviction and sentence when the case is remanded by the circuit court for a new trial and the facts of the particular case reflect that the new trial would violate the defendant’s right against double jeopardy because the State did not appeal the circuit court’s finding that the State failed to meet its burden of proof.

Respondent Motion to Dismiss, p. 5.² This is a misinterpretation of *Gregorie*. The issue in *Gregorie* was “whether a criminal defendant whose magistrate’s court conviction is overturned in circuit court may appeal that decision.” *Gregorie*, 339 S.C. at 3, 528 S.E.2d at 78. The Court noted that although “[t]he general rule is that a criminal defendant may not appeal ‘except from

² Respondent’s Motion to Dismiss filed on October 23, 2015.

the final sentence imposed by the court' . . . the Court of Appeals has created an exception to this rule." *Id.* (quoting *State v. Timmons*, 68 S.C. 258, 47 S.E. 140 (1904) (internal citations omitted)). That exception permits a defendant to appeal an order remanding the case to magistrate's court for further proceedings "if the issue is whether such proceedings would violate the defendant's double jeopardy rights." *Id.* (citing *State v. Clifford*, 335 S.C. 129, 515 S.E.2d 550 (Ct. App. 1999)). However, in *Gregorie*, our Supreme Court granted certiorari to clarify the appealability rule: "The test is *not* whether the appeal involves a double jeopardy claim as held by the Court of Appeals, but whether the party bringing the appeal was aggrieved." *Id.* at 4, 528 S.E.2d at 78 (emphasis added) (internal footnotes omitted).

According to Respondent, the only way that a criminal defendant can be aggrieved is by having his conviction affirmed. However, the test set forth in *Gregorie* makes no mention of the need for an upheld conviction, but instead focuses on whether a party has been aggrieved, which, under the definition set forth in *Bivens*, requires only that the court's "judgment or decree . . . operate[] on his rights of property or bear directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens*, 254 S.C. at 13, 173 S.E.2d at 152.

In determining whether an appeal is proper, appellate courts are concerned with "correcting errors that have practically wronged the appealing party." *Cisson v. McWhorter*, 255 S.C. 174, 177-78, 177 S.E.2d 603, 605 (1970). Additionally, even if some relief was granted in the form of the overturning of the conviction and vacating of the sentence on one issue, this would be merely alternative relief in this case, as the primary relief requested by Appellant was a decision that the magistrate did not have subject matter jurisdiction to punish the alleged bond violation via contempt, rendering the conviction a nullity and prohibiting further unlawful

prosecution. See *Sickora v. Metropolitan Life Ins. Co.*, 278 S.C. 99, 101, 292 S.E.2d 593, 595 (1982) (“The motion for a new trial *nisi* was merely alternative relief. The alternative relief did not prevent a review by this Court on the basic contention. If the primary relief had been granted, as it should have been, the alternative motion would have been unnecessary.”); see also *State v. Guthrie*, 352 S.C.103, 107, 572 S.E.2d 309, 311 (2002) (“The acts of a court with respect to a matter as to which it has no jurisdiction are void.”).

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

1. Mootness

The South Carolina Supreme Court has found an appeal to be proper where the issue on appeal could have a “practical effect upon an existing case or controversy.” *State v. Green*, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (1999). In *Green*, the Court quoted the United States Supreme Court for the proposition that “[a] criminal case is moot only if there is no possibility that any legal consequences will be imposed.” *Green*, 337 S.C. at 71, 522 S.E.2d at 604 (quoting *Sibron v. New York*, 392 U.S. 40, 57, (1968)). The Court went on to find that although a defendant had already pled guilty on some charges, the State’s appeal relating to a subject matter jurisdiction issue was not moot as it pertained to the remaining charges.” *Green*, 337 S.C. at 71, 522 S.E.2d at 604.

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

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

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

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

2. Exceptions to Mootness

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

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

The final exception recognizes that an appeal is not moot "if a decision by the trial court may affect future events, or have collateral consequences for the parties . . . even though the appellate court cannot give effective relief in the present case." *Id.* Although *Curtis* recognized these exceptions to the mootness doctrine in the civil context, this Court has found these exceptions applicable in the context of a criminal contempt appeal. See *State v. Passmore*, 363 S.C. 568, 611 S.E.2d 273 (2005).

a. Capable of Repetition But Evading Review

The evolution of the common law exceptions to the mootness doctrine from stricter requirements to more lenient requirements is exhibited in *Byrd* with the Supreme Court's

clarification of the first exception to the mootness doctrine, “capable of repetition but evading review.” See *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. The *Byrd* Court documented the original, stricter prerequisites for qualifying under the exception, noting that both the Supreme Court and this Court had previously held that,

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

Id. (citing *Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 463 S.E.2d 90 (1995); *In re John Doe*, 318 S.C. 527, 458 S.E.2d 556 (Ct. App. 1995); *In re Kaundra C.*, 318 S.C. 484, 458 S.E.2d 443 (Ct. App. 1995); *Howard v. Bibbs*, 287 S.C. 636, 340 S.E.2d 566 (Ct. App. 1986); *In re Angela Suzanne C.*, 286 S.C. 186, 332 S.E.2d 542 (Ct. App. 1985)). However, the Court also noted a “less restrictive” approach taken by other cases that required only that an appeal present an issue that is “capable of repetition but evading review,” eliminating the requirement that “the same complaining party be subjected to the action again.” *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864 (quoting *In re Darlene C.*, 278 S.C. 664, 665, 301 S.E.2d 136, 137 (1983)). The Court went on to “clarify that this less restrictive approach is the appropriate standard in determining the applicability of the evading review exception of the mootness doctrine.” *Id.*

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

Byrd, 321 S.C. at 583, 468 S.E.2d at 864.

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

In applying the “capable of evading review” prong of the test for the first exception to mootness, this Court should consider the nature and brevity of magistrate cases in general and in the context of contempt cases. Similar to the types of cases presented in *Byrd* and *Passmore*, magistrate cases, and especially magistrate contempt cases, are too brief to be fully litigated in the appellate courts prior to the resolution of the underlying case. With limited exceptions,⁴ magistrate criminal jurisdiction is limited to cases in which the punishment does not exceed a fine of five hundred dollars or imprisonment for thirty days or both. S.C. Code Ann. § 22-3-

⁴ For example, Section 22-3-545 also provides for magistrate jurisdiction where a case is being transferred to magistrate court from the court of general sessions and “the penalty for which the crime in the does not exceed five thousand five hundred dollars or one year imprisonment or both . . .”

550(A) (Supp. 2014). Where magistrates have the power to punish for contempt, the punishment is limited to the confines of magistrate's sentencing authority under Section 22-3-550. S.C. Code Ann. § 22-3-950 (2003). Because of these strict limitations on cases arising in the magistrates' exclusive jurisdiction, magistrate-level criminal cases tend to be much more brief than their general sessions counterparts.

Additionally, as dictated by statute, the sentence for an individual offense rarely exceeds thirty days, and, with the exception of certain fraudulent check and shoplifting offenses, and offenses qualifying under Section 22-3-545, magistrates may not impose consecutive sentences to exceed a total of ninety days. S.C. Code Ann. § 22-3-550(B) (Supp. 2014). As a result, for purposes of appellate litigation, the timeline for magistrate cases, from arrest to completion of sentence, is almost always "too brief to be litigated through appeal prior to [their] expiration." *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281.

The brevity of these cases for appellate purposes is compounded by the fact that magistrate appeals are made first to the circuit courts. S.C. Code Ann. § 18-3-10 (2003). Because of this statutory requirement, a magistrate appeal must be made first to the appropriate Court of Common Pleas, and a return must be filed by the magistrate before the case may be scheduled for the first appellate hearing before that court. *Id.*; S.C. Code Ann. § 18-3-40 (2003). This process frequently results in the lapse of a significant amount of time between the conviction that forms the basis of the appeal and the issuance of an appealable decision by the circuit court.

In this case, Appellant was convicted of contempt of court on April 9, 2014. Exhibit A (Order on Appeal, p. 3). The Notice of Appeal was filed with the Lexington County Clerk of Court's Office on April 15, 2014, and the magistrate's return was filed on July 10, 2014. Oral

arguments were heard before the circuit court on September 4, 2014, and the court's Order on Appeal was filed on October 6, 2014, nearly six months after Appellant's conviction for contempt. Exhibit A (Order on Appeal, p. 1). The underlying charge, for which Appellant was arrested on November 19, 2013, was resolved on October 28, 2014, pursuant to the aforementioned plea agreement. Magistrate cases are often resolved even more quickly than this, demonstrating that, similar to the student suspension at issue in *Byrd* and the one year criminal contempt sentence in *Passmore*, they are "by their very nature, completed long before an appellate court can review the issues they implicate . . . and clearly fit[] into the evading exception of the mootness doctrine." See *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864.

In applying the "capable of repetition" prong of the test, this Court must consider several factors that are at play in this case. First, it is important to note that the unlawful pursuance of criminal contempt convictions against criminal defendants for allegedly violating the no-contact provision of a defendant's bond is used in a majority of magistrate level criminal cases prosecuted by the Criminal Domestic Violence Prosecutor for the Lexington County Sheriff's Department.⁵ As a result, the likelihood that the "constitutional violation suffered by Appellant could be inflicted on [another party] in the future" is not only high, but happens in a majority of CDV and related magistrate cases in Lexington County. See *Passmore*, 363 S.C. at 583, 611 S.E.2d at 281.

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

⁵ It should be noted that although this practice is most common in CDV cases, it is not limited solely to that type of case, but also includes, for example, cases involving charges of assault and battery in the third degree, unlawful use of telephone, and violations of orders of protection.

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

When considering this exception to mootness, this Court should also look to the effect of the circuit court's order in this case. Because the court's order overturning Appellant's conviction was based solely on the holding that "the use of a bench warrant *in this instance* was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant," the order has been, and will continue to be, construed as not binding on future cases. See Exhibit A (Order on Appeal, p. 1) (emphasis added). This creates a scenario where the State could continue to use bench warrants for the purpose of bringing defendants before the court in criminal contempt proceedings, and upon appeal of a conviction to the Court of Common Pleas, the circuit court judge could continue to overturn convictions on the basis that the use of the bench warrant was improper in that instance, and either decide not to reach the issue of subject matter jurisdiction, or continue to hold that magistrates have subject matter jurisdiction. The result is that the issue would continue to be repeated while always evading review.

