

# **Attachment 1**

State of South Carolina  
Office of the Secretary of State  
The Honorable Mark Hammond

S.C. Code Ann.  
22-1-20

1205 PENDLETON STREET, SUITE 525  
COLUMBIA, SC 29201

Case No. 2019-000429

P.O. BOX 11350  
COLUMBIA, SC 29211

Business Filings  
(803) 734-2158

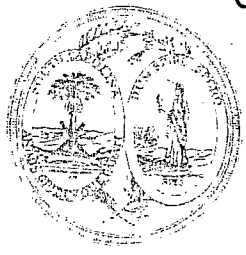
Corporations  
(Fax) (803) 734-1614

UCC  
(Fax) (803) 734-1610

Information  
(803) 734-2170  
www.scsos.com

Boards/Commissions  
(803) 734-2512

Notaries  
(803) 734-2119



~~14 October 2008~~

~~Mr. Hayward L. Rogers~~

#278510  
386 Redemption Way F4/A270  
McCormick, SC 29899

~~Dear Mr. Rogers:~~

The Secretary of State's Office is in receipt of your Freedom of Information Request. Our office does not maintain the names of jurors or any other information associated with Grand Juries. ~~We do file the oaths for magistrates~~, and copies of these are available for \$3.00 (certified) and \$1.00 (not certified). If you would like a copy of an oath, we would need payment and the name of the specific magistrate or the appropriate county and time frame that the magistrate served. ~~I did check our system and we do not have any information filed in reference to Martha Valentino.~~

Sincerely,

*T. Shealy*  
~~T. Shealy~~

Charities  
(803) 734-1790  
Fax (803) 734-1604

Service of Process  
(803) 734-0367

Trademarks  
(803) 734-1728

Employment Agencies  
(803) 734-1790

Cable Franchising  
(803) 734-0367

Investigative  
(803) 734-1790

Case NO. 2017-00721

Approved by  
S.C. Attorney General  
July 28, 1990  
SCCA 518

ARREST WARRANT

16-3-652 F- 607509  
810232 F607509

STATE OF SOUTH CAROLINA  
 County/  Municipality of  
CITY OF WEST COLUMBIA

THE STATE  
against

HEYWARD LEON ROGERS

Address: JULIUS FELDER ST  
CAYCE, SC 29033

Phone: SSN:  
Sex: M Race: B Height: 600 Weight: 188

DL State: DL #:

DOB: Agency ORI #: SC0320500

Prosecuting Agency: WCPD

Prosecuting Officer: AMODIO, RUBEN JASON

Offense: CRIMINAL SEXUAL CONDUCT F  
IRST DEGREE Offense Code: 16-3-652

Code/Ordinance Sec. 16-3-652

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 law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to  
defendant Heyward Leon Rogers  
on 11-17-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

RULE 5

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

AFFIDAVIT

Personally appeared before me the affiant JASON AMODIO who  
being duly sworn deposes and says that defendant HEYWARD LEON ROGERS  
did within this county and state on 09/28/98 violate the criminal laws of the  
State of South Carolina (or ordinance of  County/  Municipality of CITY OF WEST COLUMBIA )  
in the following particulars:

DESCRIPTION OF OFFENSE: G-16-3-652  
CRIMINAL SEXUAL CONDUCT FIRST DEGREE

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:  
IN THAT ON OR ABOUT SEPTEMBER 28, 1998 WHILE IN THE 500 BLK OF MEETING  
STREET IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID ONE  
HEYWARD LEON ROGERS DID COMMIT SEXUAL BATTERY IN THAT HE DID WITH  
FORCE AND WITHOUT CONSENT PENETRATE THE MOUTH OF THE VICTIM ETHEL  
TILLMAN WITH HIS PENIS ALL OF WHICH CONSTITUTES THE CRIME OF CRIMINAL  
SEXUAL CONDUCT FIRST DEGREE AND IS IN VIOLATION OF THE SOUTH CAROLINA  
CODE OF LAWS OF 1976 AS AMENDED. THE FOREGOING IS BASED ON AN  
INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT.

Sworn to and subscribed before me )  
on 10/15/98 )

Signature of Affiant  
Affiant's Address 1053 CENTER STREET  
WEST COLUMBIA, SC 29169  
Affiant's Telephone 794-0721

Signature of Issuing Judge (L.S.)  
Ministerial Records

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

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 09/28/98 defendant HEYWARD LEON ROGERS  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of CITY OF WEST COLUMBIA ) as set forth below:

DESCRIPTION OF OFFENSE:  
CRIMINAL SEXUAL CONDUCT FIRST DEGREE

Now, therefore, 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.

Signature of Issuing Judge (L.S.)  
Ministerial Records

Judge's Address 1053 CENTER STREET  
WEST COLUMBIA SC 29169  
Judge's Telephone 794-0721

Signature of Issuing Judge (L.S.)  
Ministerial Records

Issuing Court:  Magistrate  Municipal  Circuit

ORIGINAL

A TRUE COPY

1053 CENTER STREET, S.C.

BAIL set by

Judge \_\_\_\_\_

on \_\_\_\_\_

Type and Amount: \_\_\_\_\_

Name of Surety: \_\_\_\_\_

PRELIMINARY HEARING held by

Judge \_\_\_\_\_

on \_\_\_\_\_

Defense Attorney: \_\_\_\_\_

Decision: \_\_\_\_\_

DISPOSITION before

Judge \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: \_\_\_\_\_

Sentence: \_\_\_\_\_

JURORS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESSES

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

FILED

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

1998 NOV 30 P 3:57

Name: \_\_\_\_\_

Address: \_\_\_\_\_

WILLIAM H. COMERFORD  
CLERK OF COURT  
LEXINGTON SC

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

CODEFENDANTS

\_\_\_\_\_  
\_\_\_\_\_

ARREST WARRANT

16-1-10 F- 607505 9810232

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

AFFIDAVIT

A TRUE COPY  
Ex. CO. C.C. C.P. G.S. 14-1-10

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

Personally appeared before me the affiant JASON AMODIO who  
being duly sworn deposes and says that defendant HEYWARD LEON ROGERS  
did within this county and state on 09/28/98 violate the criminal laws of the  
State of South Carolina (or ordinance of  County/  Municipality of CITY OF WEST COLUMBIA )

THE STATE  
against

in the following particulars:  
DESCRIPTION OF OFFENSE: G-16-1-10  
STRONG ARM ROBBERY

HEYWARD LEON ROGERS  
Address: 7301 JULIUS FELDER ST  
CAYCE, SC 29033  
Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 600 Weight: 188  
Date of Birth: \_\_\_\_\_ DL #: \_\_\_\_\_  
DOB: \_\_\_\_\_ Agency ORI #: SC0320500  
Prosecuting Agency: WCPD  
Prosecuting Officer: AMODIO, RUBEN JASON  
Offense: STRONG ARM ROBBERY  
Offense Code: 137  
Code/Ordinance Sec. 16-1-10

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:  
IN THAT ON OR ABOUT SEPTEMBER 28, 1998 WHILE IN THE 500 BLK OF MEETING  
STREET IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID ON  
HEYWARD LEON ROGERS DID WITH PHYSICAL FORCE TAKE, STEAL, AND CARRY  
AWAY \$ 500.00 IN CASH AND A PURSE VALUED AT APPROX \$ 70.00 BELONGING  
TO THE VICTIM ETHEL TILLMAN. ALL OF WHICH CONSTITUTES THE CRIME OF  
STRONG ARMED ROBBERY AND IS IN VIOLATION OF THE SOUTH CAROLINA CODE  
OF LAWS OF 1976 AS AMENDED THE FOREGOING IS BASED ON AN INVESTIGATION  
BY THE WEST COLUMBIA POLICE DEPARTMENT.

