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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-08-2002

The State.....Respondent,

v.

Jami Renee Morse .....Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On May 7, 2013, Trooper C.K. Towns of the South Carolina Highway Patrol cited Appellant Jami Morse for Driving Under the Influence in violation of S.C. Code § 56-5-2930. Appellant was also ticketed for leaving the scene of an accident with injury, and that charge is pending presently in general sessions court. The matter was scheduled for a bench trial on June 13, 2013; however, at Appellant's request the case was rescheduled by the court for a jury trial later set on Tuesday, August 6th at 1:30 p.m. (R. p. 48)

Prior to the trial date, the Highway Patrol placed Trooper Towns on indefinite leave. Although the Patrol initially e-mailed the court a work schedule indicating Trooper Towns was off duty on August 6th (R. pp. 49, 69, and 72), First Sergeant Kyle Welch subsequently delivered a revised schedule to the court showing Trooper Towns on leave without pay (LWOP) on that date. (R. p. 33, line 25 – p. 34, line 20; p. 97) Thereafter, on August 6th, the court proceeded to call the case in Trooper Towns' absence. No jury was sworn. Instead, Appellant's attorney moved for a directed verdict and the court orally granted the motion. (R. pp. 3-4; p. 36, line 21 – p. 38, line 2; p. 39, lines 18-21; p. 40, line 2 – p. 41, line 1; pp. 46-47, 49)

On August 12, 2013, Appellant's attorney faxed a proposed order to the court for the judge's signature. No copy was provided to the State. (R. pp. 79-82) The magistrate judge signed the order as written on August 13th and then forwarded a copy to the State. (R. pp. 4, 50-51, 79-82) The State filed an appeal to the Berkeley County Court of Common Pleas on September 5, 2013. (R. pp. 7-15) On October 21, 2013, the Hon. R. Markley Dennis heard arguments and orally reversed the lower court's order granting a directed verdict, ruling that the magistrate did not have the power to decide the case in

the State's absence. (R. p. 19, lines 2-5; p. 28, lines 7-14, 24-25; p. 29, lines 5-8) The next day, however, Judge Dennis notified the parties of his desire to rehear the matter. (R. p. 96) On October 24, 2013, a second hearing was held. At that time Judge Dennis changed the basis for reversing the magistrate's decision, finding a directed verdict was improper because the State did not have notice of Appellant's jury trial waiver and did not consent to trying the case without a jury. (R. p. 31, lines 2-5; p. 40, line 24 – p. 41, line 1; p. 42, lines 6-10) On December 11, 2013, Judge Dennis filed an order reversing the magistrate's decision on this basis and remanding the case for trial. (R. pp. 4-5)

ARGUMENT

The circuit court properly reversed the magistrate's order directing a verdict in this case. There is no question that the State was not present for the proceedings on August 6, 2013. Moreover, despite Appellant's written request for a jury trial, the jury venire was not in the courtroom and no jury was selected. (R. p. 4; p. 36, line 25 – p. 38, line 6; p. 40, lines 2-4; pp. 46-47, 52) Because no one on the State's behalf was in attendance, no evidence was introduced and the State could not have consented to a bench trial. Thus, the magistrate erred in directing a verdict of not guilty.

I. THE CIRCUIT COURT PROPERLY ASSERTED APPELLATE JURISDICTION

A. THE STATE COULD NOT OBJECT AND WAS NOT REQUIRED TO FILE A POST-TRIAL MOTION

Appellant first argues the circuit court erred in refusing to find the State's appeal unpreserved. Initially, Appellant contends the State's ability to contest the magistrate's order "was contingent upon the State entering an objection in order to preserve the right of appeal." (Br. of Appellant at 4) This argument is misplaced. While Appellant correctly notes the general rule of error preservation requiring a contemporaneous objection at trial, in this case, as observed by Judge Dennis: "You can't object if you're not there." (R. p. 28, line 20) Indeed, the gravamen of the State's complaint on appeal is that the magistrate erred in conducting proceedings when the State was not present and therefore had no opportunity to object. Furthermore, *no* authority cited by Appellant addresses error preservation in a situation where one of the parties is not present. For example, § 18-3-70 merely states that the circuit court can only address the issues raised on appeal. See S.C. Code Ann. § 18-3-70 (Supp. 2013) ("The appeal must be heard by

the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. . . ."); State v. Bailey, 368 S.C. 39, 42, 626 S.E.2d 898, 900 (Ct. App. 2006) (citing § 18-3-70 for the proposition that "[t]he circuit court, acting as the appellate court, reviews the matters raised in the notice of appeal"). Similarly, Lippard, an unpublished opinion having no precedential value in any event, is a case where the State was present for trial but failed to object to the court's ruling.[1]

