CHAPTER 7

Juries and Jurors in Circuit Courts

ARTICLE 1

General Provisions

**SECTION 14‑7‑10.** Rules of construction.

 The rule of common law that statutes in derogation of that law are to be strictly construed has no application to any of the provisions of this chapter other than those of Article 13 hereof and Sections 14‑7‑840, 14‑7‑860, 14‑7‑1100 and 14‑7‑1110.

HISTORY: 1962 Code Section 38‑1; 1952 Code Section 38‑1; 1942 Code Section 902; 1932 Code Section 902; Civ. P. ‘22 Section 850; Civ. P. ‘12 Section 487; Civ. P. ‘02 Section 448; 1870 (14) Section 470.

CROSS REFERENCES

Constitutional provision for trial by jury, see SC Const. Art. I, Section 14.

Jurors in equity cases under South Carolina Rules of Civil Procedure, see Rule 39, SCRCP.

Separation of jury under South Carolina Rules of Civil Procedure, see Rule 47, SCRCP.

Library References

Statutes 1206(3).

Westlaw Topic No. 361.

**SECTION 14‑7‑20.** Words “male” and “men” to include “female” and “women”.

 Wherever the word “male” or “men” is used in the Code of Laws of South Carolina, 1976, relating to jurors and jury service such words shall include “female” and “women”.

HISTORY: 1962 Code Section 38‑1.1; 1967 (55) 895.

Library References

Statutes 1130.

Westlaw Topic No. 361.

C.J.S. Statutes Sections 410 to 417, 430 to 432, 441, 444 to 445.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 12, Preparation of Jury List.

**SECTION 14‑7‑30.** “Clerk” defined.

 The word “clerk,” as used in this chapter signifies the clerk of the court where the action is pending, unless otherwise specified.

HISTORY: 1962 Code Section 38‑2; 1952 Code Section 38‑2; 1942 Code Section 900; 1932 Code Section 900; Civ. P. ‘22 Section 848; Civ. P. ‘12 Section 485; Civ. P. ‘02 Section 447; 1870 (14) Section 469.

**SECTION 14‑7‑40.** Summoning and empanelling jurors by coroners, clerks, or magistrates not affected.

 Nothing contained in this chapter shall affect the power and duty of coroners, clerks or magistrates to summon and empanel jurors when authorized by other provisions of law.

HISTORY: 1962 Code Section 38‑3; 1952 Code Section 38‑3; 1942 Code Section 646; 1932 Code Section 646; Civ. P. ‘22 Section 586; Civ. C. ‘12 Section 4054; Civ. C. ‘02 Section 2953; G. S. 2274; R. S. 2413; 1871 (14) 696.

CROSS REFERENCES

Jury in coroner’s inquest, see Sections 17‑7‑20, 17‑7‑90 to 17‑7‑160, 17‑7‑190 to 17‑7‑210.

Library References

Jury 67(3).

Westlaw Topic No. 230.

C.J.S. Juries Sections 317 to 318.

LAW REVIEW AND JOURNAL COMMENTARIES

Criminal Procedure—Impaneling Jurors—Use of Challenges for Exclusion of Veniremen Who Oppose Imposition of Capital Punishment. 22 S.C. L. Rev. 98.

Jury Selection. 25 S.C. L. Rev. 439.

Attorney General’s Opinions

With reference to the fact that Aiken County magistrates have county‑wide jurisdiction, “respectable voter of the vicinity” should be construed to include voters of the entire county. Thus, the eighteen members of the venire who are to serve as the basis for the jury selected to determine a criminal case in magistrate’s court in Aiken County should be chosen from among the eligible voters of the entire county of Aiken. Also, there is no provision authorizing the use of the county jury box to select these eighteen potential jurors and therefore, there is no right for an attorney to be present at any drawing from the box. 1976‑77 Op.Atty.Gen. No 77‑269, p 206 (August 24, 1977) 1977 WL 24609.

ARTICLE 3

Drawing and Summoning Jurors

**SECTION 14‑7‑110.** Summoning of jurors by clerk of the court of common pleas.

 The clerk of the court of common pleas of each county in this State shall perform the duties provided in this article for the summoning of jurors.

HISTORY: 1962 Code Section 38‑51; 1952 Code Section 38‑51; 1942 Code Section 607; Civ. P. ‘22 Section 547; Civ. C. ‘12 Section 4016; Civ. C. ‘02 Section 2909; G. S. 2254; R. S. 2373; 1871 (14) 690; 1874 (15) 638; 1893 (21) 524; 1896 (22) 16; 1902 (23) 1066; 1939 (41) 27; 1941 (42) 70; 1943 (43) 263; 1957 (50) 286; 1986 Act No. 340, Section 1, eff March 10, 1986; 2012 Act No. 200, Section 1, eff June 7, 2012.

CROSS REFERENCES

Constitutional provision against summoning and empaneling grand or petit jurors by special law, see SC Const. Art. III, Section 34.

Juries in proceedings for release from civil arrest on surrender of property, see Sections 15‑17‑490 to 15‑17‑510.

Library References

Jury 59.

Westlaw Topic No. 230.

C.J.S. Juries Section 270.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 11, Jury Commissioners.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Chapter directory rather than mandatory. The provisions of this chapter as to the drawing and summoning of jurors are usually directory only and not mandatory. State v. Britt (S.C. 1960) 237 S.C. 293, 117 S.E.2d 379, certiorari denied 81 S.Ct. 1040, 365 U.S. 886, 6 L.Ed.2d 197.

Purpose of chapter. This chapter was enacted by the legislative branch with the intention of curing irregularities and technical errors, which so often occurred previous to these enactments, in the manner of obtaining jurors in the circuit courts, and to prevent the great delays and expenses incidental to the trial of causes. State v. Wells (S.C. 1931) 162 S.C. 509, 161 S.E. 177.

The purpose of the jury laws in this chapter of the Code is to obtain fair and impartial jurors of good citizens who possess the constitutional qualifications of jurors and to have in the courts, when needed, the proper number of such jurors. State v. Wells (S.C. 1931) 162 S.C. 509, 161 S.E. 177.

The provisions of this chapter apply to grand jurors as well as to petit jurors. State v. Wells (S.C. 1931) 162 S.C. 509, 161 S.E. 177.

Under 1 Code of Laws 1902, Section 2912, providing that the county auditor, county treasurer, and the clerk of the court shall constitute the board of jury commissioners, and that in case any member of the board fails to attend for the purpose of drawing a jury, a majority of the board may act, it is an irregularity only that two members of the board participated in drawing a special venire, and the absence of the auditor did not vitiate the action of the majority present and acting. State v. Smith (S.C. 1907) 77 S.C. 248, 57 S.E. 868.

It is a good ground of challenge to the array on the trial of a prisoner for murder, that the Jury Commissioner is a near blood relation of the deceased, and that he assisted at the drawing of the jury. State v. McQuaige (S.C. 1874) 5 S.C. 429, 1874 WL 5337, Unreported.

2. Constitutional issues

Provisions do not deny equal protection. There is certainly no denial of the equal protection of the laws in any of the constitutional or statutory provisions as to qualifications of jurors and the method of selecting them. Moorer v State, 244 SC 102, 135 SE2d 713 (1964). Bostick v State, 247 SC 22, 145 SE2d 439 (1965).

**SECTION 14‑7‑120.** Vacancy or disqualification in office of jury commissioner.

 If there is a vacancy in the office of the clerk of court of common pleas, county auditor, or county treasurer at the time fixed for preparing the jury list or for drawing a jury or if any of these officers are disqualified or unable to serve for any reason, the county judge of probate shall act in his place and stead and if there is a vacancy in two of these offices or for any other reason two of these officers are unable to serve, the county judge of probate and the sheriff of the county shall act in their places and stead. If from among the officers above named there are not three persons in office qualified and able to serve, the resident circuit judge or the presiding judge shall appoint a commissioner or commissioners to serve in the place of the commissioner or commissioners as may be disqualified during the time of his or their disqualification. Each of the substitute commissioners shall receive the same per diem and mileage as is paid jurors.

HISTORY: 1962 Code Section 38‑51.2; 1952 Code Section 38‑51.1; 1942 Code Section 622; 1932 Code Section 622; Civ. P. ‘22 Section 562; Civ. C. ‘12 Section 4030; 1902 (23) 1066; 1930 (36) 1239; 1936 (39) 1340; 1939 (41) 27; 1941 (42) 70; 1957 (50) 286; 1986 Act No. 340, Section 1, eff March 10, 1986.

Library References

Jury 59.

Westlaw Topic No. 230.

C.J.S. Juries Section 270.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 11, Jury Commissioners.

NOTES OF DECISIONS

In general 1

1. In general

Absence of clerk and county superintendent of education does not vitiate panel. The mere absence of the clerk and the county superintendent of education does not vitiate a drawing of a venire, there being present a majority of the three officers charged with the duty of so drawing. State v Nelson, 80 SC 373, 61 SE 897 (1908). State v Merriman, 35 SC 607, 14 SE 394 (1892).

Where action was against county treasurer to recover unlawful expenditures under an unconstitutional statute on the basis of defendant’s alleged bad faith, and defendant and county auditor, who was also a beneficiary under the statute, were jury commissioners, plaintiffs were not prejudiced by order providing that superintendent of education and sheriff should serve as jury commissioners along with clerk of court with respect to particular action. O’Shields v. Caldwell (S.C. 1946) 208 S.C. 245, 37 S.E.2d 665. Appeal And Error 1045(1)

A motion to quash jury panel on ground that proper jury commission did not participate in drawing of extra venire was properly overruled, where county superintendent of education took part in drawing of jury in place of county auditor as permitted by statute and there was nothing to show that superintendent of education did not have the auditor’s key to jury box. State v. Smith (S.C. 1942) 200 S.C. 188, 20 S.E.2d 726.

Nor does mistaken presence of sheriff at drawing. The presence and assistance of the sheriff in the drawing of jurors does not vitiate the panel, where his participation is in good faith and under a mistaken construction of this section [Code 1962 Section 38‑51.2] and it does not appear that the drawing was improperly done by the officers so charged by law with that duty, or that any prejudice resulted from the sheriff’s presence and assistance. State v. Nelson (S.C. 1908) 80 S.C. 373, 61 S.E. 897.

When sheriff may act. Under a strict and literal interpretation of this section [Code 1962 Section 38‑51.2] the sheriff is eligible to act only in the event that two of the three offices (namely, county auditor, county treasurer, and clerk of the court) are vacant, or when two of such officers are unable to serve. State v. Nelson (S.C. 1908) 80 S.C. 373, 61 S.E. 897.

Substitution of sheriff for superintendent of education. This section [Code 1962 Section 38‑51.2] fails to make any express provision for the substitution of the sheriff in the event that the superintendent of education is unable to serve. State v. Nelson (S.C. 1908) 80 S.C. 373, 61 S.E. 897.

If either of the board of jury commissioners, consisting of the county auditor, county treasurer, and county clerk, fails to attend, under Act February 7, 1902, the superintendent of education may act as a member of the board. State v. Smith (S.C. 1907) 77 S.C. 248, 57 S.E. 868.

**SECTION 14‑7‑130.** Preparation of jury list from electronic file of persons holding valid South Carolina driver’s license or identification card.

 In September of each year, the Department of Motor Vehicles shall furnish the State Election Commission an electronic file of the name, address, date of birth, social security number, sex, and race of persons who are over the age of eighteen years and citizens of the United States residing in each county who hold a valid South Carolina driver’s license or an identification card issued pursuant to Section 56‑1‑3350. The electronic file also must include persons who have obtained a valid South Carolina driver’s license or identification card during the previous year and exclude persons whose driver’s license or identification card has not been renewed or has been invalidated by judicial or administrative action. In October of each year, the State Election Commission shall furnish a jury list to county jury commissioners consisting of a file or list derived by merging the list of registered voters in the county with county residents appearing on the file furnished by the department, but only those licensed drivers and identification cardholders who are eligible to register to vote may be included in the list. Before furnishing the list, the commission must make every effort to eliminate duplicate names and names of persons disqualified from registering to vote or voting pursuant to the laws and Constitution of this State. As furnished to the jury commissioners by the State Election Commission, the list or file constitutes the roll of eligible jurors in the county. Expenses of the Department of Motor Vehicles and the State Election Commission in implementing this section must be borne by these agencies.

HISTORY: 1962 Code Section 38‑94; 1972 (57) 2305; 1976 Code Section 14‑7‑640; 1986 Act No. 340, Section 1; 1988 Act No. 453, Section 1; 1993 Act No.181, Section 256, eff July 1, 1993; 1996 Act No. 459, Section 25, eff June 5, 1996; 1996 Act No. 467, Section 1, eff August 21, 1996; 2000 Act No. 257, Section 1, eff May 1, 2000; 2008 Act No. 270, Section 4, eff June 4, 2008.

Editor’s Note

Prior Laws: Former Section 14‑7‑130 was titled Vacancy or disqualification in office of jury commissioner in counties containing a city of more than 70,000, and had the following history: 1962 Code Section 38‑51.3; 1952 Code Section 38‑51.2; 1942 Code Section 622; 1932 Code Section 622; Civ. P. ‘22 Section 562; Civ. C. ‘12 Section 4030; 1902 (23) 1066; 1930 (36) 1239; 1936 (39) 1340; 1939 (41) 27; 1941 (42) 70; 1956 (49) 1789; omitted by 1986 Act No. 340, Section 1.

CROSS REFERENCES

Confidentiality requirements of Article 7, Chapter 4, of Title 12 respecting creation and powers of Department of Revenue and Taxation, as not prohibiting the submission of taxpayer information to Election Commission and Department of Revenue and Taxation to effect purposes of this section, see Section 12‑54‑240.

Proof of Social Security number for purposes of obtaining driver’s license, see Section 56‑1‑90.

Library References

Jury 59.

Westlaw Topic No. 230.

C.J.S. Juries Section 270.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 12, Preparation of Jury List.

Attorney General’s Opinions

A court would likely conclude that names and identifying information concerning both current and past grand jurors are subject to exemption under FOIA. S.C. Op.Atty.Gen. (August 4, 2014) 2014 WL 3965783.

The provisions of section 14‑7‑130, mandating the jury list compiled by the State Election Commission be composed of names of registered voters and licensed drivers and identification cardholders, is applicable to jurors for a magistrate’s court. Overruling 1989 Op.Atty.Gen. No. 89‑139, p 377. S.C. Op.Atty.Gen. (September 4, 2012) 2012 WL 4009947.

The list of eligible jurors which the State Election Commission furnishes the chief magistrates should not include the names of persons holding state driver’s licenses or identification cards who are not also registered voters; to be eligible to serve as a juror in a magistrate’s court pursuant to Section 22‑2‑50 of the Code, an individual must be a registered voter. 1989 Op.Atty.Gen. No. 89‑139, p 377 (December 5, 1989) 1989 WL 406228.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Selecting jurors solely from the list of registered voters does not systematically exclude an identifiable class of persons from the group out of which juries are drawn and thus does not violate equal protection. State v. Black (S.C.App. 1995) 319 S.C. 515, 462 S.E.2d 311, rehearing denied.

The trial court properly ordered the selection of jurors from another county, even though the statute granting this authority (Section 17‑21‑85) did not become effective until after the defendant committed the crime for which he was on trial, since Section 17‑21‑85 is a procedural tool and thus would be accorded a retroactive application to pending actions and proceedings. State v. Davis (S.C. 1992) 309 S.C. 326, 422 S.E.2d 133, rehearing denied, certiorari denied 113 S.Ct. 2355, 508 U.S. 915, 124 L.Ed.2d 263.

2. Constitutional issues

Equal protection is not violated by the different methods used to compile municipal court juries and circuit court juries, since municipal court juries must be city residents while county residency is all that is required for service on the jury in circuit or probate court; thus, there is a rational basis for the distinction made between the jury lists. State v. Black (S.C.App. 1995) 319 S.C. 515, 462 S.E.2d 311, rehearing denied.

**SECTION 14‑7‑140.** Use of computer for drawing and summoning jurors.

 Notwithstanding the provisions of this chapter, the clerk of court or deputy clerk of court of a county, when drawing and summoning jurors for the court of common pleas, general sessions, or the grand jury, may utilize a computer for this purpose at the discretion of the governing body of the county. Computer software employed for the purpose of drawing and summoning jurors must be designed so as to ensure a random selection of jurors from the population available for jury service. The computerized drawing and summoning of jurors must take place in the office of the clerk of court as a public event to ensure the absolute integrity of the random selection process. The Supreme Court shall direct by order the appropriate procedures required to implement the provisions of this section.

HISTORY: 1962 Code Section 38‑52; 1952 Code Section 38‑52; 1942 Code Section 608; 1932 Code Section 608; Civ. P. ‘22 Section 548; Civ. C. ‘12 Section 4017; 1902 (23) 1066; 1915 (29) 76; 1933 (38) 446; 1939 (41) 27, 332, 543; 1941 (42) 70; 1967 (55) 895; 1974 (58) 2283; 1986 Act No. 340, Section 1, eff March 10, 1986; 1988 Act No. 299, eff February 2, 1988; 2006 Act No. 224, Section 1, eff February 3, 2006; 2012 Act No. 200, Section 2, eff June 7, 2012.

CROSS REFERENCES

Constitutional provision pertaining to trial by jury, see SC Const. Art. I, Section 14.

How grand juries are drawn, see Sections 14‑7‑1510, 14‑7‑1520.

Special jury lists in certain cases, see Section 14‑7‑310.

When objection to jurors must be made, see Section 14‑7‑1030.

Library References

Jury 60.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 306 to 307, 309, 335 to 336.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

S.C. Jur. Jury Section 21, Preparation of Jury Box.

LAW REVIEW AND JOURNAL COMMENTARIES

Impaneling Jurors—Death Sentence Invalidated When Veniremen Excluded For Voicing Scruples Against Imposition of Capital Punishment. 20 S.C. L. Rev. 833.

United States Supreme Court Annotations

Exemption of women from jury service. 7 L Ed 2d 118.

Attorney General’s Opinions

All three jury commissioners must be physically present at same location for jury drawings by computer. Making presence of all three commissioners at same location conditional upon request made at time of drawing, does not appear to be sufficient. Op.Atty.Gen. No 92‑12 (March 27, 1992) 1992 WL 575618.

As to manner of preparing jury list during period of transition from decennial registration period—1967‑1968, see 1966‑67 Op.Atty.Gen. No 2350, p 183 (November 30, 1967) 1967 WL 8660.

Deficiency in required number of electors on jury list. Any appreciable deficiency in required number of male electors on jury list and in tales box must be explained in other than general terms to rebut a prima facie case of discrimination. 1964‑65 Op.Atty.Gen. No 1916, p 210 (October 6, 1965) 1965 WL 8669 (rendered prior to 1967 amendment permitting women on juries).

Discretion of jury commissioners. Although jury commissioners have some discretion in judging qualifications of prospective jurors, such discretion is limited. 1964‑65 Op.Atty.Gen. No 1916, p 210 (October 6, 1965) 1965 WL 8669.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Objections 5

Presumptions and burden of proof 6

Purpose 3

Qualifications for jury service 4

Review 7

1. In general

Supervisors’ preparation of lists is mere irregularity. The fact that the supervisors and not the jury commissioners prepared the lists from which names to fill the jury box were made up, which lists were canvassed by such commissioners in January instead of December as provided for by this section [Code 1962 Section 38‑52], does not vitiate the panel. Hutto v Southern Ry. Co., 75 SC 295, 55 SE 445 (1906). State v Smith, 77 SC 248, 57 SE 868 (1907).

Mere irregularity is not ground for quashing array of jurors. The fact that the clerk of the board of commissioners prepared a list of electors from the tax books, which were canvassed and revised by the proper officers, was a mere irregularity, and therefore insufficient grounds for quashing the array of jurors. Rhodes v Southern Ry. Co., 68 SC 494, 47 SE 689 (1904), cited in Hutto v Southern Ry. Co., 75 SC 295, 55 SE 445 (1906). State v Smalls, 73 SC 516, 53 SE 976 (1906).

Section requires bona fide endeavor. A reasonably well implemented, bona fide endeavor to include not less than two from every three electors, who possess the constitutional qualifications for jury service, is required under this section [Code 1962 Section 38‑52]. State v. Jackson (S.C. 1962) 240 S.C. 238, 125 S.E.2d 474.

In State v Bibbs, 192 SC 231, 6 SE2d 276 (1939), a murder indictment was set aside upon the ground that the grand jury which found the indictment was not a legally qualified one, since five members of the jury were not legally registered electors due to the fact that their certificates of registration were not signed in accordance with Code 1962 Section 23‑71. State v. Bibbs (S.C. 1939) 192 S.C. 231, 6 S.E.2d 276. Criminal Law 914; Grand Jury 5

Nor fact that clerk is relative of plaintiff. In Turner v Southern Ry. Co., 179 SC 38, 183 SE 579 (1936), the court sustained an order of the lower court directing that the jury panel be made up from the jury box filled before the suit was instituted, notwithstanding the fact that the clerk of the court was related to the plaintiff. Turner v. Southern Ry. Co. (S.C. 1936) 179 S.C. 38, 183 S.E. 579.

Jury commissioners are not required to consult registration books. Jury commissioners in preparing list of jurors should consult registration books of county to ascertain whether persons selected are registered electors, but commissioners are not required to do so. State v. Gregory (S.C. 1934) 171 S.C. 535, 172 S.E. 692. Jury 62(3)

Indictment set aside where jurors are not registered. It was held in State v Rector, 158 SC 212, 155 SE 385 (1930), that the court properly quashed an indictment where at least two of seventeen grand jurors who participated in the finding of the indictment were not registered electors and were disqualified to so act. State v. Rector (S.C. 1930) 158 S.C. 212, 155 S.E. 385.

This section [Code 1962 Section 38‑52] is mandatory, and when construed with SC Const, Art 2, Sections 4, 8 (now Art 2 Sections 2, 4), and Art 5, Section 22, and other sections of the Code, it affords no basis for the disqualification of jurors duly registered when drawn, notwithstanding the fact that they had not reregistered prior to service the following year. Veronee v. Charleston Consol. Ry. & Lighting Co. (S.C. 1929) 152 S.C. 178, 149 S.E. 753.

This section [Code 1962 Section 38‑52] no doubt contemplates that the names placed in the box should be considered by the jury commissioners as a body. State v. Jones (S.C. 1912) 75 S.E. 449.

But the failure to give such consideration is nothing more than a mere irregularity. State v. Jones (S.C. 1912) 75 S.E. 449.

This section [Code 1962 Section 38‑52] does not confer on the jury commissioners the right of selection. Humphrey v. Palmer (S.C. 1911) 89 S.C. 401, 71 S.E. 977.

Act Feb. 7, 1902, 23 St. at Large, p. 1066, Section 2, requires the county auditor, treasurer, and clerk of the court to prepare a list of the qualified electors of good moral character, and as they may deem otherwise well qualified to serve as jurors, being persons of sound judgment and free from all legal exceptions. Section 4 provides that if the jury commissioners draw the name of any person not of good character, or who has died, or removed from the county, or is otherwise disqualified, the name shall be struck from the list. Section 7 provides that all jurors shall be selected by drawing ballots from the jury box, and, subject to the exceptions named, the persons whose names are on the ballots drawn shall be returned as jurors, and section 14 requires jurors to have the qualifications prescribed by law. The statute requires the petit jury to be drawn in the same manner as the grand jury. Three names drawn from the jury box were rejected, one because of his mental condition and because he was to be tried at the same term of court, another because the commissioner did not know him, and some one said that he had moved out of the county, and another because the commissioners did not know him and some one said that he was a drunkard. Held, that any irregularities in the rejection of such jurors did not render the venire illegal. State v. Cunningham (S.C. 1911) 87 S.C. 453, 69 S.E. 1093.

Absence of auditor at jury drawing. A drawing for a jury list made in the absence of the auditor by the other two commissioners is valid. State v. Merriman (S.C. 1891) 34 S.C. 16, 12 S.E. 619, rehearing denied 34 S.C. 576, 13 S.E. 328.

Additional jurors being required at a Circuit Court held in October, 1877, it was proper for the board of jury commissioners in the presence of the Circuit Court, to take from the names of jurors legally in the jury box the names of such as resided within five miles of the court‑house, and place them in a separate apartment of such jury box, and then to make their drawing of additional jurors from such apartment. State v. Cardoza (S.C. 1878) 11 S.C. 195, 1878 WL 5395, Unreported.

2. Constitutional issues

Section not discriminatory. There is nothing in this section [Code 1962 Section 38‑52] which discriminates against individuals on account of race or color or previous condition, or which subjects such persons to any other or different treatment than other electors who may be qualified to serve as jurors. Franklin v South Carolina, 218 US 161, 30 S Ct 640, 54 L Ed 980 (1910). State v Sanders, 103 SC 216, 88 SE 10 (1916).

Thus competent colored men are equally eligible with others for service under this section [Code 1962 Section 38‑52]. Franklin v. State of South Carolina (U.S.S.C. 1910) 30 S.Ct. 640, 218 U.S. 161, 54 L.Ed. 980.

Purposeful discrimination not proved by showing group 10 percent underrepresented. Purposeful discrimination based on race alone is not necessarily satisfactorily proved by showing that an identifiable group in a community is underrepresented by as much as 10 percent, as members of the petit and grand juries. Blackwell v. Thomas (C.A.4 (S.C.) 1973) 476 F.2d 443.

Unless opportunity for systematic exclusion exists. Where the opportunity for systematic exclusion exists, as under this section [Code 1962 Section 38‑52], a disparity of 10 percent underrepresentation is sufficiently great to warrant an evidentiary exploration of how the jury selection statutes are administered. Blackwell v. Thomas (C.A.4 (S.C.) 1973) 476 F.2d 443.

The opportunity for discrimination is inherent in this section [Code 1962 Section 38‑52]. Blackwell v. Thomas (C.A.4 (S.C.) 1973) 476 F.2d 443.

Since there is no fixed neutral formula for a reduction in numbers where section provided that “not less than two from every three of such electors qualified” shall be included on the jury list from which jurors are drawn, there may or may not be deliberate or inadvertent systematic exclusion, depending upon how the section is administered in various counties of the state. Blackwell v. Thomas (C.A.4 (S.C.) 1973) 476 F.2d 443.

The grand jury was properly constituted at the time it was drawn, although women were excluded from service thereon, since their exclusion was in accord with the Constitution at that time. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

The subsequent change of the Constitution would not act to make illegal a grand jury which was legally constituted at the time it was drawn. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

No race may be prescribed as incompetent for jury service. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432.

Formerly, women were not allowed to serve as jurors in South Carolina and only qualified male electors constituted the juries. See Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432 (decided prior to 1967 amendment permitting women on juries).

A jury need not be composed of a certain proportion of particular race in order to assure equal protection of the law, and inequality or disproportion in jury finally selected does not in itself show discrimination. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Constitutional Law 3307

There is no denial of equal protection of the laws in constitutional or statutory provisions relating to jury and grand jury. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Constitutional Law 3830; Grand Jury 2; Jury 2; Jury 39; Jury 58; Jury 84

Discriminatory selection of jurors in prior years does not nullify a present conviction if selection of jury for current term is on a proper basis. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Jury 33(1)

An accused is entitled to have charges against him considered by a jury in selection of which there has been neither inclusion nor exclusion because of race or color. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Jury 33(1.15)

Evidence failed to show that there had been a systematic limitation or exclusion of Negroes from jury duty so as to deny defendant Negro equal protection of the law. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Constitutional Law 3306

Evidence that in county in which Negro defendant was tried on murder charge approximately ten per cent of qualified electors were Negroes, and that for at least 12 years no Negro had ever sat on either grand or petit jury in such county, made out prima facie case of racial discrimination in selection of petit jury before which defendant was tried and which contained no Negroes, and statement of jury commissioners that there was no intentional and purposeful discrimination was insufficient to rebut such prima facie case. State v. Waitus (S.C. 1953) 224 S.C. 12, 77 S.E.2d 256. Jury 120

Evidence did not show that persons of the African Race were systematically excluded from jury box from which grand and petit jurors were drawn, and hence did not show that negro defendants were denied “equal protection of the laws” because there were no negroes on grand jury which indicted them or on petit jury which convicted them. State v. Grant (S.C. 1941) 199 S.C. 412, 19 S.E.2d 638.