This warrant is CERTIFIED FOR SERVICE in the  
 County/  Municipality of \_\_\_\_\_

Sworn to and subscribed before me )  
on 10/15/98 )

Signature of Affiant [Signature]  
Affiant's Address 1053 CENTER STREET  
WEST COLUMBIA, SC 29169  
Ministerial Recorder's Telephone 794-0721

Signature of Issuing Judge [Signature] (L.S.)  
Ministerial Recorder

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

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

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 09/28/98 defendant HEYWARD LEON ROGERS  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of CITY OF WEST COLUMBIA ) as set forth below:

DESCRIPTION OF OFFENSE:  
STRONG ARM ROBBERY

Now, therefore, 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.

Judge's Address 1053 CENTER STREET  
WEST COLUMBIA SC 29169  
Signature of Issuing Judge [Signature] (L.S.)  
Ministerial Recorder's Telephone 794-0721  
Issuing Court:  Magistrate  Municipal  Circuit  
Judge Code: \_\_\_\_\_

\_\_\_\_\_  
(L.S.)  
Signature of Judge

RETURN

A copy of this arrest warrant was delivered to  
defendant Heyward Leon Rogers  
on 11-17-98  
[Signature]  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Case No. 2

2019-000429

Form Approved by  
S.C. Attorney General  
July 26, 1990  
SCCA518

ARREST WARRANT

16-3-620 F- 607506

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

AFFIDAVIT

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

Personally appeared before me the affiant JASON AMODIO who  
being duly sworn deposes and says that defendant HEYWARD LEON ROGERS  
did within this county and state on 09/28/98 violate the criminal laws of the  
State of South Carolina (or ordinance of  County;  Municipality of CITY OF WEST COLUMBIA )  
in the following particulars:

DESCRIPTION OF OFFENSE: G-16-3-620  
ASSAULT AND BATTERY WITH INTENT TO KILL.

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 OR ABOUT SEPTEMBER 28, 1998 WHILE IN THE 500 BLK OF MEETING  
STREET IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID OF  
HEYWARD LEON ROGERS DID ATTEMPT TO KILL ETHEL TILLMAN BY RAMMING HIS  
HEAD AGAINST A BRICK WALL WITH EXTREME FORCE, CAUSING THE VICTIM  
TO SEEK MEDICAL TREATMENT FOR HER INJURIES. ALL OF WHICH CONSTITUTES THE  
CRIME OF ASSAULT AND BATTERY WITH THE INTENT TO KILL. THE FOREGOING  
IS BASED ON AN INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT

THE STATE  
against

HEYWARD LEON ROGERS  
Address: 2301 JULIUS FELDER ST  
GAYCE, SC 29033

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 600 Weight: 168  
Date of Birth: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: SC0320500  
Prosecuting Agency: WCPCD  
Prosecuting Officer: AMODIO, RUBEN JASON  
Offense: ASSAULT AND BATTERY WITH  
INTENT TO KILL. Offense Code: 11  
Code/Ordinance Sec. 16-3-620

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 law.

Sworn to and subscribed before me )  
on 10/15/98 )  
Signature of Affiant )  
Marta M. Valentinis (S.) )  
Signature of Issuing Officer )

[Signature]  
Signature of Affiant  
Affiant's Address 1053 CENTER STREET  
WEST COLUMBIA, SC 29169  
Affiant's Telephone 794-0721

STATE OF SOUTH CAROLINA )  
 County/  Municipality of )  
CITY OF WEST COLUMBIA )

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 09/28/98 defendant HEYWARD LEON ROGERS  
did violate the criminal laws of the State of South Carolina (or ordinance of  
 County/  Municipality of CITY OF WEST COLUMBIA ) as set forth below:

DESCRIPTION OF OFFENSE:  
ASSAULT AND BATTERY WITH INTENT TO KILL.

Now, therefore, 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.

Marta M. Valentinis (S.) )  
Signature of Issuing Officer )  
Judge's Address 1053 CENTER STREET  
WEST COLUMBIA SC 29169  
Judge's Telephone 794-0721  
Issuing Court:  Magistrate  Municipal  Circuit

\_\_\_\_\_  
Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to  
defendant Heyward Leon Rogers  
on 11-17-98

[Signature]  
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORIGINAL

1011

§ 14-25-105

COURTS

Cross References

Appeals generally to county circuit courts from inferior courts, see §§ 18-7-10 et seq.

§ 14-25-110. Repealed by 1980 Act No. 480, § 1, eff January 1, 1981.

Editor's Note

Former § 14-25-110 was entitled "Appeals to council".

~~§ 14-25-115. Appointment of ministerial recorder; powers and duties.~~

The council of a municipality may establish the office of ministerial recorder and appoint one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council. Before entering upon the discharge of the duties of the office of ministerial recorder, the person appointed shall take and subscribe the prescribed path of office and shall be certified by the municipal judge as having been instructed in the proper method of issuing warrants and setting and accepting bonds and recognizances. Ministerial recorders shall have the power to set and accept bonds and recognizances and to issue summonses, subpoenas, arrest warrants, and search warrants in all cases arising under the ordinances of the municipality, and in criminal cases as are now conferred by law upon magistrates. Ministerial recorders shall have no other judicial authority.

HISTORY: 1980 Act No. 480, eff January 1, 1981; 2000 Act No. 394, § 3, eff August 4, 2000.

Editor's Note

This section contains provisions dealing with matters formerly dealt with by §§ 14-25-310 and 14-25-320.

Effect of Amendment

The 2000 amendment, in the first sentence, substituted "a" for "any" municipality, in the second sentence, added "and setting and accepting bonds and recognizances", in the third sentence, added "set and accept bonds and recognizances and to" and deleted from the end "but shall have no other judicial power" and added the fourth sentence.

Attorney General's Opinions

Ministerial recorder who is not Notary Public, minister of gospel, or accepted Jewish Rabbi, is not authorized to perform marriage ceremony in this State. 1984 Op Atty Gen, No. 84-60, p. 149.

Ministerial magistrates are not authorized to hear civil proceedings pursuant to Sections 20-4-10, et seq. nor issue orders of protection pursuant to such provisions. 1984 Op Atty Gen, No. 84-120, p. 273.

BM

§ 14-25-120. Repealed by 1980 Act No. 480, § 1, eff January 1, 1981.

Editor's Note

Former § 14-25-120 was entitled "Appellant may pay fine in lieu of bond".

§ 14-25-125. Demand for jury trial; composition of jury.

Any person to be tried in a municipal court may, prior to trial, demand a jury trial, and such jury when demanded, shall be composed of six persons drawn from the qualified electors of the municipality in the manner prescribed herein. The right to a jury trial shall be deemed to have been waived unless demand is made prior to trial.

HISTORY: 1980 Act No. 480, eff January 1, 1981.

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# Attachment 2

Case No. 2019-000429

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

) IN THE COURT OF COMMON PLEAS  
) FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2007-CP-32-141

~~Howard Leon Rogers, (2785910)~~

Plaintiff,

ORDER

VS

~~Hope Frick, Deputy Clerk,  
Lexington County, clerk of Court,~~

Defendant.

FILED  
JUL 25 4 33 PM '08  
COPY

THIS MATTER IS before the Court pursuant to Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The Defendant also moves to dismiss based on lack of personal service of the lawsuit on the Defendant and the Defendant moves to dismiss based on the fact that Hope Frick, as Deputy Clerk of Court, was named as the Defendant rather than the County of Lexington.

~~At the hearing, the attorney for the Defendant stated that the Clerk of Court had given the Plaintiff the Grand Jury members and true bills issued by the Grand Jury on the dates requested. The Plaintiff alleged that he had not received those responses and the attorney for the Defendant thereafter gave copies of the above referenced information to the Plaintiff.~~

Having heard the arguments of the attorney for the Defendant and the argument of the Plaintiff, this Court finds that the Defendant is not a proper party to this action as an individual employee of the Clerk of Court's office, that the Defendant has not been properly served and that the Plaintiff has failed to state a cause of action, all pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that the Complaint be dismissed.