Appellant further avers it was incumbent upon the State to file a motion for a new trial in order to preserve its right to appellate review.[2] Respondent is aware of no prerequisite in *any* case, much less under the circumstances described herein, obliging an aggrieved party to file a new trial motion prior to appeal. And, as before, Appellant cites no supporting authority for this assertion. Section 18-3-30 simply provides the time-frame and mechanism by which a *defendant* must appeal a conviction in magistrate court. See S.C. Code Ann. § 18-3-30 (Supp. 2013) ("The appellant, within ten days after sentence, shall file notice of appeal with the clerk of circuit court and shall serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge, stating the grounds upon which the appeal is founded. . . ."). Likewise, because Rule 16(b) of the South Carolina Rules of Magistrates Court does not apply to criminal cases, it offers no support for Appellant's argument. See Rule 2, SCRMC ("These rules shall govern all *civil* suits in

[1] State v. Lippard, No. 2011-MO-003 (2011).

[2] In the alternative, Appellant argues the State should have filed a motion for judgment notwithstanding the verdict (JNOV). Such a motion, however, is never proper in a criminal case. State v. Follin, 352 S.C. 235, 258, 573 S.E.2d 812, 824 (Ct. App. 2002) ("A motion for JNOV is a civil trial motion, and thus it is improper for a party to move for JNOV in a criminal trial."); State v. Taylor, 348 S.C. 152, 158, 558 S.E.2d 917, 919 (Ct. App. 2001) ("The trial judge in a criminal matter has no authority to grant a judgment notwithstanding the verdict . . . .").

the magistrates court.") (emphasis added); Scope & Purpose, SCRMC ("These rules govern *civil* procedure in the magistrates courts. . . .") (emphasis added). Appellant's claim that Respondent has not preserved any issues for appeal is meritless.

B. THE STATE TIMELY APPEALED THE MAGISTRATE'S ORDER

Appellant next argues the circuit court lacked jurisdiction to hear the appeal because the State's appeal was not timely filed. Appellant specifically cites § 18-3-30(A) as the basis for claiming the State has ten (10) days in which to appeal a decision from magistrates court. A close reading of the statute, however, reveals that § 18-3-30 applies only to a *defendant* appealing his sentence in magistrates court upon conviction.[3]

Section 18-3-30 provides:

> (A) The appellant, within ten days after sentence, shall file notice of appeal with the clerk of circuit court and shall serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge, stating the grounds upon which the appeal is founded.
>
> (B) A person convicted in magistrates court who pays a fine assessed by the court does not waive his right of appeal and, upon proper notice, may appeal his conviction within the time allotted in this section.

S.C. Code Ann. § 18-3-30 (Supp. 2013). Although the statute refers to "the appellant," it does not contemplate the State in this role because immediately thereafter it provides a time frame "within ten days *after sentence* . . . ." Id. (emphasis added). Thus, the statute on its face clearly presupposes a *conviction* before appeal. This conclusion is supported by subsection (B)'s language stating that "[a] person *convicted* in magistrate's court . . . may appeal his *conviction* within the time allotted in this section." Id. (emphasis added).

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[3] Of note is a bill pending in the House Judiciary Committee (HB 3076), which would enlarge the time for appeal under § 18-3-30(A) to thirty days after sentencing. This bill evinces possible legislative recognition of the disparity in time for appeal between a defendant and the State. Cf. Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 659 S.E.2d 125 (2008) (stating a subsequent statutory amendment may be interpreted as clarifying the original intent of the legislature).

Because the State cannot be convicted of anything, the statutory language has no applicability to the State. Moreover, due to the limiting phrases "after sentence" and "a person convicted," the statute by its own terms can never apply to situations like the case at bar where the State has appealed what is in effect a pre-trial dismissal.

In addition, the statute further directs the appellant to "*serve notice of appeal* upon the magistrate who tried the case and *upon the designated agent for the prosecuting agency or attorney who prosecuted the charge*, stating the grounds upon which the appeal is founded." Id. (emphasis added). Obviously, if § 18-3-30 regulated appeals by the State, the inclusion of such language without a corresponding duty requiring service by the State would be absurd. See Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342-43, 713 S.E.2d 278, 283 (2011) ("Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature . . . ."); see generally CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (declaring statutes must be read so that "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . .").