Const. art. 3, Section 34, subd. 8, provides that the general assembly shall not enact local or special laws “to summon and impanel grand or petit jurors.” Act 1900, 23 St. at Large, p. 315, relating to the drawing and term of service of juries in the circuit courts, contains local and special provisions in relation to the drawing and term of service of jurors in certain counties of the state. Held unconstitutional, as violative of said section 34. State v. Queen (S.C. 1902) 62 S.C. 247, 40 S.E. 553.

3. Purpose

Purposes of section. This section [Code 1962 Section 38‑52] simply provides for an exercise of judgment in attempting to secure competent jurors of proper qualifications. Franklin v. State of South Carolina (U.S.S.C. 1910) 30 S.Ct. 640, 218 U.S. 161, 54 L.Ed. 980.

The numerical requirement imposed in the second sentence of this section [Code 1962 Section 38‑52] was intended by the legislature as a partial limitation on the discretion conferred upon the jury commission by the first sentence. State v. Jackson (S.C. 1962) 240 S.C. 238, 125 S.E.2d 474.

4. Qualifications for jury service

A state may confine the selection of jurors to males, to freeholders, to citizens, to persons within certain ages, or to persons having certain educational qualifications. Williams v. State of S. C. (D.C.S.C. 1965) 237 F.Supp. 360, vacated 356 F.2d 432. Jury 33(1.15); Jury 39

Every registered male elector is a potential and duly qualified juror, and his name may be taken from the registration books by jury commission. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Jury 52; Jury 62(3)

Term “qualified elector” within constitutional requirement that jurors be qualified electors means “registered elector”. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Jury 52

Term “qualified elector” within constitutional requirement that jurors be qualified electors, and each grand and petit juror must be of good moral character, means a registered elector, and each grand and petit juror must be a registered elector, but failure to vote does not make a man ineligible for jury duty. State v. Waitus (S.C. 1953) 224 S.C. 12, 77 S.E.2d 256. Jury 52

Any person who is a registered elector is qualified to serve as a juror, whether he votes or not. The jury duty is based on the ten‑year registration period. No payment of taxes is necessary or required. State v. Middleton (S.C. 1946) 207 S.C. 478, 36 S.E.2d 742.

This section [Code 1962 Section 38‑52] is not unconstitutional as giving the jury commissioners power to add qualifications which control those provided by the SC Constitution. State v. Sanders (S.C. 1916) 103 S.C. 216, 88 S.E. 10. Jury 58

But they may strike unqualified persons from list. It was held in State v Mills, 79 SC 187, 60 SE 664 (1908), that in the drawing of a jury it was proper for the officers charged with that duty to strike from the list the names of all persons deemed by them not to possess the qualifications prescribed by statute. State v. Mills (S.C. 1908) 79 S.C. 187, 60 S.E. 664.

And any citizen qualified under Constitution may be drawn. Any good citizen qualified under the Constitution may be drawn under the authority of this section [Code 1962 Section 38‑52] and Code 1962 Section 38‑405 to serve on the grand jury. State v. Graham (S.C. 1908) 79 S.C. 116, 60 S.E. 431.

Exemption from jury duty does not disqualify one from acting as a juror. State v. Toland (S.C. 1892) 36 S.C. 515, 15 S.E. 599. Jury 56

Qualifications relate to time when juror is to serve. It was said in State v Williams, 2 Hill (20 SCL) 381, that the qualifications of a juror relate to the time when he is to serve, and a want of such qualifications is a cause of challenge to the poll. State v. Williams (S.C. 1834).

5. Objections

Where defendant or his counsel could have easily ascertained that a juror, though duly registered in county wherein criminal case was tried, moved to adjoining county before being summoned for jury duty, and made no effort or motion to verify his residence in county of venue by questioning him after a bystander informed defendant’s counsel during jury’s deliberation that he thought such juror lived in adjoining county and court clerk made check showing that mileage given by juror corresponded with his address in county of venue, defendant was not entitled to new trial on ground of such juror’s residential disqualification after verdict of conviction. State v. De Young (S.C. 1947) 209 S.C. 482, 41 S.E.2d 100. Criminal Law 923(1)

Objections to failure to comply with section. When the party wishes to avail himself of the failure to comply with this section [Code 1962 Section 38‑52], due diligence requires that he make inquiries of those who participated in the proceedings prescribed by this section [Code 1962 Section 38‑52], and make his objections then and there before the trial. State v. Jones (S.C. 1912) 75 S.E. 449.

6. Presumptions and burden of proof

Whether there has been systematic racial discrimination by jury commissioners in selection of jurors is question to be determined from facts in each particular case; discrimination in selection of jury must be proved and cannot be presumed. State v. Stallings (S.C. 1969) 253 S.C. 451, 171 S.E.2d 588.

A defendant may establish a prima facie case of discrimination in selection of jurors in which case the burden shifts to state to refute the discrimination and evidence that Negroes have never served on a jury in county makes a prima facie case. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Jury 33(1.15)

A defendant objecting to grand or petit jury because of alleged discrimination against his race has burden of establishing such discrimination. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Grand Jury 17; Jury 33(1)

Whether there has been systematic racial discrimination by administrative officials in selection of jurors is a question to be determined from particular facts. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Jury 33(1.15)

Discrimination in selection of a jury must be proved; it cannot be presumed. Moorer v. State (S.C. 1964) 244 S.C. 102, 135 S.E.2d 713. Jury 33(1)

7. Review

Claim on appeal that jury was not drawn in accordance with statute because two‑thirds of names of male electors between ages of 21 and 65 were not in jury box was abandoned where not argued. State v. Stallings (S.C. 1969) 253 S.C. 451, 171 S.E.2d 588.

**SECTION 14‑7‑150.** Preparation of jury box.

 The jury box of a county shall contain the same number of capsules or containers as there are names on the jury list prepared by the jury commissioners from the latest official list furnished to the county by the State Election Commission each year and provided to the clerk of court of each county not later than December first of the calendar year. The capsules or containers must be small, opaque, and as similar in size, shape, and color as possible at the time of original purchase or the repurchase of additional capsules. By a slip of paper placed therein, each capsule or container must be numbered, beginning with number “one” and continuing consecutively through the number of qualified electors on the jury list prepared by the jury commissioners as hereinbefore provided. All these papers must be of similar kind, color, and weight so as to resemble each other as much as possible without distinguishing marks. The capsules or containers so prepared must be placed in the jury box constructed as required by law.

HISTORY: 1962 Code Section 38‑93; 1972 (57) 2305; 1985 Act No. 340, Section 5; 1976 Code Section 14‑7‑630; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑150 was titled Jury lists in counties containing cities of more than 70,000, and had the following history: 1962 Code Section 38‑53; 1952 Code Section 38‑53; 1942 Code Section 608; 1932 Code Section 608; Civ. P. ‘22 Section 548; Civ. C. ‘12 Section 4017; 1902 (23) 1066; 1915 (29) 76; 1933 (38) 446; 1939 (41) 27, 332, 543; 1941 (42) 70; 1942 (43) 263; 1957 (50) 11; omitted by 1986 Act No. 340, Section 1.

Library References

Jury 60.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 306 to 307, 309, 335 to 336.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

S.C. Jur. Jury Section 21, Preparation of Jury Box.

**SECTION 14‑7‑160.** Drawing and notification of jurors.

 At the time provided by law for the drawing of jurors, the jury commissioners shall randomly withdraw from the jury box one capsule or container for each juror required by law to be drawn. The jury commissioners shall then open each capsule or container drawn and ascertain the number contained therein. The names of the jurors drawn must be taken from the jury list by the numbers thereon corresponding to the numbers drawn from the capsules or containers. The jury commissioners may not excuse or disqualify any juror selected. Immediately after the jurors are drawn, the clerk of court shall issue his writ and process as now required by law for the jurors whose numbers were drawn. Any juror drawn for a term of court must be notified of the time and place he is to appear for jury duty at least fifteen days before he is to appear and serve as a juror. If the trial judge determines that additional jurors are immediately necessary for the conduct of the court he may waive the fifteen‑day notice.

HISTORY: 1962 Code Section 38‑95; 1972 (57) 2305; 1976 Code Section 14‑7‑650; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑160 was titled Names from jury list shall be placed in jury box, and had the following history: 1962 Code Section 38‑55; 1952 Code Section 38‑55; 1942 Code Section 608; 1932 Code Section 608; Civ. P. ‘22 Section 548; Civ. C. ‘12 Section 4017; 1902 (23) 1066; 1915 (29) 76; 1933 (38) 446; 1939 (41) 27, 332, 543; 1941 (42) 70; omitted by 1986 Act No. 340, Section 1.

Library References

Jury 60.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 306 to 307, 309, 335 to 336.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 14, Summoning of Venire‑ Notice and Service.

**SECTION 14‑7‑170.** Procedure in event of failure of jury commissioners to prepare list of jurors for ensuing year.

 When the jury commissioners in a county in this State shall omit to prepare the list of jurors for the then ensuing year or to prepare the ballots of the names and place them in the boxes at the time and in the manner required in this article, the Chief Justice, any associate justice of the Supreme Court, or any circuit judge shall grant an order on the application of any solicitor or attorney at law showing this omission by affidavit, which may be on information and belief, requiring the jury commissioners in question, within ten days after the order, to prepare these lists and ballots of names and to prepare the jury boxes (nunc pro tunc) and all juries drawn from these boxes are as valid and lawful as if the omission had not occurred.

HISTORY: 1962 Code Section 38‑56; 1952 Code Section 38‑56; 1942 Code Section 609; 1932 Code Section 609; Civ. P. ‘22 Section 549; Civ. C. ‘12 Section 4018; 1902 (23) 1066; 1921 (32) 276; 1939 (41) 27; 1941 (42) 70; 1942 (42) 1546; 1985 Act No. 1, Section 1, eff March 1, 1985; 1986 Act No. 340, Section 1, eff March 10, 1986.

CROSS REFERENCES

Application of this section in courts inferior to the circuit court, see Section 14‑1‑180.

Library References

Jury 60.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 306 to 307, 309, 335 to 336.

**SECTION 14‑7‑180.** Custody of jury box and keys.

 The clerk of the court shall keep the jury box in his custody. The jury box must be kept securely locked with three separate and strong locks, each lock being different and distinct from the other two and requiring one key peculiar to itself in order to be unlocked. The key to one of these three locks must be kept by the county auditor himself, the key to another of these three locks must be kept by the county treasurer himself, and the key to the third of these three locks must be kept by the clerk of the court of common pleas himself, so that no two of them shall keep a similar key or similar keys to the same lock and so that all three of them must be present together at the same time and place in order to lock or unlock and open the jury box.

HISTORY: 1962 Code Section 38‑58; 1952 Code Section 38‑58; 1942 Code Section 609; 1932 Code Section 609; Civ. P. ‘22 Section 549; Civ. C. ‘12 Section 4018; 1902 (23) 1066; 1921 (32) 276; 1939 (41) 27; 1941 (42) 70; 1976 Code Section 14‑7‑190; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑180 was titled List of jurors when jury commissioners fail to prepare list, and had the following history: 1962 Code Section 38‑57; 1952 Code Section 38‑57; 1942 Code Section 623; 1932 Code Section 623; Civ. P. ‘22 Section 563; Civ. C. ‘12 Section 4031; 1905 (24) 917; omitted by 1986 Act No. 340, Section 1.

Library References

Jury 60.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 306 to 307, 309, 335 to 336.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

NOTES OF DECISIONS

In general 1

1. In general

The deceased wife of one of the jury commissioners who drew the jury was the daughter of plaintiff, and the children of the commissioner were plaintiff’s heirs. The names in the jury box were selected in 1909, and the cause of action did not arise until 1910. Act Feb. 7, 1902, 23 St. at Large, p. 1066, Section 3, provides that the jury box shall be kept securely locked with three locks, having different keys, all held by different county officers. Section 4 of the same act gives jury commissioners the right to reject names drawn from the box in certain cases, and section 6 requires the drawing to be public. Held, that as under this statute a party has the right to be present at the drawing he should ascertain whether a jury commissioner related to another party improperly performs his duty; and hence it was not an abuse of the discretion of the trial court to overrule an objection to the entire venire, there being nothing to show that the commissioners improperly influenced its selection. Humphrey v. Palmer (S.C. 1911) 89 S.C. 401, 71 S.E. 977.

The fact that one of the keys provided for by this section [Code 1962 Section 38‑58] would open two of the three locks is a mere irregularity which is not fatal. State v. Smith (S.C. 1907) 77 S.C. 248, 57 S.E. 868.

**SECTION 14‑7‑190.** Drawing of petit jurors to serve as jury pool during weeks in which more than one term of court requiring juries are scheduled.

 Not less than fifteen days nor more than thirty‑five days before the first day of any week in which more than one term of court requiring juries is scheduled in a county, the jury commissioners shall draw a number of petit jurors to serve as a jury pool, from which the courts shall draw panels of jurors as needed according to the following schedule:

 (1) When two concurrent terms of court are scheduled, the commissioners shall draw ninety percent of the number of jurors which they would otherwise draw;

 (2) When three concurrent terms of court are scheduled, the commissioners shall draw eighty percent of the number of jurors which they would otherwise draw;

 (3) When four concurrent terms of court are scheduled, the commissioners shall draw seventy percent of the number of jurors which they would otherwise draw; or

 (4) When five or more concurrent terms of court are scheduled, the commissioners shall draw fifty percent of the number of jurors which they would otherwise draw.

 The jury commissioners shall not exclude or disqualify any juror drawn.

HISTORY: 1977 Act No. 208, Section 1; 1976 Code Section 14‑7‑235; 1986 Act No. 340, Section 1, eff March 10, 1986; 1992 Act No. 483, Section 1, eff July 1, 1992.

Editor’s Note

Provisions relative to custody of jury box and keys thereto, which formerly appeared in this section, can now be found in Section 14‑7‑180.

Library References

Jury 65.

Westlaw Topic No. 230.

C.J.S. Juries Section 308.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

**SECTION 14‑7‑200.** Drawing of petit jurors to serve during week of regular or special term of circuit court.

 Not less than fifteen nor more than thirty‑five days before the first day of each week of any regular or special term of the circuit court the jury commissioners shall proceed to draw at least seventy‑five petit jurors to serve for that week only. The chief administrative judge or the presiding judge of that circuit may increase or decrease the number of jurors drawn if he considers it necessary; however, at least seventy‑five jurors must be drawn. The jury commissioners shall randomly select the jurors and shall not excuse or disqualify any juror who has been selected. Immediately after the petit jurors are drawn, the clerk of the court of common pleas shall issue his writ of venire facias for the petit jurors, requiring their attendance on the first day of the week for which they have been drawn and this writ of venire facias must be immediately delivered to the sheriff of the county.

HISTORY: 1962 Code Section 38‑61; 1952 Code Section 38‑61; 1942 Code Section 610; 1932 Code Section 610; Civ. P. ‘22 Section 550; Civ. C. ‘12 Section 4019; 1902 (23) 1066; 1916 (29) 820; 1939 (41) 27; 1941 (42) 70; 1953 (48) 45, 185, 444; 1955 (49) 60, 76, 269, 651; 1958 (50) 1961; 1976 Code Section 14‑7‑230; 1986 Act No. 340, Section 1; 1992 Act No. 483, Section 2; 1993 Act No. 18, Section 1, eff April 22, 1993.

Editor’s Note

Prior Laws: Former Section 14‑7‑200 was titled Custody of jury box and locks in counties containing a city of more than 70,000, and had the following history: 1962 Code Section 38‑59; 1952 Code Section 38‑59; 1942 Code Section 609; 1932 Code Section 609; Civ. P. ‘22 Section 549; Civ. C. ‘12 Section 4018; 1902 (23) 1066; 1921 (32) 276; 1939 (41) 27; 1941 (42) 70; 1943 (43) 263; omitted by 1986 Act No. 340, Section 1.

CROSS REFERENCES

Placement of names of previously excused jurors on panels, in addition to the names required to be placed on such panels by this section, see Section 14‑7‑870.

Provision that, whenever a jury is charged with a case, it must not be discharged by reason of anything in this section until a verdict is found or a mistrial ordered, see Section 14‑7‑210.

Library References

Jury 65.

Westlaw Topic No. 230.

C.J.S. Juries Section 308.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

Attorney General’s Opinions

Irregularities in the listing, drawing and summoning of jurors may be often waived and, even if not waived, are not themselves acts so prejudicial as to require the quashing of a venire or to warrant the court in setting aside a judgment based upon a finding or verdict of a jury irregularly drawn. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

NOTES OF DECISIONS

In general 1

1. In general

It was said in State v Dozier, 2 Speers (29 SCL) 211, that where the writs of venire by which the grand and petit jurors were summoned are without the seal of the court, the judgment will be arrested. State v Dozier, 2 Speers (29 SCL) 211. State v Williams, 1 Rich (30 SCL) 188. State v Stephens, 11 SC 319 (1879).

Judgment will be arrested if the jury is illegally drawn. State v. Jennings (S.C. 1867) 15 Rich. 42.

If it appears anywhere in the writ of venire that it was issued in the name of the State, it is a sufficient compliance with SC Const, Art 5, Section 31, providing that all writs and processes shall run in the name of the State of South Carolina. State v. Hill (S.C. 1883) 19 S.C. 435. Jury 67(1)

A writ of venire commencing “State of South Carolina, county of Spartanburg. To the sheriff of Spartanburg county” is a sufficient compliance with the constitutional requirements of SC Const, Art 5, Section 31. State v. Hill (S.C. 1883) 19 S.C. 435. Jury 67(1)

But this is not true where the relationship is by marriage and remote. State v. McNinch (S.C. 1879) 12 S.C. 89.

In a murder trial the fact that the jury commissioner is a near blood relation of the deceased and assisted at the drawing of the jury is a good ground of challenge to the array. State v. McQuaige (S.C. 1874) 5 S.C. 429.

**SECTION 14‑7‑210.** Discharge of jury prohibited.

 Whenever a jury is charged with a case, it must not be discharged by reason of anything in Section 14‑7‑200 contained until a verdict is found or a mistrial ordered in such case.

HISTORY: 1962 Code Section 38‑62; 1952 Code Section 38‑62; 1942 Code Section 610; 1932 Code Section 610; Civ. P. ‘22 Section 550; Civ. C. ‘12 Section 4019; 1902 (23) 1066; 1916 (29) 820; 1939 (41) 27; 1941 (42) 70; 1976 Code Section 14‑7‑240; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑210 was titled Names shall be placed in “tales box”; exceptions as to certain counties, and had the following history: 1962 Code Section 38‑60; 1952 Code Section 38‑60; 1942 Code Section 609; 1932 Code Section 609; Civ. P. ‘22 Section 549; Civ. C. ‘12 Section 4018; 1902 (23) 1066; 1921 (32) 276; 1939 (41) 27; 1941 (42) 70; 1955 (49) 22, 66, 72, 534; 1957 (50) 12; 1959 (51) 487; 1960 (51) 1759; 1962 (52) 1718, 1880; 1967 (55) 8, 81; 1968 (55) 2252; 1969 (56) 20, 354, 928; 1970 (56) 2288, 2358, 2430; 1971 (57) 3, 121, 442, 2018; 1972 (57) 2202; omitted by 1986 Act No. 340, Section 1.

CROSS REFERENCES

Application of this section in courts inferior to the circuit court, see Section 14‑1‑180.

Library References

Jury 65.

Westlaw Topic No. 230.

C.J.S. Juries Section 308.

United States Supreme Court Annotations

Habeas corpus, double jeopardy, mistrials, duty of judge to declare mistrial, see Renico v. Lett, 2010, 130 S.Ct. 1855, 559 U.S. 766, 176 L.Ed.2d 678.

**SECTION 14‑7‑220.** Drawings to be open and public; notice.

 The drawings must be made openly and publicly in the office of the clerk of court of common pleas and the jury commissioners shall give ten days’ notice of the place, day, and hour of each of the drawings by posting in a conspicuous place on the courthouse door or by advertisement in a county newspaper.

HISTORY: 1962 Code Section 38‑63; 1952 Code Section 38‑63; 1942 Code Section 611; 1932 Code Section 611; Civ. P. ‘22 Section 551; Civ. C. ‘12 Section 4020; 1902 (23) 1066; 1939 (41) 27; 1941 (42) 22, 70; 1976 Code Section 14‑7‑250; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑220 was titled Names shall be placed in “tales box”; special provisions for counties of between 50,000 and 53,000 population, and had the following history: 1962 Code Section 38‑60.1; 1958 (50) 1994; omitted by 1986 Act No. 340, Section 1.

Library References

Jury 65.

Westlaw Topic No. 230.

C.J.S. Juries Section 308.

Attorney General’s Opinions

All three jury commissioners must be physically present at same location for jury drawings by computer. Making presence of all three commissioners at same location conditional upon request made at time of drawing, does not appear to be sufficient. Op.Atty.Gen. No 92‑12 (March 27, 1992) 1992 WL 575618.

This section [Code 1962 Section 38‑63] is directory and permissive only. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

Failure to give the statutory ten days’ notice prior to the public drawing of the jury is not fatal but is a mere irregularity; and it is within the discretion of the court whether the venire shall be quashed. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

NOTES OF DECISIONS

In general 1

1. In general

Statutes which prescribe the time and manner of drawing jurors are directory, and a venire will not be quashed for mere irregularities. State v. Smith (S.C. 1942) 200 S.C. 188, 20 S.E.2d 726.

Where a special term of court has been ordered, rendering it impossible to give the ten days’ notice before the drawing of the jury as prescribed in this section [Code 1962 Section 38‑63], such failure to give the ten days’ notice was held not to be reversible error. State v. Gossett (S.C. 1921) 117 S.C. 76, 108 S.E. 290, 16 A.L.R. 1299.

As a party has a right under this section [Code 1962 Section 38‑63] to be present at the drawing, he should ascertain whether a jury commissioner, related to another party, improperly performs his duty; and hence it is not an abuse of discretion of the trial court to overrule an objection to the entire venire, if there is nothing to show that the commissioners improperly influenced the selection. Humphrey v. Palmer (S.C. 1911) 89 S.C. 401, 71 S.E. 977.

A drawing in the office of the county commissioner, with doors closed and notice posted thereon that no one will be admitted, is illegal and renders a conviction by a jury so drawn invalid. State v. Turner (S.C. 1902) 63 S.C. 548, 41 S.E. 778. Jury 66(4)

**SECTION 14‑7‑230.** Methods for drawing names of jurors.

 The clerk of court must use one of the following methods for drawing the names of jurors for the purpose of impaneling a jury:

 (1) drawing of the names of jurors by a responsible and impartial person designated by the clerk of court, with the approval of the presiding judge; or

 (2) drawing of the names of jurors by computer, subject to the provisions of Section 14‑7‑140.

HISTORY: 1962 Code Section 38‑65; 1952 Code Section 38‑65; 1942 Code Section 630‑1; 1933 (38) 285; 1971 (57) 83; 1985 Act No. 27, eff March 25, 1985; 1976 Code Section 14‑7‑270; 1986 Act No. 340, Section 1, eff March 10, 1986; 2006 Act No. 224, Section 2, eff February 3, 2006.

Editor’s Note

Prior Laws: Former Section 14‑7‑230 was titled Drawing of petit jurors, see now, Section 14‑7‑200.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 21, Preparation of Jury Box.

Attorney General’s Opinions

Irregularities in the listing, drawing and summoning of jurors may be often waived and, even if not waived, are not themselves acts so prejudicial as to require the quashing of a venire or to warrant the court in setting aside a judgment based upon a finding or verdict of a jury irregularly drawn. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

**SECTION 14‑7‑240.** Selection of jurors by drawing.

 All jurors must be selected by drawing ballots from the jury box and, subject to the exceptions herein contained, the persons whose names are on the ballots so drawn must be returned to serve as jurors.

HISTORY: 1962 Code Section 38‑66; 1952 Code Section 38‑66; 1942 Code Section 612; 1932 Code Section 612; Civ. P. ‘22 Section 552; Civ. C. ‘12 Section 4021; 1902 (23) 1066; 1976 Code Section 14‑7‑280; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to when a jury, having been charged with a case, may be discharged, which formerly appeared in this section, can now be found in Section 14‑7‑210.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

**SECTION 14‑7‑250.** Disposition of names of those who are drawn and serve on a jury pool.

 The names of those who are drawn and attend a session of court as a member of a jury pool must be placed in an envelope and must not be put back into the jury box until the first revision of the jury list provided for after they have been so drawn, to the end that no person is required to serve as a juror more than once in three calendar years. Nothing contained in this article may be construed to be in conflict with the provisions of the law as to selecting by lot from the grand jury six members to serve for the ensuing year.

 Nothing contained in this article prohibits a person whose name has been properly drawn and who desires to serve as a juror from serving more frequently than once every three calendar years, except that no person shall serve as a juror more than once every calendar year as provided in Section 14‑7‑850.

HISTORY: 1962 Code Section 38‑67; 1952 Code Section 38‑67; 1942 Code Section 613; 1932 Code Section 613; Civ. P. ‘22 Section 553; Civ. C. ‘12 Section 4022; 1902 (23) 1066; 1976 Code Section 14‑7‑290; 1986 Act No. 340, Section 1, eff March 10, 1986; 1992 Act No. 483, Section 3, eff July 1, 1992; 1996 Act No. 233, Section 1, eff March 4, 1996; 2000 Act No. 257, Section 2, eff May 1, 2000.

Editor’s Note

Provisions requiring that drawings be open and public and requiring notice of drawings, which formerly appeared in this section, can now be found in Section 14‑7‑220.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 16, Frequency of Service.

Attorney General’s Opinions

The term “calendar year” as used in Section 14‑7‑250 should be construed as that period from January 1st to December 31st inclusive. Therefore, an individual who served as a juror in September, 1986 would be eligible to serve again in January, 1988. 1987 Op.Atty.Gen. No. 87‑32, p 92 (April 14, 1987) 1987 WL 245441.

This section [Code 1962 Section 38‑63] is directory and permissive only. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

Failure to give the statutory ten days’ notice prior to the public drawing of the jury is not fatal but is a mere irregularity; and it is within the discretion of the court whether the venire shall be quashed. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

**SECTION 14‑7‑260.** Number of jurors to be drawn and summoned.

 Except as otherwise expressly provided, the jury commissioners shall draw and summon at least seventy‑five persons to serve as petit jurors to attend at one and the same time at any court. The chief administrative judge or the presiding judge of that circuit may increase or decrease the number of jurors drawn and summoned if he considers it necessary; however, at least seventy‑five jurors must be drawn and summoned.

HISTORY: 1962 Code Section 38‑68; 1952 Code Section 38‑68; 1942 Code Section 616; 1932 Code Section 616; Civ. P. ‘22 Section 556; Civ. C. ‘12 Section 4025; 1902 (23) 1066; 1953 (48) 45; 1976 Code Section 14‑7‑300; 1986 Act No. 340, Section 1; 1993 Act No. 18, Section 2, eff April 22, 1993.

Editor’s Note

Prior Laws: Former Section 14‑7‑260 was titled Drawings in counties containing a city of more than 70,000, and had the following history: 1962 Code Section 38‑64; 1952 Code Section 38‑64; 1942 Code Section 611; 1932 Code Section 611; Civ. P. ‘22 Section 551; Civ. C. ‘12 Section 4020; 1902 (23) 1066; 1939 (41) 27; 1941 (42) 22, 70; 1943 (43) 263; omitted by 1986 Act No. 340, Section 1.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

NOTES OF DECISIONS

In general 1

1. In general

Whether a greater number of jurors than is prescribed by this section [Code 1962 Section 38‑68] shall be drawn is left to the discretion of the court. State v Jackson, 32 SC 27, 10 SE 769 (1890). State v Britt, 237 SC 293, 117 SE2d 379 (1960).