⁶ The April 9, 2013 Memorandum is directed to Magistrate and Municipal Judges and states, "The [Attorney General's] opinion concludes that, pursuant to S.C. Code Ann. §§ 17-15-30(D) and 17-15-100, magistrate and municipal courts are authorized to use their contempt powers to enforce conditions of release on bond."

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

b. Matters of Important Public Interest

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

Our Supreme Court recently applied the same logic in *State v. Langford*, where it considered on appeal arguments that were not preserved for appellate review but instead were raised for the first time on appeal by way of an amicus brief filed by a third party. 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012). The Court found that the issue of “who decides when criminal defendants in this State should be tried is a matter of *significant public interest*” that warranted review. *Id.* at 433, 735 S.E.2d at 477 (emphasis added) (analyzing the constitutionality of Section 1-7-330 of the South Carolina Code of Laws, which vested solicitors with exclusive power to control general sessions dockets, the Court applied the “matter of significant public interest” exception to the otherwise strict issue preservation requirements as

stated in *Ex Parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011)).

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

In this case, the issue of whether magistrates have subject matter jurisdiction to punish for contempt of court where the basis for the contempt is an alleged violation of the conditions of a criminal defendant's bond is a matter of "important public interest" involving a "question of imperative and manifest urgency that should be decided by this Court to establish a rule for future conduct." See *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. Issues of subject matter jurisdiction are, in and of themselves, important matters of public interest because whether subject matter jurisdiction exists determines the validity of a court's actions with respect to the matter at hand. See *Guthrie*, 352 S.C. at 107, 572 S.E.2d at 311. Thus, subject matter jurisdiction is a question of such fundamental importance that it may be raised for the first time on appeal or *sua sponte* by the court. *Id.* ("Whether the trial court lacks subject matter jurisdiction to hear a case is a fundamental issue that may be raised at any time, including for the first time on appeal, and it may be raised *sua sponte* by the court."); see also *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001).

Additionally, as it relates to this case, whether a magistrate has subject matter jurisdiction to use contempt powers to punish alleged bond violations is a question of public importance because of the procedure's widespread use in magistrate cases that involve an alleged victim. As

previously noted, the process of seeking criminal contempt convictions against defendants based on allegations that a defendant violated the no contact condition of his bond is being used throughout Lexington County in the prosecution of magistrate cases involving, for example, charges of criminal domestic violence, unlawful use of telephone, assault and battery, and violation of an order of protection. This amounts to a large number of magistrate cases, just in Lexington County, that result in, or could potentially result in, criminal contempt prosecution based on allegations that a defendant had contact with an alleged victim in violation of the conditions of his or her bond. Furthermore, as a result of the aforementioned Court Administration Memorandum and Attorney General Opinion, it is possible that this unlawful practice is or will be used in other counties throughout the state, subjecting a much larger percentage of the public to the same constitutional violations.

The issue presented in this appeal is one of great importance that requires guidance for future actions because of the effects that this practice has on the lives of defendants and their families. Two methods are typically used in Lexington County to initiate contempt proceedings in this context: (1) the issuance of a bench warrant, as described by the circuit court in the Order on Appeal, and (2) oral notice upon arrival for a court appearance. *See* Exhibit A (Order on Appeal, p. 2). When a bench warrant is used, the defendant is arrested on the bench warrant and held without bond until the contempt proceeding, which is determined by the court and/or the State; the amount of notice given to defense counsel, if any, varies. In other cases, a defendant may arrive for a court appearance and be notified for the first time upon arrival that contempt proceedings will be held that day on the basis of allegations for which no prior notice was given.

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

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

⁷ In some cases other offers are made, such as to plead guilty to the contempt and receive a sentence that is suspended upon the completion of a Pre-Trial Intervention program, if the defendant is eligible and the prosecutor chooses to offer the defendant the opportunity to enter the program.

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

Because in many cases the defendant and defense counsel, if the defendant is represented, have little knowledge of the allegations and minimal, if any, time to prepare a defense prior to the hearing, defendants often forfeit their constitutional rights with regards to contesting the underlying criminal charge and accept the offer in order to prevent an almost certain conviction on contempt that is likely to result in a thirty day sentence that is served day for day, with no recommendation of a suspended sentence. This frequently puts defendants in the position of having to decide between two options. On the one hand, a defendant could contest the contempt in a hearing where he or she may be sentenced to serve thirty days in jail, day for day, and face the risk of a variety of collateral consequences, such as losing a job or custody of children, in order to exercise their constitutional rights on the underlying criminal charge. On the other hand, a defendant could give up his or her constitutional rights by accepting the offer to plead guilty to the contempt and the underlying criminal charge in order to avoid the risks associated with going forward in a contempt hearing where many constitutional protections are not afforded or not observed.⁹

The fact that this practice is so pervasive in Lexington County alone would be enough to qualify as a matter of important public interest, but the possibility that the practice is being used or may be used in other counties heightens the importance. Respondent even essentially admits in the Motion to Dismiss that the issue presented on appeal is likely to affect future litigants and necessitate appellate review. See Respondent Motion to Dismiss, p. 7 ("The ground Appellant

⁹ For example, no right to a jury trial exists in contempt cases where the contemnor is not facing a sentence of more than six months incarceration. See *Bloom v. Illinois*, 391 U.S. 194 (1968); *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982). Additionally, because a defendant is frequently presented with the allegations upon arrival at a court appearance with no prior summons for a contempt hearing, the defendant may not yet have the advice of counsel and is not afforded the opportunity to call witnesses on his or her behalf.

advances for consideration on appeal, at most, is a matter for another litigant on another day"). As a result, the issue is ripe for review by the appellate courts, and this Court should decide the issue in order to establish a rule for future conduct.

c. Collateral or Future Consequences Affecting Appellant

The third exception articulated in *Curtis* recognizes the need for appellate review where the lower court's decision creates the potential for collateral or future consequences for the parties. *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. Collateral or future consequences are not limited to any particular set of circumstances and need not be legal certainties in order to qualify the issue for review. In *Passmore*, the Supreme Court listed several examples of potential collateral consequences that were "enough to surmount the mootness doctrine":

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

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

S.E.2d at 596.

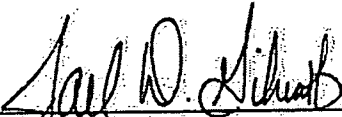
Similarly, the circuit court's decision in this case may affect future events and have collateral consequences for Appellant. In addition to the potential that Appellant may be confronted with similar contempt charges again in the future, as previously discussed, other collateral consequences could result, rendering the case ripe for review. Furthermore, the contempt conviction, though overturned, could be used during sentencing or during any future hearings¹⁰ with Appellant and could have to be disclosed to, among others, potential employers if asked about prior arrests on criminal charges.

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

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

CONCLUSION

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


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Date: 11/02/2015

EXHIBIT A

ORIGINAL

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

STATE OF SOUTH CAROLINA,

Respondent,

-vs-

QUENTIN PRICE,

Appellant - Defendant.

) IN THE COURT OF COMMON PLEAS

) ORDER ON APPEAL

) Case Number: 2014-CP-32-01449

This is an appeal from the Magistrate's Court wherein the appellant-defendant challenges a citation for contempt of court, the procedure whereby he was cited and tried for contempt, the finding of contempt, and the imposition of a criminal sentence.¹ The court determines: 1) that Magistrates have the power to cite and punish a defendant for constructive contempt of court for violating a condition of bond concerning an offense that is within the jurisdiction of the summary courts; 2) that the use of a bench warrant in this instance was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant; and, 3) that the lack of a proper procedural framework and opportunity to be heard requires this court to reverse the finding of contempt of court and the sentence imposed, based on due process concerns.²

¹ In his Supplemental Statement of Issues on Appeal, the appellant sets out six specific assertions of error. Assertions 3 and 4 are challenges involving the conduct of the trial. Since the court is vacating the finding of contempt, it is not necessary to rule on those assertions other than to state, had the reversal not been entered on other grounds, the case would have to be reversed and remanded to allow the appellant to develop the record more fully.

² The court has concerns about whether a harmless error analysis should be conducted, since the defendant was in jail on other charges when served with the bench warrant, ultimately was given notice when brought before the Magistrate (with counsel), and was given two days to prepare to address the allegation of contempt. Because of the court's determination that fundamental due process was violated, however, the court has determined that a harmless error analysis is not proper.

FACTUAL BACKGROUND

The defendant was charged with Criminal Domestic Violence, First Offense, and he was released on bail on November 30, 2013. The offense is not a General Sessions offense. His release was subject to the condition that he was to have no contact with the purported victim. According to the State in its oral argument, he violated that condition earlier and was punished for contempt. On the previous occasion, he had been found hiding in the victim's shower and was found to be in contempt of court. It is not clear to this court what charges the defendant picked up after the arrest for the instant CDV 1st.

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As to the instant case, the State went to a Magistrate and obtained a bench warrant for the defendant's arrest based on an oral statement that the defendant had violated the conditions of his bond. At the time of the service of the bench warrant in this case on March 27, 2014, the defendant was incarcerated on unrelated charges. He was taken before another Magistrate, the Chief Magistrate, on April 7, 2014, pursuant to the bench warrant and treated as being charged with contempt of court. The defense attorney moved to vacate the bench warrant and objected to the consideration of the charge of contempt of court based on various constitutional and procedural grounds. She demanded that any contempt citation be supported by a Rule to Show Cause, issued pursuant to pleadings and/or affidavit, with proper notice and an opportunity to be heard.