Perhaps expectedly, the underlying statute authorizing criminal appeals from magistrates court is also facially inapplicable to the State. Section 18-3-10 proclaims that "[e]very person *convicted* before a magistrate of any offense whatever *and sentenced* may *appeal from the sentence* to the Court of Common Pleas for the county." S.C. Code Ann. § 18-3-10 (Supp. 2013) (emphasis added). By employing the words "convicted" and "sentenced" as prerequisites to appeal, this statute further supports reading § 18-3-30 as having no effect upon the State. See In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 639, 686 S.E.2d 683, 687 (2009) ("[S]tatutes dealing with the

same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."); accord State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013).

It is well established that a court cannot employ rules of statutory construction to impose another meaning when the terms of a statute are plain, unambiguous, and convey a clear and definite meaning. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); State v. Benjamin, 341 S.C. 160, 163, 533 S.E.2d 606, 607 (Ct. App. 2000) ("When the language of a statute is plain, unambiguous, and conveys a clear and definite meaning, the application of standard rules of statutory interpretation is unwarranted" such that the statutory terms "must be applied according to their literal meaning"). By their own terms, neither of these statutes applies to the State; hence the statutory scheme cannot be used as authority for defining the parameters of the State's time limit for appealing a case from magistrates court.

This deduction is not surprising in light of the fact that the State's right to appeal in South Carolina generally is controlled by case law, not statutes. State v. McKnight, 353 S.C. 238, 238, 577 S.E.2d 456, 457 (2003) ("While a limited right of appeal in criminal cases has been conferred upon the State by statute in a number of jurisdictions, the extent of the right of the prosecution to appeal in this jurisdiction has been defined by our judicial decisions."), quoting State v. Holliday, 255 S.C. 142, 144, 177 S.E.2d 541, 542 (1970); accord State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846-47 (Ct. App. 2005) ("In South Carolina, the State's right to appeal is defined by our judicial decisions, not statutory law. Thus, the State's right to appeal in a criminal case is a judicially created right.") (internal citation omitted); State v. Belviso, 360 S.C. 112, 600 S.E.2d 68

(Ct. App. 2004) (affirming the State's right to appeal magistrates court dismissals and pre-trial rulings which suppress evidence and thereby significantly impair the State's ability to prosecute a criminal case). In State v. Belviso, this Court reversed the circuit court's determination that it lacked jurisdiction to hear the State's appeal because § 18-3-10 only authorizes appeals following a conviction and sentencing in magistrates court. Significantly, the Court found the circuit court's reliance on § 18-3-10 misplaced, holding that because the State's right to appeal is judicially created the Court would look to judicial opinions instead. Belviso, 360 S.C. at 115, 600 S.E.2d at 70. Like the statute at issue in Belviso, § 18-3-30 simply cannot be read as having any bearing on an appeal by the State. It is therefore readily apparent that any timeline governing the State's appeals must be found elsewhere in the law.

Respondent has found no case or statute purporting to delineate the State's time for appeal from magistrates court. In the absence of both judicial and statutory law, therefore, it becomes necessary to turn to the rules of procedure for guidance. While the South Carolina Rules of Criminal Procedure apply to magistrates court, nothing therein addresses the timeliness of appeals to circuit court. Rule 37 of the criminal procedure rules provides, in pertinent part:

> These rules shall apply to every trial court of criminal jurisdiction within this State . . . . They shall apply insofar as practicable in magistrate's courts . . . to the extent they are not inconsistent with the statutes and rules governing these 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 the State.*

Rule 37, SCRCrimP (emphasis added). Here, the absence of an applicable rule of criminal procedure necessitates consideration of the civil procedure rules, as they comport with the practice existing in this state for appeals to the Court of Common Pleas.

Rule 74 of the civil rules, which pre-dates Rule 37, SCRCrimP, governs the procedure on appeal to the circuit court from inferior courts. The relevant portion of Rule 74 declares:

> Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court . . . *within the time provided by the statute, or by this rule when no time is fixed by statute,* for service of the notice of intention to appeal. . . .

Rule 74, SCRCP (emphasis added). Accordingly, per this rule, because no statute provides a time for filing an appeal by the State, the 30-day time limit for service of the appeal also operates as the proper time for filing the notice. Id.; see State v. Oxner, 391 S.C. 132, 705 S.E.2d 51 (2011) (finding the procedural aspect of Rule 74 applies to circuit court proceedings upon appeal of a criminal conviction from magistrates court).