IT IS SO ORDERED.

The Honorable J. Ernest K. ...  
Judge of Circuit Court

27 of July, 2008  
Lexington, South Carolina

JANUARY 1999 GENERAL SESSIONS

MONDAY JANUARY 11, 1999

~~Presiding Judge: Rodney Peoples~~  
~~Court convened at 9:00 A.M.~~

Reporter: Daphne Vann

Case No. 2019-000429

Grand Jury Vor Dire

Jurors sworn as Grand Jury for 1999:

- 1. Barbara A. Johnson (H)
- 2. Frank Williams (H)
- X 3. Susan Matthews (H)
- 4. Johnette S. Adams (H)
- X 5. Thomas Backman (H)
- 6. Joseph Rhodes (H) - Foreman
- 7. Paul Howell
- 8. Vicki Fecas
- 9. Jason Lindsay
- 10. Paula Taylor
- 11. Kimberly Hook
- 12. Elizabeth Weed
- 13. Susan Barefoot
- 14. Katherine Birnie
- 15. Michelle Morrow
- X 16. Ryan Ezzell
- 17. John Lindler Jr.
- 18. George Thomas Jr.

Alternates:

- 1. Corey Thornton
- 2. Katherine Dievendorf
- 3. Gary Shelton
- 4. David Parler
- 5. Sandra Rucker
- 6. Debra Gunter

98-GS-32-3945

State vs. Tracy Gunn - Attorney General's Office served a true copy of 2 ct direct indictment and his attorney. Attorney General Office represented by Tameka Isaac. Defendant represented by Asst Public Defender.

Bond setting- Bond set at \$10,000.00 Surety or 10% cash on each count seperately. Condition of to pay \$1,800 to the Public defender fund. Pay at the rate of \$60 week starting 1-11-99. Def. t at time of sentence for any monies paid to P D Fund. Public defender to write order.

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON )



IN RE: )  
REPORT OF LEXINGTON )  
COUNTY GRAND JURY )

Case No. 2019-000429

We, the undersigned members of the Grand Jury, do hereby certify that the Grand Jury met on February 22, 1999 and that at least twelve (12) members of the Grand Jury affirmatively voted for the issuance of a true billed indictment in each and every case on the attached list unless otherwise noted.

- 6 Joe Rhodes  
Foreman (Or Acting Foreman)
- 1 Barbara Johnson
- 4 Johette Adams  
3
- 11 Theresa R. Hook  
4
- 8 Niki S. Dean  
5
- 9 Jean Byrd  
6
- 12 Elizabeth Reed  
7
- 10 Paula D. Latta  
8
- 14 Katharine H. Birme  
9

- 7 Paul R. Howell  
10
- 18 George M. Thomas  
11
- 17 John F. Guiller Jr  
12
- 15 Michelle M. Fitchum (Morgan)  
13
- 13 Susan R. Buehler  
14
- 2 Frank W. Williams  
15
- \_\_\_\_\_ 16
- \_\_\_\_\_ 17
- \_\_\_\_\_ 18

EXHIBIT - 2

Lexington, South Carolina  
February 22, 1999

Page 3 Case No 2019-00429 Charges 13  
 Grand Jury Discovery

0291	<del>Edward Lee Ferguson</del>	Strong Armed Robbery	Common Law
0292	John B. Hill	Failure to Appear After Release	
0293	Randall W. Shealy	Forgery	
0294	Lashella Thompson	Dist. Crack Cocaine	
0295	" "	" " " "	w/proximity
0296	" "	Conspiracy to Dist.	Crack Cocaine
0297	Lisha Thompson	" " " "	" "
0298	" "	" " Dist.	w/proximity Scho
0299	" "	Dist. Crack Cocaine	
0300	Michael Jermain Lyles	Resisting Arrest	
0301	Stanley Williams	Indecent Exposure	
0302	Mark A. Wilmot	Obtaining Signature or prop. by	False
0303	Keith Lamon Young	Poss. w/intent to Dist. Marijuana	
0304	" " " "	" " " "	w/proximity School
0305	Donald W. Jordan	Fraudulent Check	
0306	" "	" "	" "
0307	Juanita Thompson	Fraudulent Check	
0308	Robert S. Waters Sr.	" "	" "
0309	Sheila Boles	Shoplifting Less 1,000.00	3rd offense
0310	" "	" " " "	" or More
0311	Joseph Golson	Murder	
0312	Martin James Sharpe	Burglary First Degree	
0313	" " "	Criminal Sexual Conduct First Degree	
0314	" " "	Kidnapping	
0315	" " "	Ass. & Batt. High & Aggr. Nature	Common Law
0316	" " "	Burglary First Degree	
0317	" " "	Criminal Sexual Conduct First Degree	
0318	" " "	Kidnapping	
0319	" " "	Ass. & Batt. of Kid & Bod. Ntr.	Common Law

Grand Jury Discovery

Charge  
Charges

0262	Robert D. Lundy	Forgery
0263	" " "	"
0264	Phillip D. McCoy	Poss. w/ Intent to Distr. Crack cocaine
0265	" "	Simple Poss. Marijuana
0266	" "	Poss. w/ Intent to Distr. Crack Cocaine <sup>proximity school</sup>
0267	Charles McMillon	Burglary second
0268	" "	Grand Larceny more than 5,000.00
0269	Marty Miles	Poss. w/ Intent to Distr. Marijuana w/ proximity
0270	" " " " " "	" " " " "
0271	Antwan Nelson	Count Ten Kidnapping
0272	" "	Count Nine "
0273	" "	Count eight "
0274	" "	Count seven "
0275	" "	Count six Poss of firearm & knife <sup>During Comm. Violent Crime</sup>
0276	" "	Count five Poss. & Batt. High & Agg. Nature <sup>Common Law</sup>
0277	" "	Count four Criminal Conspiracy
0278	" "	Count three Burglary First Degree
0279	" "	Count two Armed Robbery
0280	" "	Count one " "
0281	Felipe Pena Alfara	Criminal Dom. Violence High + Agg. Nature
0282	Albert Richard Robinson	Burglary Third Degree
0283	" " "	Grand Larceny - 5,000 or more
0284	" " "	" " "
0285	Hayward Leon Rogers	Burglary Second
0286	" " "	Criminal Sexual Conduct First Degree
0287	" " "	" " " " "
0288	" " "	" " " " "
0289	" " "	<del>Poss. w/ Intent to Distr. 200</del>
0290	" " "	Kidnapping

Case No. 2019-000429

DOCKET NO. 99-GS-32- 819

**The State of South Carolina**  
**County of LEXINGTON**  
**COURT OF GENERAL SESSIONS**

FEBRUARY TERM 1999

THE STATE  
vs.

HEYWARD LEON ROGERS



CDR# 14

Indictment for  
~~Battery~~  
ASSAULT WITH INTENT TO KILL  
§16-3-620

DONALD V. MYERS, SOLICITOR

A TRUE COPY  
*Donald V. Myers*  
Lex. Co. C.C.C.F., G.S. F.C.

WITNESSES

WCPD

Amodio

ARREST WARRANT NUMBER

F-607506

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

2/22/99

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

9/21/01

Page 4 of 235

Entry Number 8-2

Date Filed 07/26/12

2:12-cv-01858-TMC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

INDICTMENT FOR  
ASSAULT WITH INTENT TO KILL  
~~and Battery~~ §16-3-620  
COR

At a Court of General Sessions, convened in February 1999 the Grand Jurors of LEXINGTON County present upon their oath:

~~and Battery~~ COR  
ASSAULT WITH INTENT TO KILL  
§16-3-620

That HEYWARD LEON ROGERS, did in Lexington County on or about September 28, 1998, with malice aforethought commit an assault and battery upon one Ethel Tillman, with the intent to kill the said victim, in violation of Section 16-3-620 of the South Carolina Code of Laws of 1976, as amended.