Upon hearing that the defense attorney needed more time to prepare to address the charges, the Magistrate delayed the proceedings for an additional two days, asking her if the amount of time was sufficient. The parties appeared for a hearing on the issue of contempt of court. The transcripts of both proceedings are in the file, as well as the Return of the Magistrate. The defendant's motions to vacate the bench warrant were

denied, and the objections to the procedural method of citing the defendant for contempt of court were overruled. The Magistrate found the defendant to be in contempt and sentenced him to serve 30 days in jail. There is a dispute as to whether the Magistrate gave the defendant proper credit for time served, but this court finds no error in that regard. This appeal followed.

There is nothing in the file indicating that a written document was presented to the issuing Magistrate to request the bench warrant or to seek revocation of bond. There is not an affidavit, petition, motion, or any sworn testimony in this file reflecting that it was presented to the issuing Magistrate in order to obtain the bench warrant. It is undisputed that this alleged misconduct took place outside the Magistrate's presence. Based on the file, it appears that the issuing Magistrate was contacted and advised orally that the defendant had violated a no-contact order in his bond. The Magistrate issued a bench warrant for the defendant's arrest. A copy of the bench warrant is not in the file, so the court is of the opinion that the bench warrant does not set forth with specificity the date, time, and place of the allegedly contemptuous conduct. Nonetheless, it appears that defense counsel knew essential aspects of the alleged contempt, including the time and place of the alleged violation, prior to the hearing.

THE POWER TO HOLD SOMEONE IN CONTEMPT OF COURT

Several principles seem to be in play. The State's basic argument is that courts have an inherent power to enforce their orders, and the inherent powers of a Magistrate include the power to punish for constructive contempt. The appellant's position is that fundamental due process requires notice and an opportunity to be heard before a person is

incarcerated. The court agrees with both propositions. However, the court does not agree with all the interpretations that the parties advance from those principles.

The Criminal Trial Benchbook provided to all circuit judges in South Carolina contains the following section dealing with contempt of court.

CONTEMPT POWER

The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings. Direct contempt occurs when a person's conduct interferes with judicial proceedings, when a person exhibits disrespect for the court, or when one hampers judicial proceedings. State v. Havelka, 285 S.C. 388, 330 S.E.2d 288 (1985) (the trial court's finding of contempt for inappropriate dress was reversed when the defendant was not disruptive and had no notice that the attire was inappropriate).

Constructive contempt occurs outside the court's presence or hearing but nevertheless tends to impede or prevent the due administration of justice. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).

The court is present wherever any of its constituent parts is engaged in the prosecution of the business of the court according to the law. The jury pool constitutes an integral constituent part of the court and contemptuous acts within their sight or hearing will constitute direct contempt. State v. Kennerly, 337 S.C. 617, 524 S.E.2d 837 (1999).

The appellant argues that a South Carolina Magistrate cannot punish for contempt of court, except for direct contempt. He cites various cases, including State v. Harper (376 S.E.2d 272, 297 S.C. 257 (1989), S.C. Code Ann. §22-3-950, as well as opinions of the South Carolina Attorney General. While the court is impressed with the extent of authority and the content of it, the court disagrees with the assertion that Magistrates have no power to punish for constructive contempt of court.

State v. Harper involved a Magistrate who cited an attorney for multiple counts of contempt of court when the attorney stood to raise objections to the jury selection process in court. The opinion states, "South Carolina Code Annotated Section 22-3-950 (1976) sets forth the magistrate's power to punish for contempt." This court believes that the defendant is reading that sentence too broadly. It does not state that the statute is the only method by which a Magistrate may hold someone in contempt of court.

The language of §22-3-950 has been modified somewhat concerning the penalty for contempt since Harper was decided, but the language that is critical to the analysis relevant in this appeal has not changed.

SECTION 22-3-950. Power to punish for contempt.

Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates' courts in Section 22-3-550.

The Supreme Court in Harper was not dealing with a constructive contempt situation, so the language of the opinion and its reference to the statute should be read in that context. The Supreme Court was acknowledging a statute that was applicable to the situation before it. Since it was not considering constructive contempt, there was no need for it to determine that a Magistrate lacks contempt powers for conduct outside a Magistrate's observation.

The appellant also cites the Fourth Circuit Court of Appeals in Dean v. Shirer, 547 F.2d 227 (4th Cir. 1976), for the proposition that a Magistrate's contempt powers are

limited to instances where the contemptuous conduct occurs in the presence of the court. The Fourth Circuit was dealing with a summary judgment ruling in a civil suit arising from alleged state action in finding a person in contempt. The quotation cited in the appellant's brief is correct in stating that the contempt power under the statute (now §22-3-950) is limited to events occurring in the Magistrate's presence (or direct contempt).

Dean is not binding on this court, but even if it were, it does not definitively state that a Magistrate lacks inherent contempt powers. Again, the federal court was dealing with whether there was a clear lack of jurisdiction in a case alleging misconduct by a judge, and the federal court found no clear absence of jurisdiction where contemptuous events occurred outside the municipal judge's presence.

It is this court's view that the cases and opinions cited by the appellant do not actually state that South Carolina Magistrates lack jurisdiction in situations of constructive contempt. They may hint at it. It may be in dictum. But, it is this court's view that those cases either were dealing with situations of direct contempt, so the language must be viewed in that context, or they were dealing with tangential issues.

In a well-written opinion cited by the appellant, the office of the South Carolina Attorney General responded to a request from South Carolina Court Administration [To: Neal Forney, 1978 S.C. Op. Atty. Gen. 214 (1978)]. The question posed was, "Is the power of the magistrate to punish for contempt of court limited to trial situations or does it include such activities as bond proceedings, preliminary examinations, and warrant issuing proceedings?" The answer given by the Assistant Attorney General seems to this court to construe the question as being one that deals with contemptuous behavior committed in the Magistrate's presence, but not in an actual trial. So, the conclusion

reached was stated, as follows: "Pursuant to Section 22-3-950, magistrates may punish all behavior within the definition of contemptuous done in their presence while performing the duties of their office as contempt of court. This would include contemptuous actions during bond proceedings, preliminary examinations, and warrant issuing proceedings."

This court agrees with that statement; but, that conclusion does not state that a Magistrate lacks the ability to punish for contempt committed outside the judge's presence.

That Attorney General's opinion includes an excellent explanation of some issues currently before this court, including the following language:

In your question you asked whether the power of a magistrate to punish for contempt of court is limited to trial situations or does it include other activities, such as bond proceedings, preliminary examinations, and warrant issuing proceedings. A review of early court decisions appears to indicate wide authority. In Lining v. Bentham, a Justice of the Peace, 2 S.C.L. (2Bay) 1, (1796), a justice of the peace had ordered a man imprisoned for accusing the justice of gross impartiality [sic] and abuse of power during a bail proceeding. The South Carolina Constitutional Court of Appeals affirmed the action and referenced "... the power of a magistrate to commit for insults or contempts ... offered in the presence of the court. The Court by dictum stated however that as to any contempts offered out of the presence of the court, such 'ought to' be prosecuted by indictments. (More recent cases reference the fact that for contempts committed out of the presence of the court, 'constructive contempt', such should be initiated pursuant to a rule to show cause. State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956); State v. Johnson, 249 S.C. 1, 152 S.E.2d 669 (1967).) In State v. Johnson, 3 S.C.L. (1 Brev.) 155 (1802) a justice of the peace had ordered a particular woman imprisoned for an unspecified period of time for coming to his office, treating him contemptuously and threatening him. The Charleston Constitutional Court held that a 1731 Act which provided punishment by fine instead of imprisonment for contempt of court and which was argued to apply did not apply to a justice of the peace. Instead, it was stated that:

*2 Justices of peace have a power derived from the common law, and necessarily attached to their offices, of committing and confining for gross behavior in their presence while engaged in the proper discharge of their duties, as public magistrates. This power has always been recognized and respected, as lawful, and indispensably requisite, for the maintenance of their offices and jurisdiction ... 1 Brev. At 159

WPA
#7

Therefore, with reference to the above case authority indicating broad contempt powers, it is the opinion of this Office that Section 22-3-950, supra, which grants a magistrate the power to enforce the observance of decorum in his court while holding the same should be construed to allow the magistrate to punish for all behavior within the definition of contemptuous done in his presence while in the performance of the duties of his office.

In Lining v. Bentham cited above, it is true that the Constitutional Court of Appeals of South Carolina stated in dictum: "The true rule of distinction seems to be this, that where contumelious words are spoken, or other insult is offered to a justice of the peace, and in his presence, he may commit; but when spoken behind his back, he ought to proceed by indictment. 3 Burn. 33, Salk. 698, 3 Mod. 139, 2 Show. 207." Taking into consideration the differences in procedure and court structure between the 18th Century and the 21st, this dictum can be read to support both the State's argument that a proceeding may be pursued for constructive contempt, as well as the appellant's position that the procedure to be utilized would not be a bench warrant.

The rest of the opinion seems to support a broad view of contempt powers for justices of the peace. A major portion of the opinion dealt with whether the officer was performing in a ministerial or judicial capacity at various times, so as to be immune.

Lining includes the following language:

With regard to the power of a magistrate to commit for insults or contempts offered to him while in the due execution of his office, it is incidental to magisterial authority; and without such power, he could never vindicate or support the laws, which are intrusted to his management, and over which he has jurisdiction. That a magistrate, sitting in judgment touching a matter within his jurisdiction, constituted a court in law, though an inferior one, and he was bound to protect the authority of such court. And one general principle, incidental to all courts, as well superior as inferior, was a power to commit for contempts, either by *word or deed*, offered in the presence of the judge, and in the face of such court. And this is not against *magna charta*, or the law of the land, but forms a

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#8

part of the common law, which is recognised by the terms of our constitution. 5Vin. tit. *Contempts*, 447. *Lill. Pract. Reg.* 305. *Gilb. Hist. C.* B. 20, 21. Hawk. 96, 112, 113.

Again, a statement that a Magistrate may punish for contemptuous behavior done in the judge's presence is not a statement that a Magistrate may only punish for behavior committed in the court's presence. As noted earlier, the charge of Criminal Domestic Violence, First Offense, is within the jurisdiction of the Magistrate's Court. The Magistrates here were dealing with cases where the jurisdiction would not be going to the circuit court after the bond hearing, so this court believes that they must have the inherent power to enforce their orders, including conditions of bond.