This section [Code 1962 Section 38‑68] does not make it necessary that the whole number of the thirty‑six (now forty) jurors should be present at the commencement of the trial. State v Jackson, 32 SC 27, 10 SE 769 (1890). State v Stephens, 13 SC 285 (1880). State v Rasor, 168 SC 221, 167 SE 396 (1933).

A jury venire should not be quashed because of the disqualification of one of the persons included therein to serve in the courts as a juror because of overage. State v. Rasor (S.C. 1933) 168 S.C. 221, 167 S.E. 396, 86 A.L.R. 1237.

**SECTION 14‑7‑270.** Preparation of special jury list in certain circumstances.

 Whenever the jury list of any county is destroyed by fire or other casualty or it is held by any court of competent jurisdiction that the jury list has been unlawfully prepared or is irregular or illegal, so as to render void the drawing of jurors therefrom, the jury commissioners shall prepare a special jury list for the county immediately in the manner herein prescribed from which special list grand and petit jurors are drawn for the courts of general sessions and common pleas for the county until the annual jury list has been prepared for the county as provided.

HISTORY: 1962 Code Section 38‑69; 1952 Code Section 38‑69; 1942 Code Section 619; 1932 Code Section 619; Civ. P. ‘22 Section 559; Civ. C. ‘12 Section 4028; 1902 (23) 1066; 1976 Code Section 14‑7‑310; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

For a local provision that either the clerk or deputy may draw jurors in Aiken County, see Local Law Index.

Provisions relative to persons who may draw jurors, which formerly appeared in this section, can now be found in Section 14‑7‑230.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 38‑69] and Code 1962 Sections 38‑70 and 38‑51.2 are very broad in their terms. State v. Malloy (S.C. 1912) 91 S.C. 429, 74 S.E. 988.

This section [Code 1962 Section 38‑69] and Code 1962 Sections 38‑70 and 38‑51.2 are intended to prevent delay or interruption of the business of the court which would arise but for the powers conferred on the resident judge and the court. State v. Malloy (S.C. 1912) 91 S.C. 429, 74 S.E. 988.

Under this section [Code 1962 Section 38‑69] and Code 1962 Sections 38‑70 and 38‑51.2, the resident circuit judge has authority to require the drawing of a new grand jury where an indictment is quashed because found by a grand jury unlawfully drawn. State v. Malloy (S.C. 1912) 91 S.C. 429, 74 S.E. 988. Grand Jury 10

**SECTION 14‑7‑280.** Duty of circuit judge in case of irregularities.

 When at any time it is determined by the circuit judge of any circuit, upon complaint made to him, that an irregularity has occurred in the drawing of the juries for any court within his circuit or that any act has been done whereby the validity of any jury drawn or to be drawn may be questioned, the circuit judge may issue his order to the jury commissioners for each county for which the court is to be held, at least five days before the sitting thereof, to proceed to draw jurors for the term or take measures as may be necessary to correct the error.

HISTORY: 1962 Code Section 38‑70; 1952 Code Section 38‑70; 1942 Code Section 620; 1932 Code Section 620; Civ. P. ‘22 Section 560; Civ. C. ‘12 Section 4029; 1902 (23) 1066; 1972 (57) 2537; 1976 Code Section 14‑7‑320; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to selection of jurors by drawing, which formerly appeared in this section, can now be found in Section 14‑7‑240.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

Attorney General’s Opinions

Provisions of Code 1962 Section 38‑63 are directory and permissive only, and any motion made for quashing a venire on the grounds of lack of proper notice, where the court has determined that there has been no ill effect, should be denied. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

NOTES OF DECISIONS

In general 1

1. In general

Irregularities in the listing, drawing, and summoning of jurors are not in themselves acts so prejudicial as to require the quashing of a venire or to warrant the court in setting aside a judgment based upon a finding of verdict of a jury irregularly drawn. State v Britt, 237 SC 293, 117 SE2d 379 (1960), citing State v Wells, 162 SC 509, 161 SE 177 (1931).

The manifest object of this section [Code 1962 Section 38‑70] is to prevent a delay of justice by supplying any deficiency or irregularity in the drawing or summoning of jurors. State v Toland, 36 SC 515, 15 SE 599 (1892). See also, State v Malloy, 91 SC 429, 74 SE 988 (1912).

This section [Code 1962 Section 38‑70] authorizing circuit judge to correct irregularity in drawing of juries, does not authorize directing preparation of entirely new jury list. But when this section and Code 1962 Section 38‑57 are construed together, they do authorize such action. State v. Wells (S.C. 1931) 162 S.C. 509, 161 S.E. 177. Jury 61

This section [Code 1962 Section 38‑70], authorizing circuit court to direct drawing of jurors on irregularity occurring in drawing of juries, applies to grand and petit jurors. State v. Wells (S.C. 1931) 162 S.C. 509, 161 S.E. 177. Grand Jury 8

The mode of effecting the objective of this section [Code 1962 Section 38‑70] is prescribed in language not mandatory but merely permissive. State v. Toland (S.C. 1892) 36 S.C. 515, 15 S.E. 599.

**SECTION 14‑7‑290.** Preparation of special list and drawing of special jury in certain circumstances.

 Whenever at any term of the circuit court the array of grand and petit jurors summoned to attend is held to have been irregularly or illegally drawn or summoned, the presiding judge shall immediately order, in either case, that the jury commissioners of the county shall immediately prepare a special list and, in open court, draw a special venire of grand or petit jurors or draw a special jury from the last list prepared according to law. Any special grand or petit jury so drawn and summoned shall serve instead of those discharged at this term.

HISTORY: 1962 Code Section 38‑71; 1952 Code Section 38‑71; 1942 Code Section 621; 1932 Code Section 621; Civ. P. ‘22 Section 561; 1912 (27) 772; 1976 Code Section 14‑7‑330; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to disposition of names of those who are drawn and who serve as jurors, which formerly appeared in this section, can now be found in Section 14‑7‑250.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

Attorney General’s Opinions

Under Former Statutes

This section [Code 1962 Section 38‑71] is directory only in that the drawing of the jury is dependent upon the decision of the presiding judge as to the effect of the irregularity upon the fair trial of the defendant charged before the court. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

**SECTION 14‑7‑300.** Supplying deficiency in number of jurors drawn.

 Whenever it is necessary to supply any deficiency in the number of grand or petit jurors duly drawn, whether caused by challenge or otherwise, the jury commissioners, under the direction of the court, shall draw from the jury box the number of jurors as the court considers necessary to fill the deficiency.

HISTORY: 1962 Code Section 38‑72; 1952 Code Section 38‑72; 1942 Code Section 618; 1932 Code Section 618; Civ. P. ‘22 Section 558; Civ. C. ‘12 Section 4027; 1902 (23) 1066; 1939 (41) 27; 1941 (42) 70; 1943 (43) 263; 1955 (49) 22, 66, 72, 534; 1957 (50) 12; 1958 (50) 1994; 1959 (51) 487; 1960 (51) 1759; 1962 (52) 1718, 1880; 1967 (55) 8, 81; 1968 (55) 2252; 1969 (56) 354, 928; 1970 (56) 2358, 2430; 1971 (57) 3, 121, 442, 2018; 1972 (57) 2202; 1976 Code Section 14‑7‑340; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions limiting the number of persons to be drawn and summoned to serve as petit jurors, which formerly appeared in this section, can now be found in Section 14‑7‑260.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

NOTES OF DECISIONS

In general 1

1. In general

Discretion of court as to number of jurors. Whether a greater number of jurors than is prescribed by this section [Code 1962 Section 38‑68] shall be drawn is left to the discretion of the court. State v Jackson, 32 SC 27, 10 SE 769 (1890). State v Britt, 237 SC 293, 117 SE2d 379 (1960).

Presence of jurors at commencement of trial. This section [Code 1962 Section 38‑68] does not make it necessary that the whole number of the thirty‑six (now forty) jurors should be present at the commencement of the trial. State v Jackson, 32 SC 27, 10 SE 769 (1890). State v Stephens, 13 SC 285 (1880). State v Rasor, 168 SC 221, 167 SE 396 (1933).

The meaning of “the same rules shall be observed as in drawing from the jury box” is not clear, and we need not undertake to decide it now. It may refer to the rules requiring a public drawing in the clerk’s office; or construed with Code 1962 Section 38‑72, it may be taken as referring only to the mechanics of the drawing. State v. Livingston (S.C. 1958) 233 S.C. 400, 105 S.E.2d 73.

Disqualification of juror for overage. A jury venire should not be quashed because of the disqualification of one of the persons included therein to serve in the courts as a juror because of overage. State v. Rasor (S.C. 1933) 168 S.C. 221, 167 S.E. 396, 86 A.L.R. 1237.

**SECTION 14‑7‑310.** Venires for additional jurors.

 Nothing contained in this article prevents the clerk of the court of common pleas from issuing venires for additional jurors in term time upon the order of the court whenever it is necessary for the convenient dispatch of its business. In any such case venires must be served and returned and jurors required to attend on those days as the court shall direct.

HISTORY: 1962 Code Section 38‑75; 1952 Code Section 38‑75; 1942 Code Section 614; 1932 Code Section 614; Civ. P. ‘22 Section 554; Civ. C. ‘12 Section 4023; 1902 (23) 1066; 1939 (41) 27; 1941 (42) 70; 1943 (43) 263; 1976 Code Section 14‑7‑380; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to preparation of special jury lists in certain circumstances, which formerly appeared in this section, can now be found in Section 14‑7‑270.

CROSS REFERENCES

Preparation of the jury list, see Section 14‑7‑140.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

NOTES OF DECISIONS

In general 1

Presumptions and burden of proof 2

1. In general

Numerical requirement of statute that list of prospective jurors include not less than two from every three qualified male electors serves as partial limitation on discretion conferred upon jury commission in assembling list and requires reasonably well implemented bona fide endeavor to include not less than two from every three electors possessing constitutional qualifications for jury service. State v. Jackson (S.C. 1962) 240 S.C. 238, 125 S.E.2d 474. Jury 63

Court, on challenge to array, was justified in accepting estimate of chairman of registration board as to what records and evidence reflected as to number of registered electors. State v. Jackson (S.C. 1962) 240 S.C. 238, 125 S.E.2d 474. Jury 120

Where statutory requirement that jury commissioners prepare list of prospective jurors including not less than two from every three qualified electors was disregarded by officials because jury box was too small and not enough capsules were available, unlawful jury list resulted and list was subject to be corrected either under common law or statute. State v. Jackson (S.C. 1962) 240 S.C. 238, 125 S.E.2d 474. Jury 63; Jury 64

Where the sheriff served by mail or in person all of the thirty‑six men named in the original venire, the court, after the original panel had been exhausted in a homicide case, was warranted in ordering the issuance of a venire for additional jurors. State v. Tidwell (S.C. 1915) 100 S.C. 248, 84 S.E. 778. Jury 70(1)

This section [Code 1962 Section 38‑69] and Code 1962 Sections 38‑70 and 38‑51.2 are very broad in their terms. State v. Malloy (S.C. 1912) 91 S.C. 429, 74 S.E. 988.

Section prevents, delay of business of court. This section [Code 1962 Section 38‑69] and Code 1962 Sections 38‑70 and 38‑51.2 are intended to prevent delay or interruption of the business of the court which would arise but for the powers conferred on the resident judge and the court. State v. Malloy (S.C. 1912) 91 S.C. 429, 74 S.E. 988.

Judge may require drawing of new grand jury. Under this section [Code 1962 Section 38‑69] and Code 1962 Sections 38‑70 and 38‑51.2, the resident circuit judge has authority to require the drawing of a new grand jury where an indictment is quashed because found by a grand jury unlawfully drawn. State v. Malloy (S.C. 1912) 91 S.C. 429, 74 S.E. 988.

2. Presumptions and burden of proof

Burden was on defendant to prove facts upon which challenge to array was predicated. State v. Jackson (S.C. 1962) 240 S.C. 238, 125 S.E.2d 474. Jury 120

**SECTION 14‑7‑320.** Calling of alternate jurors.

 Whenever in the opinion of a presiding judge of a court of common pleas or general sessions of any county of this State about to enter upon the trial of a civil or criminal case the trial is likely to be protracted, the court may cause an entry to that effect to be made in the minutes of the court and, immediately after the jury is impaneled and sworn, the court shall direct the calling of one or two additional jurors in its discretion, to be known as alternate jurors. These jurors must be drawn from the same source, in the same manner, have the same qualifications, and be subject to the same examination and challenge as the jurors already sworn.

HISTORY: 1962 Code Section 38‑76; 1952 Code Section 38‑76; 1942 Code Section 626‑2; 1937 (40) 300; 1976 Code Section 14‑7‑390; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to duties of a circuit judge in the event of irregularities in the drawing of jurors, which formerly appeared in this section, can now be found in Section 14‑7‑280.

CROSS REFERENCES

Juries in civil cases, see South Carolina Rules of Civil Procedure, Rule 47.

Peremptory challenges for alternate jurors called under the provisions of this section, see Section 14‑7‑1120.

Library References

Jury 82.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 310, 320 to 321, 327, 334, 341, 344.

Attorney General’s Opinions

Provisions of Code 1962 Section 38‑63 are directory and permissive only, and any motion made for quashing a venire on the grounds of lack of proper notice, where the court has determined that there has been no ill effect, should be denied. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

A defendant was entitled to a “Batson hearing” on purposeful discrimination where an alternate juror of the same sex and minority race as the defendant was challenged by the state on the basis of similar age, but the state had a juror information sheet which showed that the juror was older than the defendant; however, this error was harmless where the juror was merely an alternate, the defense counsel agreed to proceed to trial without this alternate rather than begin a de novo selection of the jury, and since under Section 14‑7‑320 the calling of alternate jurors is within the discretion of the trial judge. State v. Thompson (S.C.App. 1991) 304 S.C. 85, 403 S.E.2d 139, certiorari denied.

Objection that two alternate jurors participated in jury deliberations prior to introduction of all evidence thereby denying defendant a fair trial was waived where defendant failed to object to trial court’s failure to admonish jury that they were not to so deliberate until all of the evidence had been introduced; objection could not be raised for the first time on appeal. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522.

Statute granting presiding judge right to direct the calling of an alternate or 13th juror is remedial and is intended to prevent mistrials in criminal cases of long duration where a juror dies or becomes so ill as to be unable to continue his duties. State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410. Jury 32(1)

2. Constitutional issues

Statute granting presiding judge right to direct the calling of an alternate or 13th juror, does not violate constitutional provision that petit jury of circuit courts shall consist of 12 men, all of whom must be agreed as to verdict in order to render it. State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410. Jury 32(1)

**SECTION 14‑7‑330.** Notice of motion to quash panel because of disqualification of jury commissioners.

 No motion to quash any panel of petit jurors may be made because of any relationship, connection, or other disqualification on the part of the jury commissioners, or any of them, who made up the jury box, unless notice of the motion in writing is given at least ten days before the convening of any court to the adverse party, or his attorney setting forth the ground for the making of the motion. Failure to give notice is considered a waiver of all rights.

HISTORY: 1962 Code Section 38‑79; 1952 Code Section 38‑79; 1942 Code Section 626‑3; 1936 (39) 1431; 1976 Code Section 14‑7‑400; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to preparation of a special jury list and drawing of a special venire or jury in the event that grand or petit jurors have been irregularly drawn or summoned, which formerly appeared in this section, can now be found in Section 14‑7‑290.

Library References

Jury 70.

Westlaw Topic No. 230.

C.J.S. Juries Sections 322 to 326.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

Attorney General’s Opinions

This section [Code 1962 Section 38‑71] is directory only in that the drawing of the jury is dependent upon the decision of the presiding judge as to the effect of the irregularity upon the fair trial of the defendant charged before the court. 1963‑64 Op.Atty.Gen. No 1728, p 213 (September 18, 1964) 1964 WL 8348.

Where a jury commissioner considers that he may be disqualified with respect to a specific criminal case, he should continue to act as jury commissioner until otherwise ordered by the court pursuant to a motion made under this section [Code 1962 Section 38‑79] 1963‑64 Op.Atty.Gen. No 1633, p 63 (March 2, 1964) 1964 WL 8265.

**SECTION 14‑7‑340.** Procedure to obtain jurors when jury commissioners are disqualified.

 If notice is given and the party upon whom it is served concedes or it is determined by the court that the relationship, connection, or disqualification exists, then the moving party shall apply to the resident circuit judge or the presiding judge of the circuit, either at chambers or in term time, setting out by way of affidavits the facts. Thereupon the judge shall order the jury commissioners who are not related, connected, or disqualified to make up a special jury box composed of the names of two hundred and forty persons, who are qualified to serve as jurors, from which special box there must be drawn the names of thirty‑six jurors who must be summoned and required to attend as extra jurors. From the extra panel a jury may be obtained to try the case in which the regular panel is disqualified. In case all of the jury commissioners are disqualified, then the judge shall designate three others who shall perform this duty.

HISTORY: 1962 Code Section 38‑80; 1952 Code Section 38‑80; 1942 Code Section 626‑3; 1936 (39) 1431; 1976 Code Section 14‑7‑410; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to supplying deficiencies in numbers of jurors drawn, which formerly appeared in this section, can now be found in Section 14‑7‑300.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

NOTES OF DECISIONS

In general 1

1. In general

Deficiency must be supplied from tales box. There can be no doubt under this section [Code 1962 Section 38‑72] that if there is any deficiency in the required number of petit jurors, such deficiency is supplied from names drawn from the tales box. State v. Britt (S.C. 1960) 237 S.C. 293, 117 S.E.2d 379, certiorari denied 81 S.Ct. 1040, 365 U.S. 886, 6 L.Ed.2d 197.

No challenge to array of jurors. There can be no challenge to the array of jurors drawn to supply such deficiency, but each juror may be challenged for reason. State v. Merriman (S.C. 1891) 34 S.C. 16, 12 S.E. 619, rehearing denied 34 S.C. 576, 13 S.E. 328.

**SECTION 14‑7‑350.** Term of extra or special panel.

 The extra or special panel may be discharged as soon as the need for it ceases.

HISTORY: 1962 Code Section 38‑81; 1952 Code Section 38‑81; 1942 Code Section 626‑3; 1936 (39) 1431; 1976 Code Section 14‑7‑420; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑350 was titled Supplying deficiency in number of jurors in counties of between 50,000 and 53,000 population, and had the following history: 1962 Code Section 38‑72.2; 1958 (50) 1994; omitted by 1986 Act No. 340, Section 1.

Library References

Jury 70.

Westlaw Topic No. 230.

C.J.S. Juries Sections 322 to 326.

**SECTION 14‑7‑360.** Requirement that persons serve as jurors unless disqualified or excused.

 When the name of a person is drawn from the jury box for jury service by the jury commissioners the person shall serve as a juror unless disqualified or excused by the court as may be provided by law.

HISTORY: 1962 Code Section 38‑82; 1952 Code Section 38‑82; 1942 Code Section 608; 1932 Code Section 608; Civ. P. ‘22 Section 548; Civ. C. ‘12 Section 4017; 1902 (23) 1066; 1915 (29) 76; 1933 (38) 446; 1939 (41) 27, 332, 543; 1941 (42) 70; 1976 Code Section 14‑7‑430; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑360 was titled Supplying deficiency in number of jurors in counties with city of 16,000 to 16,500, and had the following history: 1962 Code Section 38‑73; 1952 Code Section 38‑73; 1942 Code Section 618; 1932 Code Section 618; Civ. P. ‘22 Section 558; Civ. C. ‘12 Section 4027; 1902 (23) 1066; 1939 (41) 27; 1941 (42) 70; 1943 (43) 282; omitted by 1986 Act No. 340, Section 1.

Library References

Jury 66.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 311 to 316.

**SECTION 14‑7‑370.** Penalty for neglect of duty in drawing and summoning jurors.

 When, by neglect of any of the duties required by this article to be performed by any of the officers or persons mentioned, the jurors to be returned from any place are not duly drawn and summoned to attend the court, every person guilty of neglect shall pay a fine not exceeding one hundred dollars, to be imposed by the court, to the use of the county in which the offense was committed.

HISTORY: 1962 Code Section 38‑83; 1952 Code Section 38‑83; 1942 Code Section 645; 1932 Code Section 645; Civ. P. ‘22 Section 585; Civ. C. ‘12 Section 4053; Civ. C. ‘02 Section 2952; G. S. 2273; R. S. 2412; 1871 (14) 694; 1976 Code Section 14‑7‑440; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑370 was titled Draft from tales box, and had the following history: 1962 Code Section 38‑74; 1952 Code Section 38‑74; 1942 Code Section 615; 1932 Code Section 615; Civ. P. ‘22 Section 555; Civ. C. ‘12 Section 4024; 1902 (23) 1066; omitted by 1986 Act No 340, Section 1.

Library References

Jury 82.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 310, 320 to 321, 327, 334, 341, 344.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

**SECTION 14‑7‑380.** Punishment of jury commissioners guilty of fraud.

 If any member of the board of jury commissioners is guilty of fraud, either (a) by practicing on the jury box previously to a draft, (b) in drawing a juror, (c) in returning into the jury box the name of any juror which has been lawfully drawn out and drawing or substituting another in his stead, or (d) in any other way in the drawing of jurors, he must be punished by a fine not exceeding five hundred dollars or be imprisoned not exceeding two years in a state correctional institution.

HISTORY: 1962 Code Section 38‑84; 1952 Code Section 38‑84; 1942 Code Section 1573; 1932 Code Section 1573; Cr. C. ‘22 Section 521; Cr. C. ‘12 Section 590; Cr. C. ‘02 Section 433; G. S. 2238; R. S. 346; 1871 (14) 694; 1976 Code Section 14‑7‑450; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to issuance of venires for additional jurors, which formerly appeared in this section, can now be found in Section 14‑7‑310.

Library References

Jury 82.

Westlaw Topic No. 230.

C.J.S. Juries Sections 272, 310, 320 to 321, 327, 334, 341, 344.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 13, Drawing of Jury Venire.

**SECTION 14‑7‑390.** Service of summons for jury duty by first class mail or by alternate method.

 The clerk of court of a county may serve a summons for jury duty by first class mail. In the alternative, the clerk of court of any county may contract with the State Election Commission to serve a summons for jury duty by first class mail. Should the clerk of court of any county not choose to use either of the procedures for summoning jurors provided by this section, the clerk may summon jurors as provided by Section 14‑7‑410 or the sheriff shall serve jurors as provided by Section 14‑7‑400.

HISTORY: 1983 Act No. 150, Section 1; 1976 Code Section 14‑7‑455; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to calling alternate jurors, which formerly appeared in this section, can now be found in Section 14‑7‑320.

Library References

Jury 67(2).

Westlaw Topic No. 230.

C.J.S. Juries Sections 317, 319.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 14, Summoning of Venire‑ Notice and Service.

S.C. Jur. South Carolina Rules of Civil Procedure Section 47.1, Reporter’s Notes.

Attorney General’s Opinions

Sheriff may not serve juror summonses by regular mail. 1978 Op.Atty.Gen. No 78‑148, p 182 (August 3, 1978) 1978 WL 22616.

**SECTION 14‑7‑410.** Service of summons for jury duty by certified mail; alternate procedure.

 The clerk of court of any county may serve a summons for jury duty by certified mail with return receipt requested. Should the clerk of court of any county not choose to use the procedure for summoning jurors provided by this section, the sheriff must continue to serve jurors as provided by law.

HISTORY: 1980 Act 370, Section 1; 1983 Act No. 150, Section 2; 1976 Code Section 14‑7‑465; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to obtaining jurors when jury commissioners are disqualified, which formerly appeared in this section, can now be found in Section 41‑7‑340.

CROSS REFERENCES

Summoning of jurors by clerk as provided in this section, as alternative to summoning jurors by first class mail, see Section 14‑7‑390.

Library References

Jury 67(2).

Westlaw Topic No. 230.

C.J.S. Juries Sections 317, 319.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 14, Summoning of Venire‑ Notice and Service.

Attorney General’s Opinions

Sheriff may not serve juror summonses by regular mail. 1978 Op.Atty.Gen. No 78‑148, p 182 (August 3, 1978) 1978 WL 22616.

**SECTION 14‑7‑420.** Attendance and service in court of common pleas by jurors summoned to attend and serve in court of general sessions.

 In cases where the law provides for the opening and holding of the court of common pleas during the week in which a term of the court of general sessions is or may be held in any county, the jurors summoned to attend and serve in the court of general sessions shall also attend and serve as jurors in any court of common pleas.

HISTORY: 1962 Code Section 38‑87; 1952 Code Section 38‑87; 1942 Code Section 70; 1932 Code Section 70; Civ. P. ‘22 Section 67; Civ. P. ‘12 Section 34; Civ. P. ‘02 Section 29; 1870 (14) 29; 1954 (48) 1445; 1976 Code Section 14‑7‑470; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions relative to the term of an extra or special panel drawn as a result of disqualification of jury commissioners, which formerly appeared in this section, can now be found in Section 14‑7‑350.

For a local law making this section inapplicable to Charleston County, see Local Law Index.

Library References

Jury 73.

Westlaw Topic No. 230.

C.J.S. Juries Section 345.

**SECTION 14‑7‑430.** Exclusiveness of method and procedure described by this article.

 The method and procedure described by this article is the exclusive method for the preparation of the jury lists, jury box, and the drawing of jurors therefrom and for the service as jurors in the circuit courts of this State.

HISTORY: 1962 Code Section 38‑82; 1952 Code Section 38‑82; 1942 Code Section 608; 1932 Code Section 608; Civ. P. ‘22 Section 548; Civ. C. ‘12 Section 4017; 1902 (23) 1066; 1915 (29) 76; 1933 (38) 446; 1939 (41) 27, 332, 543; 1941 (42) 70; 1986 Act No. 340, Section 1, eff March 10, 1986.

Editor’s Note

Provisions requiring persons whose names are drawn to serve as jurors, except in certain enumerated circumstances, which formerly appeared in this section, can now be found in Section 14‑7‑360.

Library References

Jury 57.

Westlaw Topic No. 230.

C.J.S. Juries Sections 262, 268 to 269.

ARTICLE 7

Disqualification, Exemptions, and Excuse from Service as Jurors

**SECTION 14‑7‑810.** Enumeration of disqualifications in any court.

 In addition to any other provision of law, no person is qualified to serve as a juror in any court in this State if:

 (1) He has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

 (2) He is unable to read, write, speak, or understand the English language.

 (3) He is incapable by reason of mental or physical infirmities to render efficient jury service. Legal blindness does not disqualify an otherwise qualified juror.

 (4) He has less than a sixth grade education or its equivalent.

 Any person called to jury service who knows or has good reason to suspect that he is disqualified under this section, upon questioning by the trial judge, hearing officer, or clerk of court, must state the disqualifying facts or the reasons for his suspicions and any failure to do so is punishable as contempt of court. The trial judge must make the final determination of the qualifications of a juror as set out in this section and his decision must not be disturbed on appeal.

HISTORY: 1962 Code Section 38‑100; 1966 (54) 2799; 1984 Act No. 466, eff June 20, 1984; 1986 Act No. 340, Section 2, eff March 10, 1986.

Library References

Jury 38.

Westlaw Topic No. 230.

C.J.S. Juries Sections 276, 279 to 281, 284 to 287, 290, 301.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 26, Trial Matters.

S.C. Jur. Appeal and Error Section 129, Trial Matters.

S.C. Jur. Jury Section 12, Preparation of Jury List.

S.C. Jur. Jury Section 17, Disqualifications.

S.C. Jur. Probation, Parole, and Pardon Section 30, The Order of Pardon and Its Effect.

LAW REVIEW AND JOURNAL COMMENTARIES

Impaneling Jurors—Death Sentence Invalidated When Veniremen Excluded For Voicing Scruples Against Imposition of Capital Punishment. 20 S.C. L. Rev. 833.