Exhibit - 4

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*J. Cawell*  
SOLICITOR

Case No. 2019-000429

DOCKET NO. 99-GS-32- 819

**The State of South Carolina**  
County of LEXINGTON  
COURT OF GENERAL SESSIONS

FEBRUARY TERM 1999

THE STATE  
vs.

HEYWARD LEON ROGERS



ARREST WARRANT NUMBER

F-607506

ACTION OF GRAND JURY

TRUE BILL

*Joe Rhodes*  
Foreperson of Grand Jury

Date: 2/22/99

VERDICT

GUILTY

CDR# 14

Indictment for  
~~Battery~~ COK  
ASSAULT WITH INTENT TO KILL  
§16-3-620

*Frank M. Tyler*  
Foreperson of Petit Jury

Date: 9/21/01

DONALD V. MYERS, SOLICITOR

A TRUE COPY

*Donald V. Myers*  
Lex. Co. C.C.C.F., G.S. F.C.

Page 4 of 235  
Entry Number 8-4  
Date Filed 01/20/14



H. HIR,

24 S.C. 144; Rodney CLAIR, Respondent, v. STATE of South Carolina, Petitioner.;  
478 S.E.2d 54

Page 144

Rodney CLAIR, Respondent, v. STATE of South Carolina, Petitioner.

No. 24515.

Supreme Court of South Carolina.

Submitted June 19, 1996.

Decided November 4, 1996.

Page 145

Attorney General Charles Molony Condon, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Teresa N. Cosby, and Assistant Attorney General G. Robert DeLoach III, Columbia, for petitioner.

Tara Dawn Shurling, Columbia, for respondent.

MOORE, Justice:

We granted the State's petition for a writ of certiorari to review the grant of post-conviction relief (PCR) in this case. We now affirm.

*FACTS*

Respondent was indicted for trafficking in cocaine weighing more than 100 grams and less than 200 grams. Before the

Page 146

jury was sworn, the solicitor moved to amend the indictment to an amount more than 200 grams and less than 400 grams. Defense counsel consented to the amendment based on his understanding that the amount did not change the nature of the charges against his client. Respondent was convicted and sentenced to twenty-five years without parole and fined \$100,000.

Respondent filed a direct appeal which he then withdrew. Thereafter, he filed this application for PCR. On motion for summary judgment, the PCR judge granted respondent relief on the ground the amendment of the indictment without presentment by the grand jury deprived the court of subject matter jurisdiction.

*ISSUE*

Did the amendment of the indictment change the nature of the offense?

*DISCUSSION*

Under S.C.Code Ann. § 17-19-100 (1985), an indictment may be amended, and the trial may proceed as if the amended indictment had been originally returned by the grand jury, if the amendment does not change the nature of the offense charged. The State contends the PCR judge erred in finding amendment of the indictment changed the nature of the offense since the amendment went only to the amount of cocaine which is not an element of trafficking.(fn1)

In *Hopkins v. State*, 317 S.C. 7, 451 S.E.2d 389 (1994), we held an amendment that increases the penalty changes the nature of the offense and therefore deprives the court of subject matter jurisdiction. The amendment in this case changed the penalty involved since it increased the applicable

Page 147

fine from \$50,000 to \$100,000. Accordingly, the order granting PCR is

**AFFIRMED.**

FINNEY, C.J., and TOAL and WALLER, JJ., concur.

BURNETT, A.J., dissenting in separate opinion.

BURNETT, Justice:

I respectfully dissent.

#### FACTS

Respondent was indicted for trafficking in cocaine. The indictment originally alleged that respondent trafficked in more than 100 but less than 200 grams of cocaine. Before the jury was sworn, however, the State moved to amend the indictment on the ground that the amount of cocaine alleged was incorrect. With respondent's consent, the trial court permitted the State to amend the indictment to allege an amount of more than 200 but less than 400 grams of cocaine.(fn1) Respondent was subsequently convicted of trafficking, sentenced to twenty-five years' imprisonment, and fined \$100,000.

Respondent filed a direct appeal which he later withdrew. Thereafter, respondent filed an application for post-conviction relief (PCR). Respondent argued that without a written waiver of presentment, the amendment to his trafficking indictment deprived the trial court of subject-matter jurisdiction because the amendment increased the maximum penalty for a conviction. After hearing oral arguments, the PCR court agreed and vacated respondent's conviction.


#### ISSUE

Did the amendment to respondent's trafficking indictment deprive the trial court of subject matter jurisdiction?

Page 148

An amendment to an indictment is permissible if the amendment does not change the nature of the offense charged. S.C.Code Ann. § 17-19-100 (1985); *see also State v. Myers*, 313 S.C. 391, 438 S.E.2d 236 (1993). Here, respondent was charged with "trafficking in cocaine," an offense defined in S.C.Code Ann. § 44-53-370(e)(2) (Supp.1995) as the sale, purchase, possession, etc., of "ten grams or more of

cocaine or any mixtures containing cocaine." Although the amendment to respondent's indictment increased the potential punishment he faced if convicted of trafficking, the offense charged remained the same. Consequently, the amendment in this case was permissible under § 17-19-100.

Respondent argues (and the majority holds) that this Court's decision in *Hopkins v. State*, 317 S.C. 7, 451 S.E.2d 389 (1994), mandates a different result. I disagree. 

In *Hopkins*, the petitioner was originally indicted for two counts of felony DUI causing great bodily injury. His indictment was subsequently amended to allege two counts of felony DUI causing death. See S.C.Code Ann. § 56-5-2945 (Supp. 1995). Consequently, unlike the case at hand, the amendment at issue in *Hopkins* actually changed the original offense charged, not merely the potential punishment.

Further, in holding that an amendment to an indictment which increases the maximum penalty for an offense exceeds the terms of § 17-19-100, the *Hopkins* Court relied solely on *State v. (Bruce Eugene) Riddle*, 301 S.C. 211, 391 S.E.2d 253 (1990).<sup>(fn2)</sup> *Riddle*, however, does not support such a holding. In *Riddle*, the Court held that the amendment at issue changed the nature of the offense charged because the amendment increased the lesser charge of assault with intent to commit third degree criminal sexual conduct to the greater charge of assault with intent to commit first degree criminal sexual conduct. The reference in *Riddle* to the difference in punishment between third degree CSC and first degree CSC was clearly not the basis of the Court's decision that the amendment exceeded the terms of § 17-19-100.

Page 149

I would therefore reverse the grant of post-conviction relief and reinstate respondent's conviction and sentence for trafficking in cocaine.

#### Footnotes:

1. The State also relies on *State v. Towery*, 300 S.C. 86, 386 S.E.2d 462 (1989), in which this Court held a trafficking indictment that alleged *no* weight was sufficient. *Towery*, however, involved only the question whether the original indictment presented by the grand jury was sufficient to give the defendant notice of the charges against him. It did not address whether an amendment at trial of a true-billed indictment changed the nature of the charges for purposes of determining whether the court had subject matter jurisdiction.

1. At trial, respondent stipulated the amount of cocaine at issue was 293 grams. He contended, however, that the cocaine was not his.

2. The *Hopkins* opinion inadvertently cites *State v. (Ernest M.) Riddle*, 291 S.C. 232, 353 S.E.2d 138 (1987).

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Exhibit-A

The State of South Carolina



Office of the Attorney General

Case No. 2019-000429

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-743377  
FACSIMILE 803-733-6231

December 15, 1993

The Honorable Clyde N. Davis, Jr.  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: State v. Gene Tony Cooper, Jr.