Although Appellant asserts Respondent filed its appeal to the circuit court under a "mistaken belief" that the time for appeal was thirty (30) days, there was no mistake. (Br. of Appellant at 6) As demonstrated above, no specific statute governs appeals by the State from magistrates court. Furthermore, because the criminal procedure rules are silent on the matter, the only remaining law is that found in Oxner, *supra*, and Rule 74 of the rules of civil procedure. The State's appeal, filed well within thirty (30) days of its receipt of written notice of the magistrate's order on August 13, 2013, was therefore timely.[4] (R. pp. 7-15) Accordingly, because the circuit court properly exercised its

[4] It also makes logical sense that the time for the State to appeal is thirty days. For agencies like the Department of Public Safety, virtually all criminal cases in magistrates court are prosecuted by law enforcement officers. As non-lawyers, these officers cannot handle appeals. Conversely, the Department's attorneys generally are not present during the magistrate court proceedings. An appeal window of thirty days permits an adequate period of time for attorneys to gather information, including a recording of the proceedings, and become sufficiently acquainted with a case to go forward with an appeal.

appellate jurisdiction in reviewing the magistrate's order on appeal, the order of Judge Dennis filed December 11, 2013 must be affirmed.

II. THE CIRCUIT COURT DID NOT CONDUCT A DE NOVO REVIEW

Lastly, Appellant argues the circuit court erred in conducting a de novo review that included factual findings that were not part of the magistrate's return. (Br. of Appellant at 6-7) Appellant is correct in his assertion that the circuit court sits in its appellate capacity to correct errors of law, not to conduct a de novo review of the facts. However, the only facts alleged to be improper that are relevant to the circuit court's ruling are readily apparent in the record below. The salient facts relied upon by the circuit court are: (1) that Trooper Towns was not present to represent the State on August 6, 2013, and (2) although the case was scheduled for a jury trial, no jury was selected or sworn. These facts are evident in the magistrate's return and recording of proceedings in the lower court. (R. p. 28, lines 13-14; p. 36, line 25; p. 37; p. 39, lines 18-25; p. 40, lines 2-4; p. 42, line 6, 19-23; p. 43, lines 22-25; pp. 46-49)

The sum total of the magistrate's return dealing with the court proceeding is as follows:

> On the afternoon of August 6, 2013, the case was called by the court clerk. Trooper Towns was not present for court. Attorney Milton Stratos, Defendant Jami Morse, and the alleged victim Kristopher Browder were present for court. Attorney Milton Stratos stated that (1) the [S]tate failed to provide anything to show that the defendant was guilty and (2) Motion for a directed verdict was made by Attorney Milton Stratos. The motion for a directed verdict was granted.

(R. p. 49) As can be seen, the return clearly states that Trooper Towns was not present for court on August 6, 2013. As to the absence of a jury, Judge Dennis correctly found this detail implicit in the return when he stated: "[T]here was no jury picked. There is

nowhere where [the return] says 'I empaneled the jury.'" (R. p. 40, lines 2-4) Presumably a magistrate is aware of his statutory duty to provide a statement of *all* the proceedings in a case. See S.C. Code Ann. § 18-3-40 (Supp. 2013) ("Within ten days after service [of a notice of appeal] the magistrate shall file the notice in the office of the clerk of court, together with the record, a statement of all the proceedings in the case, and the testimony taken at the trial as provided in § 22-3-790."). Because the magistrate's return makes no mention of a jury, it can be inferred that a jury was not present and empaneled. Moreover, counsel for Appellant admitted on the record before the circuit court that no jury had been selected. (R. p. 37, lines 20-23) Consequently, Appellant has waived any argument concerning this fact. TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded in a lower court may not be argued on appeal."); accord State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000).

The circuit court eventually found the magistrate erred in directing a verdict because the State had no notice of and did not consent to Appellant being tried without a jury. Appellant does not address this ruling in his statement of issues nor proffer any argument on the merits of the circuit court's ultimate conclusion. The issue is therefore deemed abandoned and should not be considered by this Court. Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); State v. Branham, 392 S.C. 225, 708 S.E.2d 806 (Ct. App. 2011) (stating an issue not argued on appeal is abandoned). Even if the issue were properly before the Court, however, the circuit court correctly concluded the magistrate erred in conducting any proceedings in the absence of a jury panel.