There are other sections of the Code that deal with situations where Magistrates have contempt powers in matters where the jurisdiction remains in Magistrate's Court.

Section 22-3-930 discusses contempt powers related to compelling witnesses to testify. It provides, in part:

If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates' courts in Section 22-3-550.

Section 22-3-550 discusses the contempt power of the Magistrate concerning restitution. It reads, in part, in Subsection (A):

In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs,

fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C).

In determining the meaning of statutes, the courts are directed to give a reading that harmonizes various statutes dealing with the same subject matter. The statutes above indicate that Magistrates have other contempt powers. They may review and punish for contempt for certain violations related to compelling attendance of witnesses and restitution. While these may be issues of direct contempt, it seems that they may also involve situations where the alleged misconduct took place in a constructive contempt context.

In addition, there are statutes in South Carolina dealing with bail and the power to punish violations by using contempt of court which seem applicable to any court with jurisdiction. Sections of the South Carolina Code dealing with bail contain provisions discussing the interaction between conditions of bail, the need to monitor them, and the power to enforce them through contempt of court.

SECTION 17-15-20. Conditions of appearance recognizance or appearance bond; discharge, validity, relief of surety.

(A) An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing . . . and to do and receive what is enjoined by the court, and . . . be of good behavior toward all the citizens of the State, or especially toward a person or persons specified by the court.

SECTION 17-15-30. Matters to be considered in determining conditions of release; contempt. . . .

(D) A court hearing these matters has contempt powers to enforce the provisions of this section.

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SECTION 17-15-50. Amendment of order.

The court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release.

SECTION 17-15-100. Power to punish for contempt not affected.

Nothing contained in Sections 17-15-10 through 17-15-60 shall affect the power of any court of the State to punish for contempt. [Emphasis added.]

It is this court's finding that the General Assembly has not restricted Magistrate's Court to punish only situations of direct contempt. The power to punish for contempt is an inherent power of a court, a power that is too important and essential to be eliminated by reference to language that does not specifically provide for elimination or restriction of the power. As the State repeatedly argued, a court must be allowed to enforce its orders. If the intent of the General Assembly was to restrict the power of Magistrates to situations of direct contempt only, it is this court's belief that the legislature would have done so with definite and precise language.

**USE OF THE BENCH WARRANT TO INSTITUTE
AND MAINTAIN CONTEMPT PROCEEDINGS**

The State argues that there must be a provision to allow the issuance of a bench warrant to protect victims who are endangered by a defendant's violation of the conditions of bail.³ The appellant counters that he has fundamental due process rights that must be honored before he can be incarcerated, and that the opportunity for misuse is too great to allow law enforcement officials and/or purported victims to obtain bench warrants based merely on ex parte assertions that a condition of bond has been violated.

³ Of course, if the defendant violates the law in doing so, he may be subject to arrest on new charges.

The court agrees that victims must be protected, but the procedure used here is not appropriate. It violates fundamental due process rights.

South Carolina's statutes do provide a specific mechanism to revoke or modify bond in situations where a Magistrate sets bond, but it is for a General Sessions offense.

Subsection (B) of §17-15-55 reads:

(B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any.

(3) If the state's motion to revoke or modify bond includes a prima facie showing of **imminent danger** to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge within forty-eight hours of receiving service of the state's motion or as soon as practical. The chief judge shall order the solicitor to notify the defense counsel of record and bond surety of the time and date of the hearing, and the solicitor shall provide proof reasonable efforts were made to affect the notice. Upon notice by the State, the defense counsel of record and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing. The court may proceed with the hearing despite the absence of the defendant or bond surety. The court may not proceed with the hearing if the defense counsel of record is not present. If an emergency bond hearing is held without the presence of the defendant and bond is revoked, the judge having heard the matter may conduct the hearing on the defendant's motion to reconsider the revocation. Defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety. [Emphasis added.]

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#12

While this procedure is not a contempt citation, it is analogous to the underlying situation here. This procedure does not support the State's position that a bench warrant can be issued for the immediate arrest of this defendant for violation of the conditions of bond, based solely on an unsworn, ex parte claim that such an event occurred. As discussed below, this court might be able to

accept an exception for an emergency situation, but none was shown here.

The procedure applicable to General Sessions offenses recognizes that there must be a motion and a reasonable effort to provide notice to the defendant, with an opportunity to be heard, before a defendant can be judged to have done something that requires revocation based on a violation of the bond order. There have to be specific allegations of how the conditions of bond have been violated. This procedure balances the emergency situation by providing that a hearing can be held in the defendant's absence and a bench warrant could issue thereafter, with the ability of the defendant to move to reconsider and vacate the bench warrant. But, the hearing in the defendant's absence could take place only after there is a specific motion and proof provided to the court of reasonable efforts to notify the defendant, defense counsel, and any bail bonding company or surety. The hearing could not go forward in the General Sessions scenario if the defense attorney was not present.

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#13

The State also points to the uniform bond form that is issued by South Carolina Court Administration. On the form, a notice is provided that a bench warrant will be issued for the defendant if he violates a condition of bond. The court acknowledges that the form contains that language. The court believes that the form comports with state law, particularly as it relates to General Sessions cases. But, in this court's view, that notice alone is not sufficient to withstand a due process analysis. If it were, there would be no need for §17-15-55(B).

In another well-written opinion, the office of the Attorney General discussed an inquiry by a Municipal Judge as to whether a law enforcement officer, knowing of a no-

contact provision in a bond, could arrest a defendant for violation of a condition of bond, without a warrant [2004 WL 3058232 (S.C.A.G.)]. The opinion discussed freshly-committed offenses, which the Municipal Judge mentioned. The Assistant Attorney General referenced a 1996 opinion of the Attorney General's office, which is said to assert that a Municipal Judge can issue a bench warrant for a violation of a condition of bond, and stated:

Consistent with such opinion, a bench warrant could be issued for a defendant violating a condition of a bond. [emphasis added] I do not know of any authority for a law enforcement officer to arrest for violation of a condition of a bond committed in his presence. Of course, such conduct . . . by a defendant may give rise to possible other criminal violations for which an arrest may be made at the location . . .

In discussing the 1996 opinion of the Attorney General, the following language

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appears:

This office has indicated in a prior opinion dated October 21, 1996 that "(w)here a defendant fails to perform a condition required of him by a bond, the bonding judge may bring the defendant back before him for further action. Such is typically done by virtue of a bench warrant." That opinion commented further that

I know of no reason why the issuance of a bench warrant would not be the appropriate procedural mechanism to bring the defendant back generally before the court where he or she has violated a special condition of his or her bond...(Citing People ex rel. Shaw v. Lombard, 408 N.Y.S.2d 664 (1978))... it has been generally stated that "the proper procedure is to require the defendant to appear before the court, by a bench warrant if necessary, in order for the court to review its release of the defendant on recognizance or bail."...Such is consistent with Section 17-15-40 stating that "a warrant for the person's arrest will be issued immediately" upon violation of a condition of release.

In discussing these issues, the opinion uses terms that a Magistrate "could" or that

a Magistrate "may" issue a bench warrant. The opinion relies upon a case from another jurisdiction that approved the issuance of a bench warrant if necessary. The opinion gives import to the word "immediately" in §17-15-40.⁴ In this court's view, there may be situations where it is appropriate to issue a bench warrant to have a defendant brought to court on an allegation that a condition of bond was violated, but it seems to this court that citing someone for criminal contempt in the context of constructive contempt would involve more due process protections than considering whether to revoke bond on a pending criminal charge. The contempt citation is a new criminal proceeding.

It may be that a higher court would focus on the defendant's being released on bail as a matter of favor, rather than of right, where his freedom can be taken away more easily than someone who was not already under arrest. However, it seems to this court that issuing a bench warrant as a substitute for a motion to revoke bond or as a citation of contempt is not the proper method in most cases. If it is allowed at all, due process would require some exigent circumstance that did not exist here. Moreover, if a bench warrant is allowable, fundamental due process seems to require that the allegation be supported at a minimum by oath or affirmation, and some safeguards for a prompt hearing would need to be in place. This seems to be particularly true when citing someone with a new criminal contempt charge.

This record reflects no such emergency, so there is no need for the court to decide if a bench warrant would be proper in a situation of emergency. The court's

⁴ §17-15-40: On releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person's arrest will be issued immediately upon any such violation. The person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation thereof on a form to be prescribed by the Attorney General.

WPK
#15

understanding is that the defendant was arrested on other charges, he was in jail when he was served with this bench warrant, and there was no indication that he was about to be released.

If this court were to agree that a bench warrant "may" or "could" be issued to bring a defendant back before the court for an alleged violation of a condition of bond, it disagrees with the statement in the opinions of the Attorney General that the typical method of bringing a defendant back before the court would be through issuance of a bench warrant. The court's understanding is that the typical method is to serve the defendant with a motion to revoke the bond or modify its conditions.

WPK
#16
In fact, the 1996 opinion of the Attorney General acknowledges the need for notice and an opportunity to be heard when deciding whether or not to revoke bond. In the very same opinion, when discussing the Municipal Judge's question about whether contempt of court is the proper "charge," the opinion turns to revocation of bond. Absent an emergency situation, with protections for a speedy hearing, this court has difficulty in seeing how issuing a bench warrant ex parte in this instance would involve less protection under due process principles than a procedure to revoke the defendant's bond. The 1996 opinion states:

Where a defendant is brought back before the court for violation of the condition of a bond, the bond may be revoked or new, additional conditions may be imposed. As stated at 8 C.J.S. Bail Section 83, p. 105, "(a)ccused's violation of a condition of release is a legitimate reason to impose additional or more restrictive conditions, to increase the amount of bail, or to revoke release on bail or recognizance... Whether to revoke bail or to impose more restrictive conditions is discretionary with the judicial officer." **Of course, in order for bail to be revoked, the defendant must be provided notice and an opportunity to be heard.** Ibid. As stated at S.C. Code Ann. §17-15-50 (2003), "(t)he court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release." [emphasis added]

State v. Harper was cited on page 4 of this order dealing with the appellant's assertion that the Magistrate's contempt powers are limited to direct contempt. The court in Harper wrote:

Contempt is an extreme measure and the power to adjudge in contempt is not to be lightly asserted. Brasington v. Shannon, 288 S.C. 183, 341 S.E. (2d) 130 (1986); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). It is well settled that contempt results from willful disobedience of an order of the court; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which such finding is based. Curlee v. Howle, 277 S.C. 377, 287 S.E. (2d) 915 (1982).