NOTES OF DECISIONS

In general 1

Justiciability 2

1. In general

In a prosecution for murder, the trial judge properly disqualified two jurors under Section 14‑7‑810 where both of the jurors gave inconsistent answers about their views of the death penalty and displayed an incredible lack of understanding about the trial process. State v. Gaskins (S.C. 1985) 284 S.C. 105, 326 S.E.2d 132, certiorari denied 105 S.Ct. 2368, 471 U.S. 1120, 86 L.Ed.2d 266, habeas corpus dismissed 916 F.2d 941, rehearing denied, certiorari denied 111 S.Ct. 2277, 500 U.S. 961, 114 L.Ed.2d 728, rehearing denied 112 S.Ct. 14, 501 U.S. 1269, 115 L.Ed.2d 1098, habeas corpus denied 943 F.2d 49, certiorari denied 112 S.Ct. 18, 501 U.S. 1272, 115 L.Ed.2d 1102.

Indebtedness to bank does not, as matter of law, disqualify juror from service in case in which bank is interested; such excusal must instead be left to sound discretion of trial judge. Palmetto Bank v. Rowland (S.C. 1980) 275 S.C. 38, 267 S.E.2d 426. Jury 92

2. Justiciability

Where box from which grand jury and petit juries were drawn contained names of all electors of county and percentages of blacks and women drawn approximated percentages of blacks and women in population of electors, no justiciable case or controversy was presented, even though substantial disparities had previously existed between percentages of presumptively qualified blacks and women and percentages selected for jury service. Blackwell v. Thomas (C.A.4 (S.C.) 1973) 476 F.2d 443.

**SECTION 14‑7‑820.** Disqualification of county officers and court employees.

 No clerk or deputy clerk of the court, constable, sheriff, probate judge, county commissioner, magistrate or other county officer, or any person employed within the walls of any courthouse is eligible as a juryman in any civil or criminal case; provided, that no person may be disqualified under this section except as determined by the court.

HISTORY: 1962 Code Section 38‑101; 1952 Code Section 38‑101; 1942 Code Section 627; 1932 Code Section 627; Civ. P. ‘22 Section 567; Civ. C. ‘12 Section 4035; Civ. C. ‘02 Section 2933; R. S. 2378; 1888 (20) 69; 1890 (20) 725; 1986 Act No. 340, Section 2, eff March 10, 1986.

CROSS REFERENCES

Qualifications of jurors, see SC Const. Art. V, Section 22.

Library References

Jury 38.

Westlaw Topic No. 230.

C.J.S. Juries Sections 276, 279 to 281, 284 to 287, 290, 301.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 17, Disqualifications.

Attorney General’s Opinions

Acknowledging that only the court has the authority to determine whether a prospective juror should be excused or disqualified, it appears that clerks of the circuit court and their deputies would be ineligible to serve as jurors in the Courts of Common Pleas and General Sessions and that the clerk or deputy clerk of a magistrate’s court would be ineligible to serve in that magistrate’s jury trials; a clerk or deputy clerk of a probate court should only be disqualified if within the “working within the walls of the courthouse” exemption. 1989 Op.Atty.Gen. No. 89‑75, p 199 (July 26, 1989) 1989 WL 406165.

Conservation officers are ineligible. Conservation officers (game wardens) are State constables and are ineligible to serve as jurymen under this section [Code 1962 Section 38‑101]. 1966‑67 Op.Atty.Gen. No 2318, p 141 (September 20, 1967) 1967 WL 8628.

NOTES OF DECISIONS

In general 1

1. In general

Thus a magistrate is prohibited from serving on grand jury. There is a strong reason for prohibiting a magistrate from serving on a grand jury as on a petit jury, since he might have to pass on bills against persons whom he has bound over to the court of general sessions. State v Graham, 79 SC 116, 60 SE 431 (1908). State v Rector, 158 SC 212, 155 SE 385 (1930).

A juror’s belief that he is the member of law enforcement is not enough to disqualify him. State v. Hughey (S.C. 2000) 339 S.C. 439, 529 S.E.2d 721, rehearing denied, certiorari denied 121 S.Ct. 345, 531 U.S. 946, 148 L.Ed.2d 277. Jury 83(3)

Correctional officer was not “law enforcement officer” within meaning of statute that disqualifies such officers from jury duty, even though correctional officer’s questionnaire indicated that he considered himself member of law enforcement. State v. Hughey (S.C. 2000) 339 S.C. 439, 529 S.E.2d 721, rehearing denied, certiorari denied 121 S.Ct. 345, 531 U.S. 946, 148 L.Ed.2d 277. Jury 83(3)

Any person employed within walls of courthouse is ineligible as juryman in any civil or criminal case, and once trial judge determines potential juror is employed in any capacity within courthouse he must disqualify that person from jury service; while trial judge is given wide discretion in deciding whether juror is qualified or not, extreme caution should be exercised in capital cases to assure defendant will be tried by fair and impartial jury. State v. Reed (S.C. 1987) 293 S.C. 515, 362 S.E.2d 13.

A prospective juror was not disqualified under Section 14‑7‑820 on the basis of his employment with the criminal investigation division of the Navy and his previous employment with a county police department, since the prospective juror did not hold any of the positions covered by that statute. State v. Matthews (S.C. 1986) 291 S.C. 339, 353 S.E.2d 444. Jury 83(3)

A special deputy sheriff is not automatically disqualified as a juror under Section 14‑7‑820, without a showing of bias or prejudice. State v. Matthews (S.C. 1986) 291 S.C. 339, 353 S.E.2d 444. Jury 83(3)

The trial judge erred in failing to disqualify uniformed highway patrolman from jury to try the defendant charged with capital murder, since a highway patrolman is functionally equivalent to a deputy sheriff. State v. Cooper (S.C. 1986) 291 S.C. 332, 353 S.E.2d 441.

Without showing of bias or prejudice on the part of potential juror, showing of his status as a special deputy sheriff was not a disqualification. Bryant v. State (S.C. 1975) 264 S.C. 157, 213 S.E.2d 451.

“Eligible” means capable of serving or legally qualified to serve. State v. Johnson (S.C. 1923) 123 S.C. 50, 115 S.E. 748.

Deputy sheriff is ineligible. Since a “sheriff,” a “constable,” and a “magistrate” are expressly designated to be ineligible as jurymen, a deputy sheriff vested with like powers and charged with like duties would seem clearly to be embraced within the term “or other county officer” as used in this section [Code 1962 Section 38‑101]. State v. Johnson (S.C. 1923) 123 S.C. 50, 115 S.E. 748.

“Juryman” is not limited to petit juryman. There is no sufficient ground for limiting the word “juryman,” as used in this section [Code 1962 Section 38‑101], to include a member of the petit jury and exclude a member of the grand jury. State v. Graham (S.C. 1908) 79 S.C. 116, 60 S.E. 431.

**SECTION 14‑7‑830.** Exclusion from jury service of members of grand jury which found indictment.

 No member of the grand jury which has found an indictment may be put upon the jury for the trial thereof.

HISTORY: 1962 Code Section 38‑103; 1952 Code Section 38‑103; 1942 Code Section 1000; 1932 Code Section 1000; Cr. P. ‘22 Section 86; Cr. C. ‘12 Section 80; Cr. C. ‘02 Section 53; G. S. 2639; R. S. 52; 1731 (3) 279; 1976 Code Section 14‑7‑840; 1986 Act No. 340, Section 2, eff March 10, 1986.

Editor’s Note

Prior Laws: Former Section 14‑7‑830 was titled Names of persons guilty of crime or immorality withdrawn from jury box, and had the following history: 1962 Code Section 38‑102; 1952 Code Section 38‑102; 1942 Code Section 628; 1932 Code Section 628; Civ. P. ‘22 Section 568; Civ. C. ‘12 Section 4036; Civ. C. ‘02 Section 2934; G. S. 2242; R. S. 2379; 1871 (14) 691; omitted by 1986 Act No. 340, Section 2.

CROSS REFERENCES

Disqualification from registration or voting of persons convicted of certain offenses, see SC Const. Art. II, Section 7.

Library References

Jury 38.

Westlaw Topic No. 230.

C.J.S. Juries Sections 276, 279 to 281, 284 to 287, 290, 301.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 26, Disqualifications for Cause.

Attorney General’s Opinions

Jury commissioner may consider a nondisqualifying offense in acting upon removal of venireman. 1964‑65 Op.Atty.Gen. No 1912, p 202 (October 1, 1965) 1965 WL 8069.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 38‑103] has reference to the trial of one charged with the commission of a crime and had no application where the foreman of the petit jury in a civil case had been a member of the grand jury which had refused to indict defendant for the death of plaintiff’s intestate. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883.

One who served as grand juror on the finding of an indictment is incompetent to serve as petit juror on trial of the offense. State v. Goodwin (S.C. 1925) 131 S.C. 67, 126 S.E. 519.

Objection to grand juror who finds a bill of indictment at one court and serves as petit juror at next court, comes too late after trial and conviction. State v. O’Driscoll (S.C. 1798).

**SECTION 14‑7‑840.** Exemption from jury service; requirement of direction by court; maintenance of list of persons excused.

 No person is exempt from service as a juror in any court of this State except men and women sixty‑five years of age or over. Notaries public are not considered state officers and are not exempt under this section. A person exempt under this section may be excused upon telephone confirmation of date of birth and age to the clerk of court or the chief magistrate. The jury commissioners shall not excuse or disqualify a juror under this section. The clerk of court shall maintain a list of persons excused by the court and the reasons the juror was determined to be excused.

HISTORY: 1962 Code Section 38‑104; 1952 Code Section 38‑104; 1942 Code Section 629; 1932 Code Section 629; Civ. P. ‘22 Section 569; Civ. C. ‘12 Section 4037; Civ. C. ‘02 Section 2935; G. S. 2240; R. S. 2380; 1832 (8) 380; 1836 (8) 447; 1871 (14) 690; 1878 (14) 582; 1880 (17) 307; 1884 (18) 713; 1891 (20) 1124; 1896 (22) 19; 1899 (23) 44; 1902 (23) 1028; 1907 (25) 492; 1921 (32) 269, 278; 1923 (33) 95; 1925 (34) 31; 1941 (42) 96; 1952 (47) 2042; 1965 (54) 641; 1967 (55) 895; 1978 Act No. 579 eff July 18, 1978; 1979 Act No. 108 Section 1, eff June 22, 1979; 1976 Code Section 14‑7‑850; 1986 Act No. 340, Section 2, eff March 10, 1986; 1992 Act No. 414, Section 1, eff June 1, 1992.

Editor’s Note

Provisions excluding grand jury members from jury service at a trial on an indictment found by the grand jury, which formerly appeared in this section, can now be found in Section 14‑7‑830.

CROSS REFERENCES

Exclusion of persons excused from jury service under this section from certain requirements applicable to other excused jurors, see Section 14‑7‑870.

Exemption of officers and employees of state penitentiary from jury duty, see Section 24‑3‑930.

Library References

Jury 38.

Westlaw Topic No. 230.

C.J.S. Juries Sections 276, 279 to 281, 284 to 287, 290, 301.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 18, Exemption for Those Over 65.

Attorney General’s Opinions

Students and individuals over 65 years of age should not generally be omitted from a jury list prior to striking. 1983 Op.Atty.Gen. No. 83‑54, p. 80 (August 3, 1983) 1983 WL 142725.

Persons over sixty‑five years of age are exempt from jury service; members of school boards and town councils are also exempt but only while in the actual discharge of their duties as a member of a school board or town council; ordained ministers, licensed embalmers, and licensed veterinarians are not exempt from jury service. 1978 Op.Atty.Gen. No 78‑181, p 209 (October 31, 1978) 1978 WL 22649.

Jury commissioners may not exclude from jury venire one exempted from jury duty in the absence of a statute. 1967‑68 Op.Atty.Gen. No 2574, p 275 (May 30, 1968) 1968 WL 8966.

This section [Code 1962 Section 38‑104], while exempting registered nurses and licensed practical nurses from jury duty, does not disqualify them, but only grants a personal privilege which they may claim or waive. 1966‑67 Op.Atty.Gen. No 2370, p 217 (September 22, 1967) 1967 WL 8678.

Jury commissioners may exclude exempt persons from the jury list, excepting certain situations. 1964‑65 Op.Atty.Gen. No 1793, p 31 (February 2, 1965) 1965 WL 7958.

A part‑time postal clerk would be able to claim an exemption on days he is scheduled to work for the post‑office department. 1964‑65 Op.Atty.Gen. No 1836, p 92 (April 14, 1965) 1965 WL 7998.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Under this section [Code 1962 Section 38‑104] an exemption from jury service is not a disqualification to act as a juror, but is a mere personal privilege which the juror alone may claim or waive. State v Graham, 79 SC 116, 60 SE 431 (1908). State v Merriman, 35 SC 607, 14 SE 394 (1892). State v Toland, 36 SC 515, 15 SE 599 (1892).

While a prospective juror employed by the criminal investigation division of the Navy could have claimed, as a United States officer, an exemption from jury service under Section 14‑7‑850, such an exemption is a privilege and not a disqualification, and the parties could not object to the prospective juror due to his employment status under the statute if the prospective juror himself did not claim his privilege of exemption. State v. Matthews (S.C. 1986) 291 S.C. 339, 353 S.E.2d 444.

A motion to quash a jury venire on the ground that Section 14‑7‑850 systematically excludes certain categories was properly denied, since the statute does not exclude or disqualify any category of citizens, but grants an option which the juror alone may exercise. State v. Skipper (S.C. 1985) 285 S.C. 42, 328 S.E.2d 58, certiorari granted in part 106 S.Ct. 270, 474 U.S. 900, 88 L.Ed.2d 225, reversed 106 S.Ct. 1669, 476 U.S. 1, 90 L.Ed.2d 1. Jury 33(1.10); Jury 33(1.20)

A deputy sheriff for an industrial corporation, whose qualification, powers, and duties are provided for by Civ.Code 1912, Sections 1149‑1151 (See Code 1942, Sections 3499‑3501), is a county officer within section 4035 (See Code 1942, Section 627), making certain officers or any other county officer ineligible as a juryman, especially in view of section 4037 (See Code 1942, Section 629), exempting sheriffs and their deputies from jury duty, since sections 1146, 1147, 1149, 1150 (See Code 1942, Sections 3499‑3501), do not change the common‑law rule that a deputy sheriff is an officer, and such officer is therefore disqualified to serve as a juror, since the word “eligible” means capable of serving, legally qualified to serve. State v. Johnson (S.C. 1923) 123 S.C. 50, 115 S.E. 748.

This section [Code 1962 Section 38‑104], exempting from jury service the marshals of the United States and their deputies and all the officers of the United States, is broad enough to include a rural free delivery carrier, but the parties have no right to object to him on that account if he does not claim his privilege of exemption. State v. Graham (S.C. 1908) 79 S.C. 116, 60 S.E. 431.

2. Constitutional issues

Persons who are 65 years of age or older and thus statutorily exempt from service as jurors are not a “distinctive group” for purposes of Sixth Amendment’s requirement that a person charged with a crime be able to draw from a fair cross‑section of the community, a prima facie violation of which requires in part a showing that the group alleged to be excluded is a distinctive group in the community. State v. Stanko (S.C. 2013) 402 S.C. 252, 741 S.E.2d 708, rehearing denied, certiorari denied 134 S.Ct. 247, 187 L.Ed.2d 183. Jury 33(1.20)

Evidence did not show that persons of the African Race were systematically excluded from jury box from which grand and petit jurors were drawn, and hence did not show that negro defendants were denied “equal protection of the laws” because there were no negroes on grand jury which indicted them or on petit jury which convicted them. State v. Grant (S.C. 1941) 199 S.C. 412, 19 S.E.2d 638.

**SECTION 14‑7‑845.** Postponement of jury service for students and school employees.

 (A) If a student selected for jury service during the school term requests, his service must be postponed to a date that does not conflict with the school term. For purposes of this subsection, a student is a person enrolled in high school or an institution of higher learning, including technical college.

 (B) If a public or private school employee, a person primarily responsible for the elementary or secondary education of a child in a home or charter school, or a person who is an instructor at an institution of higher learning including a technical college, selected for jury service during the school term requests, his service must be postponed to a date that does not conflict with the school term. For purposes of this subsection, a “school employee” is a person employed as a teacher, certified personnel at the building level, or bus driver by a school, a school system, or a school district offering educational programs to grades K‑12 and to institutions of higher learning, including technical colleges. For purposes of this subsection, “school term” means the instructional school year, generally from September first until May thirtieth or not more than one hundred ninety days.

 (C) A person selected for jury service who requests a postponement pursuant to subsection (A) or (B) must provide evidence of school enrollment or employment, or evidence of educational responsibilities during a home or charter school term coinciding with the dates of jury duty.

HISTORY: 1990 Act No. 427, Section 1, eff April 24, 1990; 1997 Act No. 28, Section 1, eff May 21, 1997; 2010 Act No. 187, Section 1, eff May 28, 2010.

Library References

Jury 55.

Westlaw Topic No. 230.

C.J.S. Juries Sections 302 to 304.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 19, Students.

S.C. Jur. Jury Section 19.5, School Employees.

**SECTION 14‑7‑850.** Frequency of jury service.

 No person is liable to be drawn and serve as a juror in any court more often than once every three calendar years and no person shall serve as a juror more than once every calendar year, but he is not exempt from serving on a jury in any other court in consequence of his having served before a magistrate.

HISTORY: 1962 Code Section 38‑106; 1952 Code Section 38‑106; 1942 Code Section 630; 1932 Code Section 630; Civ. P. ‘22 Section 570; Civ. C. ‘12 Section 4038; Civ. C. ‘02 Section 2936; G. S. 2241; R. S. 2381; 1879 (16) 307; 1976 Code Section 14‑7‑870; 1986 Act No. 340, Section 2, eff March 10, 1986; 1996 Act No. 233, Section 2, eff March 4, 1996; 2000 Act No. 257, Section 3, eff May 1, 2000.

Editor’s Note

Provisions relative to exemptions from jury service, which formerly appeared in this section, can now be found in Section 14‑7‑840.

CROSS REFERENCES

Exemption of officers and employees of State Penitentiary from jury duty, see Section 24‑3‑930.

Library References

Jury 55.

Westlaw Topic No. 230.

C.J.S. Juries Sections 302 to 304.

LAW REVIEW AND JOURNAL COMMENTARIES

Impaneling Jurors ‑ Death Sentence Invalidated When Veniremen Excluded For Voicing Scruples Against Imposition of Capital Punishment. 20 S.C. L. Rev. 833.

Attorney General’s Opinions

Excluding from jury venire or list. Jury commissioners may not exclude from jury venire one exempted from jury duty in the absence of a statute. 1967‑68 Op.Atty.Gen. No 2574, p 275 (May 30, 1968) 1968 WL 8966.

Section grants personal privilege which may be claimed or waived. This section [Code 1962 Section 38‑104], while exempting registered nurses and licensed practical nurses from jury duty, does not disqualify them, but only grants a personal privilege which they may claim or waive. 1966‑67 Op.Atty.Gen. No 2370, p 217 (September 22, 1967) 1967 WL 8678.

Jury commissioners may exclude exempt persons from the jury list, excepting certain situations. 1964‑65 Op.Atty.Gen. No 1793, p 31 (February 2, 1965) 1965 WL 7958.

A part‑time postal clerk would be able to claim an exemption on days he is scheduled to work for the post‑office department. 1964‑65 Op.Atty.Gen. No 1836, p 92 (April 14, 1965) 1965 WL 7998.

**SECTION 14‑7‑860.** Authority of judge to excuse jurors for good cause; excuse of women with children under age 7, primary caretakers of certain persons, and persons essential to operation of business; punishment for violations.

 (A) The presiding judge for cause shown may excuse any person from jury duty at any term of court if the judge considers it advisable. But no juror who has been drawn to serve at any term of the court may be excused except for good and sufficient cause, which, together with his application, must be filed in the office of the clerk of court and remain on record.

 (B) A person who:

 (1) has legal custody and the duty of care for a child less than seven years of age;

 (2) is the primary caretaker of a person aged sixty‑five or older; or

 (3) is the primary caretaker of a severely disabled person who is unable to care for himself or cannot be left unattended; and desires to be excused from jury duty must submit an affidavit to the clerk of court.

 The affidavit must state that he is unable to provide adequate care for the child, person aged sixty‑five or older, or disabled person while performing jury duty, and must be excused by the presiding judge from jury service.

 (C) The provisions of Section 14‑7‑870 do not apply to any juror described in this subsection who: (a) has a child less than seven years of age, (b) is the primary caretaker of a person aged sixty‑five or older, or (c) is the primary caretaker of a severely disabled person who is unable to care for himself or cannot be left unattended.

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

 (E) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine not to exceed one thousand dollars or imprisoned not more than thirty days, or both.

HISTORY: 1962 Code Section 38‑105; 1952 Code Section 38‑105; 1942 Code Section 5220; 1932 Code Section 5220; 1922 (32) 844; 1986 Act No. 340, Section 2, eff March 10, 1986; 2000 Act No. 394, Section 1, eff August 4, 2000; 2004 Act No. 228, Section 1, eff May 11, 2004; 2010 Act No. 187, Section 2, eff May 28, 2010.

Editor’s Note

An earlier version of this section, which contained provisions relative to exemption of dentists and dental hygienists from jury service, was repealed by 1979 Act No. 108, Section 2, eff June 22, 1979.

Library References

Jury 55.

Westlaw Topic No. 230.

C.J.S. Juries Sections 302 to 304.

RESEARCH REFERENCES

ALR Library

70 ALR 5th 587 , Exclusion of Women from Grand or Trial Jury or Jury Panel in Criminal Case as Violation of Constitutional Rights of Accused or as Ground for Reversal of Conviction‑State Cases.

Encyclopedias

S.C. Jur. Jury Section 20, Excusal by the Court.

NOTES OF DECISIONS

In general 1

Prejudice 2

1. In general

The determination of good cause for excusing jurors under Section 14‑7‑890 is for the trial judge. State v. Norris (S.C. 1985) 285 S.C. 86, 328 S.E.2d 339. Jury 75(1)

2. Prejudice

Excusal of five prospective jurors, in a manner apparently not in compliance with a predecessor of this section, resulted in no prejudice to accused, and exception based on such noncompliance will be overruled. DeLee v. Knight (S.C. 1975) 266 S.C. 103, 221 S.E.2d 844, certiorari denied 96 S.Ct. 2658, 426 U.S. 939, 49 L.Ed.2d 392.

The general principle, that error must be prejudicial in order to be a ground for reversal, applies to rulings on excusing a juror. State v. Rogers (S.C. 1974) 263 S.C. 373, 210 S.E.2d 604. Criminal Law 1166.16

On a motion for a continuance by accused felon, based upon alleged improper summoning and excusing of members of jury panel, movant had failed to show that any of his substantial rights had been affected, thus, according to the record, any irregularity would not operate to the prejudice of the defendant. State v. Rogers (S.C. 1974) 263 S.C. 373, 210 S.E.2d 604. Criminal Law 1166(7)

**SECTION 14‑7‑870.** Procedures applicable to excused jurors.

 Whenever a juror is so excused, unless the cause of the excuse is permanent physical disability of the juror or the juror is a member of one of the classes of persons set forth in Section 14‑7‑840, the name of the juror must be placed by the jury commissioners on the succeeding panel of the same term, or the next term or a subsequent term of court. The name of the juror so placed on any panel must be in addition to the seventy‑five names required to be placed on the panel under the provisions of Section 14‑7‑200, and the juror shall attend the court on the first day of the week for which he has been so designated without the issuance or service of any further process.

 He shall serve as a substitute on the panel in the stead and place of any one of the jurors drawn on the panel whose attendance cannot then be procured or who may be excused from attendance on the panel for cause as provided in this article.

HISTORY: 1962 Code Section 38‑109; 1952 Code Section 38‑109; 1942 Code Section 631; 1932 Code Section 631; Civ. P. ‘22 Section 571; Civ. C. ‘12 Section 4039; Civ. C. ‘02 Section 2937; R. S. 2382; 1871 (14) 690; 1930 (36) 1222; 1976 Code Section 14‑7‑900; 1986 Act No. 340, Section 2, eff March 10, 1986; 1988 Act No. 473, eff May 2, 1988.

Editor’s Note

A provisions to the effect that no person is subject to jury service in any court more often than once a year, which formerly appeared in this section, can now be found in Section 14‑7‑850.

CROSS REFERENCES

Provision that this section is inapplicable to certain women who have children under age 7, see Section 14‑7‑860.

Library References

Jury 55.

Westlaw Topic No. 230.

C.J.S. Juries Sections 302 to 304.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 20, Excusal by the Court.

ARTICLE 9

Objections and Challenges to Jurors; Impanelling of Juries

**SECTION 14‑7‑1010.** Ascertainment of qualifications of jurors by presiding judge; maintenance of list of excused or disqualified jurors; transfer of juror to subsequent term by clerk of court.

 The presiding judge shall at each term of court ascertain the qualifications of the jurors.

 The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law. The clerk of court shall maintain a list of all jurors excused or disqualified and the reasons provided therefor by the presiding judge, which list must be signed by the presiding judge. In no case shall the jury commissioners excuse or disqualify any juror for any reason whatsoever; provided that the clerk of court may, without court approval, transfer any juror to a subsequent term upon good and sufficient cause.

HISTORY: 1962 Code Section 38‑201; 1952 Code Section 38‑201; 1942 Code Section 608; 1932 Code Section 608; Civ. P. ‘22 Section 548; Civ. C. ‘12 Section 4017; 1902 (23) 1066; 1915 (29) 76; 1933 (38) 446; 1939 (41) 27, 332, 543; 1941 (42) 70; 1986 Act No. 340, Section 3, eff March 10, 1986.

Library References

Jury 109.

Westlaw Topic No. 230.

C.J.S. Juries Section 417.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 17, Disqualifications.

S.C. Jur. Jury Section 20, Excusal by the Court.

LAW REVIEW AND JOURNAL COMMENTARIES

“Trial by Jury” in “Handbook of South Carolina Trial and Appellate Practice,” 11 SCLQ, Supp, 50 (1959).

NOTES OF DECISIONS

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1. In general

Defendant’s motion for new trial on ground that one of jurors, who convicted defendant of manslaughter, was not registered elector, was properly overruled on ground that defendant, by failing to make timely suggestion to presiding judge that he should have jurors present to court clerk their registration certificates or other satisfactory evidence that they were qualified electors, waived statutory requirement. State v. Amburgey (S.C. 1945) 206 S.C. 426, 34 S.E.2d 779. Jury 110(3)

No error where judge did not require presentation of registration certificates. Where it was contended that it was error in that the presiding judge failed to comply with this section [Code 1962 Section 38‑201] in that he did not ascertain the qualifications of the jurors by having them present to the clerk of court their registration certificates or other satisfactory evidence that they were qualified electors, it was held that it was not error since no timely suggestion was made to the presiding judge that he should have those upon the venire present to the clerk of court their registration certificates or other satisfactory evidence that they were qualified electors. State v. Logue (S.C. 1944) 204 S.C. 171, 28 S.E.2d 788.

2. Construction and application

The statutory amendment, requiring presiding judge to ascertain jurors’ qualifications by having them present to court clerk their registration certificates or other satisfactory evidence that they are qualified electors, does not relieve accused from exercising due diligence to ascertain jurors’ statutory and constitutional qualifications, nor modify or repeal statute providing that objections to jurors, not made before they are impaneled or charged with trial of case, shall be deemed waived. State v. Amburgey (S.C. 1945) 206 S.C. 426, 34 S.E.2d 779. Jury 84; Jury 110(3)

3. Review

An appellate court will not disturb a trial court’s disqualification of a prospective juror when there is a reasonable basis from which the trial court could have concluded the juror would not have been able to faithfully discharge his responsibilities as a juror under the law. State v. Wise (S.C. 2004) 359 S.C. 14, 596 S.E.2d 475, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 355, 543 U.S. 948, 160 L.Ed.2d 263. Criminal Law 1158.17

**SECTION 14‑7‑1020.** Jurors may be examined by court; if juror is not indifferent, he must be set aside.

 The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.