At Appellant's request, this case was set for a jury trial before the magistrate. On the date of trial, however, no venire members were qualified or presented for selection and no jury was sworn. The State is entitled to notice of, and indeed must consent to, a defendant's decision to waive his or her right to a jury trial. State v. Hanson, 285 S.C. 543, 544, 331 S.E.2d 782, 782 (1985) ("A defendant's waiver of a jury trial is conditioned upon the consent of the prosecutor and the trial judge."); State v. Senter, 396 S.C. 547, 722 S.E.2d 233 (Ct. App. 2011) (affirming the conditioning of defendant's jury trial waiver upon consent of prosecutor and trial judge); Rule 14(b), SCRCrimP ("A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge."). Here, there is no evidence the State received notice of any purported jury trial waiver or assented to the court conducting a bench trial. Thus, the magistrate erred as a matter of law in directing a verdict of not guilty prior to swearing a jury for trial, and as a result the circuit court's order must be affirmed.

III. THIS COURT SHOULD AFFIRM THE CIRCUIT COURT BASED ON OTHER GROUNDS APPEARING IN THE RECORD PURSUANT TO RULE 220(c), SCACR

Rule 220(c) of the appellate court rules permits this Court to affirm the circuit court decision based on any ground appearing in the appellate record. Rule 220(c), SCACR; Rule 208(b)(2), SCACR ("Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)."). It is undisputed that the State of South Carolina was not represented at the proceedings in magistrates court on August 6, 2013. It is similarly unchallenged that the magistrate entered a directed verdict of not guilty as the disposition in this case. In its

appeal to the circuit court, the State advanced two arguments based upon these undisputed facts, both of which support an affirmance of the circuit court order.

The State first argued the magistrate erred in entering a "directed verdict" of "not guilty" because *no evidence* was presented to the magistrates court in this case. A motion for directed verdict in a criminal case is properly made after the presentation of evidence. Rule 19(a), SCRCrimP ("On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged . . . *after the evidence on either side is closed* . . . .") (emphasis added); State v. Rainwater, 376 S.C. 256, 257 n.1, 657 S.E.2d 449, 449 n.1 (2008) ("It would be improper for the magistrate to grant a 'directed verdict' based on the insufficiency of the evidence when no evidence had yet been presented."). In this instance, no evidence was received in the magistrates court because the State was not present; hence, there were no facts from which a "verdict" in the defendant's favor could be deduced. As a consequence, the magistrate erred as a matter of law in granting a directed verdict.

Secondly, even if the magistrate's order is construed as dismissing the case for lack of prosecution,[5] the ruling was clearly erroneous. In the absence of statutory authority, a judge has no power to dismiss a criminal case prior to trial except at the behest of the prosecuting agent. Ex Parte Brittian, 263 S.C. 363, 366, 210 S.E.2d 600, 601 (1974) ("A statute may authorize the court . . . to order an indictment or prosecution dismissed. But in the absence of such a statute . . . a court has no power . . . to dismiss a criminal prosecution except at the instance of the prosecutor. . . .") (quoting 21 Am. Jur.2d *Criminal Law* § 517 (1965)); see State v. Needs, 333 S.C. 134, 146, 508 S.E.2d

[5] See Rainwater, 376 S.C. at 257 n.1, 657 S.E.2d at 449 n.1 (interpreting magistrate's order as a dismissal despite the fact that both the oral pronouncement from the bench and the magistrate's written return stated the magistrate was granting a directed verdict).

857, 863 (1998) ("[A] trial court generally has no power to dismiss a properly drawn indictment issued by a properly constituted grand jury before trial unless a statute grants that power to the court."); accord State v. Ridge, 269 S.C. 61, 236 S.E.2d 401 (1977).

In Brittian, in deciding whether the failure of the State to proceed with a criminal prosecution at the scheduled time warranted a dismissal of the case, our supreme court cited the trial court's lack of power to do so and reversed. In so doing, the court cited with approval an Illinois case wherein charges were dismissed for lack of prosecution. In that case, People v. Guido, 297 N.E.2d 18 (1973), it was held that a trial court in a criminal case "did not have the authority to dismiss a case on the ground that the State had failed to appear," basing its decision in part on the fact that "the State represents the people and th[at] considerations of public safety and welfare are involved." Brittian, 263 S.C. at 367, 210 S.E.2d at 601; see also Guido, 297 N.E.2d at 19 ("The court on its own motion, or on the motion of the defendant, has no power before trial, in the absence of a statute, to dismiss criminal charges . . . since this power rests initially and primarily with the prosecuting officer."). There is no statute in this state granting courts the power to dismiss criminal prosecutions prior to trial. The magistrate therefore erred as a matter of law in disposing of the case of his own accord.[6]