Dear Mr. Davis:

On January 1, 1993, the Court heard oral arguments in the above-referenced death penalty case out of Lexington County. In Argument VII of the Final Brief of Appellant, Appellant maintains that the trial judge erroneously instructed the jury, in accordance with State v. Atkins, 293 S.C. 294, 360 S.E.2d 302 (1987), overruled in part, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315, 319-323 (1991) (Chandler, J., concurring in result), which was then-controlling precedent. (Final Brief of Appellant at pp. 43-46). His argument is premised upon his convictions for a "series of violent offenses including several armed robberies and a burglary...." (Final Brief of Appellant at p. 43). He maintains that because of this record of convictions for allegedly violent crimes, should he have been sentenced to life imprisonment in the present case, he would have never been eligible for parole as the result of S.C. Code Ann. § 24-21-640 (Supp. 1992). Therefore, he claims that the trial judge's charge concerning parole eligibility was materially incorrect and misleading. (Final Brief of Appellant at 44-46).

In connection with Appellant's seventh argument, the State would like to bring to the Court's attention that the South Carolina General Assembly passed a Crime Classification Act in 1993 which amended the creation of defined violent crimes in 1985. In its pertinent part to this case in Act No. 184, Section 8 provides as follows:

Section 8. Section 16-1-60 of the 1976 Code is amended to read:

Section 16-1-60. (A) For purposes of definition under South Carolina Law a violent crime includes the offenses of murder (§ 16-3-10); armed robbery (§ 16-11-330)...

(B) For a person to be considered guilty of a violent crime, the offense must be defined as a violent crime pursuant to subsection (A) at the time of the commission of the crime. (Emphasis added).

1993 Acts and Joint Resolutions, No. 184, p. 3239. Section 266 of the Act states as follows concerning the prospective application of the Crime Classification Act:

Prospective application of Act. Section 266. All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this act takes effect are saved. The provisions of this act other than § 16-1-60(B) apply prospectively to crimes and offenses committed after the effective date of the act. The provisions of sub-section 16-1-60(B) apply retroactively to all persons convicted under the laws of this State. All sentences pronounced on or after the effective date of this act must comply with the classification system, except where a penalty greater than the one in effect on the date the offense was committed would be required.

1993 Acts and Joint Resolutions, Act 184, Section 266, p. 3397 (emphasis added). Further, the declared effective date of these sections of the Crime Act is January 1, 1994. 1993 Acts and Joint Resolutions, No. 184, Section 269, p. 3399.

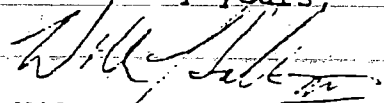
Because § 16-1-60 was not passed until 1986, any crimes committed before that date will no longer be classified as "violent offenses". As a result, the provisions of § 24-21-640 would no longer be applicable to Appellant's murder conviction, had he been sentenced to life imprisonment. Rather, because the armed robberies took place in 1976, he would have been parole eligible after January 1, 1994, if he had been sentenced to life imprisonment for the present murder.

Therefore, the State submits that following January 1, 1994, Appellant cannot show any conceivable prejudice based upon the trial judge's instruction under Atkins.

3/2  
The Honorable Clyde N. Davis, Jr.  
December 15, 1993  
Page Three

Thank you very much for your attention to this matter. If there are any questions, please do not hesitate to contact me.

Sincerely yours,



William Edgar Salter, III  
Assistant Attorney General

WESIII\aw  
CC; David I. Bruck, Esquire

# **Attachment 4**

DOROTHY FELLIATREULT -DIRECT- BY MR. RIDDLE

1 evidence department typically analyzes, was the  
2 head hair standards, pubic head standards, pubic  
3 hair combings, if the incident occurred within a  
4 certain time frame from the collection of  
5 samples, and an envelope containing  
6 miscellaneous materials if they find certain  
7 things on the body of the suspect that might be  
8 probative to the case. The other part of the  
9 kit would be blood and saliva standards  
10 collected from the suspect as well.

11 Q What is the blood collected for? What is the  
12 purpose of that?

13 A I believe that's for the D.N.A. examination.

14 Q Did you have an opportunity, as part of your  
15 employment, to go to the Lexington County  
16 Detention Center and do a suspect evidence  
17 collection kit on Heyward Rogers?

18 A Yes, sir, I did.

19 Q And when did this take place?

20 A On October 8, 1998.

21 Q Were you present when the samples were taken?

22 A Yes, sir, I was. When you take a suspect  
23 evidence collection kit, the hair evidence that  
24 I described earlier can be collected by someone  
25 who simply knows what they are doing because

## DOROTHY FILIATREULT -DIRECT- BY MR. RIDDLE

1 it's considered a less invasive examination or  
2 collection technique. You simply take a pair of  
3 teasers and pull the hairs out one by one or a  
4 few at a time from the area in question and  
5 collect them in that manner.

6 However, because it's a blood standard as  
7 well that needs to be collected, typically a  
8 nurse or a qualified nurse or someone like that  
9 will take the blood standards. In this  
10 particular case, a nurse Merkye (ph.) Blackmon  
11 performed the D.N.A. standards on the blood and  
12 saliva standards in my presence.

13 Q She actually drew the blood?

14 A Yes.

15 Q After she drew the blood, what did she do with  
16 it?

17 A She properly packaged them back into the suspect  
18 evidence collection kit and gave them to me.

19 Q Did she do anything to change it while she had  
20 it?

21 A No, sir.

22 Q And all this was done in your presence?

23 A Yes, sir.

24 Q When you get the various samples -- the blood,  
25 the hair, and saliva -- what do you do with



South Carolina  
Department of Labor, Licensing and Regulation

Case No. 2019-000429



Nikki R. Haley  
Governor

Richele Taylor  
Director

110 Centerview Drive  
Post Office Box 11329  
Columbia, SC 29211-1329  
(803) 896-4300  
FAX (803) 896-4393

~~July 27, 2015~~

Hayward L. Rogers #278510  
Perry Correctional Institute  
430 Oaklawn Road  
Pelzer, SC 29669

~~Re: Freedom of Information (FOIA) Request - Merkyle Blackmon~~

Dear Mr. Rogers:

~~This letter is in response to your FOIA request regarding Merkyle Blackmon, dated July 6, 2015, and received on July 13, 2015. Copy included.~~

We have searched and find no one licensed as a nurse or otherwise with our agency by the name of Merkyle Blackmon, as you provided.

If you have any further questions concerning this or any other matter, please contact me.

Sincerely,

~~Lesia Shannon Kudelka~~  
Communications Director and Ombudsman  
(803) 896-4376 / [Lesia.Kudelka@llr.sc.gov](mailto:Lesia.Kudelka@llr.sc.gov)

Enclosures



South Carolina  
Department of Labor, Licensing and Regulation



Case No. 2019-000429

110 Centerview Drive

Post Office Box 11329  
Columbia, SC 29211-1329  
(803) 896-4300  
FAX (803) 896-4393

Nikki R. Haley  
Governor

Emily H. Farr  
Interim Director

~~September 15, 2016~~

Hayward L. Rogers 278510  
Broad River Correctional Institution  
4460 Broad River Road, MLT-A2111  
Columbia, SC 29210

~~Re: Freedom of Information Act (FOIA) Request - Merkyle Blackmon~~

~~Dear Mr. Rogers:~~

~~This letter is in response to your request for a certified response to your request for information on Merkyle Blackmon.~~

~~As stated in our previous response, we have searched and find no one licensed as a nurse or otherwise with our agency by the name of Merkyle Blackmon, as you provided.~~

~~Please note that phlebotomists may draw blood. There also may be others certifications that allow someone to draw blood. Our agency does not license phlebotomists.~~

If you have further questions, please let us know.

Sincerely,

~~Lesia Shannon-Kudelka~~  
Communications Director and Ombudsman  
Office of Communications and Government Affairs

State of South Carolina  
County of Lexington

Signed before me on September 15, 2016.

Notary Public Signature

Dorothy M. Buchanan  
Notary Public Printed

My Commission Expires 02/05/25



South Carolina  
Department of Labor, Licensing and Regulation



Case No. 2019-000429

110 Centerview Drive  
Post Office Box 11329  
Columbia, SC 29211-1329  
(803) 896-4300  
FAX (803) 896-4393

Nikki R. Haley  
Governor

Emily H. Farr  
Interim Director

September 15, 2016

Hayward L. Rogers 278510  
Broad River Correctional Institution  
4460 Broad River Road, MLT-A2111  
Columbia, SC 29210

Re: Freedom of Information Act (FOIA) Request - Merkyle Blackmon

Dear Mr. Rogers:

This letter is in response to your request for a certified response to your request for information on Merkyle Blackmon.