HISTORY: 1962 Code Section 38‑202; 1952 Code Section 38‑202; 1942 Code Section 637; 1932 Code Section 637; Civ. P. ‘22 Section 577; Civ. C. ‘12 Section 4045; Civ. C. ‘02 Section 2944; G. S. 2261; R. S. 2403; 1797 (5) 358; 1986 Act No. 340, Section 3, eff March 10, 1986.

CROSS REFERENCES

Person called as juror in case involving capital punishment being examined by defense attorney, see Section 16‑3‑20.

Library References

Jury 124.

Westlaw Topic No. 230.

C.J.S. Juries Sections 365, 367 to 370, 398 to 399, 413 to 416, 418 to 425, 473 to 511.

RESEARCH REFERENCES

Encyclopedias

58 Am. Jur. Proof of Facts 3d 395, Challenges for Cause in Jury Selection Process.

5 Am. Jur. Trials 143, Selecting the Jury‑Plaintiff’s View.

S.C. Jur. Jury Section 17, Disqualifications.

S.C. Jur. Jury Section 20, Excusal by the Court.

S.C. Jur. Jury Section 22, Objections.

S.C. Jur. Jury Section 26, Disqualifications for Cause.

S.C. Jur. South Carolina Rules of Civil Procedure Section 47.1, Reporter’s Notes.

S.C. Jur. Venue Section 22, Local Prejudice.

United States Supreme Court Annotations

Effect of accused’s federal constitutional rights on scope of voir dire examination of prospective jurors—Supreme Court cases. 114 L Ed 2d 763.

NOTES OF DECISIONS

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1. In general

Duty of judge. It is the duty of the trial judge to assure himself that each and every prospective juror is unbiased, fair, and impartial, and that not one of them is disqualified. State v Britt, 237 SC 293, 117 SE2d 379 (1960). State v Holland, 261 SC 488, 201 SE2d 118 (1973).

Judge may permit counsel to examine juror on voir dire, but the better practice is for judge to conduct examination. Brown v Kress Co., 170 SC 178, 170 SE 142 (1933). State v Britt, 237 SC 293, 117 SE2d 379 (1960).

For additional related cases, see State v Weaver, 58 SC 106, 36 SE 499 (1900). State v Summers, 36 SC 479, 15 SE 369 (1892). State v Perry, 73 SC 199, 53 SE 169 (1906). State v Johnson, 74 SC 401, 54 SE 601 (1906).

To protect both parties’ right to an impartial jury, the trial court must conduct voir dire of the prospective jurors to determinate whether the jurors are aware of any bias or prejudice against a party, as well as to elicit such facts as will enable the parties intelligently to exercise their right of peremptory challenge. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(3); Jury 131(6)

Trial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18)

In the event of jurors giving false or misleading answers during voir dire, the trial court must inquire into whether the withheld information affects the jury’s impartiality. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18)

Parties in a case, through the trial court, have a right to question jurors on their voir dire examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently to exercise their right of peremptory challenge. Wall v. Keels (S.C.App. 1998) 331 S.C. 310, 501 S.E.2d 754. Jury 131(1); Jury 131(3)

Judge may on own motion place juror on voir dire. This section [Code 1962 Section 38‑202] provides the mode and manner by which the question of the bias or prejudice of a juror shall be determined, and those provisions of law for ascertaining this desired end are ample. It is hardly necessary to add that while the court shall, on motion of either party in suit, examine on oath any person who is called as a juror therein, this does not mean that the trial judge may not of his own motion place jurors on their voir dire, if, in his good judgment, he should conclude that this test should be applied. State v. Royster (S.C. 1936) 181 S.C. 269, 186 S.E. 921, 105 A.L.R. 1522.

2. Constitutional issues

The Fourteenth Amendment requires the judge to interrogate the jurors on the subject of racial prejudice. Ham v. South Carolina (U.S.S.C. 1973) 93 S.Ct. 848, 409 U.S. 524, 35 L.Ed.2d 46. Jury 131(6)

The State having created a statutory framework for the selection of juries, the essential fairness required by the due process clause of the Fourteenth Amendment requires that under certain facts shown the defendant be permitted to have the jurors interrogated on the issue of racial bias. Ham v. South Carolina (U.S.S.C. 1973) 93 S.Ct. 848, 409 U.S. 524, 35 L.Ed.2d 46.

The inquiry as to racial prejudice derives its constitutional stature from the firmly established precedent, and from a principal purpose as well as from the language of the Fourteenth Amendment. Ham v. South Carolina (U.S.S.C. 1973) 93 S.Ct. 848, 409 U.S. 524, 35 L.Ed.2d 46.

Refusal of question as to bias against beards. The trial judge’s refusal to inquire as to particular bias against beards, after his inquiries as to bias in general, does not reach the level of a constitutional violation. Ham v. South Carolina (U.S.S.C. 1973) 93 S.Ct. 848, 409 U.S. 524, 35 L.Ed.2d 46. Jury 131(6)

Difference in voir dire treatment between capital and noncapital cases is rationally related to achievement of legitimate state goals and therefore does not offend equal protection guarantees. State v. Brown (S.C. 1980) 274 S.C. 592, 266 S.E.2d 415. Constitutional Law 3831; Jury 131(13)

Fourteenth Amendment requires that voir dire questions relating to possible racial prejudice be asked in cases of the nature here presented, where black man is accused of raping white woman and of robbery; trial judge has considerable latitude as to manner by which the objective is achieved; questions “will you give careful attention to the testimony of every witness without regard to race, color, creed or sex?” and “the fact that a white woman has been raped, coupled with the fact that the man charged with the rape is black, would that make it difficult for you to be impartial and totally fair?” were patently sufficient to comply with the requirements of the Fourteenth Amendment relative to possible racial prejudice. State v. Middleton (S.C. 1976) 266 S.C. 251, 222 S.E.2d 763, vacated 97 S.Ct. 44, 429 U.S. 807, 50 L.Ed.2d 69, on remand 268 S.C. 152, 232 S.E.2d 342, certiorari denied 98 S.Ct. 230, 434 U.S. 878, 54 L.Ed.2d 157.

3. Discretion of court

Trial court did not abuse its discretion in failing to strike for cause a juror who was student researcher and university graduate, in university’s action against contractor for negligence and breach of contract following a fire on roof connecting two buildings, which roof contractor was hired to remodel, where juror stated that her relationship with university would not interfere with her ability to remain impartial, and juror did not appear to have special knowledge about the fire. The Winthrop University Trustees for the State v. Pickens Roofing and Sheet Metals, Inc. (S.C.App. 2016) 418 S.C. 142, 791 S.E.2d 152, rehearing denied. Education 1043; Negligence 1714; Public Contracts 455

Although venireman in murder prosecution stated on voir dire that he had read about the case and had formed an opinion about it, and further stated that he was a friend of one of the assistant solicitors, it was not an abuse of discretion to refuse to excuse venireman for cause where venireman stated in effect that he could be fair and impartial. State v. Franklin (S.C. 1976) 267 S.C. 240, 226 S.E.2d 896.

The question of the impartiality of the juror is addressed to the discretion of the trial judge. State v. Johnson (S.C. 1966) 248 S.C. 153, 149 S.E.2d 348.

Voir dire examination of jurors, and its nature and extent, are within the discretion of the trial judge. State v. Brooks (S.C. 1959) 235 S.C. 344, 111 S.E.2d 686, appeal dismissed, certiorari denied 81 S.Ct. 707, 365 U.S. 300, 5 L.Ed.2d 689.

Or omitted. Where record disclosed no motion or request that the court examine jurors on voir dire, omission of such examination by the court could not be assigned as error. State v. Orr (S.C. 1954) 225 S.C. 369, 82 S.E.2d 523, certiorari denied 75 S.Ct. 74, 348 U.S. 848, 99 L.Ed. 669. Criminal Law 1035(6); Criminal Law 1044.1(3)

Plaintiff may be allowed to challenge foreman. Where plaintiff challenged the jury, and another was appointed as foreman without objection from defendant, and both parties stated that they were satisfied with the jury, the court, in allowing plaintiff to challenge such substituted foreman, was acting within its discretion. Curnow v. Phoenix Ins. Co. of Hartford, Conn. (S.C. 1896) 46 S.C. 79, 24 S.E. 74.

4. Scope of voir dire

Scope of juror’s interrogation is in court’s discretion. The scope and limits of the interrogation of a juror on voir dire is within the sound discretion of the circuit judge. State v Carson, 131 SC 42, 126 SE 757 (1925). State v Nance, 25 SC 168 (1886). State v Britt, 237 SC 293, 117 SE2d 379 (1960). State v Young, 238 SC 115, 119 SE2d 504 (1961). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

Examination may be extended beyond statutory questions. After the statutory questions have been asked and answered, any further examination of a juror on voir dire must be left to the discretion of the trial judge, which is subject to review only for abuse thereof. State v Britt, 237 SC 293, 117 SE2d 379 (1960), citing State v Bethune, 93 SC 195, 75 SE 281 (1912). State v Peterson, 255 SC 579, 180 SE2d 341 (1971). State v Ham, 259 SC 118, 191 SE2d 13 (1972).

The scope of voir dire and the manner in which it is conducted generally are left to the sound discretion of the trial judge. State v. Wise (S.C. 2004) 359 S.C. 14, 596 S.E.2d 475, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 355, 543 U.S. 948, 160 L.Ed.2d 263. Jury 131(2); Jury 131(4)

As a general rule, the trial court is not required to ask all voir dire questions submitted by the attorneys. Wall v. Keels (S.C.App. 1998) 331 S.C. 310, 501 S.E.2d 754. Jury 131(4)

Manner in which voir dire questions are pursued and scope of any additional voir dire are matters of trial court discretion. State v. Patterson (S.C. 1997) 324 S.C. 5, 482 S.E.2d 760, certiorari denied 118 S.Ct. 146, 522 U.S. 853, 139 L.Ed.2d 92. Jury 131(2); Jury 131(4)

The responsibility of the trial court is to focus the scope of voir dire examination as described in Section 14‑7‑1020; the manner in which these questions are pursued and the scope of any additional voir dire is within the sound discretion of the trial court. Wilson v. Childs (S.C.App. 1993) 315 S.C. 431, 434 S.E.2d 286. Jury 131(2); Jury 131(4)

During the voir dire examination, the trial court is not required to ask every question submitted by counsel. Wilson v. Childs (S.C.App. 1993) 315 S.C. 431, 434 S.E.2d 286. Jury 131(4)

The authority and responsibility of the trial court is to focus the scope of the voir dire examination set forth in Section 14‑7‑1020. The manner in which these questions are pursued and the scope of any voir dire beyond their bounds are matters of trial court discretion. State v. Lucas (S.C. 1985) 285 S.C. 37, 328 S.E.2d 63, certiorari denied 105 S.Ct. 2714, 472 U.S. 1012, 86 L.Ed.2d 729, rehearing denied 106 S.Ct. 15, 473 U.S. 925, 87 L.Ed.2d 694, denial of post‑conviction relief affirmed 308 S.C. 31, 416 S.E.2d 646.

Specific recollection of press coverage and possible personal association with the solicitor’s office are outside the scope of voir dire under Section 14‑7‑1020. State v. Lucas (S.C. 1985) 285 S.C. 37, 328 S.E.2d 63, certiorari denied 105 S.Ct. 2714, 472 U.S. 1012, 86 L.Ed.2d 729, rehearing denied 106 S.Ct. 15, 473 U.S. 925, 87 L.Ed.2d 694, denial of post‑conviction relief affirmed 308 S.C. 31, 416 S.E.2d 646.

Having asked the statutory questions, any further voir dire examination was in trial judge’s discretion. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522.

Discretion not abused. The trial judge, in the exercise of his discretion, concluded that the scope of the voir dire examination of the jurors, which he conducted, was sufficiently broad to assure that every juror presented was unbiased and impartial. Nothing in the record indicated that the refusal to propound the questions submitted by appellant constituted an abuse of discretion. State v. Sellers (S.C. 1971) 257 S.C. 35, 183 S.E.2d 889, certiorari denied 93 S.Ct. 967, 410 U.S. 908, 35 L.Ed.2d 269.

After the inquiries required by this section [Code 1962 Section 38‑202] are made, any further examination of a juror on voir dire is left to the discretion of the trial judge. State v. Sellers (S.C. 1971) 257 S.C. 35, 183 S.E.2d 889, certiorari denied 93 S.Ct. 967, 410 U.S. 908, 35 L.Ed.2d 269.

Refusal of trial judge to ask proposed voir dire questions. Where the basic questions referred to in this section [Code 1962 Section 38‑202] were covered, and there was no showing that other proposed questions should have been asked to assure a fair and impartial jury, there was no abuse of discretion by the trial judge in refusing to ask the proposed voir dire questions. State v. Ham (S.C. 1971) 256 S.C. 1, 180 S.E.2d 628, certiorari granted in part 92 S.Ct. 744, 404 U.S. 1057, 30 L.Ed.2d 745, reversed 93 S.Ct. 848, 409 U.S. 524, 35 L.Ed.2d 46.

Affording counsel opportunity to submit other reasonable questions. There was no abuse of discretion on the part of the trial judge in conducting the voir dire examination where he followed the procedure as prescribed by this section [Code 1962 Section 38‑202], and additionally afforded counsel the opportunity to submit other reasonable questions. State v. Peterson (S.C. 1971) 255 S.C. 579, 180 S.E.2d 341, certiorari denied 92 S.Ct. 159, 404 U.S. 860, 30 L.Ed.2d 102.

5. Capital cases, generally

A capital defendant has a statutory right to examine jurors through counsel, but statute allowing such right does not enlarge the scope of voir dire permitted understatute governing how jurors may be examined by court. State v. Wise (S.C. 2004) 359 S.C. 14, 596 S.E.2d 475, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 355, 543 U.S. 948, 160 L.Ed.2d 263. Jury 131(1); Jury 131(4)

Trial judge did not abuse his discretion in capital murder trial by excusing prospective juror for cause during individual voir dire after juror stated that she could not under any circumstances find defendant guilty, even though court did not first permit defense counsel to examine juror;juror’s belief she should not sit in judgment of another rendered her incapable of fulfilling her basic responsibilities as a juror and would have prevented or substantially impaired the performance of her duties as a juror. State v. Wise (S.C. 2004) 359 S.C. 14, 596 S.E.2d 475, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 355, 543 U.S. 948, 160 L.Ed.2d 263. Jury 104.1

In capital case, proper standard in determining qualification of prospective juror is whether juror’s views would prevent or substantially impair performance of his duties as juror in accordance with his instructions and his oath. State v. Council (S.C. 1999) 335 S.C. 1, 515 S.E.2d 508, rehearing denied, certiorari denied 120 S.Ct. 588, 528 U.S. 1050, 145 L.Ed.2d 489, grant of post‑conviction relief reversed in part 380 S.C. 159, 670 S.E.2d 356, certiorari denied 129 S.Ct. 2770, 174 L.Ed.2d 284. Jury 97(1)

Trial judge did not abuse his discretion in death penalty case by refusing to disqualify juror, who was initially uncertain as to whether she could presume defendant was innocent, where each time judge clearly explained law juror affirmed she could presume defendant innocent. State v. Council (S.C. 1999) 335 S.C. 1, 515 S.E.2d 508, rehearing denied, certiorari denied 120 S.Ct. 588, 528 U.S. 1050, 145 L.Ed.2d 489, grant of post‑conviction relief reversed in part 380 S.C. 159, 670 S.E.2d 356, certiorari denied 129 S.Ct. 2770, 174 L.Ed.2d 284. Jury 107

Statutes regarding scope of voir dire and granting capital defendant right to examine jurors governed selection of jurors and did not apply to situation where court was informed of a matter which might have justified discharge of seated juror. State v. Ivey (S.C. 1998) 331 S.C. 118, 502 S.E.2d 92, rehearing denied, certiorari denied 119 S.Ct. 812, 525 U.S. 1075, 142 L.Ed.2d 671, habeas corpus dismissed 2008 WL 1787481. Jury 131(1); Jury 131(4)

Manner in which a capital defendant examines jurors through counsel during voir dire, and the scope of any additional voir dire, are matters of trial court discretion. State v. Hill (S.C. 1998) 331 S.C. 94, 501 S.E.2d 122, rehearing denied, certiorari denied 119 S.Ct. 597, 525 U.S. 1043, 142 L.Ed.2d 539, denial of habeas corpus affirmed 339 F.3d 187. Jury 131(4); Jury 131(13)

Although a capital defendant has the statutory right during voir dire to examine jurors through counsel, this does not enlarge the scope of voir dire otherwise permitted. State v. Hill (S.C. 1998) 331 S.C. 94, 501 S.E.2d 122, rehearing denied, certiorari denied 119 S.Ct. 597, 525 U.S. 1043, 142 L.Ed.2d 539, denial of habeas corpus affirmed 339 F.3d 187. Jury 131(4)

Murder defendant was not entitled to ask jurors on voir dire whether they would consider that he did not have significant prior criminal history of violence; trial judge stated that he would allow defendant to ask whether juror would consider mitigating circumstances as presented by defense and as instructed by court, and this general question covered whether juror would refuse to consider mitigating circumstances and did not render trial unfair. State v. Hill (S.C. 1998) 331 S.C. 94, 501 S.E.2d 122, rehearing denied, certiorari denied 119 S.Ct. 597, 525 U.S. 1043, 142 L.Ed.2d 539, denial of habeas corpus affirmed 339 F.3d 187. Jury 131(8)

In order to protect a capital defendant’s right to an impartial jury, he or she is entitled to have prospective jurors informed of the race of the defendant and questioned on their racial biases. If a juror is shown through voir dire to exhibit bias, the trial judge must exercise his or her discretion by disqualifying such a juror. A juror must be excused if his or her opinions would prevent or substantially impair the performance of his or her duties as a juror in accordance with the oath and instructions. State v. Green (S.C. 1990) 301 S.C. 347, 392 S.E.2d 157, certiorari denied 111 S.Ct. 229, 498 U.S. 881, 112 L.Ed.2d 183, rehearing denied 111 S.Ct. 548, 498 U.S. 995, 112 L.Ed.2d 556, denial of habeas corpus affirmed 220 F.3d 220.

Scope of voir dire allowed by trial judge was not inadequate to ensure that jurors were not “subconsciously” influenced by extensive media coverage; Section 16‑3‑20(D) grants capital defendant right to examine jurors through counsel but does not enlarge scope of voir dire permitted under Section 14‑7‑1020; trial judge properly exercised his discretion to limit scope of voir dire to inquiry into juror bias or prejudice. State v. Owens (S.C. 1987) 293 S.C. 161, 359 S.E.2d 275, certiorari denied 108 S.Ct. 496, 484 U.S. 982, 98 L.Ed.2d 495.

SC Code Ann Section 16‑3‑20(D) grants capital defendant right to examine jurors through counsel but does not enlarge scope of voir dire permitted under Section 14‑7‑1020, and trial judge properly exercised his discretion to limit scope of voir dire to inquiry into jurors bias or prejudice. State v. Owens (S.C. 1987) 293 S.C. 161, 359 S.E.2d 275, certiorari denied 108 S.Ct. 496, 484 U.S. 982, 98 L.Ed.2d 495.

While Section 16‑3‑20(D) grants a capital defendant the right to examine jurors through counsel, that section does not enlarge the scope of voir dire delineated in Section 14‑7‑1020, which permits inquiry into bias or prejudice. State v. Patterson (S.C. 1986) 290 S.C. 523, 351 S.E.2d 853, certiorari dismissed 107 S.Ct. 2490, 482 U.S. 902, 96 L.Ed.2d 382.

It was within the trial judge’s discretion in a murder trial to exclude two prospective jurors because of health and educational conflicts. State v. South (S.C. 1985) 285 S.C. 529, 331 S.E.2d 775, certiorari denied 106 S.Ct. 209, 474 U.S. 888, 88 L.Ed.2d 178, denial of post‑conviction relief affirmed 310 S.C. 504, 427 S.E.2d 666.

In a prosecution for murder, the court properly limited defense counsel’s voir dire questioning to the determination of specific and real bias or interest in the jurors and not to the development of personality profiles since neither Section 16‑3‑20(D) nor Section 14‑7‑1020 requires the trial judge to permit counsel to engage in lengthy interviews of prospective jurors. State v. Smart (S.C. 1982) 278 S.C. 515, 299 S.E.2d 686, certiorari denied 103 S.Ct. 1784, 460 U.S. 1088, 76 L.Ed.2d 353, habeas corpus granted 677 F.Supp. 414, affirmed 856 F.2d 609, rehearing granted, opinion vacated on rehearing 873 F.2d 1558, certiorari denied 110 S.Ct. 189, 493 U.S. 867, 107 L.Ed.2d 144.

In a prosecution for murder, the court properly ruled that Section 14‑7‑1020 limited defendant’s attorneys on voir dire where, although defendant alleged that Section 16‑3‑20(D), which allows defense counsel to examine the potential jurors, allowed his counsel unlimited voir dire in a capital murder case, the method and scope of voir dire was within the trial court’s discretion. State v. Thompson (S.C. 1982) 278 S.C. 1, 292 S.E.2d 581, certiorari denied 102 S.Ct. 1996, 456 U.S. 938, 72 L.Ed.2d 458, rehearing denied 102 S.Ct. 2917, 457 U.S. 1112, 73 L.Ed.2d 1323.

Prohibiting State as a matter of law from conducting voir dire examination of jurors in death case is error, since Code Section 16‑3‑20 is merely a limitation upon, but does not repeal, the discretion of the court in voir dire examinations authorized under this section. State v. Smart (S.C. 1980) 274 S.C. 303, 262 S.E.2d 911. Jury 131(1)

6. Opposition to capital punishment

Refusal to allow juror to serve because he admits disbelief in capital punishment. In a murder case, refusing to allow a juror to serve after admitting on his voir dire examination his disbelief in capital punishment for murder, is not error. State v James, 34 SC 49, 12 SE 657 (1891). State v James, 34 SC 579, 13 SE 325 (1891). State v McIntosh, 39 SC 97, 17 SE 446 (1893). State v Robinson, 149 SC 439, 147 SE 441 (1929). State v Hyde, 90 SC 296, 73 SE 180 (1912). State v Britt, 237 SC 293, 117 SE2d 379 (1960).

Determination of whether juror is qualified to serve on death penalty case is within sole discretion of trial judge and is not reviewable on appeal unless wholly unsupported by evidence. State v. Council (S.C. 1999) 335 S.C. 1, 515 S.E.2d 508, rehearing denied, certiorari denied 120 S.Ct. 588, 528 U.S. 1050, 145 L.Ed.2d 489, grant of post‑conviction relief reversed in part 380 S.C. 159, 670 S.E.2d 356, certiorari denied 129 S.Ct. 2770, 174 L.Ed.2d 284. Criminal Law 1158.17; Jury 85

Excusal of prospective juror for cause after capital defendant asked him only two questions did not violate defendant’s right to examine juror through counsel; juror was excused prior to any individual voir dire being conducted, and trial judge found that juror was not qualified to serve due to fact that he was Jehovah’s Witness minister who would require some four days of counseling before he could serve. State v. Tucker (S.C. 1999) 334 S.C. 1, 512 S.E.2d 99, certiorari denied 119 S.Ct. 2407, 527 U.S. 1042, 144 L.Ed.2d 805. Jury 131(13)

The trial court properly disqualified a prospective juror where, during voir dire, the juror stated that she would never impose the death penalty on a mentally retarded defendant, no matter how egregious the crime or how slight the mental retardation, and the defendant on trial was mildly retarded. State v. Davis (S.C. 1992) 309 S.C. 326, 422 S.E.2d 133, rehearing denied, certiorari denied 113 S.Ct. 2355, 508 U.S. 915, 124 L.Ed.2d 263.

A juror should not be excused for cause merely because he or she expresses moral scruples against the death penalty, unless such beliefs would substantially impair performance of his or her duties as a juror. However, this rule has not been extended to apply to peremptory challenges. A prosecutor may exercise his or her peremptory challenges for any non‑racially discriminatory reason. Accordingly, where a prosecutor perceives that a juror will have a problem imposing the death penalty, he or she may exercise a peremptory challenge against such a juror. State v. Green (S.C. 1990) 301 S.C. 347, 392 S.E.2d 157, certiorari denied 111 S.Ct. 229, 498 U.S. 881, 112 L.Ed.2d 183, rehearing denied 111 S.Ct. 548, 498 U.S. 995, 112 L.Ed.2d 556, denial of habeas corpus affirmed 220 F.3d 220.

In reviewing a trial court’s qualification or disqualification of prospective jurors, the responses of the challenged jurors mu st be examined in light of the entire voir dire; the ultimate consideration is that the juror be unbiased, impartial and able to carry out the law as it is explained. Thus, a trial court did not err in failing to disqualify 2 jurors on the ground that their responses on voir dire indicated a predisposition to vote for the death penalty, where one juror indicated that she would wait until she “had been presented with the entire picture,” and further indicated an understanding of the concept of mitigating circumstances and a respect for and willingness to “follow the law,” and the other juror demonstrated the ability to consider all evidence before reaching a decision, even though his responses indicated some confusion on his part. State v. Green (S.C. 1990) 301 S.C. 347, 392 S.E.2d 157, certiorari denied 111 S.Ct. 229, 498 U.S. 881, 112 L.Ed.2d 183, rehearing denied 111 S.Ct. 548, 498 U.S. 995, 112 L.Ed.2d 556, denial of habeas corpus affirmed 220 F.3d 220.

A trial judge in a murder prosecution properly excused a prospective juror based upon her views regarding capital punishment where the prospective juror stated during voir dire examination that she could not vote for the death penalty if she “had not seen the act,” regardless of the evidence. State v. Cain (S.C. 1988) 297 S.C. 497, 377 S.E.2d 556, certiorari denied 110 S.Ct. 3254, 497 U.S. 1010, 111 L.Ed.2d 764, rehearing denied 111 S.Ct. 14, 497 U.S. 1050, 111 L.Ed.2d 828.

Two jurors were properly excluded for cause in capital case where first stated that he could not vote for imposition of death penalty if victim were unknown to him, and second stated opposition to death penalty in terms of not wanting to sign any document as part of something to take someone’s life. State v. Drayton (S.C. 1987) 293 S.C. 417, 361 S.E.2d 329, certiorari denied 108 S.Ct. 1060, 484 U.S. 1079, 98 L.Ed.2d 1021, dismissal of post‑conviction relief affirmed 312 S.C. 4, 430 S.E.2d 517, rehearing denied, certiorari denied 114 S.Ct. 607, 510 U.S. 1014, 126 L.Ed.2d 572, rehearing denied 114 S.Ct. 1142, 510 U.S. 1159, 127 L.Ed.2d 451. Jury 108

The trial judge had the authority, as well as the duty, to disallow capital defendant’s counsel from asking hypothetical questions of potential jurors on voir dire in an attempt to discover hidden biases or prejudices concerning the death penalty. State v. Patterson (S.C. 1986) 290 S.C. 523, 351 S.E.2d 853, certiorari dismissed 107 S.Ct. 2490, 482 U.S. 902, 96 L.Ed.2d 382. Jury 131(17)

Opposition to the death penalty does not have to be demonstrated with unmistakable clarity. A juror’s exclusion was proper where her responses, viewed in their entirety, would have impaired her performance as a juror, notwithstanding some brief equivocation. State v. Elmore (S.C. 1985) 286 S.C. 70, 332 S.E.2d 762, vacated 106 S.Ct. 1942, 476 U.S. 1101, 90 L.Ed.2d 353. Jury 108

The trial judge’s questions to each prospective juror, in a murder case, as to whether he or she would: (a) always vote for the death penalty; (b) always vote for life imprisonment; or (c) vote for either, depending on the evidence; were proper because they insured the jurors could perform their duties as required by law. State v. South (S.C. 1985) 285 S.C. 529, 331 S.E.2d 775, certiorari denied 106 S.Ct. 209, 474 U.S. 888, 88 L.Ed.2d 178, denial of post‑conviction relief affirmed 310 S.C. 504, 427 S.E.2d 666. Jury 131(17)

The trial judge properly disallowed hypothetical questions concerning the death penalty to be asked by defense counsel, since the purpose of voir dire is to insure that each juror can make a decision based on the evidence presented rather than hypothetical evidence. State v. South (S.C. 1985) 285 S.C. 529, 331 S.E.2d 775, certiorari denied 106 S.Ct. 209, 474 U.S. 888, 88 L.Ed.2d 178, denial of post‑conviction relief affirmed 310 S.C. 504, 427 S.E.2d 666.