As a final matter, it should be noted that there is an inherent issue of fairness involved in this case. An adversarial judicial system is based upon the notion that each party has an equal opportunity to gather and present evidence, examine witnesses, and

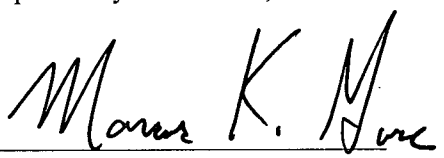
[6] Indeed, this was the basis of the circuit court's original ruling in this matter. Judge Dennis clearly recognized that a court cannot dismiss a criminal case prior to trial when he stated: "I can't dismiss a case for failure to prosecute in a criminal case. I don't have authority, that's not my prerogative. It surely is not a directed verdict. . . . The [magistrates] court didn't have the right to do what it did. . . . [T]he court can't dismiss a criminal case for failure to prosecute. Doesn't have authority." (R. p. 28, lines 7-10, 24-25; p. 29, lines 5-8)

make appropriate arguments to the trier of fact. When one party is unintentionally absent from the process, it cannot be said that a just result is had. Our courts have repeatedly held *ex parte* proceedings where the State is absent are voidable at best. See, e.g., State v. Hill, 266 S.C. 49, 52, 221 S.E.2d 398, 399 (1976) ("We take this opportunity to again call to the attention of the Bench and the Bar that when an order involves the State an ex parte order is improper."); Ishmell v. S.C. Highway Dep't, 264 S.C. 340, 215 S.E.2d 201 (1975) (declaring an order without notice to the State improvidently granted and stating such an order could be set aside solely for that reason); State v. Best, 257 S.C. 361, 373, 186 S.E.2d 272, 278 (1972) (reversing a trial judge's post-court modification of criminal sentences on other grounds but declaring that because such orders "were improvidently granted without notice to the State," they could have been set aside "on that ground alone"). For the reasons advanced above, this Court should affirm the order of the circuit court pursuant to Rule 220(c), SCACR.

CONCLUSION

The State, having asserted its grounds and legal authority in support thereof, hereby asks this Court to affirm the circuit court order and grant such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



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Date: June 18, 2015

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 208, SCACR.

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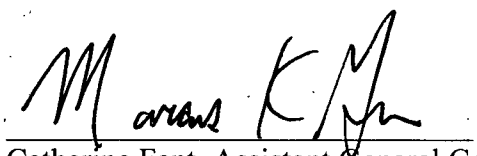
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.



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v.

Jami Morse.....Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief on the Honorable Jenny Abbott Kitchings, Clerk, at the South Carolina Court of Appeals, addressed to 1220 Senate Street, Columbia, SC 29201, via United States Mail, postage prepaid, on this 30th day of June, 2015.

Monishia L. Davis
Paralegal

Blythewood, S.C.
Dated: June 30, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUL 01 2015
SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-08-2002

The State .....Respondent,

v.

Jami Morse.....Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Final Brief on the Appellant, Jami Morse, addressed to her attorney of record, Milton D. Stratos, Esq., by depositing a copy in the United States Mail, postage prepaid, on June 30, 2015, addressed to 1041 Johnnie Dodds Blvd., Suite 14A, Mt. Pleasant, South Carolina 29464.

Monishia L. Davis, Paralegal
S.C. Department of Public Safety
Office of General Counsel

Blythewood, S.C.
Dated: June 30, 2015

South Carolina Department of Public Safety
OFFICE OF GENERAL COUNSEL
P.O. Box 1993 • Blythewood, S.C. 29016
Tel: (803) 896-7965 • Fax: (803) 896-7967

June 30, 2015

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: State of South Carolina v. Jami Morse
Appellate Case No. 2013-002734
Case No. 2013-CP-08-2002

Dear Ms. Kitchings:

Please find enclosed the following documents for filing with the Court in the above-referenced matter: (1) sixteen copies of Respondent's Final Brief, (2) an original and one (1) copy of the Proof of Service, and (3) Certificate of Compliance with Rule 211(b), SCACR.

In addition, please clock in a copy of the Respondent's Final Brief, Proof of Service and Certificate of Compliance for return to me in the envelope provided.

Sincerely,

Monishia L. Davis
Paralegal

cc: Milton D. Stratos, Esq.

/mld
Enclosures