The Brasington case, cited in Harper, involved a Family Court determination of contempt. It includes the following language:

In an action for contempt, the burden of proof is on the moving party. See, e.g., State v. Bowers, 270 S.C. 124, 241 S.E. (2d) 409 (1978). The use of a rule to show cause to initiate the proceeding does not shift the burden of proof to the respondent. 60 C.J.S., Motions & Orders, Section 37(5).

Contempt results from the willful disobedience of a court order. Before a court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. Moseley v. Mosier, 279 S.C. 348, 306 S.E. (2d) 624 (1983); Bigham v. Bigham, 264 S.C. 101, 212 S.E. (2d) 594 (1975). In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. Means v. Means, 277 S.C. 428, 288 S.E. (2d) 811 (1982). The burden then shifts to the respondent to establish his defense and inability to comply with the order. Id.; Pratt v. South Carolina Department of Social Services, 283 S.C. 550, 324 S.E. (2d) 97 (Ct. App. 1984).

In a Rule 53 proceeding, the clerk of court must identify the court order which the respondent has allegedly violated, and must identify the specific acts or omissions which constitute noncompliance. These facts must be alleged in the affidavit which supports the rule. See, e.g., State v. Johnson, 249 S.C. 1, 152 S.E. (2d) 669 (1967); Hornsby v. Hornsby, 187 S.C. 463, 198 S.E. 29 (1938).

In the present case, the affidavit which supported the rule asserted Shannon had failed to obey an order of the court, but it did not identify the order or the manner in which the order had been violated. The

WPA
#17

affidavit was insufficient to put Shannon on notice of the charges to which he was required to respond.

Because of the insufficiency of the affidavit and the improper shifting of the burden of proof, the orders of the trial judge are reversed.

In oral argument, counsel for the State asserted that the Family Court allows for the issuance of a bench warrant where the safety of a victim is in issue. There was no citation of authority, but there are provisions related to contempt of court in Rule 14, SCRFC, and the procedure there deals with issuance of a Rule to Show Cause. The official notes following Rule 14, SCRFC,⁵ do not seem to support the State's contention that issuance of a bench warrant was appropriate here. Rule 13, SCRFC, which deals with bench warrants in Family Court, also does not seem to support the State's argument.

WPA
#18
Moreover, as this record reflects, a defendant who commits a new offense that also constitutes a violation of his bond on a pending charge can be arrested for the new offense. The judge who considers setting bond on the new offense would be made aware of the fact that the defendant was on bond, what the conditions of the existing bond are, and what dangers the defendant might pose to the victim and to the community.

CONCLUSION

For the foregoing reasons, the court has determined that the Magistrate's power to punish for contempt is not limited to situations of direct contempt. The court has also

⁵ Rule 14 provides for a Rule to Show Cause for contempt situations, except for direct contempt. The official notes begin by stating, "The long established procedural vehicle to bring a party into court for contempt proceedings has been the rule to show cause." The notes then provide citations and explanations about direct and constructive contempt.

concluded that a bench warrant was not properly obtained or used to cite the defendant for contempt of court.

THEREFORE, IT IS ORDERED:

- 1) that the appeal is denied insofar as it is based on a claim that the Magistrate lacked jurisdiction to deal with constructive contempt of court for a violation of a condition of bond; and,
- 2) that the appeal is granted as to the claim that the use of a bench warrant in this instance was improper and violated due process.

IT IS FURTHER ORDERED that the citation for contempt of court is overturned and the sentence is vacated.

AND IT IS SO ORDERED.

#19
September 30, 2014

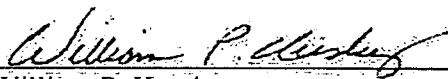

William P. Keesley
Judge

EXHIBIT B

Criminal Charging Document No.

BAIL PROCEEDING
FORM IISTATE OF SOUTH CAROLINA
COUNTY OF Lexington

IN THE Criminal Domestic Violence Court

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Price, Quentin Raymar
NAME OF DEFENDANTOffense Charged: Domestic / Criminal Domestic Violence - 1st offense (2013/3210202227)

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

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

This determination was based upon the following findings of fact: _____

Nature of Circumstances of Offense _____

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

THEREFORE, IT IS HEREBY ORDERED:

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

CASH IN LIEU OF BOND

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

CASH PERCENTAGE IN LIEU OF BOND

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

APPEARANCE RECOGNIZANCE WITH SURETY

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

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

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

☒ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on December 16, 2013 at 1:00 o'clock PM at Criminal Domestic Violence Court - 139 East Main Street/Lexington, SC 29072 / (803) 783-2886. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

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

INITIALS OF DEFENDANT

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

SIGNATURE OF JUDGE

DATE

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

SCCA/511A (Revised 3/2012)

Original Copy For The Trial Court - Copy For The Defendant

ACKNOWLEDGEMENT BY DEFENDANT

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

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

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

ADDRESS _____
 CITY/STATE/ZIP _____ TELEPHONE _____
 SOCIAL SECURITY NUMBER _____ DRIVER'S LICENSE OR ID NUMBER _____
 SIGNATURE OF DEFENDANT _____
 DATE _____
 ATTORNEY REPRESENTING ACCUSED (IF KNOWN) _____

SPECIAL CONDITIONS OF RELEASE

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

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

SIGNATURE OF CUSTODIAN (IF APPROVED) _____

DATE _____

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

☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ AM/PM to _____ o'clock, _____ AM/PM
 on _____ DATE(S) _____ on condition that he return to the custody of _____ NAME OF PERSON OR ORGANIZATION _____
 at _____ LOCATION _____ as designated:

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

APPEARANCE RECOGNIZANCE WITH SURETY

On the 20 day of NOVEMBER, 2013, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 5000.00, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

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

NAME OF SURETY/Attorney in Fact _____ TELEPHONE _____

SIGNATURE OF SURETY BONDSMAN _____

Gene Frye Bail Bonds
 ADDRESS OF SURETY 1310 D Avenue
 West Columbia, SC 29169
 CITY/STATE/ZIP (803) 826-1122

SIGNATURE OF JUDGE _____

DATE _____

NAME OF INSURANCE COMPANY _____

ADDRESS OF INSURANCE COMPANY _____

(If Commission Expires) _____

CITY/STATE/ZIP _____



EXHIBIT C




STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

2013A3210202227
Case Number

BENCH WARRANT
2013A3210202227

To any Lawful Constable or Officer:

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

Violate conditions of bond as imposed by The Honorable Brian Jeffcoat on November 20, 2013, in that he contacted the victim in a pending case against him to wit:
That on 03/09/14 around 6:00pm the defendant, Quentin Price, and his ex-girlfriend got into an argument after he started kicking her car and removed the vehicle license to her Dodge Neon. The defendant then charged Ms. Mims after she told him to leave causing her to fear that she was about to be assaulted. Ms. Mims then struck the defendant with a stun gun in self defense and ran back into her apartment to get away from him. The defendant then left the scene. This incident occurred at [REDACTED] in the Columbia area of Lexington County. Mr. Price and Ms. Mims formerly cohabitated together and have a child in common.

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

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

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

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

OFFICER'S RETURN

STATE OF SOUTH CAROLINA

Lexington County

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

Officer's Name

Date

Address: [REDACTED]

DL# [REDACTED]

State: SC

Height: 6'0"

Weight: 240

SSN: [REDACTED]

DOB: [REDACTED]

Sex: M

Race: B

Susanee Magistrate
04 - 2014 - 0018

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

EXHIBIT D

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

JUDGMENT IN A CIVIL CASE

ORIGINAL

CASE NO. 2014 CP-32-01449

STATE OF SOUTH CAROLINA

QUENTIN RAYMAR PRICE

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

William F. Harding
Circuit Court Judge

2050
Judge Code

8/5/2015
Date

For Clerk of Court Office Use Only

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

Nicole Howland

Jael Gilreath

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text visible on the paper.

EXHIBIT E

425

ARREST WARRANT

2014A3210200709

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

14007629

against

Quentin Raymar Price

Address:

Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: B Height: 6 Weight: 240

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: S. J. Gamble - 1504

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

Offense Code: 2553

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

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Criminal Domestic Violence Court
139 East Main Street
Lexington, SC 29072
Lexington City Sheriff's Dept.

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant S. J. Gamble

being duly sworn deposes and says that defendant Quentin Raymar Price

did within this county and state on or about 3/14/2014

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Lexington

In the following particulars:

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

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

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

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address P O Box 639

Lexington, SC 29071

Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/14/2014

defendant Quentin Raymar Price

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Lexington

) as set forth below:

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

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

Sworn to and subscribed before me

on 5/1/2014

Signature of Issuing Judge
Arthur L. Myers

Judge Code: 7252

(L.S.)

Judge's Address 139 East Main St

Lexington, SC 29072

Judge's Telephone

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

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

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE SUMMARY COURT **427**
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA

Rockelle Clarke Race B Sex M Age 22
v. Quentin Raymar Price DOB [REDACTED] SSN [REDACTED]
Magistrate - District SID # [REDACTED]

Defendant

AKA

Charges were disposed of in the court indicated below:

☒ Magistrate ☐ Municipal

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

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

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

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

Arrest Charge _____

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

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

- ☒ The defendant was fingerprinted and the summary court has coordinated with SLED and confirmed the criminal charge is statutorily appropriate for expungement.
- ☐ The defendant was not fingerprinted and the summary court has coordinated with the arresting law enforcement agency and confirmed that no fingerprints were taken from the defendant for this charge.