Jurors were properly excluded in a murder case where their views on the death penalty would have substantially impaired the performance of their duties. State v. South (S.C. 1985) 285 S.C. 529, 331 S.E.2d 775, certiorari denied 106 S.Ct. 209, 474 U.S. 888, 88 L.Ed.2d 178, denial of post‑conviction relief affirmed 310 S.C. 504, 427 S.E.2d 666. Jury 108

During the sentencing phase of a murder prosecution, three potential jurors who stated that they could not or would not vote for the death penalty were properly excused under Section 14‑7‑1020, and this worked no prejudice on defendants, who had been granted leave to examine over 100 prospective jurors, far above and beyond any constitutional and statutory entitlements, since the test of a juror’s qualification is the ability to reach a verdict of either guilt or innocence, and, if necessary, to vote for a sentence of death; moreover, the ability merely to consider these possibilities is not sufficient, under Section 16‑3‑20(E), to qualify a prospective juror. State v. Plath (S.C. 1984) 281 S.C. 1, 313 S.E.2d 619, certiorari denied 104 S.Ct. 3560, 467 U.S. 1265, 82 L.Ed.2d 862, rehearing denied 105 S.Ct. 27, 468 U.S. 1226, 82 L.Ed.2d 920, rehearing denied 105 S.Ct. 28, 468 U.S. 1226, 82 L.Ed.2d 920, denial of habeas corpus affirmed 113 F.3d 1352, certiorari denied 118 S.Ct. 715, 139 L.Ed.2d 655, denial of habeas corpus affirmed 130 F.3d 595, certiorari denied 118 S.Ct. 1854, 140 L.Ed.2d 1102. Jury 108

In a prosecution for murder, the court properly refused to disqualify certain jurors for cause due to their general opinions in favor of the death penalty since a juror’s competence is within the trial judge’s discretion and is not reviewable on appeal unless wholly unsupported by the evidence and the testimony of such jurors demonstrated that each could render an impartial verdict according to law. State v. Thompson (S.C. 1982) 278 S.C. 1, 292 S.E.2d 581, certiorari denied 102 S.Ct. 1996, 456 U.S. 938, 72 L.Ed.2d 458, rehearing denied 102 S.Ct. 2917, 457 U.S. 1112, 73 L.Ed.2d 1323.

Trial judge properly excused juror for cause where record indicated that juror was unequivocally opposed to capital punishment, and that he could not render a verdict of guilty, regardless of the evidence, if it would result in the imposition of death penalty. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522. Jury 108

This section [Code 1962 Section 38‑202] does not require an examination of a juror as to his opposition to capital punishment. State v. Britt (S.C. 1960) 237 S.C. 293, 117 S.E.2d 379, certiorari denied 81 S.Ct. 1040, 365 U.S. 886, 6 L.Ed.2d 197.

7. Relationships, generally

Motion for new trial where based on juror’s vote. The court will not consider a motion for a new trial based on an affidavit of a juror, who sat as a juror in a former trial of the case, showing how he voted on such former trial. State v Robertson, 54 SC 147, 31 SE 868 (1899). State v Langford, 74 SC 460, 55 SE 120 (1906). Blassingame v Laurens, 80 SC 38, 61 SE 96 (1908).

Juror who knew individual who allegedly loaned murder weapon to defendant’s accomplice could be allowed to remain seated on jury, where trial judge questioned juror about the effect that her knowledge of individual would have on her ability to be fair and impartial, and juror stated unequivocally that her knowledge of individual would have no effect on her ability to render impartial verdict. State v. Ivey (S.C. 1998) 331 S.C. 118, 502 S.E.2d 92, rehearing denied, certiorari denied 119 S.Ct. 812, 525 U.S. 1075, 142 L.Ed.2d 671, habeas corpus dismissed 2008 WL 1787481. Jury 149

In rejecting the plaintiff’s additional voir dire requests regarding certain jurors’ acquaintance with the defendant, the trial judge properly exercised its discretion in regard to the scope of voir dire where the jurors of which the plaintiff complained had already stated that they were acquainted with the defendant, but that they could remain impartial. Wilson v. Childs (S.C.App. 1993) 315 S.C. 431, 434 S.E.2d 286.

There is no absolute rule of disqualification based on a juror’s relationship to an attorney in the case. Whether a basis for disqualification exists depends on the circumstances of each case. Thompson v. O’Rourke (S.C. 1986) 288 S.C. 13, 339 S.E.2d 505. Jury 91

It is error for trial judge to refuse to question prospective jurors as to possible relationship with counsel or counsel’s law firm. Crosby v. Southeast Zayre, Inc. (S.C. 1980) 274 S.C. 519, 265 S.E.2d 517.

And juror is competent although defendant in pending similar suit. In a suit to enforce the statutory liability of an insolvent bank, a juror is not disqualified because he is a defendant in a pending similar action. Calhoun v. Anderson (S.C. 1929) 148 S.C. 392, 146 S.E. 245. Jury 96

Where a juror, on examination, states that he knows of no relationship to the parties, and after verdict it is found that he is related, it is no ground for new trial, as the relationship could not have affected him. Senterfeit v. Shealy (S.C. 1905) 71 S.C. 259, 51 S.E. 142.

A juror who has tried the case of one who was jointly indicted with defendant is competent. State v. Williams (S.C. 1889) 31 S.C. 238, 9 S.E. 853.

8. Family relationship

This section [Code 1962 Section 38‑202] is mandatory as it is the duty of the court, on motion, to apply this statutory method of ascertaining whether any juror is related to either of the parties litigant. Robinson v Howell, 66 SC 326, 44 SE 931 (1903). Senterfeit v Shealey, 71 SC 259, 51 SE 142 (1905). State v Henderson, 73 SC 201, 53 SE 170 (1906).

But jurors related within sixth degree are generally excused. Smith v Quattlebaum, 223 SC 384, 76 SE2d 154 (1953). State v Byrd, 72 SC 104, 51 SE 542 (1905). Clinton v Leakle, 71 SC 22, 50 SE 541 (1905).

The fact that a judge set aside two jurors as disqualified because related by blood or connected by marriage within the sixth degree to one of the parties was not error, though the degree of such relationship was erroneously considered to be governed by statute. State v Brock, 61 SC 141, 39 SE 359 (1901). State v Merriman, 34 SC 16, 12 SE 619 (1891).

Juror’s unintentional concealment of employment relationship with family member of defendant and possible distant familial relationship with defendant warranted removal of juror mid‑trial and replacement with alternate juror in armed robbery prosecution, where, although there was no allegation that juror’s failure to disclose information was intentional, there was no question that the jury was impartial after the juror’s removal. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18); Jury 149

Solely because juror is related by blood or marriage to police officer or deputy sheriff does not automatically disqualify such juror. State v. Gulledge (S.C. 1982) 277 S.C. 368, 287 S.E.2d 488.

Fact that juror was related to solicitor’s secretary was not ground for excusing juror for cause, there being no rule of law that juror must be disqualified on account of his relationship to an attorney in the case. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522.

The fact that the juror was related by marriage to a deputy sheriff not involved in the case furnished no basis for disqualifying the juror. State v. Pitts (S.C. 1971) 256 S.C. 420, 182 S.E.2d 738. Jury 90; Jury 131(18)

Refusal to grant new trial on ground of kinship of juror. The trial judge did not abuse his discretion in refusing to grant a new trial upon ascertaining that a juror was related to one of the litigants within the sixth degree. Smith v. Quattlebaum (S.C. 1953) 223 S.C. 384, 76 S.E.2d 154.

There is no statute that disqualifies a juror by reason of relationship or kinship with any of the parties to an action. Smith v. Quattlebaum (S.C. 1953) 223 S.C. 384, 76 S.E.2d 154.

Nor is there a statute disqualifying a juror on account of his relationship to an attorney in the case, either by affinity or consanguinity, within any degree. State v. Nicholson (S.C. 1952) 221 S.C. 399, 70 S.E.2d 632. Jury 91

Where it did not appear that jurors were related within the sixth degree either by blood or by marriage to persons involved which allegedly disqualified jurors, such jurors were not of the “family relationship” which would disqualify them. State v. Logue (S.C. 1944) 204 S.C. 171, 28 S.E.2d 788.

Juror may be ordered to stand aside because of relation to one of the parties. It is not an abuse of discretion for the court to order a juror to stand aside, without presenting him to the defendant, where the juror states on his voir dire that he is related to the defendant, is not sure he could be impartial, and asks to be excused. State v. Murphy (S.C. 1896) 48 S.C. 1, 25 S.E. 43.

Relationship should be ascertained before trial. A party objecting on ground of relationship must use diligence to ascertain relationship before the trial. Blassingame v. City of Laurens (S.C. 1908) 80 S.C. 38, 61 S.E. 96.

In the absence of special circumstances that justify a trial judge to ask jurors whether they are related to either party, have any interest in the case, have expressed or formed an opinion, or know of any bias or prejudice to either party, the questions asked pursuant to the statute during general voir dire are sufficient to determine the existence of bias or prejudice. State v. Vang (S.C.App. 2003) 353 S.C. 78, 577 S.E.2d 225, rehearing denied, certiorari denied. Jury 131(6)

9. Business relationship

The trial court’s failure to adopt a bright line rule and excuse all potential jurors who owed a debt to hospital was not an abuse of discretion, in malpractice case in which hospital had admitted liability; the trial court asked the jury panel every question posed by the parties during voir dire, and hospital chose not to request additional void dire to address the concern that some venire members may be biased as a result of being indebted to hospital. Burke v. AnMed Health (S.C.App. 2011) 393 S.C. 48, 710 S.E.2d 84, rehearing denied, petition denied. Jury 131(4)

Where a cooperative is a party to a lawsuit, a cooperative member has an inherent pecuniary interest in the case, so that the bias of a cooperative member shall be presumed, and the member is as a result per se disqualified from serving on jury. Alston v. Black River Electric Co‑op. (S.C. 2001) 345 S.C. 323, 548 S.E.2d 858. Jury 88

Members of electric cooperative against which negligence action had been brought by owner of home that was damaged in fire allegedly caused by defective power line were subject to per se disqualification from serving as jurors in action; inherent risk of impartiality would arise from allowing cooperative members to serve as jurors, since they had pecuniary interest in action based on their status as both owners and customers of cooperative. Alston v. Black River Electric Co‑op. (S.C. 2001) 345 S.C. 323, 548 S.E.2d 858. Jury 88

In cases in which cooperative association is a party, judges should keep the following considerations in mind in developing voir dire, and in determining whether to strike customers of cooperative association for cause: (1) the amount in controversy; (2) the prospective jurors’ benefit or detriment; (3) the prospective jurors’ perceived benefit or detriment; and (4) the prospective jurors’ involvement with the cooperative association. Alston v. Black River Elec. Co‑op. (S.C.App. 2000) 338 S.C. 543, 527 S.E.2d 119, rehearing denied, certiorari granted, reversed 345 S.C. 323, 548 S.E.2d 858. Jury 88; Jury 131(1)

Limitation of voir dire in negligence action against electric cooperative by motorist who was injured in collision with cooperative’s employee was abuse of discretion; given that most prospective jurors were cooperative’s customers, and thus would receive proportionate rebates of any excess revenues, trial court should have asked questions submitted by motorist, and by refusing to even identify by name potential jurors who received power from cooperative, trial court prevented motorist from identifying those jurors who she could argue should be excused for cause, and likewise prevented her from intelligently exercising her peremptory strikes. Wall v. Keels (S.C.App. 1998) 331 S.C. 310, 501 S.E.2d 754. Jury 131(4)

A trial judge in a medical malpractice action did not commit reversible error in failing to strike for cause any prospective juror who was being or had been treated, or whose family members were treated, by the defendants where, upon questioning by the trial judge, each juror responded that the connection with the defendants would not prejudice him or her and that he or she would be able to render a true and just verdict in the case. Roof v. Kimbrough (S.C.App. 1988) 297 S.C. 156, 375 S.E.2d 318, certiorari denied 298 S.C. 308, 380 S.E.2d 172. Jury 90

In the trial of a libel action brought by medical doctor, the trial judge did not abuse his discretion in refusing to disqualify for cause those jurors who had themselves or who had family members who had been treated by the doctor, especially since all challenged jurors affirmatively stated that they could give the parties a fair trial. Abofreka v. Alston Tobacco Co. (S.C. 1986) 288 S.C. 122, 341 S.E.2d 622. Jury 90

Refusal of the plaintiff’s request to interrogate the jurors as to whether they were stockholders in defendant corporation or its affiliate was reversible error. Southern Bell Tel. & Tel. Co. v. Shepard (S.C. 1974) 262 S.C. 217, 204 S.E.2d 11.

A stockholder in a corporation is incompetent to serve as a juror in a case in which the corporation is a party or has any pecuniary interest. Southern Bell Tel. & Tel. Co. v. Shepard (S.C. 1974) 262 S.C. 217, 204 S.E.2d 11.

Refusal to allow juror to serve because of employment with defendant. Excusing from the panel two jurors, who stood up when the court asked if any of them were in defendant’s employ, was in the discretion of the court, though one had only a small rent account to collect for defendant, and the other a contract for advertising space with a company of which defendant’s president was an officer or stockholder. Yarborough v. Columbia Ry., Gas & Electric Co. (S.C. 1915) 100 S.C. 33, 84 S.E. 308.

10. Indifference

Impartiality of juror is question for circuit court. The very language of this section [Code 1962 Section 38‑202] shows conclusively that the question of the impartiality of a juror is addressed to the discretion of the circuit court, and if the judge of that court is not satisfied that the juror in question is indifferent to the cause, such juror should be rejected and another called in his place. State v Prater, 26 SC 198, 613, 2 SE 108 (1887). State v Young, 238 SC 115, 119 SE2d 504 (1961).

Section gives circuit judge exclusive power to determine indifference. This section [Code 1962 Section 38‑202] had been construed as investing the circuit judge with exclusive power to determine whether a given juror, after examination on his voir dire, is indifferent in the cause. State v Royster, 181 SC 269, 186 SE 921 (1936). State v Young, 238 SC 115, 119 SE2d 504 (1961).

A potential juror who has an interest in the lawsuit such that she is not indifferent in the cause must be deemed incompetent to serve on the jury. Alston v. Black River Electric Co‑op. (S.C. 2001) 345 S.C. 323, 548 S.E.2d 858. Jury 97(1)

While a juror should be disqualified by the court if it appears that the juror is not indifferent in the case, the decision is within the sound discretion of the trial judge. Abofreka v. Alston Tobacco Co. (S.C. 1986) 288 S.C. 122, 341 S.E.2d 622.

Either party may require examination. Under this section [Code 1962 Section 38‑202] the court is required, upon motion of either party, to examine prospective jurors in order to ensure their indifference in the cause to be tried. State v. Watkins (S.C. 1972) 259 S.C. 185, 191 S.E.2d 135, vacated 93 S.Ct. 3053, 413 U.S. 905, 37 L.Ed.2d 1016, conformed to 262 S.C. 178, 203 S.E.2d 429, appeal dismissed 94 S.Ct. 3204, 418 U.S. 911, 41 L.Ed.2d 1157.

But surety on recognizance of defendant is not competent. The fact that one of the jurors is surety on the recognizance of one of the defendants is proof enough that the juror is not indifferent in the cause. The court should reject him, and another should be called in his place. State v. Prater (S.C. 1887) 26 S.C. 198, 26 S.C. 613, 2 S.E. 108.

11. Preconceived opinion

A voir dire inquiry of the jury panel as to whether any member held an opinion or believed that jurors in a civil case should limit money damages in order to reduce insurance rates was inherently prejudicial since it injected the issue of insurance into the trial, and indicated that insurance was involved. Dunn v. Charleston Coca‑Cola Bottling Co. (S.C. 1993) 311 S.C. 43, 426 S.E.2d 756. Jury 131(15.1)

The defendant was not deprived of the opportunity to select a fair and impartial jury by the trial judge’s preclusion of queries into any bias by the prospective jurors in favor of testimony presented by police officers, since a juror should not, prior to trial, be required to identify which witnesses he will believe, but rather he must determine the credibility of witnesses only after he has heard all of the testimony. State v. Davis (S.C. 1992) 309 S.C. 326, 422 S.E.2d 133, rehearing denied, certiorari denied 113 S.Ct. 2355, 508 U.S. 915, 124 L.Ed.2d 263.

A juror’s failure to disclose that her husband had hit and killed a child while driving his car did not entitle the plaintiff, whose child had been struck and killed by the defendant’s automobile, to a new trial, even though the juror did not respond when the court asked if any member of the venir knew of any reason why they could not give both parties a fair and impartial trial, where the court had only told the venire that the case involved the wrongful death of a small child, and did not explain that the case involved an automobile accident; thus, the juror did not withhold an answer to a precise question. Morris v. Jensen (S.C.App. 1992) 309 S.C. 153, 420 S.E.2d 710, rehearing denied.

A plaintiff whose child was struck and killed by an automobile was not entitled to a new trial on grounds of juror prejudice where the only evidence that the foreperson, whose husband had struck and killed a small child with his automobile, exerted undue influence on the jury panel was an unsworn juror’s statement that, in her opinion, the forelady was prejudiced and might have influenced some other jurors. Morris v. Jensen (S.C.App. 1992) 309 S.C. 153, 420 S.E.2d 710, rehearing denied.

There was no abuse of discretion in trial court’s qualification of jurors who had some basic knowledge of case, but had no prior opinion of defendant’s guilt and could give him fair trial; both prospective jurors had read newspaper accounts of case, but each stated she could put aside prior knowledge of case, follow law as charged, and base her verdict on evidence presented at trial. State v. Drayton (S.C. 1987) 293 S.C. 417, 361 S.E.2d 329, certiorari denied 108 S.Ct. 1060, 484 U.S. 1079, 98 L.Ed.2d 1021, dismissal of post‑conviction relief affirmed 312 S.C. 4, 430 S.E.2d 517, rehearing denied, certiorari denied 114 S.Ct. 607, 510 U.S. 1014, 126 L.Ed.2d 572, rehearing denied 114 S.Ct. 1142, 510 U.S. 1159, 127 L.Ed.2d 451.

Mere exposure to adverse publicity does not automatically disqualify a prospective juror; it is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court; and where the court asked, in addition to routine statutory questions under 1962 Code Section 38‑202 [1976 Code Section 14‑7‑1020], questions addressed to the issue whether objectivity had been contaminated by adverse pretrial publicity, voir dire examination supports trial judge’s exercise of his discretion not to disqualify juror. State v. Fowler (S.C. 1976) 266 S.C. 203, 222 S.E.2d 497.

Prejudice from publicity not established. Where the jurors selected to try the case were questioned fully on voir dire about any prejudice, bias or adverse influence from newspaper publicity relating to the defendant and the jurors stated under oath that they were not biased or prejudiced and could give the defendant a fair and impartial trial, the claimed prejudice from newspaper publicity was not established. State v. Ham (S.C. 1972) 259 S.C. 118, 191 S.E.2d 13.

Answers not inconsistent. The jurors who stated that they believed a law‑enforcement officer more likely to tell the truth, because of his position, also stated that they did not believe that black people, because of their race, were more likely to falsify under oath; and that they could fairly and impartially try the case. The answers were not inconsistent. State v. Sellers (S.C. 1971) 257 S.C. 35, 183 S.E.2d 889, certiorari denied 93 S.Ct. 967, 410 U.S. 908, 35 L.Ed.2d 269. Jury 131(18)

In determining that the jurors were qualified, the trial judge properly construed the answers of the jurors to mean that, while they generally considered the fact that a witness was an officer, likely to favorably affect his credibility, such did not keep them from weighing his testimony in the light of the particular facts and circumstances and giving to the parties a fair and impartial trial. The jurors in question were qualified and the trial judge properly so held. State v. Sellers (S.C. 1971) 257 S.C. 35, 183 S.E.2d 889, certiorari denied 93 S.Ct. 967, 410 U.S. 908, 35 L.Ed.2d 269.

Where several jurors declared on voir dire that they had formed an opinion which it would take some evidence to remove, but they also declared that they were free of any bias or prejudice, could give the defendant a fair and impartial trial, and would be uninfluenced by any opinion theretofore formed, it was not error for the trial judge to rule them as qualified. State v. Fuller (S.C. 1955) 227 S.C. 138, 87 S.E.2d 287. Jury 103(5)

Nor juror who criticized plaintiff’s attorney. Prospective juror, who on voir dire admitted having criticized plaintiff’s attorney for bringing suit and who testified he thought it was wrong to sue companies like defendant’s, was held not an “impartial” juror, notwithstanding statement that he could give impartial trial; and placing of his name on panel was error. Brown v. S.H. Kress & Co. (S.C. 1933) 170 S.C. 178, 170 S.E. 142. Jury 97(1)

Acceptance of juror having opinion from reading evidence at former trial was not abuse of discretion. State v. Pridmore (S.C. 1931) 163 S.C. 73, 161 S.E. 335. Jury 103(3)

Nor acceptance where juror said he could give fair trial. In a prosecution for murder, the trial judge’s action in refusing to exclude from the jury a juror who, on his voir dire, stated that if reports he had heard were true, defendant ought to be hung, but that he could give defendant a fair and square trial, was not an abuse of discretion. State v. Faries (S.C. 1923) 125 S.C. 281, 118 S.E. 620. Jury 103(11.1)

A juror who admitted that he had formed an opinion from what he had heard and read, but stated that if selected as a juror, he would absolutely leave that impression behind and be governed solely by the testimony, was not disqualified to serve, though during a long and tedious examination he made statements in reference to the testimony necessary to efface his impression, largely in the words of the examining counsel, which, taken alone, might disqualify him. State v. Mittle (S.C. 1922) 120 S.C. 526, 113 S.E. 335, error dismissed, certiorari denied 43 S.Ct. 164, 260 U.S. 705, 260 U.S. 744, 67 L.Ed. 473. Jury 103(14)

As is juror whose opinion may be changed by testimony. Where a juror, after stating that he has formed or expressed an opinion, states that it is not so fixed as not to be changed by testimony, and that he is not sensible of any bias, it is proper to accept him. Sims v. Jones (S.C. 1895) 43 S.C. 91, 20 S.E. 905.

12. Presumption of innocence

Examination of the jury beyond the questions required by 1962 Code Section 38‑202 [1976 Code Section 14‑7‑1020] is generally left to the sound discretion of the trial judge; questions relative to the presumption of innocence are not required to be asked on voir dire, and failure of judge to ask such question did not constitute abuse of discretion where he fully instructed jury, in his charge, as to presumption of innocence and burden of proof. State v. Middleton (S.C. 1976) 266 S.C. 251, 222 S.E.2d 763, vacated 97 S.Ct. 44, 429 U.S. 807, 50 L.Ed.2d 69, on remand 268 S.C. 152, 232 S.E.2d 342, certiorari denied 98 S.Ct. 230, 434 U.S. 878, 54 L.Ed.2d 157.

13. Racial prejudice

The trial judge is not required to put the question of racial bias to the jurors in any particular form, or to ask any particular number of questions on the subject, simply because requested to do so by the defendant. Ham v. South Carolina (U.S.S.C. 1973) 93 S.Ct. 848, 409 U.S. 524, 35 L.Ed.2d 46. Jury 131(13); Jury 131(15.1)

It is not an abuse of discretion for the court to refuse to ask prospective juror, “If it develops under the testimony and evidence that the defendant is guilty of murder, would the fact that he is a negro stand in your way in determining a recommendation to mercy?” State v. Young (S.C. 1961) 238 S.C. 115, 119 S.E.2d 504, certiorari denied 82 S.Ct. 101, 368 U.S. 868, 7 L.Ed.2d 65.

Refusal of question as to racial prejudice of juror. It is proper for the court to refuse to allow defendant in a criminal prosecution to ask a juror “whether, in spite of the fact that defendant is a negro, he would be influenced thereby in passing on the evidence.” State v. Bethune (S.C. 1910) 86 S.C. 143, 67 S.E. 466.

Juror is not excused for prejudice without examination. It is error for the court to excuse a juror on the ground of prejudice without first making the examination called for by this section [Code 1962 Section 38‑202]. State v. Williams (S.C. 1889) 31 S.C. 238, 9 S.E. 853. Jury 131(1)

Specific individual questions designed to reveal racial prejudices of a particular juror are required only when “special circumstances” exist, such as when race is an integral part of the case; however, a special circumstance does not exist when the only racial fact in the case is that the defendant and the victim are of different races. State v. Vang (S.C.App. 2003) 353 S.C. 78, 577 S.E.2d 225, rehearing denied, certiorari denied. Jury 131(6)

14. Unintentional concealment

A juror’s “unintentional concealment” occurs where the question posed during voir dire is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18)

If a juror’s nondisclosure of information during voir dire is unintentional, the trial court may exercise its discretion in determining whether to proceed with the trial with the jury as is, replace the juror with an alternate, or declare a mistrial. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18); Jury 133; Jury 149

When a juror has unintentionally concealed information during voir dire, the trial court in that situation must determine whether the information concealed would have supported a challenge for cause or would have been a material factor in a party’s exercise of its peremptory challenges. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18)

15. Objection

In depositor’s action against bank for conversion of Christmas club account, judge properly excused prospective jurors who were depositors of bank, where defense counsel, although objecting to jurors’ being excused, did not request voir dire examination until after the jury was impaneled. Owens v Andrews Bank & Trust Co. (SC) 220 SE2d 116. State v Peterson, 255 SC 579, 180 SE2d 341 (1971). State v Ham, 259 SC 118, 191 SE2d 13 (1972). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

The defendant in a products liability action properly objected to a voir dire inquiry by requesting that the inquiry “not be charged,” even absent a motion for mistrial or new trial, since it would have been futile to move for a mistrial based on an objection which the court had overruled. Dunn v. Charleston Coca‑Cola Bottling Co. (S.C. 1993) 311 S.C. 43, 426 S.E.2d 756.

Contention that trial court’s failure to ask the standard statutory questions of the entire jury venire, rather than merely directing the questions to the jurors after they had been seated, negated the use of defendant’s peremptory challenges was rejected as having no merit, where no objection was raised to the form of voir dire examinations. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522. Jury 131(13)

Residence of a juror in magisterial district of plaintiff, who was one of three magistrates in the county, did not raise an implication of bias requiring automatic disqualification of the juror in personal injury suit, and where there was no showing of bias in fact and no request for voir dire to ascertain impartiality of such jurors, refusal to excuse the jurors was not error. Bowers v. Watkins Carolina Exp., Inc. (S.C. 1972) 259 S.C. 371, 192 S.E.2d 190.

When jurors on voir dire examination revealed that they had been communicated with concerning their service as prospective jurors, due diligence required state, at that time, to request court to fully interrogate these jurors concerning details of contacts or to request permission from court to make such inquiries itself, and since state failed to do so but accepted them as jurors, it waived objections as to qualifications of the jurors. State v. Johnson (S.C. 1966) 248 S.C. 153, 149 S.E.2d 348.