As stated in our previous response, we have searched and find no one licensed as a nurse or otherwise with our agency by the name of Merkyle Blackmon, as you provided.

Please note that phlebotomists may draw blood. There also may be others certifications that allow someone to draw blood. Our agency does not license phlebotomists.

If you have further questions, please let us know.

Sincerely,

Lesia Shannon Kudelka  
Communications Director and Ombudsman  
Office of Communications and Government Affairs

State of South Carolina  
County of Lexington

Signed before me on September 15, 2016.

Notary Public Signature

Notary Public Printed

My Commission Expires 02/05/25

Case No. 2019-000429

~~State Board of Medical Examiners~~

3 10:02

ADMINISTRATOR: JOHN D. VOLMER

SYCS

POST OFFICE BOX 11289

COLUMBIA, SOUTH CAROLINA 29211-1289

~~July 6, 2019~~

Re: Freedom of Information ACT Request

Dear Board of Medical Examiners:

Under statutory state provisions of The Freedom of Information Act, pursuant to S.C. Code Ann. 30-40-10 et.al; I am requesting public information and wanting to know, do you know of a registered nurse by the name of ~~MS MERKLE~~ ~~MS KIRBY~~ that is allegedly licensed by the State Board of Nursing, and licensed by the State Board of Medical Examiners to obtain "blood and urine samples", during the periods of September 1, 1998 - to January 31, 2003? S.C. Code Ann. 56-5-2950(a) (Supp. 2003).

This information will be very helpful in knowing if this person was qualified to conduct the procedures.

Thank you

Sincerely,

~~John D. Volmer~~

John D. Volmer, Administrator

4300 Parkland Dr. Room 100

Columbia, SC 29211-1289

[REDACTED]  
[REDACTED] State of South Carolina  
[REDACTED] County of Richland  
[REDACTED]  
[REDACTED] SC

### CERTIFICATE OF SERVICE

I, The undersigned, hereby does CERTIFY That on This  
herein date That an original and a copy of The  
FREEDOM OF INFORMATION ACT REQUEST has been served  
on The STATE BOARD OF MEDICAL EXAMINERS and The  
Richland County CLERK OF COURT by placing a copy in  
The U.S. Mail postage prepaid.

July 6, 2015

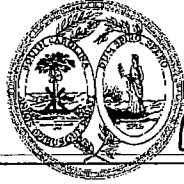
[Signature]

Sworn to before me this 6<sup>th</sup> Day  
of July 2015.

[Signature]

Notary Public for South Carolina

My Commission Expires 1/23/2013



Case No. 2019-000429

State of South Carolina  
Circuit Court Judge, At-Large, Seat 5

J. MARK HAYES, II  
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR  
SPARTANBURG, SOUTH CAROLINA 29306  
TELEPHONE: (864) 562-4144  
FAX: (864) 562-4142  
E-MAIL: mhayesj@sccourts.org

July 5, 2016

The Honorable Beth Carrigg  
Lexington County Clerk of Court  
205 East Main Street, Suite 146  
Lexington, South Carolina 29072-3557

Re: ~~Rogers v. State 2012-CP-32-3237~~

Dear Madame Clerk:

Enclosed please find a letter I have received from Mr. Hayward L. Rogers concerning his PCR case. Please incorporate his letter into the Court's file.

In advance, thank you for your cooperation and attention.

Respectfully,

J. Mark Hayes, II

Attachments

CC: ~~Hayward L. Rogers, #278510~~  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, South Carolina 29210

David K. Allen, Esq.  
206 East Main Street  
Lexington, South Carolina 29072-3546

Patrick Schmeckpeper, Esq.  
Post Office Box 11549  
Columbia, South Carolina 29211

JMHII/smw

Case No. 2019-000429

Hayward L. Rogers, 278510  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, South Carolina 29210

JUNE 23, 2016

(Re: ROGERS v. STATE, 2012-CR-32-3231)

Lexington County PCR

Dear Judge Hayes,

This is to notify you and the State that I have been framed and convicted for crimes I did not commit! Both counsel for the state and my lawyer David Allen lied to you at the January 14, 2016 hearing when they told you that they knew of no law where a person has to be authorized to take DNA sample at my trial. The state established no evidence establishing that Merkyle Blackman was qualified to collect blood for DNA sample. The newly discovered evidence proves Blackman impersonated herself as a nurse to illegally take blood from me in violation of an illegal search and seizure in violation of my 4th, 5th, 6th, and 14th Amendments to the U.S. Const. and S.C. State Const. Blackman was not even an appropriately trained person, and the search warrant used was insufficient for probable cause, because the search warrant used was for the search of a dwelling, and not a search to draw blood by a body intrusion, and there was no court order pursuant to S.C. Code Ann.

2.

~~23030630~~ only an authorized appropriately Trained person  
can collect blood for DNA Sample. Both Patrick Schmeckpeper,  
ESq, and David K. Allen, E.S.q, lied to you at that <sup>hearings</sup> hearing, and  
you should see that Justice is served the proper way.

~~JUNE 23 2016~~

~~Stephanie L. Fogel~~

CC: Daniel E. Shearouse  
David K. Allen, E.S.q.  
Patrick Schmeckpeper, E.S.q.

Case No. 2019-000429

Code of Laws of South Carolina 1976 Annotated

Title 23. Law Enforcement and Public Safety

Chapter 3. South Carolina Law Enforcement Division

Article 9. State DNA Database

~~Code 1976 § 23-3-630~~

§ 23-3-630. Persons authorized to take DNA sample; immunity from liability.

Effective: January 1, 2009

Currentness

(A) Only an appropriately trained person may take a sample from which DNA may be obtained.

(B) A person taking a sample pursuant to this article is immune from liability if the sample was taken according to recognized procedures. However, no person is relieved from liability for negligence in the taking of a sample.

**Credits**

HISTORY: 1994 Act No. 497, Part II, § 131A; 2004 Act No. 230, § 2; 2008 Act No. 413, § 4.D, eff January 1, 2009.

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Code 1976 § 23-3-630. SC ST § 23-3-630

Current through 2016 Act No. 147, effective March 15, 2016, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

End of Document

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Case No. 2019-000429

March 30, 2017

Mr. Hayward L. Rogers, 278510  
Broad River Correctional Inst.  
4460 Broad River Road  
Columbia, SC 29210

Re: Freedom of Information Request #1703199  
Licensed phlebotomists

Dear Mr. Rogers,

This is to advise you that the Freedom of Information Office could not locate any files on the referenced subject, company, individual, and/or address as submitted. This request is now closed.

If you have any questions, please feel free to contact the Freedom of Information Office at (803) 898-3882.

Sincerely,

*Karla A. York*

Karla A. York, Director  
Freedom of Information Office  
Direct Line: (803) 898-3817  
yorkka@dhec.sc.gov

Enclosures



Case NO. 2019-000429

April 17, 2017

Mr. Hayward L. Rogers, 278510  
Broad River Correctional Inst.  
4460 Broad River Road  
Columbia, SC 29210

Re: Freedom of Information Request #1703199  
licensed phlebotomists

Dear Mr. Rogers,

Please find enclosed a copy of the letter we mailed to you on 3/30/17.

If you have any questions, please feel free to contact the Freedom of Information Office at (803) 898-3882.