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

R. Adams
Judge

Signed this 22 day of Oct, 2015

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

[REDACTED]

[REDACTED]

EXHIBIT G

Gilreath, Jael

From: O'Cain, Shannon
Sent: Thursday, October 29, 2015 3:06 PM
To: Gilreath, Jael
Subject: FW: Quentin Price
Attachments: 20151029150232888.pdf

From: Danielle Young [mailto: [REDACTED]]
Sent: Thursday, October 29, 2015 3:04 PM
To: O'Cain, Shannon
Subject: RE: Quentin Price

Hey Shannon!

Attached is the dismissal on Quentin Price. Btw you can email me for any update, question, etc if you would like! Hope all is well!

Danielle

From: O'Cain, Shannon [mailto: [REDACTED]]
Sent: Thursday, October 29, 2015 2:27 PM
To: [REDACTED]
Subject: Quentin Price

Hey Danielle Hope you are having a good day ! Shannon Davis forwarded your email to me, if you could possibly email me a copy of the letter of Dismissal that would be great !!! Thank you so much for your help !!

Shannon M. O'Cain, Paralegal/Investigator
Eleventh Circuit Public Defenders Office
407 West Main Street
Lexington, SC 29072
(803) 785-8874 Phone
(803) 785-1443 Fax



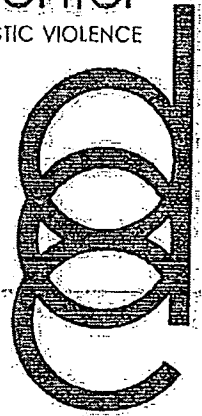
This email has been checked for viruses by Avast antivirus software.
www.avast.com

[REDACTED]

[REDACTED]

EXHIBIT H

"NOTICE OF DISMISSAL"



DATE: July 3, 2015

TO: The Honorable Adams, Irmo Magistrate Court

FROM: DAC STAFF

Case Name: Quentin Price

Case/Warrant #: 2014A3210200476 &
2014A3210200227

DAC Case Actions Summary

Received Referral on: June 24, 2015

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

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

Subsequent contacts include the following:

- Mr. Price attended orientation on June 29th.
- His first group session was scheduled for July 8th.

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

- ☐ Did not begin program or respond to contacts from DAC.
- ☐ Accumulating excessive absences without acceptable justification or documentation. He has missed ____ sessions out of ____ scheduled sessions.
- ☒ Involvement in a criminal incident related to domestic or other violence while attending DAC. Date reported to DAC: July 3, 2015

(X) Other/Comments:

- According to Solicitor Nicole Howland, Mr. Price was arrested for drug charges on July 2, 2015.

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

The South Carolina Court of Appeals

The State, Respondent,

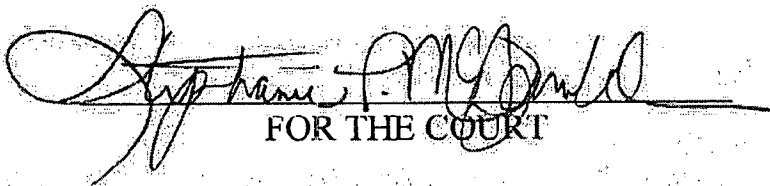
v.

Quentin Price, Appellant.

Appellate Case No. 2015-001779

ORDER

Respondent's motion to dismiss is granted. *See* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."); *State v. Cox*, 328 S.C. 371, 373, 492 S.E.2d 399, 400 (Ct. App. 1997) ("[A]n aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property."); *State v. Looper*, 412 S.C. 363, 366, 772 S.E.2d 516, 517 (Ct. App. 2015) ("[T]he word aggrieved refer[s] to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation" (quoting *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970))). The remittitur will be sent as provided by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc: Jael Denise Gilreath, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire

FILED
1/13/16

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALSAppeal from Lexington County
William P. Keesley, Circuit Court Judge**RECEIVED**

JAN 27 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

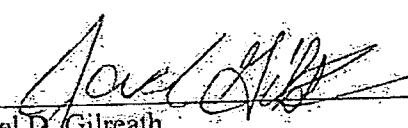
QUENTIN RAYMAR PRICE,

APPELLANT

APPELLATE CASE NO. 2015-001779

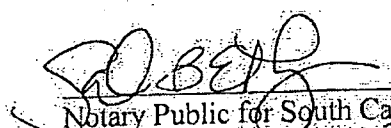
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of Appellant's Petition for Rehearing in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, via U.S. Mail this 27th day of January, 2016.


Jacl D. Gilreath
Assistant Public Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2016.


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

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA,

V.

QUENTIN RAYMAR PRICE,

RECEIVED

JAN 27 2016

SC Court of Appeals

Respondent,

Appellant.

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-001779

PETITION FOR REHEARING

On January 13, 2016, this Court filed granted Respondent's motion to dismiss. Pursuant to Rule 221, SCACR, Appellant respectfully requests this Court rehear this matter based on the following points that were overlooked and/or misapprehended by the Court in granting the motion.

In granting Respondent's motion, this Court cited to Rule 201(b), SCACR, which states that "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal," and followed with citations to case law defining "aggrieved party." Specifically, this Court cited to *State v. Cox*, 328 S.C. 371, 372, 492 S.E.2d 399, 400 (Ct. App. 1997) for the proposition that "an aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property," and to *State v. Looper*, 412 S.C. 363 366, 772 S.E.2d 516, 517 (Ct. App. 2015) for a definition of "aggrieved": "the word aggrieved

refer[s] to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.” (quoting *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970)). Although the Order does not provide any specific analysis as to the application of Rule 201(b) and the cited case law to the facts of this case, the implication of the quoted language in the Order is that Appellant is not an aggrieved party because his conviction was reversed by the Circuit Court. This appears to be the only basis upon which Appellant’s appeal was dismissed. In granting Respondent’s motion on this basis alone, this Court failed to consider or misapprehended the following points in this case, which are outlined below:

(I) Appellant is an aggrieved party despite the reversal of his conviction.

(II) Even if Appellant were not an aggrieved party, the issue on appeal before this Court is one that falls within the recognized exceptions to mootness and is an issue that (a) is Capable of repetition but evading review and therefore warrants consideration on the merits, (b) presents a question of imperative and manifest urgency that should be answered by the appellate courts in order to establish a rule for future conduct in matters of important public interest, and (c) may affect future events and result in collateral consequences for Appellant.

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

In granting Respondent’s motion to dismiss on the basis that Appellant is not an aggrieved party, the Court overlooked or misapprehended important facts that demonstrate that Appellant fits within the definition of “aggrieved.” As noted by this Court in the Order, the South Carolina Supreme Court has set forth the definition of aggrieved party:

...an aggrieved party within statute relating to appeals is a

person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest; the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.

Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (emphasis added) (citing *Bowles v. Dannin*, 2 A.2d 892 (1938)).

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

This Court’s Order suggests that the only way that a criminal defendant can be aggrieved is by having his conviction affirmed. However, the test set forth in *Gregorie* makes no mention of the need for an upheld conviction, but instead focuses on whether a

party has been aggrieved, which, under the definition set forth in *Bivens*, requires only that the court's "judgment or decree . . . operate[] on his rights of property or bear directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens*, 254 S.C. at 13, 173 S.E.2d at 152. In determining whether an appeal is proper, appellate courts are concerned with "correcting errors that have practically wronged the appealing party." *Cisson v. McWhorter*, 255 S.C. 174, 177-78, 177 S.E.2d 603, 605 (1970).

Additionally, this Court overlooked or misapprehended the fact that even if some relief was granted by the court below in the form of overturning the conviction and vacating of the sentence on one issue, this would be merely alternative relief in this case. The primary relief requested by Appellant was a decision that the magistrate did not have subject matter jurisdiction to punish the alleged bond violation via contempt, rendering the conviction a nullity and prohibiting further unlawful prosecution. *See Sickora v. Metropolitan Life Ins. Co.*, 278 S.C. 99, 101, 292 S.E.2d 593, 595 (1982) ("The motion for a new trial *nisi* was merely alternative relief. The alternative relief did not prevent a review by this Court on the basic contention. If the primary relief had been granted, as it should have been, the alternative motion would have been unnecessary."); *see also State v. Guthrie*, 352 S.C.103, 107, 572 S.E.2d 309, 311 (2002) ("The acts of a court with respect to a matter as to which it has no jurisdiction are void.")

In this case, although Appellant's conviction was overturned he is still an aggrieved party. When the Circuit Court held that magistrates have subject matter jurisdiction to punish alleged bond violations via contempt powers, the court essentially

sanctioned Appellant's unlawful prosecution in violation of Appellant's due process rights under the United States and South Carolina Constitutions. Additionally, the relief granted by the court was merely alternative relief similar to the Courts granting a new trial in *Sickora*. See *Sikora*, 278 S.C. at 101, 292 S.E.2d at 595. The primary relief requested by Appellant was a determination by the court that magistrates lack subject matter jurisdiction to punish for contempt where the alleged contemptuous conduct is a violation of conditions of a defendant's bond and an order prohibiting the State from subjecting defendants to further unlawful prosecution for contempt.

II. Dismissal of this appeal is not proper because the issue presented falls within the recognized exceptions to the mootness doctrine as it is an issue that is capable of repetition but evading review, presents a question of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest, and may affect future events bearing upon Appellant's rights or resulting in collateral consequences for Appellant.

The South Carolina Supreme Court has found an appeal to be proper where the issue on appeal could have a "practical effect upon an existing case or controversy." *State v. Green*, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (1999). In *Green*, the Court quoted the United States Supreme Court for the proposition that "[a] criminal case is moot only if there is no possibility that any legal consequences will be imposed." *Green*, 337 S.C. at 71, 522 S.E.2d at 604 (quoting *Sibron v. New York*, 392 U.S. 40, 57, (1968)). The Court went on to find that although a defendant had already pled guilty on some charges, the State's appeal relating to a subject matter jurisdiction issue was not moot as it pertained to the remaining charges. *Green*, 337 S.C. at 71, 522 S.E.2d at 604.