Where foreman of petit jury in action arising out of automobile collision had been member of grand jury when no bill was returned on charge against defendant arising out of same collision, but there was no objection to qualifications of any juror prior to return of verdict and it was not even contended that defendant did not know that foreman had been on grand jury, defendant was not entitled to a new trial upon ground of disqualification of juror. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883. New Trial 54

Omission of voir dire is not error if not requested. When there is no motion or request for an examination, the omission to make a voir dire examination cannot be assigned as error. State v. Cooper (S.C. 1948) 212 S.C. 61, 46 S.E.2d 545. Jury 131(10)

Where no request for a voir dire examination was made until after several jurors had already been drawn and accepted, and where prospective jurors thereafter drawn were examined separately and other jurors not previously examined were examined as a body, such procedure did not cause accused’s rights to be prejudiced. State v. Gidron (S.C. 1947) 211 S.C. 360, 45 S.E.2d 587.

16. Mistrial

A court should not grant a mistrial based on a juror’s concealment of information during voir dire unless absolutely necessary. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 133

When determining whether to grant a mistrial due to a juror’s concealment of information during voir dire, a trial judge should exhaust other methods to cure possible prejudice before aborting a trial. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 133

17. Presumptions and burden of proof

In the face of a juror’s intentional nondisclosure of pertinent information during voir dire, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18); Jury 132

Where a juror’s failure to disclose information during voir dire is innocent, no inference of bias can be drawn. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18); Jury 132

When a juror unintentionally conceals information during voir dire, the moving party has a heightened burden to show that the concealed information indicates the juror is potentially biased, and that the concealed information would have been a material factor in the party’s exercise of its peremptory challenges; in other words, the moving party must show that it was prejudiced by the concealment because it was unable to strike a potential, and material, source of bias. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Jury 131(18)

Before a customer of a cooperative association is excused from venire for cause in case in which cooperative association is a party, the party attempting to disqualify the potential juror must demonstrate actual bias. Alston v. Black River Elec. Co‑op. (S.C.App. 2000) 338 S.C. 543, 527 S.E.2d 119, rehearing denied, certiorari granted, reversed 345 S.C. 323, 548 S.E.2d 858. Jury 88

There was no abuse of discretion in refusing to change venue where trial judge has screened jurors to ensure defendant fair trial; trial judge interviewed each juror to determine whether he or she could be impartial and received satisfactory reply; it is defendant’s burden to demonstrate actual juror prejudice as result of news accounts of defendant’s case and mere assertion that jurors could have been subconsciously affected by media exposure is insufficient to show prejudice where of jurors actually selected to serve, one indicated he had seen one or 2 headlines, another had read one article, and 2 others vaguely recalled hearing something about case. State v. Owens (S.C. 1987) 293 S.C. 161, 359 S.E.2d 275, certiorari denied 108 S.Ct. 496, 484 U.S. 982, 98 L.Ed.2d 495.

Upon motion for new trial based upon disqualification of one or more of jurors, it is incumbent on movant to show the fact of disqualification, that such disqualification was unknown before the verdict, and that movant was not negligent in failing to discover disqualification before verdict. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883. New Trial 157

18. Review

Judge’s ruling may be reviewed for error of law. The question of indifference of a juror as ruled on by the trial judge is reviewable for error of law by the Supreme Court. Brown v Kress & Co., 170 SC 178, 170 SE 142 (1933). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

No error of law if any evidence supports finding. If there is any evidence tending to support the finding on a juror’s competency, there is no error of law. State v Faries, 125 SC 281, 118 SE 620 (1923). State v Young, 238 SC 115, 119 SE2d 504 (1961). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

Unless conclusion of circuit court is without any evidence to support it. A decision of the trial court that a juror is indifferent will not be reviewed unless the conclusion is wholly without evidence to support it. State v Williamson, 65 SC 242, 43 SE 671 (1903). State v Mittle, 120 SC 526, 113 SE 335 (1922). State v Britt, 237 SC 293, 117 SE2d 379 (1960). State v Fuller, 229 SC 439, 93 SE2d 463 (1956). State v Young, 238 SC 115, 119 SE2d 504 (1961). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

Though not as to question of fact. The decision as to whether a juror is indifferent or not, if it involves a mere question of fact, is not reviewable on appeal. State v Haines, 36 SC 504, 15 SE 555 (1892). Sims v Jones, 43 SC 91, 20 SE 905 (1895). State v Robertson, 54 SC 147, 31 SE 868 (1899). State v Young, 238 SC 115, 119 SE2d 504 (1961). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

This section [Code 1962 Section 38‑202] invests the circuit judge with exclusive power to determine a juror’s competency, and a finding on such an issue may not be reviewed, except for error of law, under SC Const of 1895, Art 5, Section 4 (now Art 5, Section 5), State v Faries, 125 SC 281, 118 SE 620 (1923). Elliott v Black River Electric Cooperative, 233 SC 233, 104 SE2d 357 (1958). State v Young, 238 SC 115, 119 SE2d 504 (1961).

Should a trial court fail to replace a juror that intentionally concealed information during voir dire or grant a mistrial, the party need only demonstrate on appeal the error of the trial court’s decision by proving the concealment was, in fact, intentional; however, the party need not show prejudice, as the bias against the moving party is inferred, and prejudice from the moving party’s inability to strike the juror is apparent. State v. Coaxum (S.C. 2014) 410 S.C. 320, 764 S.E.2d 242, certiorari denied 135 S.Ct. 1873, 191 L.Ed.2d 746. Criminal Law 1166.16

In reviewing error as to qualification of juror, Supreme Court engages in three step analysis: first, appellant must show that he exhausted all of his peremptory challenges; second, if all peremptory challenges were used, court must determine if juror was erroneously qualified; third, appellant must demonstrate this error deprived him of fair trial. State v. Council (S.C. 1999) 335 S.C. 1, 515 S.E.2d 508, rehearing denied, certiorari denied 120 S.Ct. 588, 528 U.S. 1050, 145 L.Ed.2d 489, grant of post‑conviction relief reversed in part 380 S.C. 159, 670 S.E.2d 356, certiorari denied 129 S.Ct. 2770, 174 L.Ed.2d 284. Criminal Law 1166.18

When reviewing trial court’s qualification or disqualification of prospective jurors, responses of challenged jurors must be examined in light of entire voir dire. State v. Council (S.C. 1999) 335 S.C. 1, 515 S.E.2d 508, rehearing denied, certiorari denied 120 S.Ct. 588, 528 U.S. 1050, 145 L.Ed.2d 489, grant of post‑conviction relief reversed in part 380 S.C. 159, 670 S.E.2d 356, certiorari denied 129 S.Ct. 2770, 174 L.Ed.2d 284. Criminal Law 1134.38

When reviewing trial court’s qualification or disqualification of prospective jurors, ultimate consideration is that juror be unbiased, impartial and able to carry out the law as explained to him. State v. Council (S.C. 1999) 335 S.C. 1, 515 S.E.2d 508, rehearing denied, certiorari denied 120 S.Ct. 588, 528 U.S. 1050, 145 L.Ed.2d 489, grant of post‑conviction relief reversed in part 380 S.C. 159, 670 S.E.2d 356, certiorari denied 129 S.Ct. 2770, 174 L.Ed.2d 284. Criminal Law 1134.38

In reviewing an error as to the qualifications of a juror, a 3‑step analysis is utilized. First, an appellant must show that he or she exhausted all of his or her peremptory challenges. If an appellant failed to exhaust all of his or her challenges, the Supreme Court need not examine whether a juror was erroneously qualified. However, if all peremptory challenges were used, the disputed juror is examined to see if the juror was erroneously qualified. Finally, if a juror was erroneously qualified, the appellant must demonstrate that this error deprived him or her of a fair trial. Thus, a trial judge’s error in failing to excuse a juror who was racially biased did not warrant reversal, since the appellant failed to demonstrate that the error deprived him of his right to a fair trial where none of the jurors ultimately seated was challenged for cause. State v. Green (S.C. 1990) 301 S.C. 347, 392 S.E.2d 157, certiorari denied 111 S.Ct. 229, 498 U.S. 881, 112 L.Ed.2d 183, rehearing denied 111 S.Ct. 548, 498 U.S. 995, 112 L.Ed.2d 556, denial of habeas corpus affirmed 220 F.3d 220.

A juror’s competence is within the trial judge’s sole discretion and is not reviewable on appeal unless wholly unsupported by the evidence, pursuant to Section 14‑7‑1020. State v. Spann (S.C. 1983) 279 S.C. 399, 308 S.E.2d 518, appeal dismissed, certiorari denied 104 S.Ct. 2146, 466 U.S. 947, 80 L.Ed.2d 533, dismissal of habeas corpus reversed 963 F.2d 663. Criminal Law 1152.2(2)

A determination of a juror’s competency is within the trial judge’s discretion and is not reviewable on appeal unless wholly unsupported by the evidence. State v. Watkins (S.C. 1972) 259 S.C. 185, 191 S.E.2d 135, vacated 93 S.Ct. 3053, 413 U.S. 905, 37 L.Ed.2d 1016, conformed to 262 S.C. 178, 203 S.E.2d 429, appeal dismissed 94 S.Ct. 3204, 418 U.S. 911, 41 L.Ed.2d 1157. Criminal Law 1152.2(2); Jury 85

The method and scope of a voir dire examination rests within the discretion of the trial judge, which is subject to review only for abuse thereof. State v. Peterson (S.C. 1971) 255 S.C. 579, 180 S.E.2d 341, certiorari denied 92 S.Ct. 159, 404 U.S. 860, 30 L.Ed.2d 102. Criminal Law 1152.2(2); Jury 131(2)

This section [Code 1962 Section 38‑202] vests the power in the trial judge to determine the competence and indifference of jurors in any case, and his decision thereabout will not be reversed on appeal unless it is without support in the evidence or is influenced by error of law. State v. Bostick (S.C. 1969) 253 S.C. 205, 169 S.E.2d 608. Criminal Law 1158.17

Examination beyond statutory questions. After the questions required by this section [Code 1962 Section 38‑202] have been asked and answered, any further examination of a juror on voir dire must be left to the discretion of the trial judge, which is subject to review only for abuse thereof. State v. Britt (S.C. 1960) 237 S.C. 293, 117 S.E.2d 379, certiorari denied 81 S.Ct. 1040, 365 U.S. 886, 6 L.Ed.2d 197.

Or unless there is abuse of court’s discretion. The question of fact whether jurors in action to enforce statutory liability of stockholders of insolvent bank were defendants in such an action, being strictly within the discretion of the trial court, cannot be reviewed by the Supreme Court, no abuse of discretion being shown. Calhoun v. Anderson (S.C. 1929) 148 S.C. 392, 146 S.E. 245. Jury 96

**SECTION 14‑7‑1030.** Time for making objections to jurors.

 All objections to jurors called to try prosecutions, actions, issues, or questions arising out of actions or special proceedings in the various courts of this State, if not made before the juror is impaneled for or charged with the trial of the prosecution, action, issue, or question arising out of an action or special proceeding, is waived, and if made thereafter is of no effect.

HISTORY: 1962 Code Section 38‑203; 1952 Code Section 38‑203; 1942 Code Section 639; 1932 Code Section 639; Civ. P. ‘22 Section 579; Civ. C. ‘12 Section 4047; Civ. C. ‘02 Section 2946; G. S. 2265; R. S. 2406; 1871 (14) 693; 1899 (23) 39; 1986 Act No. 340, Section 3, eff March 10, 1986.

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Jury 124.

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S.C. Jur. Jury Section 22, Objections.

NOTES OF DECISIONS

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1. In general

What moving party must show. Upon motion for a new trial based upon disqualification of a juror, it is incumbent on movant to show (1) the fact of disqualification, (2) that such disqualification was unknown before the verdict, and (3) that movant was not negligent in failing to make discovery of the disqualification before verdict. Spencer v Kirby, 234 SC 59, 106 SE2d 883 (1959), commented on in 12 SCLQ 370 (1960). State v Rayfield, 232 SC 230, 101 SE2d 505 (1958). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

This section [Code 1962 Section 38‑203] does not apply to grand jurors. State v Boyd, 56 SC 382, 34 SE 661 (1900). State v Rafe, 56 SC 379, 34 SE 660 (1900).

Completing jury panel without exhausting challenges. Where party objects to juror and the court overrules the objections, and the party completes his jury without exhausting his right of challenge, the error of the court, if any, is cured. State v Price, 10 Rich (44 SCL) 351. State v McQuaige, 5 SC 429 (1874). State v Gill, 14 SC 410 (1881). State v Dodson, 16 SC 453 (1882). State v Anderson, 26 SC 599, 2 SE 699.

For additional related cases, see State v Quarrel, 2 Bay (2 SCL) 150. Pearson v Wightman, 1 Mill (8 SCL) 336. State v Fisher, 2 N & Mc (11 SCL) 261. State v Billis, 2 McC (13 SCL) 12. State v Slack, 1 Bail (17 SCL) 330. State v Williams, 2 Hill (20 SCL) 381. State v Blackledge, 7 Rich (41 SCL) 327. State v Clyburn, 16 SC 375 (1882). Todd v Gray, 16 SC 635 (1882).

The trial court did not err in refusing to disqualify the venire on the ground that the defendant was arraigned and allowed to plead guilty to one count of the indictment in their presence where the defendant made no objection to the venire’s presence during his plea, nor asked that they be excused during the arraignment proceedings, and thus he waived any error. State v. Wilkins (S.C.App. 1992) 310 S.C. 81, 425 S.E.2d 68, certiorari denied.

A party seeking a new trial based on the disqualification of a juror must show: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to verdict; and (3) the moving party was not negligent in failing to learn of the disqualification before verdict. Thompson v. O’Rourke (S.C. 1986) 288 S.C. 13, 339 S.E.2d 505. New Trial 42(1)

Statement made by defendant after jury had returned its verdict, to the effect that the defendant noticed that some of the jurors had served on his jury at a previous trial, indicated that he was aware of possible disqualification before the jury returned its verdict, and, hence, he was not entitled to a new trial, and there was no abuse of discretion in failing to inquire further into the matter, as 1962 Code Section 38‑203 [1976 Code Section 14‑7‑1030] mandated waiver. State v. Williams (S.C. 1976) 266 S.C. 325, 223 S.E.2d 38. Criminal Law 923(9)

Or where juror was overage. Motion for new trial on ground that juror was overage came too late since movant did not show disqualification was unknown before verdict. State v. Rayfield (S.C. 1958) 232 S.C. 230, 101 S.E.2d 505.

Appellant will not be permitted to take his changes upon a favorable verdict, and in case of disappointment, have the verdict set aside upon a technicality. State v. Harreld (S.C. 1955) 228 S.C. 311, 89 S.E.2d 879. Criminal Law 913(1)

Section applies to objections known before trial. This section [Code 1962 Section 38‑203] applies only to disqualifications of jurors which either were known to the complaining party or his counsel before trial, or which were unknown due to lack of diligence. State v. De Young (S.C. 1947) 209 S.C. 482, 41 S.E.2d 100.

Or where juror lacked residence. In State v DeYoung, 209 SC 482, 41 SE2d 100 (1947), the court held that a motion for a new trial, based upon disqualification of a juror because of lack of residence, came too late and this section [Code 1962 Section 38‑203] was applicable. State v. De Young (S.C. 1947) 209 S.C. 482, 41 S.E.2d 100.

Where no timely suggestion was made to presiding judge that he should have those upon venire present their registration certificates or other evidence that they were qualified electors, no complaint could be made on appeal. State v. Logue (S.C. 1944) 204 S.C. 171, 28 S.E.2d 788.

New trial not allowed where juror was improperly listed on venire and was also agent of party, since objection to juror should have been taken before trial. Smith v. Oliver Motor Co. (S.C. 1935) 174 S.C. 464, 177 S.E. 791. New Trial 55

One on trial will be deemed to know whether the jurors were prejudiced against him, because he has ample opportunity to test the impartiality of the jurors, and because he knows that under Civ.Code 1902, Section 2946 (See Code 1942, Section 639), all objections to jurors, if not made before the jury is impaneled, are waived, and hence cannot be made ground for a new trial. State v. Jones (S.C. 1911) 89 S.C. 41, 71 S.E. 291, Am.Ann.Cas. 1912D,1298.

Objection that a venire facias was not sealed cannot be raised for the first time on appeal, though defendant may not have discovered the defect until after verdict. State v. Lazarus (S.C. 1909) 83 S.C. 215, 65 S.E. 270.

Or where juror sat on former trial of same case. The fact that a juror sat on a former trial of the same case was not ground for setting aside the conviction at the second trial, where counsel for defendant and the juror had both forgotten such fact until after verdict. State v. Langford (S.C. 1906) 74 S.C. 460, 55 S.E. 120.

Objection for larceny is allowed after verdict. Objection that a juror is disqualified because convicted of larceny may be made after verdict, if not discovered before. Garrett v. Weinberg (S.C. 1898) 54 S.C. 127, 31 S.E. 341, rehearing denied 54 S.C. 127, 34 S.E. 70.

2. Construction with other laws

The statutory amendment, requiring presiding judge to ascertain jurors’ qualifications by having them present to court clerk their registration certificates or other satisfactory evidence that they are qualified electors, does not relieve accused from exercising due diligence to ascertain jurors’ statutory and constitutional qualifications, nor modify or repeal statute providing that objections to jurors, not made before they are impaneled or charged with trial of case, shall be deemed waived. State v. Amburgey (S.C. 1945) 206 S.C. 426, 34 S.E.2d 779. Jury 84; Jury 110(3)

3. Due diligence

Which should be made before jury empaneled. Objections to jurors should be made before the jury is empaneled and charged with the trial of the case, unless there is some unknown disqualification which due diligence would not disclose. State v Parsons, 171 SC 449, 172 SE 424 (1934). State v Rayfield, 232 SC 230, 101 SE2d 505 (1958).

Meaning of “objections.” ‑ In State v Gregory, 171 SC 535, 172 SE 692 (1934), the word “objections” used in this section [Code 1962 Section 38‑203], providing that objections to jurors not taken before jury is empaneled shall be deemed waived, was held to mean such objections of which party had knowledge, or which, by exercise of due diligence, he could have known. State v Amburgey, 206 SC 426, 34 SE2d 779 (1945). State v Rayfield, 232 SC 230, 101 SE2d 505 (1958). State v Johnson, 248 SC 153, 149 SE2d 348 (1966).

Party objecting to a juror after the jury is impaneled must show that he could not have, in the exercise of due diligence, discovered the ground for objection before the impaneling of the jury. Creighton v. Coligny Plaza Ltd. Partnership (S.C.App. 1998) 334 S.C. 96, 512 S.E.2d 510, rehearing denied. Jury 150

Objection to juror based on her husband’s relationship with counsel for one of the defendants, made after jury was impaneled, was not timely, where business relationship could have been discovered through questioning in initial voir dire. Creighton v. Coligny Plaza Ltd. Partnership (S.C.App. 1998) 334 S.C. 96, 512 S.E.2d 510, rehearing denied. Jury 150

Section 14‑7‑1030 provides that objections to jurors not made prior to impanelment are waived; however, an objection may be made after impanelment where the objecting party demonstrates that he could not have discovered the ground for the objection through due diligence. Wilson v. Childs (S.C.App. 1993) 315 S.C. 431, 434 S.E.2d 286. Jury 142

The plaintiff could not assert an objection to the presence of a foreign national on the jury where, prior to the impanelment of the jury, the juror’s information card stated that the juror was born in Syria; because of the information card, plaintiff’s counsel could have discovered the juror’s nationality through the exercise of due diligence. Wilson v. Childs (S.C.App. 1993) 315 S.C. 431, 434 S.E.2d 286.

Trial counsel has the responsibility to bring to the court’s attention in a timely manner any potential bias or prejudicial matters which could affect his client. If an objection to a juror is made after a jury is impaneled, the objecting party must show that he could not, in the exercise of due diligence, have discovered the grounds for objection before the jury was impaneled. Where a party failed to move for a mistrial or make an offer of proof as to the prior relationship between the party and a juror, and failed to move for a new trial on the grounds of juror bias at the trial level, he failed to preserve his exceptions or to create a record on which the Supreme Court could support the granting of a new trial. Stelter v. Keenan (S.C. 1986) 287 S.C. 389, 339 S.E.2d 116.

“Objections” means such objections of which the party had knowledge, or which, by the exercise of due diligence, he could have known; upon motion, it is incumbent on the movant to show that he was not negligent in failing to make discovery of the disqualification before the verdict and was not guilty of lack of due diligence in discovering any disqualification. State v. Williams (S.C. 1976) 266 S.C. 325, 223 S.E.2d 38.

Communication with jurors. Where jurors on their voir dire examination revealed the fact that they had been contacted and communicated with, the State was then aware of a possible disqualification on account thereof and due diligence required the State at that time to request the court to fully interrogate these jurors as to the details of the contacts and communications or to request permission from the court to make such inquiries itself. State v. Johnson (S.C. 1966) 248 S.C. 153, 149 S.E.2d 348. Jury 110(12)

Or where juror served on grand jury returning “no bill.” ‑ Defendant’s motion for new trial in a civil suit, based upon disqualification of a juror because he had previously served on a grand jury which returned a “no bill” on an indictment against defendant arising out of the same set of facts, came too late, since ordinary care by defendant would have revealed such disqualification as grand jury membership is a matter of public record. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883.

Accused who fails to exercise due diligence in discovering disqualification of juror before empaneling of jury cannot, after rendition of adverse verdict, ask court to disturb verdict. State v. Gregory (S.C. 1934) 171 S.C. 535, 172 S.E. 692. Criminal Law 923(9)

Or where party could have determined relationship of juror to other party. Where a juror, upon being asked if he is related to either party, says he does not know of any relationship, and after verdict, on motion for new trial, losing party shows that he is related, his relationship could not have affected him and where due diligence was not shown before trial in ascertaining relationship, verdict will not be set aside. Senterfeit v. Shealy (S.C. 1905) 71 S.C. 259, 51 S.E. 142.

4. Prejudice

Condition on which relief is granted. The court will not grant relief unless it appears that the party has been prejudiced. State v Stephens, 11 SC 319 (1879). State v Gill, 14 SC 410 (1881).

5. Review

Defendant preserved for appellate review his claim that trial court erred in ruling that defendant’s exercise of peremptory challenges against two white prospective jurors violated Batson, and in precluding defendant from challenging those two venirepersons after court ordered jury restruck; before jury was sworn, defendant objected to seating those two jurors. State v. Short (S.C. 1999) 333 S.C. 473, 511 S.E.2d 358. Criminal Law 1035(6)

**SECTION 14‑7‑1040.** Juror’s liability to pay taxes not cause of challenge.

 In indictments and penal actions for the recovery of sum of money or other thing forfeited, it is not a cause of challenge to a juror that he is liable to pay taxes in any county, city, or town which may be benefited by recovery.

HISTORY: 1962 Code Section 38‑204; 1952 Code Section 38‑204; 1942 Code Sections 638, 1001; 1932 Code Sections 638, 1001; Civ. P. ‘22 Section 578; Cr. P. ‘22 Section 87; Civ. C. ‘12 Section 4046; Cr. C. ‘12 Section 81; Civ. C. ‘02 Section 2945; Cr. C. ‘02 Section 54; G. S. 2264, 2640; R. S. 53, 2405; 1871 (14) 693; 1986 Act No. 340, Section 3, eff March 10, 1986.

Library References

Jury 124.

Westlaw Topic No. 230.

C.J.S. Juries Sections 365, 367 to 370, 398 to 399, 413 to 416, 418 to 425, 473 to 511.

**SECTION 14‑7‑1050.** Impaneling jury; in court of common pleas.

 In the trial of all actions at law in the courts of common pleas and issues ordered to be framed by the judge in equity cases in the courts, the clerk in the manner provided by Section 14‑7‑1060 shall furnish the parties or their attorneys with a list of twenty jurors from the whole number of jurors who are in attendance, the names on the list to be numbered from one to twenty, and be stricken off by numbers in the same manner as the regular panels of jurors in those courts have been formed. From this list the parties or their attorneys shall alternatively strike, until there are but twelve left, which shall constitute the jury to try the case or issue. In all cases the plaintiff shall have the first strike and in all civil cases any party shall have the right to demand a panel of twenty competent and impartial jurors from which to strike a jury.

HISTORY: 1962 Code Section 38‑205; 1952 Code Section 38‑205; 1942 Code Section 634; 1932 Code Section 634; Civ. P. ‘22 Section 574; Civ. C. ‘12 Section 4042; Civ. C. ‘02 Section 2940; 1901 (23) 633; 1902 (23) 1069; 1904 (24) 413; 1909 (26) 48; 1939 (41) 74; 1986 Act No. 340, Section 3, eff March 10, 1986.

CROSS REFERENCES

Preparation by the clerk of a list containing the names of 20 jurors where a jury charged with a case is delayed in rendering its verdict, see Section 14‑7‑1080.

Library References

Jury 124.

Westlaw Topic No. 230.

C.J.S. Juries Sections 365, 367 to 370, 398 to 399, 413 to 416, 418 to 425, 473 to 511.

RESEARCH REFERENCES

Encyclopedias

58 Am. Jur. Proof of Facts 3d 395, Challenges for Cause in Jury Selection Process.

5 Am. Jur. Trials 143, Selecting the Jury‑Plaintiff’s View.

S.C. Jur. Appeal and Error Section 130, Post‑Trial Matters.

S.C. Jur. Jury Section 17, Disqualifications.

S.C. Jur. Jury Section 20, Excusal by the Court.

S.C. Jur. Jury Section 28, Procedure for Striking Jury.

S.C. Jur. Venue Section 22, Local Prejudice.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Practice and procedure. 46 S.C. L. Rev. 191 (Autumn 1994).

Criminal Procedure—Impaneling Jurors—Use of Challenges for Exclusion of Veniremen Who Oppose Imposition of Capital Punishment. 22 S.C. L. Rev. 98.

Gamecocks spur trouble in jury deliberations: What the Fourth Circuit really thinks about Wikipedia as a legal resource in United States v. Lawson. Brittany M. McIntosh, 64 S.C. L. Rev. 1157 (Summer 2013).

Hammond, Peremptory challenges: Edmonson v Leesville Concrete Co. and the Batson motion in civil litigation. 43 S.C. L. Rev. 617 (Spring 1992).

Jury Selection. 25 S.C. L. Rev. 439.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Disqualification 5

Prejudice 4

Strikes 3

Venue 6

1. In general

Statute guarantees litigants the right to an impartial jury. Alston v. Black River Electric Co‑op. (S.C. 2001) 345 S.C. 323, 548 S.E.2d 858. Jury 33(2.10)

Irregularities in empaneling jury are not reversible error unless harmful. Graham v. Columbia Ry., Gas & Electric Co. (S.C. 1915) 102 S.C. 468, 86 S.E. 952.

2. Constitutional issues

The constitutional guarantee of equal protection of the laws prohibits the exercise of peremptory challenges on racial grounds by private litigants in the trial of a civil case. Since the trial judge makes the determination as to the impartiality of a selected jury, his or her involvement in the selection process is substantial enough to be considered “state action” subject to the mandates of the Fourteenth Amendment. Thus, the proscriptions announced in Batson v Kentucky (1986) 476 US 79, 106 S Ct 1712, 90 L Ed 2d 69. Chavous v Brown (1989, App) 299 SC 398, 385 SE2d 206.

3. Strikes

Trial court did not abuse its discretion in failing to strike for cause a juror who was student researcher and university graduate, in university’s action against contractor for negligence and breach of contract following a fire on roof connecting two buildings, which roof contractor was hired to remodel, where juror stated that her relationship with university would not interfere with her ability to remain impartial, and juror did not appear to have special knowledge about the fire. The Winthrop University Trustees for the State v. Pickens Roofing and Sheet Metals, Inc. (S.C.App. 2016) 418 S.C. 142, 791 S.E.2d 152, rehearing denied. Education 1043; Negligence 1714; Public Contracts 455

A procedure employed to empanel a jury violated Section 14‑7‑1050 here the trial court empaneled a pool of 28 jurors and permitted each of the 4 litigants, the plaintiff and 3 defendants sued jointly and severally, to strike alternately; Section 14‑7‑1050 requires that 20 jurors be called and that each side of the litigation be permitted 4 strikes total. Moore v. Jenkins (S.C. 1991) 304 S.C. 544, 405 S.E.2d 833.