Sincerely,

*Karla A. York*

Karla A. York, Director  
Freedom of Information Office  
Direct Line: (803) 898-3817  
yorkka@dhec.sc.gov

Enclosures



Freedom of Information Request Form

Customer Service: (803) 898-3882

Date: March 6, 2017

Internal request number: \_\_\_\_\_

Contact information

Name: SC Department of Health Company/Organization: Phlebotomists  
Street address: 2600 Bull Street City: Columbia, State: S.C. Zip Code: 29201  
Phone number: \_\_\_\_\_ Email address: \_\_\_\_\_

Request information

I'm requesting:  Specific documents  File review

Facility or project name: Phlebotomists

Facility address: \_\_\_\_\_

County: \_\_\_\_\_

DHEC file custodian/staff contact if known: \_\_\_\_\_

Description of documents or files requested:

I Request to know if you have information verifying if This agency has ever in The past or Future provided Certification or Licensing To a person named Merkyle Blackman to act as a Phlebotomists, especially during The periods of September 1, 1998 - Thru - January 1, 2001. under Statutory Law of the Freedom of Information act, you have 15 days to Reply.

Family Privacy Protection Act statement

The Family Privacy Protection Act, SC Code Section 30-2-50, prohibits any person or private entity from knowingly obtaining or using any personal information obtained from our agency for commercial solicitation directed to any person in the State. Violation of this law is a crime.

I have read and understand this statement. I am not requesting personal information for the purposes of commercial solicitation or in violation of law.

Signed: Daymond A. Rozen Mar. 6, 2017

Submit requests: Email: [foi@dhec.sc.gov](mailto:foi@dhec.sc.gov) • Fax: (803) 898-3816 • Mail: FOI Office, 2600 Bull St., Columbia, S.C. 29201

Office Use Only: Date completed: \_\_\_\_\_

Billing info: Research: Time: \_\_\_\_\_ Cost: \_\_\_\_\_

Description: \_\_\_\_\_

Services:  Scan #: \_\_\_\_\_  WebX documents #: \_\_\_\_\_  Hard copies #: \_\_\_\_\_  CD duplication #: \_\_\_\_\_

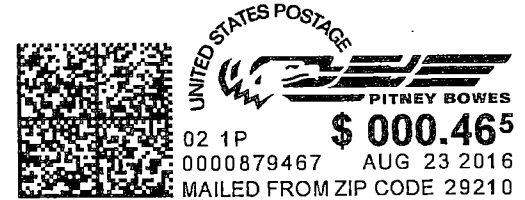
Other: \_\_\_\_\_

Delivery options:  Pick up  Emailed  Mailed  Other: \_\_\_\_\_ Total charge: \_\_\_\_\_

Case No. 2019-000429

Hayward L. ROSEERS, 278510  
Broad River Correctional Institution  
4460 Broad River Road, MLT-A2111  
Columbia, S.C. 29210

COLUMBIA  
SC 290  
24 AUG '16  
PM 1 L



SCDC

SEP 15 2016

MAIL ROOM

RECEIVED

AUG 25 2016

LLR Communications Office

29211-132929

~~South Carolina Department of~~

~~Labor Licenses and Regulation~~

ATTN: ~~MS Lesia Shannon Kudelka~~

Post office Box 11329

Columbia, S.C. 29211-1329

MOULTRIE UNIT



362 S.C. 511 (2004)

608 S.E.2d 874

The **STATE**, Respondent,

v.

Timothy Scott **FREY**, Appellant. *Case No. 2019-000429*No. 3878.

Court of Appeals of South Carolina.

Submitted September 15, 2004.

Decided October 25, 2004.

Withdrawn, Substituted and Refiled January 25, 2005.

513 \*513 Ricky Keith Harris, of Spartanburg, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, Assistant Attorney General Deborah R.J. Shupe, all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

**ORDER**

## PER CURIAM:

The State has petitioned for a rehearing and argues our prior opinion was incorrect in several particulars. While we deny the petition for rehearing, we briefly address the State's contentions.

The State argues initially that the record establishes its compliance with the statutory mandate requiring that "[b]lood and urine samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples in a licensed medical facility." S.C.Code Ann. § 56-5-2950(a) (Supp.2003). We disagree, for we remain firmly convinced that this record fails to establish that Scott Darragh is either a licensed physician, registered nurse or is otherwise properly qualified under the statute.

514 The State further argues that it would have been unduly burdensome to "utilize the out-of-state subpoena process, and expend Spartanburg County's limited financial resources, to \*514 secure the testimony of" Darragh. Assuming Darragh has moved to another state as alleged, the suggestion that Darragh's qualifications could be established *only* by his presence and testimony at trial is specious.

We also view as meritless the State's newly asserted efforts to recast the issue as one of "chain of custody."

The State finally contends that a remand to the trial court is the appropriate remedy. While we agree that a remand is appropriate under the circumstances, we do not adopt the State's expansive proposal for the taking of new evidence. We have reviewed the cases cited by the State for the proposition that it is entitled to a second bite of the apple to establish Darragh's qualifications: State v. Primus, 312 S.C. 256, 440 S.E.2d 128 (1994) (case remanded to lower court to conduct an initial *Jackson v. Denno* hearing to determine whether the defendant was "in custody" for *Miranda* purposes when he made statements to a police officer); State v. Williams, 258 S.C. 482, 189 S.E.2d 299 (1972) (case remanded to trial court to consider defendant's motion to strike the in-court identification testimony where the trial court "overruled the motion without going fully into whether or not there had, in fact, been improper prior confrontations, and whether, in fact, either or both of the in-court identifications were perchance the tainted product of any such unlawful

confrontation"); *State v. Sampson*, 317 S.C. 423, 454 S.E.2d 721 (Ct.App.1995) (court declined on appeal to rule on motion to suppress, instead remanding to the trial court to conduct an initial hearing on the sufficiency of a search warrant affidavit). These cases represent remands to trial courts to address issues that were not fully addressed and developed during the original trial. Remand in such circumstances is far removed from the request here — allowing the State a second evidentiary hearing. We conclude the remand should be limited to the existing record for the trial court to determine whether the State's failure to establish the qualifications of Darragh per section 56-5-2950(a) "materially affected the accuracy or reliability of the tests results or the fairness of the testing procedure." S.C.Code Ann. § 56-5-2950(e) (Supp.2003).

The original opinion, therefore, is withdrawn and the attached opinion is substituted therefor.

515 \*515 KITTREDGE, J.:

Timothy Scott Frey appeals his conviction for driving under the influence. Frey seeks a new trial, contending the circuit court improperly admitted evidence of the results of a blood-alcohol test. We reverse in part and remand.

## FACTS AND PROCEDURAL HISTORY

On December 21, 2001, Frey, while driving a pick-up truck in Spartanburg County, collided with two Spartanburg County Sheriff's Office vehicles. Frey was injured in the accident and transported to the Spartanburg Regional Medical Center. The police officer investigating the accident, Trooper L.D. Smith of the South Carolina Highway Patrol, met Frey at the hospital emergency room. After Trooper Smith advised Frey of his rights under the Implied Consent Laws, Frey consented to a blood sample being taken for blood-alcohol level analysis.

Trooper Smith prepared a standard-form SLED Blood Collection Report in connection with obtaining the blood sample from Frey. According to the report, the blood was drawn from Frey by an individual named "Scott Darragh." Darragh signed the form in the space labeled "licensed or trained collector," and the form was admitted in evidence over Frey's hearsay objection. The report, however, does not indicate what position Darragh held at the hospital nor did the State offer any evidence to show what, if any, medical training or licensure Darragh had that would qualify him to obtain the blood sample.

- ✓ At trial, Frey sought to suppress the admission of the blood-alcohol test results on the grounds the State did not present any evidence that the blood sample was drawn by a qualified individual as required under the implied consent statute. The circuit court denied Frey's request and admitted the test results. Frey was convicted and sentenced. This appeal followed.

## STANDARD OF REVIEW

- 516 A trial judge's decision to admit or exclude evidence is within his discretion and will not be disturbed on appeal \*516 absent an abuse of discretion. *Elledge v. Richland/Lexington Sch. Dist. Five*, 352 S.C. 179, 185, 573 S.E.2d 789, 792 (2002).