In granting Respondent's motion to dismiss, this Court may have accepted Respondent's arguments that essentially amount to an assertion that the issue before this

Court is moot because Appellant's conviction was vacated on other grounds. However, this Court overlooked the fact that similar to *Green*, Appellant still had a pending magistrate charge, unlawful use of telephone, that was brought by the same prosecutor and that included a bond condition of no contact with the alleged victim as of October 21, 2015. Exhibit E (Arrest Warrant 2014A3210200709).¹ Thus, Appellant faced collateral consequences despite the reversal of his conviction at the time he filed his notice of appeal. In the Return to Respondent's motion to dismiss, Appellant indicated that on October 29, 2015, Appellant received a notice from the Irmo Magistrate Court, indicating that the unlawful use of telephone charge had been *nolle prossed* and was being expunged pursuant to Section 17-22-950 of the South Carolina Code of Laws. Exhibit F (Order for Destruction of Arrest Records). The notice was dated October 22, 2015. *Id.*

This Court overlooked or misapprehended the fact that by the terms of an October 28, 2014, plea agreement that resolved the underlying CDV, as well as two other charges, this unlawful use of telephone charge was to be *nolle prossed* upon Appellant's successful completion of counseling through the Domestic Abuse Center, followed by three months of good behavior. Appellant's bond condition of no contact with the alleged victim was to remain in effect until the charge was resolved. Appellant did not complete his counseling at the Domestic Abuse Center because he was terminated from the program at the request of Prosecutor Howland on July 3, 2015, after Appellant's

arrest on drug charges. Appellant Return to Motion to Dismiss, Exhibit G (Email from Danielle Young); Exhibit H (Notice of Dismissal from Domestic Abuse Center). As a

¹ All references to Exhibits and supporting documentation are to those that were included in Appellant's Return to Respondent's Motion to Dismiss.

result, because Appellant did not complete the first condition of his plea agreement, as required for dismissal of the unlawful use of telephone charge, the period of three months of good behavior never even began. No reason has been provided to Appellant as to why the unlawful use of telephone charge was suddenly *nolle prossed* and expunged on October 22, 2015, one day prior to the State's filing of the motion to dismiss. This Court overlooked or misapprehended the fact that this appears to have been a calculated move by the State to avoid review by this Court of the issue on appeal.

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

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

The final exception recognizes that an appeal is not moot “if a decision by the trial court may affect future events, or have collateral consequences for the parties . . . even though the appellate court cannot give effective relief in the present case.” *Id.* Although *Curtis* recognized these exceptions to the mootness doctrine in the civil context, this Court has found these exceptions applicable in the context of a criminal contempt appeal. *See State v. Passmore*, 363 S.C. 568, 611 S.E.2d 273 (2005).

A. The issue presented is one that is capable of repetition but evading review.

In granting Respondent’s motion to dismiss, this Court overlooked or misapprehended the evolution of the common law exceptions to the mootness doctrine from stricter requirements to more lenient requirements that favor appellate review in cases such as the one at hand. One example of this evolution towards more lenient requirements is exhibited in *Byrd* with the Supreme Court’s clarification of the first exception to the mootness doctrine, “capable of repetition but evading review.” *See Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. The *Byrd* Court documented the original, stricter prerequisites for qualifying under the exception, noting that both the Supreme Court and this Court had previously held that,

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

Id. (citing *Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 463 S.E.2d 90 (1995); *In re John*

Doe, 318 S.C. 527, 458 S.E.2d 556 (Ct. App. 1995); *In re Kaundra C.*, 318 S.C. 484, 458 S.E.2d 443 (Ct. App. 1995); *Howard v. Bibbs*, 287 S.C. 636, 340 S.E.2d 566 (Ct. App. 1986); *In re Angela Suzanne C.*, 286 S.C. 186, 332 S.E.2d 542 (Ct. App. 1985)). However, the Court also noted that the “less restrictive” approach taken by other cases required only that an appeal present an issue that is “capable of repetition but evading review,” eliminating the requirement that “the same complaining party be subjected to the action again.” *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864 (quoting *In re Darlene C.*, 278 S.C. 664, 665, 301 S.E.2d 136, 137 (1983)). The Court went on to “clarify that this less restrictive approach is the appropriate standard in determining the applicability of the evading review exception of the mootness doctrine.” *Id.*

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

This Court overlooked or misapprehended the similarity of the issue on appeal in this case to that of *Passmore*, where our Supreme Court found appellate review proper. In *Passmore*, the Court found that a one year sentence for criminal contempt of court was too brief to survive appellate litigation, noting that even “the State concedes in its brief: ‘the sentence was in fact too brief to be fully litigated through appeal prior to its

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

In applying the “capable of evading review” prong of the test for the first exception to mootness, this Court should have considered the nature and brevity of magistrate cases in general and particularly in the context of contempt cases. Similar to the types of cases presented in *Byrd* and *Passmore*, magistrate cases, and especially magistrate contempt cases, are too brief to be fully litigated in the appellate courts prior to the resolution of the underlying case. With limited exceptions,² magistrate criminal jurisdiction is limited to cases in which the punishment does not exceed a fine of five hundred dollars or imprisonment for thirty days or both. S.C. Code Ann. § 22-3-550(A) (Supp. 2014). Where magistrates have the power to punish for contempt, the punishment is limited to the confines of the magistrate’s sentencing authority under Section 22-3-550.

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

S.C. Code Ann. § 22-3-950 (2003). Therefore, because of these strict limitations on cases arising in the magistrates' exclusive jurisdiction, magistrate-level criminal cases tend to be much more brief than their general sessions counterparts.

Additionally, as dictated by statute, the sentence for an individual offense rarely exceeds thirty days. *See, e.g.*, S.C. Code Ann. § 22-3-550(B) (Supp. 2014). The brevity of these cases for appellate purposes is compounded by the fact that magistrate appeals are made first to the circuit courts. S.C. Code Ann. § 18-3-10 (2003). This process frequently results in the lapse of a significant amount of time between the conviction that forms the basis of the appeal and the issuance of an appealable decision by the circuit court. As a result, this Court should take into account that, for purposes of appellate litigation, the timeline for magistrate cases, from arrest to completion of sentence, is almost always "too brief to be litigated through appeal prior to [their] expiration." *See Passmore*, 363 S.C. at 583, 611 S.E.2d at 281.

In considering Respondent's motion to dismiss, Court should have considered the application of these principles to this case. In this case, Appellant was convicted of contempt of court on April 9, 2014. Exhibit A (Order on Appeal, p. 3). The Notice of Appeal was filed with the Lexington County Clerk of Court's Office on April 15, 2014, and the magistrate's return was filed on July 10, 2014. Oral arguments were heard before the circuit court on September 4, 2014, and the court's Order on Appeal was filed on October 6, 2014, nearly six months after Appellant's conviction for contempt. Exhibit A (Order on Appeal, p. 1). The underlying charge, for which Appellant was arrested on November 19, 2013, was resolved on October 28, 2014, pursuant to the aforementioned plea agreement. Magistrate cases are often resolved even more quickly than this,

demonstrating that, similar to the student suspension at issue in *Byrd* and the one year criminal contempt sentence in *Passmore*, they are “by their very nature, completed long before an appellate court can review the issues they implicate . . . and clearly fit[] into the evading exception of the mootness doctrine.” See *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864.

In applying the “capable of repetition” prong of the test, this Court should have considered several factors that are applicable to this case. First, it is important to note that the unlawful pursuance of criminal contempt convictions against criminal defendants for allegedly violating the no-contact provision of a defendant’s bond is used in a majority of magistrate level criminal cases prosecuted by the Criminal Domestic Violence Prosecutor for the Lexington County Sheriff’s Department.³ As a result, the likelihood that the “constitutional violation suffered by Appellant could be inflicted on [another party] in the future” is not only high, but happens in a majority of domestic violence and related magistrate cases in Lexington County. See *Passmore*, 363 S.C. at 583, 611 S.E.2d at 281.

Additionally, this Court should have considered the great likelihood that defendants in other parts of the state might be subjected to the same unlawful and unconstitutional prosecution. Despite the Attorney General’s Office’s previous conflicting opinions on the issue, a March 1, 2013 Opinion suggested that magistrates and municipal judges may use bench warrants and contempt proceedings to punish

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

alleged bond violations. Opinion of the Attorney General to The Honorable Ernest O'Brien, 2013 WL 1695519 (S.C.A.G.) (March 1, 2013). In a memorandum dated April 9, 2013, Court Administration notified magistrates and municipal courts of the March 1, 2013 Attorney General Opinion's approval of the use of bench warrants and contempt proceedings to address alleged bond violations.⁴

When considering this exception to mootness, this Court should also have looked to the effect of the circuit court's order in this case. Because the court's order overturning Appellant's conviction was based solely on the holding that "the use of a bench warrant *in this instance* was improper because there were no exigent circumstances shown to the court, supported by oath or affirmation, that required the immediate arrest of the defendant," the order has been, and will continue to be, construed as not binding on future cases. *See* Exhibit A (Order on Appeal, p. 1) (emphasis added). This Court overlooked or misapprehended that this creates a scenario where the State could continue to use bench warrants for the purpose of bringing defendants before the court in criminal contempt proceedings, and upon appeal of a conviction to the Court of Common Pleas, the circuit court judge could continue to overturn convictions on the basis that the use of the bench warrant was improper in that instance, and either decide not to reach the issue of subject matter jurisdiction, or continue to hold that magistrates have subject matter jurisdiction. The result is that the issue would continue to be repeated while always evading review.

⁴ The April 9, 2013 Memorandum is directed to Magistrate and Municipal Judges and states, "The [Attorney General's] opinion concludes that, pursuant to S.C. Code Ann. §§ 17-15-30(D) and 17-15-100, magistrate and municipal courts are authorized to use their contempt powers to enforce conditions of release on bond."

For each of these reasons, this Court should have found that the issue of whether magistrates have subject matter jurisdiction to punish alleged bond violations using contempt powers is the epitome of an issue that is capable of repetition but evading review, and therefore falls within an exception to the mootness doctrine.