## LAW/ANALYSIS

Frey argues the circuit court erred in the admission of the blood-alcohol analysis test results.

Under the Implied Consent Statute, an arresting officer may direct that a blood sample be collected from a person arrested for DUI if that person is unable to submit to a breathalyzer test for medical reasons. S.C.Code Ann. § 56-5-2950 (Supp.2003). The statute requires, however, that blood samples be collected by qualified medical personnel: "Blood and urine samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples

in a licensed medical facility." S.C.Code Ann. § 56-5-2950(a). The circuit court found there was enough "circumstantial evidence" to establish statutory compliance based upon the fact that, following the trooper's request, Darragh appeared in the emergency room wearing "hospital like scrubs."

We disagree with the reasoning of the circuit court. With any question regarding statutory construction and application, the court must always look first to the legislative intent as determined from the plain language of the statute. State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002); State v. Morqan, 352 S.C. 359, 365-66, 574 S.E.2d 203, 206 (Ct.App.2002). The plain language of section 56-5-2950 requires that, when an officer directs a blood sample be collected from a person arrested for DUI, the sample "must" be obtained by trained, qualified medical personnel. Our courts have consistently held that use of words such as "shall" or "must" indicates the Legislature's intent to enact a mandatory requirement. See, e.g., South Carolina Police Officers Ret. Sys. v. City of Spartanburg, 301 S.C. 188, 191, 391 S.E.2d 239, 241 (1990) (noting that statutory prescriptions couched in language such as "shall" and "must" are mandatory in application and effect); Starnes v. South Carolina Dep't of Pub. Safety, 342 S.C. 216, 221, 535 S.E.2d 665, 667 (Ct.App.2000) (same). The plain language of section 56-5-2950 demands that the State \*517 offer some evidence to establish compliance with this statutory requirement.

The plain language of section 56-5-2950 further requires that we reject the State's suggestion that the mere appearance of Scott Darragh in the emergency room is sufficient, for the statute mandates that the blood sample "must" be obtained by a trained medical professional. One's mere appearance in a hospital wearing generic hospital attire is not evidence of one's medical training. We likewise reject the State's assertion that Darragh's signature on the SLED form in the space labeled "licensed or trained collector" is sufficient to establish compliance with the statute. Simply signing a preprinted form does not provide any indicia that the signatory's qualifications meet the specific licensing or training requirements of section 56-5-2950.<sup>[1]</sup> To hold otherwise would render the minimal foundational requirement of section 56-5-2950 without any meaningful force or effect. In light of the State's failure to satisfy this basic requirement, we are constrained to find the circuit court erred in finding the foundational requirements of section 56-5-2950 had been satisfied.<sup>[2]</sup>

\*518 The State alternatively asserts that, assuming Darragh was not qualified under the statute to collect the blood sample, suppression would not be warranted. Specifically, the State contends Frey was not prejudiced by the failure to comply with the statute. The State bases its argument on the principle that where a statute is silent about the admissibility of evidence, the "exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the appellant cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedures." State v. Sheldon, 344 S.C. 340, 343, 543 S.E.2d 585, 586 (Ct.App.2001) (quoting State v. Chandler, 267 S.C. 138, 226 S.E.2d 553 (1976)).

Recent revisions to section 56-5-2950 are in accord with the State's position. The statute was amended in 2003 to include the addition of subsection (e),<sup>[3]</sup> which provides, in pertinent part:

The failure to follow any of these policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence any tests results, *if the trial judge or hearing officer finds that such failure materially affected the accuracy or reliability of the tests results or the fairness of the testing procedure.*

S.C.Code Ann. § 56-5-2950(e) (Act No. 61, 2003 S.C. Acts 689) (emphasis added).

\*519 Since the statutory mandate in question is inextricably connected to the accuracy and reliability of the blood test results, we remand to the trial court. We are persuaded that \*519 in the first instance the issue of prejudice should be addressed by the trial court. We find instructive the case of State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585 (Ct.App.2001). Sheldon, a then on-duty state trooper, was charged with reckless homicide. The Highway Patrol participated in the accident investigation, in violation of a statute. As a result of the statutory violation, the trial court granted Sheldon's motion to suppress evidence gathered or prepared by the Highway Patrol's Multi-disciplinary Accident Investigation Team (MAIT). The State appealed, and this court noted that evidence obtained in violation of a

statute "is not necessarily inadmissible absent a demonstration of prejudice resulting from the violation." *Id.* at 344, 543 S.E.2d at 586. We remanded to the trial court since "[i]t did not make any findings on whether Sheldon would be prejudiced by MAIT's investigation of the collision." *Id.* Here, the trial court on remand shall, on the existing record, determine whether the State's failure to comply with section 56-5-2950(a) "materially affected the accuracy or reliability of the tests results or the fairness of the testing procedure." *Cf. State v. Huntley*, 349 S.C. 1, 6, 562 S.E.2d 472, 474 (2002) (noting that, in a DUI prosecution, breathalyzer operator error did not impact the accuracy of the breath test results, concluding "[i]f there is no question the breathalyzer machine was operating properly and its results were reliable"); *State v. Chandler*, 267 S.C. 138, 142, 226 S.E.2d 553, 555 (1976) (holding that evidence seized at nighttime was properly admitted pursuant to warrant authorizing a search "in the daytime only" since the court determined the violation had no impact on the reliability or probative value of the evidence).

## CONCLUSION

Because the State failed to establish Frey's blood sample was obtained by a licensed physician, registered nurse, or "other medical personnel trained to obtain the samples in a licensed medical facility" as mandated by section 56-5-2950, we remand to the trial court to determine whether "such failure materially affected the accuracy or reliability of the tests results or the fairness of the testing procedure." An answer in the affirmative shall entitle Frey to a new trial, but \*520 otherwise, the admission of the blood test results and resulting conviction shall stand affirmed.

REVERSED IN PART AND REMANDED.

HEARN, C.J., and HUFF, J., concur.

[1] We reject the State's argument to the extent it relies on the signature of Darragh as substantive evidence of his qualifications to collect the blood sample. We find guidance on this point in the manner our Rules of Criminal Procedure address the admission of a report of chemical analysis to establish the physical evidence of a controlled substance. Under narrowly limited circumstances, such a report signed by the chemist or analyst who performed the test may be admitted for chain of custody and substantive purposes. Rule 6(a), SCRCrimP. However, if the defendant timely objects to the admission of the report, the signed report alone is insufficient to establish that the tests were performed by a SLED-certified chemist and were conducted pursuant to SLED-approved procedures. The rule instead requires that, in the face of a proper objection to the report, "the trial judge shall require the chemist or analyst to be present at trial for the purpose of personally testifying." In the present case, the admission of the blood collection report to establish the qualifications of Darragh was hotly contested — subject to repeated defense objections. While the SLED form here may maintain its efficacy for chain of custody purposes, we decline to find that the medical training and qualification requirements mandated under section 56-5-2950 may be proven by the mere signature on the form.

[2] We are mindful of the legitimate concern of the trial court that law enforcement officers who request blood samples should not be required to demand detailed background information about the hospital employee who shows up to take the sample. This concern, however, is misplaced. There is no basis to find fault with the actions of Trooper Smith. Law enforcement officers may generally rely on the implicit and explicit assurances of medical providers regarding the qualifications of personnel who are assigned to assist them in their investigation. The failure of proof in this case is directly attributable to the State's failure to establish the qualifications of Scott Darragh.

[3] The 2003 revisions to § 56-5-2950 became effective shortly after the trial of this case. Because subsection (e) addresses procedural rather than substantive rights, it is remedial in nature, and therefore retroactive in its application. See *South Carolina Dep't of Revenue v. Rosemary Coin Machs., Inc.*, 339 S.C. 25, 28, 528 S.E.2d 416, 418 (2000) (noting that "statutes that are remedial or procedural in nature are generally held to operate retrospectively").