B. Matters of Important Public Interest

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

Our Supreme Court recently applied the same logic in *State v. Langford*, where it considered on appeal arguments that were not preserved for appellate review and were raised for the first time on appeal by way of an amicus brief. 400 S.C. 421, 432-33, 735 S.E.2d 471, 477 (2012). The Court found that the issue of “who decides when criminal defendants in this State should be tried is a matter of *significant public interest*” that warranted review. *Id.* at 433, 735 S.E.2d at 477 (emphasis added) (analyzing the

constitutionality of Section 1-7-330 of the South Carolina Code of Laws, which vested solicitors with exclusive power to control general sessions dockets, the Court applied the “matter of significant public interest” exception to the otherwise strict issue preservation requirements as stated in *Ex Parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011)).

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

Here, the issue of whether magistrates have subject matter jurisdiction to punish for contempt of court where the basis for the contempt is an alleged violation of the conditions of a criminal defendant’s bond is a matter of “important public interest” involving a “question of imperative and manifest urgency that should be decided by this Court to establish a rule for future conduct.” *See Curtis*, 345 S.C. at 568, 549 S.E.2d at 596. This Court’s decision in granting Respondent’s motion to dismiss failed to take into account that issues of subject matter jurisdiction are important matters of public interest ~~because whether subject matter jurisdiction exists determines the validity of a court’s~~ actions with respect to the matter at hand. *See Guthrie*, 352 S.C. at 107, 572 S.E.2d at 311. Indeed, subject matter jurisdiction is a question of such fundamental importance that it may be raised for the first time on appeal or *sua sponte* by the court. *Id.* (“Whether

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

Additionally, this Court overlooked or misapprehended the other important aspects of the issue on appeal in this case. Specifically, whether a magistrate has subject matter jurisdiction to use contempt powers to punish alleged bond violations is a question of public importance because of the procedure’s widespread use in magistrate cases that involve an alleged victim. As previously noted, the process of seeking criminal contempt convictions against defendants based on allegations that a defendant violated the no contact condition of his bond is being used throughout Lexington County in the prosecution of magistrate cases involving, for example, charges of criminal domestic violence, unlawful use of telephone, assault and battery, and violation of an order of protection. This amounts to a large number of magistrate cases, just in Lexington County, that result in, or could potentially result in, criminal contempt prosecution based on allegations that a defendant had contact with an alleged victim in violation of the conditions of his or her bond. As a result of the aforementioned Court Administration Memorandum and Attorney General Opinion, it is possible that this unlawful practice is or will be used in other counties throughout the state, subjecting a much larger percentage of the public to the same constitutional violations.

Furthermore, this Court overlooked or misapprehended the great importance of deciding this issue on appeal in order to give guidance for future actions because of the effects that this practice has on the lives of defendants and their families. Two methods are typically used in Lexington County to initiate contempt proceedings in this context:

(1) the issuance of a bench warrant, as described by the circuit court in the Order on Appeal; and (2) oral notice upon arrival for a court appearance. *See* Exhibit A (Order on Appeal, p. 2). When a bench warrant is used, the defendant is arrested on the bench warrant and held without bond until the contempt proceeding, which is determined by the court and/or the State; the amount of notice given to defense counsel, if any, varies. In other cases, a defendant may arrive for a court appearance and be notified for the first time upon arrival that contempt proceedings will be held that day on the basis of allegations for which no prior notice was given.

In a majority of cases, defendants are given two options by the State: contest the contempt charge or enter a plea of guilty to the contempt and to the underlying criminal charge, such as CDV, and receive separate sentences of periods of incarceration, to run consecutive, that are suspended to domestic abuse counseling and, at times, other conditions, such as a continued prohibition on contact with the alleged victim.⁵ Should a defendant fail to complete or violate some portion of the suspended sentence, the suspended periods of incarceration, typically – prior to the recent change in the domestic violence laws – thirty days each,⁶ are activated, and while the CDV charge is eligible for

⁵ In some cases other offers are made, such as to plead guilty to the contempt and receive a sentence that is suspended upon the completion of a Pre-Trial Intervention program, if the defendant is eligible and the prosecutor chooses to offer the defendant the opportunity to enter the program.

⁶ Prior to the legislative enactment of the new domestic violence laws, both contempt and criminal domestic violence, first offense, were each punishable by incarceration not to exceed thirty days. S.C. Code Ann. § 22-3-950 (2003) (Authorizing magistrates to punish for contempt “by imposition of sentences up to the limits imposed on magistrates’ courts in Section 22-3-550.”); S.C. Code Ann. § 22-3-550 (Supp. 2014) (Limiting magistrates’ general jurisdiction to offenses punishable by “a fine or forfeiture not

“good time credit” under Section 24-13-210, the contempt is treated as ineligible for any “good time credit,” and that period of incarceration is served day-for-day. *See* S.C. Code Ann. § 24-13-210(C) (Supp. 2010) (Providing for a reduction in sentence at the rate of one day for every two days served for any “inmate convicted of an offense against this State and sentenced to a local detention facility [and] whose record of conduct shows that he has faithfully observed all the rules . . . and has not been subjected to punishment for misbehavior.”).

This Court should also have taken into account the fact that in many cases the defendant and defense counsel, if the defendant is represented, have little knowledge of the allegations and minimal, if any, time to prepare a defense prior to the hearing. As a result, defendants often forfeit their constitutional rights with regards to contesting the underlying criminal charge and accept the offer in order to prevent an almost certain conviction on contempt that is likely to result in a thirty day sentence that is served day for day, with no recommendation of a suspended sentence. This frequently puts defendants in the position of having to decide between two options. On the one hand, a defendant could contest the contempt in a hearing where he or she may be sentenced to serve thirty days in jail, day for day, and face the risk of a variety of collateral

exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both.”); S.C. Code Ann. § 16-25-20(B)(1) (Supp. 2014) (providing for punishment of Criminal Domestic Violence, First Offense, by incarceration not to exceed thirty days or a fine not less than one thousand dollars nor more than two thousand five hundred dollars). With the recent statutory changes, the magistrate-level domestic violence charge, Domestic Violence, Third Degree, is now punishable by a fine of not less than one thousand five hundred dollars nor more than two thousand five hundred dollars, or incarceration not to exceed ninety days, or both. S.C. Code Ann. § 16-25-20(D)(1) (amended 2015).

consequences, such as losing a job or custody of children, in order to exercise their constitutional rights on the underlying criminal charge. On the other hand, a defendant could give up his or her constitutional rights by accepting the offer to plead guilty to the contempt and the underlying criminal charge in order to avoid the risks associated with going forward in a contempt hearing where many constitutional protections are not afforded or not observed.⁷

The fact that this practice is so pervasive in Lexington County alone would be enough to qualify as a matter of important public interest, but the likelihood that the practice is being used or may be used in other counties heightens the importance. Respondent even essentially admits in the Motion to Dismiss that the issue presented on appeal is likely to affect future litigants and necessitate appellate review. *See* Respondent Motion to Dismiss, p. 7 (“The ground Appellant advances for consideration on appeal, at most, is a matter for another litigant on another day”). As a result, this Court should have found that the issue on appeal in this case is ripe for review by the appellate courts, and this Court should decide the issue in order to establish a rule for future conduct.

C. Collateral or Future Consequences Affecting Appellant

This Court overlooked or misapprehended the third exception articulated in *Curtis*, which recognizes the need for appellate review where the lower court’s decision creates the potential for collateral or future consequences for the parties. *Curtis*, 345 S.C.

⁷ For example, no right to a jury trial exists in contempt cases where the contemnor is not facing a sentence of more than six months incarceration. *See Bloom v. Illinois*, 391 U.S. 194 (1968); *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982). Additionally, because a defendant is frequently presented with the allegations upon arrival at a court appearance with no prior summons for a contempt hearing, the defendant may not yet have the advice of counsel and is not afforded the opportunity to call witnesses on his or her behalf.

at 568, 549 S.E.2d at 596. Collateral or future consequences are not limited to any particular set of circumstances and need not be legal certainties in order to qualify the issue for review. In *Passmore*, the Supreme Court listed several examples of potential collateral consequences that were “enough to surmount the mootness doctrine”:

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

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

In granting Respondent’s motion to dismiss, this Court failed to take into consideration the effects on future events and the collateral consequences for Appellant implicated by the circuit court’s decision in this case. In addition to the potential that Appellant may be confronted with similar contempt charges again in the future, as

previously discussed, other collateral consequences could result, rendering the case ripe for review. Furthermore, the contempt conviction, though overturned, could be used during sentencing or during any future hearings⁸ with Appellant and could have to be disclosed to, among others, potential employers if asked about prior arrests on criminal charges.

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

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant the petition for rehearing, reinstate the appeal, and hear the merits of the issue on appeal.


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

Date: 01/26/2016

⁸For example, in each of the proceedings below, the Prosecutor noted to the courts that the alleged bond violation in question was Appellant's second time being charged with contempt for having contact with the alleged victim. *See, e.g.* Exhibit A (Order on Appeal, p.2).



ALAN WILSON
ATTORNEY GENERAL

February 5, 2016

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Quentin Raymar Price
Appellate Case No: 2015-001779

Dear Ms. Kitchings:

I am in receipt of Appellant's January 26, 2016, "Petition for Rehearing" in regard this Court's January 13, 2016, Order of Dismissal in the above-referenced case. Please accept this letter in lieu of a formal response. To the extent a formal return is required by the Court, the State would ask permission to submit such return upon request. For the reasons set forth in detail in the State's October 23, 2015, "Motion to Dismiss," and as found by this Court in its Order of Dismissal, the Appeal was properly dismissed because Appellant is not an aggrieved party.

Sincerely,

Benjamin Aplin
Interim Senior Assistant Deputy Attorney General
S.C. Bar No: 8729

JBA/ab

cc: Jael Denise Gilreath, Esquire
Ms. Trisha Allen

The South Carolina Court of Appeals

The State, Respondent,

v.

Quentin Price, Appellant.

Appellate Case No. 2015-001779

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul A. Short, Jr. J.

John D. Beetham J.

Stephanie P. McDaniel J.

Columbia, South Carolina

cc: Jael Denise Gilreath, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

FILED
5/12/16