There was no denial of the right to exercise peremptory challenges where two jurors who first denied being acquainted with a party later advised the court that they recognized the party when he entered the courtroom, and the trial court then permitted the party one additional peremptory strike but refused to permit any further peremptory challenges, since no bias on the part of the jurors was shown, and the party had failed to use the means available to it in order to ascertain full information about each juror before the jury was empaneled. Southern Welding Works, Inc. v. K & S Const. Co. (S.C.App. 1985) 286 S.C. 158, 332 S.E.2d 102.

The intent of this section [Code 1962 Section 38‑205] and Code 1962 Sections 38‑206 to 38‑209 is to give litigants a fair and impartial jury. To that end they are allowed to challenge any number of jurors for cause, and, in addition, each side is given the right to reject four peremptorily by striking their names from the list without assigning any cause. Brown v. S.H. Kress & Co. (S.C. 1933) 170 S.C. 178, 170 S.E. 142.

State has four challenges where two claimants are on other side. On trial of proceeding to escheat involving the heirship of two classes of claimants, where the cases are consolidated the State is entitled to four challenges, and each of the two classes is entitled to two challenges under this section [Code 1962 Section 38‑205]. In re Percival’s Estate (S.C. 1917) 108 S.C. 39, 93 S.E. 243.

4. Prejudice

Appellate court’s determination that juror’s lack of concern for her role as impartial juror violated fundamental fairness failed to grant due deference to trial judge’s factual finding, in denying new trial to plaintiff in breach of contract action following an extensive inquiry, that plaintiff did not suffer actual prejudice from juror’s misconduct. Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc. (S.C. 2009) 384 S.C. 441, 682 S.E.2d 489. Appeal And Error 1015(1)

An irregular method of empaneling a jury was prejudicial as a matter of law where each of 3 defendants was permitted 4 strikes, but the single plaintiff was only permitted 4 as well, since the multiple party side was allowed an inordinate influence to dominate the jury selection process. Moore v. Jenkins (S.C. 1991) 304 S.C. 544, 405 S.E.2d 833.

5. Disqualification

Members of electric cooperative against which negligence action had been brought by owner of home that was damaged in fire allegedly caused by defective power line were subject to per se disqualification from serving as jurors in action; inherent risk of impartiality would arise from allowing cooperative members to serve as jurors, since they had pecuniary interest in action based on their status as both owners and customers of cooperative. Alston v. Black River Electric Co‑op. (S.C. 2001) 345 S.C. 323, 548 S.E.2d 858. Jury 88

Where a cooperative is a party to a lawsuit, a cooperative member has an inherent pecuniary interest in the case, so that the bias of a cooperative member shall be presumed, and the member is as a result per se disqualified from serving on jury. Alston v. Black River Electric Co‑op. (S.C. 2001) 345 S.C. 323, 548 S.E.2d 858. Jury 88

In action for wrongful cutting of timber with defense of independent contractor who logged the timber, a juror who was an uncle by marriage of the contractor was disqualified by interest and trial court, after verdict for defendant in proper exercise of discretion, granted a new trial. Collum v. Dolan (S.C. 1950) 216 S.C. 276, 57 S.E.2d 430.

6. Venue

In a lawsuit involving an electric cooperative in which it is truly impossible to strike a jury without cooperative members, who are per se disqualified from serving as jurors in such an action, a change of venue would be justified based on fairness concerns. Alston v. Black River Electric Co‑op. (S.C. 2001) 345 S.C. 323, 548 S.E.2d 858. Venue 50

**SECTION 14‑7‑1060.** Procedures to be employed by clerk to draw jury panel.

 If a computer is not used for the drawing of jurors pursuant to the provisions of Section 14‑7‑140, the clerk shall write or cause the names of the jurors in attendance to be written, each on a separate paper or ballot which must be white and plain, which must resemble each other as much as possible, and which must be so folded that the name written thereon is not visible on the outside. The clerk shall place each of the ballots or separate papers in a separate, small opaque capsule or container, which must be as uniform in size, shape, and color as possible at the time of original purchase or repurchase of the capsules or containers. Whenever a jury panel of twenty is to be drawn, these capsules or containers must be placed in a small rotating drum, cylindrical in shape, having a handle at the end thereof and resting on such supports that it can be turned by means of the handle, the drum, capsules, and other equipment to be furnished by the jury commissioners and approved by the resident judge. When the containers or capsules have been placed in the drum, it must be completely closed and securely fastened and rotated by means of the handle for a sufficient length of time necessary for a complete mixing of the containers or capsules and the required number of jurors must then be drawn, one by one, by a responsible and impartial person designated by the clerk of court, with the approval of the presiding judge. The names of the jurors so drawn must be returned to the capsules and replaced in the drum when the jurors are no longer actually engaged in service on a trial jury.

HISTORY: 1962 Code Section 38‑209; 1952 Code Section 38‑209; 1942 Code Section 634; 1932 Code Section 634; Civ. P. ‘22 Section 574; Civ. C. ‘12 Section 4042; Civ. C. ‘02 Section 2940; 1901 (23) 633; 1902 (23) 1069; 1904 (24) 413; 1909 (26) 48; 1939 (41) 74; 1976 Code Section 14‑7‑1090; 1986 Act No. 340, Section 3, eff March 10, 1986; 2006 Act No. 224, Section 3, eff February 3, 2006.

Editor’s Note

Provisions requiring objections for cause prior to striking and requiring the clerk to furnish an additional list of jurors if disqualifications are discovered after the jury has been struck, which formerly appeared in this section, can now be found in Section 14‑7‑1070.

CROSS REFERENCES

Applicability, in the court of common pleas, of provisions for furnishing parties and their attorneys with a list of jurors, see Section 14‑7‑1050.

Library References

Jury 124.

Westlaw Topic No. 230.

C.J.S. Juries Sections 365, 367 to 370, 398 to 399, 413 to 416, 418 to 425, 473 to 511.

**SECTION 14‑7‑1070.** Objections for cause to be made before striking; requirement of additional jury list where disqualifications are discovered after striking.

 When the list is prepared by the clerk and presented to the parties or their attorneys, objection for cause must be made before striking, and if the objection is sustained, the clerk shall fill up the list before it is stricken. If, after the jury has been struck as provided, it is discovered that any one or more of the jurors whose names remain upon the jury list are disqualified for any cause, the clerk shall furnish the parties or their attorneys with an additional list of three times as many jurors as may be found to be disqualified, to be drawn as the first list was drawn, from which the parties or their attorneys shall alternately strike, until there is left the number necessary to impanel the panel.

HISTORY: 1962 Code Section 38‑206; 1952 Code Section 38‑206; 1942 Code Section 634; 1932 Code Section 634; Civ. P. ‘22 Section 574; Civ. C. ‘12 Section 4042; Civ. C. ‘02 Section 2940; 1901 (23) 633; 1902 (23) 1069; 1904 (24) 413; 1909 (26) 48; 1939 (41) 74; 1976 Code Section 14‑7‑1060; 1986 Act No. 340, Section 3, eff March 10, 1986.

Editor’s Note

Provisions relative to the effect of a jury’s delay in rendering a verdict, which formerly appeared in this section, can now be found in Section 14‑7‑1080.

Library References

Jury 124.

Westlaw Topic No. 230.

C.J.S. Juries Sections 365, 367 to 370, 398 to 399, 413 to 416, 418 to 425, 473 to 511.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 22, Objections.

United States Supreme Court Annotations

Jury trial, death penalty, excusal for cause, substantial impairment in ability to impose death penalty, see Uttecht v. Brown, 2007, 127 S.Ct. 2218, 551 U.S. 1, 167 L.Ed.2d 1014, on remand 530 F.3d 1031.

Jury trial, habeas corpus, jury selection process, see Berghuis v. Smith, 2010, 130 S.Ct. 1382, 559 U.S. 314, 176 L.Ed.2d 249, on remand 505 Fed.Appx. 560, 2012 WL 5869934.

Attorney General’s Opinions

There are no statutory or constitutional provisions mandating the appearance of all prospective jurors for a jury trial in magistrate’s court in order that they may be examined on their voir dire prior to a defendant exercising any peremptory challenges or challenges for cause. However a defendant does have the right to examine on their voir dire those jurors selected to hear the case to ascertain a basis for a challenge for cause. 1980 Op.Atty.Gen. No 80‑32, p 64 (March 17, 1980) 1980 WL 81916.

NOTES OF DECISIONS

In general 1

1. In general

The trial court was not required to strike a juror for cause because the juror had spoken to a prosecution witness, who was a former co‑employee, where the juror indicated that she was not affected by the conversation. State v. Hawkins (S.C.App. 1992) 310 S.C. 50, 425 S.E.2d 50.

A defendant may not challenge for cause after accepting a juror with knowledge of an objection to qualification. Thus, a trial judge properly denied a defendant’s request to remove a juror from the jury and to replace her with the alternate juror where the juror had been accepted by the defense notwithstanding that, in the defendant’s presence, she had been made aware during voir dire that the defendant had been found guilty of burglary and criminal sexual conduct at a previous trial and, following jury selection, the defendant moved to have her replaced due to her awareness of these convictions. State v. Elmore (S.C. 1989) 300 S.C. 130, 386 S.E.2d 769, certiorari denied 110 S.Ct. 2633, 496 U.S. 931, 110 L.Ed.2d 652, rehearing denied 111 S.Ct. 9, 497 U.S. 1047, 111 L.Ed.2d 824.

**SECTION 14‑7‑1080.** Effect of jury’s delay in rendering verdict.

 Should the jury charged with any case be delayed in rendering its verdict so that it could not be present to be drawn from in making the list to form a second jury, then the clerk shall present to the parties or their attorneys a list containing the names of twenty jurors to be drawn by the clerk from the remaining jurors in the manner provided in Section 14‑7‑1050, from which list the parties or their attorneys shall alternately strike, as provided in Section 14‑7‑1050 until twelve are left who shall constitute the jury.

HISTORY: 1962 Code Section 38‑207; 1952 Code Section 38‑207; 1942 Code Section 634; 1932 Code Section 634; Civ. P. ‘22 Section 574; Civ. C. ‘12 Section 4042; Civ. C. ‘02 Section 2940; 1901 (23) 633; 1902 (23) 1069; 1904 (24) 413; 1909 (26) 48; 1939 (41) 74; 1976 Code Section 14‑7‑1070; 1986 Act No. 340, Section 3, eff March 10, 1986.

Editor’s Note

Provisions relative to impaneling a jury in default cases or in cases where the right to strike a jury has been waived, which formerly appeared in this section, can now be found in Section 14‑7‑1090.

Library References

Jury 124.

Westlaw Topic No. 230.

C.J.S. Juries Sections 365, 367 to 370, 398 to 399, 413 to 416, 418 to 425, 473 to 511.

LAW REVIEW AND JOURNAL COMMENTARIES

Jury Selection. 25 S.C. L. Rev. 439.

**SECTION 14‑7‑1090.** Impaneling jury in default cases or in cases where right to strike jury has been waived.

 In all cases of default when it may be necessary to have the verdict of a jury or in the trial of cases when the parties or their attorneys shall waive the right to strike a jury, the clerk shall, under the direction of the judge, draw and impanel a jury who shall pass upon those matters as may be submitted to it in default cases or the trial of those cases when the parties have waived the right to strike the jury.

HISTORY: 1962 Code Section 38‑208; 1952 Code Section 38‑208; 1942 Code Section 634; 1932 Code Section 634; Civ. P. ‘22 Section 574; Civ. C. ‘12 Section 4042; Civ. C. ‘02 Section 2940; 1901 (23) 633; 1902 (23) 1069; 1904 (24) 413; 1909 (26) 48; 1939 (41) 74; 1976 Code Section 14‑7‑1080; 1986 Act No. 340, Section 3, eff March 10, 1986.

Editor’s Note

Provisions as to the manner of drawing a jury panel of twenty, which formerly appeared in this section, can now be found in Section 14‑7‑1060.

Library References

Jury 146.

Westlaw Topic No. 230.

C.J.S. Juries Sections 514 to 515.

LAW REVIEW AND JOURNAL COMMENTARIES

Jury Selection. 25 S.C. L. Rev. 439.

**SECTION 14‑7‑1100.** Impaneling jury in criminal case.

 In impaneling juries in criminal cases, the jurors must be called, sworn, and impaneled anew for the trial of each case, according to the established practice.

HISTORY: 1962 Code Section 38‑210; 1952 Code Section 38‑210; 1942 Code Section 92; 1932 Code Section 982; Cr. P. ‘22 Section 73; Cr. C. ‘12 Section 70; Cr. C. ‘02 Section 44; G. S. 2636; R. S. 44; 1871 (14) 692; 1986 Act No. 340, Section 3, eff March 10, 1986.

Library References

Jury 146.

Westlaw Topic No. 230.

C.J.S. Juries Sections 514 to 515.

LAW REVIEW AND JOURNAL COMMENTARIES

Jury Selection. 25 S.C. L. Rev. 439.

United States Supreme Court Annotations

Double Jeopardy, Double jeopardy barred retrial after jury was empaneled but state presented no evidence due to absent complaining witnesses, see Martinez v. Illinois, U.S.Ill.2014, 134 S.Ct. 2070, 188 L.Ed.2d 1112, rehearing denied 135 S.Ct. 342, 190 L.Ed.2d 241. Double Jeopardy 59, 104

NOTES OF DECISIONS

In general 1

1. In general

“Paper strike” method of exercising peremptory strikes, whereby parties struck jurors on paper rather than having them physically present, used in capital sentencing proceeding, did not violate statute providing that, in impaneling juries in criminal cases, jurors had to be called, sworn, and impaneled anew for trial of each case, according to established practice. State v. Bryant (S.C. 2007) 372 S.C. 305, 642 S.E.2d 582, rehearing denied, certiorari denied 128 S.Ct. 245, 552 U.S. 899, 169 L.Ed.2d 169. Jury 139

Objection to order in which jurors are called, see State v. Sims (S.C. 1830).

**SECTION 14‑7‑1110.** Peremptory challenges in criminal cases.

 Any person who is arraigned for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery is entitled to peremptory challenges not exceeding ten, and the State in these cases is entitled to peremptory challenges not exceeding five. Any person who is indicted for any crime or offense other than those enumerated above has the right to peremptory challenges not exceeding five, and the State in these cases is entitled to peremptory challenges not exceeding five. No right to stand aside jurors is allowed to the State in any case whatsoever. In no case where there is more than one defendant jointly tried are more than twenty peremptory challenges allowed in all to the defendants, and in misdemeanors when there is more than one defendant jointly tried no more than ten peremptory challenges are allowed in all to the defendants. In felonies when there is more than one defendant jointly tried the State has ten challenges.

HISTORY: 1962 Code Section 38‑211; 1952 Code Section 38‑211; 1942 Code Section 1002; 1932 Code Section 1002; Cr. P. ‘22 Section 88; Cr. C. ‘12 Section 82; Cr. C. ‘02 Section 55; R. S. 54; 33 Ed. 1; 1712 (2) 549; 1841 (11) 154; 1887 (19) 830; 1892 (21) 94; 1927 (35) 180; 1928 (35) 1161; 1930 (36) 1268; 1932 (27) 1145; 1943 (43) 285; 1986 Act No. 340, Section 3, eff March 10, 1986; 1987 Act No. 10, Section 1, eff March 16, 1987.

Library References

Jury 134.

Westlaw Topic No. 230.

C.J.S. Juries Sections 340, 425, 427 to 441, 443 to 450.

RESEARCH REFERENCES

Encyclopedias

73 Am. Jur. Proof of Facts 3d 89, Proof of Religion in the Courtroom that Violates the Right to a Fair Trial.

S.C. Jur. Jury Section 27, Peremptory Challenges.

S.C. Jur. Jury Section 29, Number of Strikes.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, criminal law. 40 S.C. L. Rev. 41 (Autumn 1988).

Annual survey of South Carolina law, criminal law. 41 S.C. L. Rev. 39 (Autumn 1989).

Annual survey of South Carolina law: Practice and procedure. 46 S.C. L. Rev. 191 (Autumn 1994).

Blume, Racial discrimination in the state’s use of peremptory challenges: the application of the United States Supreme court’s decision in Batson v. Kentucky in South Carolina. 40 S.C. L. Rev. 299 (Winter 1989).

Note, Beyond Batson: eliminating gender‑based peremptory challenges. 105 Harvard Law Rev 1920 (June 1992).

United States Supreme Court Annotations

Due process, fair trial, jury selection, good faith error in denial of peremptory challenge, see Rivera v. Illinois, U.S.Ill.2009, 129 S.Ct. 1446, 556 U.S. 148, 173 L.Ed.2d 320.

Habeas corpus, peremptory challenge, demeanor based explanation for challenge, see Thaler v. Haynes, 2010, 130 S.Ct. 1171, 559 U.S. 43, 175 L.Ed.2d 1003, rehearing denied 130 S.Ct. 2141, 559 U.S. 1088, 176 L.Ed.2d 758, on remand 438 Fed.Appx. 324, 2011 WL 3652598.

Jury selection, peremptory challenges, race discrimination, pretext, prospective juror’s student teaching status, see Snyder v. Louisiana, U.S.La.2008, 128 S.Ct. 1203, 552 U.S. 472, 170 L.Ed.2d 175, on remand 982 So.2d 763, 1998‑1078 (La. 4/30/08).

NOTES OF DECISIONS

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Batson challenge 3‑8

In general 3

Burden of proof 8

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Purposeful discrimination 5

Race‑neutral explanation 6

Burden of proof, Batson challenge 8

Constitutional issues 2

Hearing, Batson challenge 4

Justiciability 14

Mistrial 13

Nature of right to challenge 9

Paper strikes 11

Prejudice 12

Pretext, Batson challenge 7

Purposeful discrimination, Batson challenge 5

Race‑neutral explanation, Batson challenge 6

Review 15

Right to stand aside juror 10

1. In general

Challenge by State. Peremptory challenge may be interposed at any time by the State before prisoner has spoken. State v Corley, 43 SC 127, 20 SE 989 (1895). State v Haines, 36 SC 504, 15 SE 555 (1892). State v Harding, 70 SC 395, 50 SE 11 (1905).

A juror should not be excused for cause merely because he or she expresses moral scruples against the death penalty, unless such beliefs would substantially impair performance of his or her duties as a juror. However, this rule has not been extended to apply to peremptory challenges. A prosecutor may exercise his or her peremptory challenges for any non‑racially discriminatory reason. Accordingly, where a prosecutor perceives that a juror will have a problem imposing the death penalty, he or she may exercise a peremptory challenge against such a juror. State v. Green (S.C. 1990) 301 S.C. 347, 392 S.E.2d 157, certiorari denied 111 S.Ct. 229, 498 U.S. 881, 112 L.Ed.2d 183, rehearing denied 111 S.Ct. 548, 498 U.S. 995, 112 L.Ed.2d 556, denial of habeas corpus affirmed 220 F.3d 220.

Defendant was not entitled to total of 10 peremptory challenges, 5 for assault and battery with intent to kill and 5 for resisting arrest because a defendant is entitled to total of 10 peremptory challenges if any of enumerated crimes in Section 14‑7‑1110 are present and to total of 5 peremptory challenges in all other cases. State v. Martin (S.C. 1987) 293 S.C. 46, 358 S.E.2d 697. Jury 136(8)

Defendant who was indicted for assault and battery with intent to kill and resisting arrest was not entitled to 5 per‑emptory challenges during selection of jury for assault and battery with intent to kill charge and 5 challenges for resisting arrest charge, for total of 10 per‑emptory charges, as regardless of number of charges to be tried together, defendant is entitled to total of 10 per‑emptory challenges if any of enumerated crimes in Section 14‑7‑1110 are present and to total of 5 per‑emptory challenges in all other cases. State v. Martin (S.C. 1987) 293 S.C. 46, 358 S.E.2d 697. Jury 136(8)

Statute which states that one arraigned on charge of grand larceny is entitled to peremptory challenges not exceeding 10 means grand larceny defendant shall be allotted full 10 peremptory strikes. State v. Anderson (S.C. 1981) 276 S.C. 578, 281 S.E.2d 111. Jury 136(5)

Where trial judge conducted further examination of jurors challenged for cause before determining their fitness and allowed defense counsel ten peremptory challenges instead of five provided by statute, denial of challenges for cause of juror who was wife of county jailer, juror who was wife of deputy sheriff and juror who answered affirmatively when asked if she would feel any compulsion to find against defendant in obscenity prosecution in order to protect her children from movies dealing with sex, but would follow court’s instructions, was not error. State v. Watkins (S.C. 1972) 259 S.C. 185, 191 S.E.2d 135.

Crimes not specifically enumerated. Since the crime of armed robbery is not listed among those offenses entitling a defendant to ten peremptory challenges, but falls within the category of crimes not specifically enumerated in the statute, a defendant charged with armed robbery is entitled to only five peremptory challenges. State v. Miller (S.C. 1972) 258 S.C. 573, 190 S.E.2d 23.

The five statutory peremptory challenges given the state and the 10 given defendant may be used for any cause satisfactory to counsel or for no cause, and it is neither the province of the trial judge nor the Supreme Court to interfere State v. Richburg (S.C. 1968) 250 S.C. 451, 158 S.E.2d 769.

On an indictment for forgery the state under Cr.Code, Section 55 (See Code 1942, Section 1002), is entitled to five peremptory challenges. State v. Murray (S.C. 1905) 72 S.C. 508, 52 S.E. 189.

Under Cr.St. Section 54 (See Code 1942, Section 1002), allowing the state not more than five peremptory challenges in prosecutions for murder, manslaughter, burglary, arson, rape, grand larceny, or forgery, and in all other cases not exceeding two such challenges, the trial court erred in allowing the state five peremptory challenges in a prosecution for larceny of a cow alleged to be of the value of $15, since the crime charged was not grand larceny. State v. Anderson (S.C. 1901) 59 S.C. 229, 37 S.E. 820.

On commencing the trial, the court announced that defendants were each entitled to 20 peremptory challenges, but, after each had challenged two jurors, held that they were each entitled to five challenges only, which was correct. Held not ground for new trial. State v. Jacob (S.C. 1889) 30 S.C. 131, 8 S.E. 698, 14 Am.St.Rep. 897.

Where the panel is exhausted by challenges of four prisoners, it is irregular to postpone trial to another week before original jury, and it is error to allow the prisoner then only twelve challenges because he had exhausted eight the week before. State v. Briggs (S.C. 1887) 27 S.C. 80, 2 S.E. 854.

Effect of exhausting jury by challenge. State v. Burket (S.C. 1818) 12 Am.Dec. 662.

Prisoner cannot withdraw a peremptory challenge in order to challenge for cause. State v. Price (S.C. 1857) 10 Rich. 351.

Defendant on trial for burning stacks of hay and ricks of corn fodder is only entitled to five peremptory challenges. State v. Pope (S.C. 1878) 9 S.C. 273.

A person indicted under Chapter CXXIX, Section 4, of the General Statutes, for burning a frame prepared for building, is entitled to only five peremptory challenges. State v. Workman (S.C. 1881) 15 S.C. 540, 1881 WL 5926, Unreported.

2. Constitutional issues

Discrimination in jury selection, whether based on race or on gender, causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process; litigants are harmed by risk that prejudice which motivated discriminatory selection of the jury will infect the entire proceedings; community is harmed by state’s participation in perpetuation of invidious group stereotypes and inevitable loss of confidence in the judicial system that state‑sanctioned discrimination in the courtroom engenders. J.E.B. v. Alabama ex rel. T.B., 1994, 114 S.Ct. 1419, 511 U.S. 127, 128 L.Ed.2d 89, on remand 641 So.2d 821. Jury 33(5.15); Jury 38

Trial court’s failure to remove for cause juror who should have been removed, thus causing defendant to use a peremptory challenge, did not violate defendant’s Fourteenth Amendment right to due process by arbitrarily depriving him of the full compliment of peremptory challenges allowed under state law. Ross v. Oklahoma, U.S.Okla.1988, 108 S.Ct. 2273, 487 U.S. 81, 101 L.Ed.2d 80, rehearing denied 109 S.Ct. 11, 487 U.S. 1250, 101 L.Ed.2d 962. Constitutional Law 4756

There is no Batson violation when a juror against whom a party would have exercised a peremptory challenge is ultimately seated on the jury; Batson vindicates the juror’s right to equal protection, and this right is not abridged if the juror is seated. State v. Short (S.C. 1999) 333 S.C. 473, 511 S.E.2d 358. Constitutional Law 3831; Jury 33(5.15)

The trial court’s quashing of the jury was not reversible error although the trial court erroneously found that the striking of a white jurors was racially discriminatory because where a trial judge improperly quashes a jury panel, no juror’s equal protection rights have been violated. State v. Adams (S.C. 1996) 322 S.C. 114, 470 S.E.2d 366.

Under equal protection jurisprudence, it is established that an action motivated in part by an impermissible reason will not necessarily be invalid if the same action would have been taken in the absence of the impermissible motivation; thus, a pretextual explanation for a peremptory strike does not necessarily constitute a Batson violation when a valid, race neutral explanation for the strike is also offered. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478.

Batson’s prohibition against the discriminatory exercise of peremptory strikes is grounded in the Equal Protection Clause of the Fourteenth Amendment; thus, as with other types of Equal Protection cases, the guiding purpose behind Batson and its progeny is to prohibit purposeful, invidious discrimination. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

The Fourteenth Amendment’s prohibition of use of peremptory strikes in a racially discriminatory manner applies to civil cases as well as criminal cases. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

It is well‑settled that the Fourteenth Amendment prohibits the use of peremptory strikes in a discriminatory manner. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

The Fourteenth Amendment to the United States Constitution prohibits the exercise of peremptory strikes solely on the basis of race. McBeth v. TNS Mills, Inc. (S.C.App. 1995) 318 S.C. 388, 458 S.E.2d 52, rehearing denied, certiorari denied. Constitutional Law 3309

Both the United States Supreme Court and the South Carolina Supreme Court have held that the Fourteenth Amendment’s prohibition against the exercise of peremptory strikes solely on the basis of race applies in civil as well as criminal cases. McBeth v. TNS Mills, Inc. (S.C.App. 1995) 318 S.C. 388, 458 S.E.2d 52, rehearing denied, certiorari denied.

The legislature may limit the number of peremptory challenges, even in capital cases, without impinging on any constitutional right. State v. Holland (S.C. 1973) 261 S.C. 488, 201 S.E.2d 118.

The acts reducing the number of challenges to what is here allowed are not unconstitutional, as they do not prevent the right of trial by jury. State v. Wyse (S.C. 1890) 32 S.C. 45, 10 S.E. 612. Jury 33(5.15)

3. Batson challenge—In general

Unless a discriminatory intent is inherent in the proponent’s explanation for his or her peremptory strike of a member of a cognizable racial group or gender, the reason offered will be deemed race or gender‑neutral. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Jury 33(5.15)

The purposes of Batson and its progeny are to protect the defendant’s right to a fair trial by a jury of the defendant’s peers, protect each venireperson’s right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

The process involved in a trial court’s determination of whether peremptory strikes were exercised in a racially discriminatory manner is as follows: (1) a party will request a hearing on the matter when members of a cognizable racial group or gender are struck by the opposing party, (2) the proponent of the peremptory strikes must then offer a race‑neutral explanation for the strikes (although the proponent of the peremptory challenges no longer has any burden of presenting reasonably specific, and legitimate explanations for the strike), and (3) the opponent of the strikes must then show that the race‑neutral explanations given were mere pretext; under some circumstances, the race‑neutral explanation given by the proponent may be so fundamentally implausible that the judge may determine, at the third step of the analysis, that the explanation was mere pretext even without a showing of disparate treatment. State v. Easler (S.C.App. 1996) 322 S.C. 333, 471 S.E.2d 745, rehearing denied, certiorari granted, affirmed as modified 327 S.C. 121, 489 S.E.2d 617.

The process involved in a trial court’s determination of whether peremptory strikes were exercised in a racially discriminatory manner is as follows: (1) a party will request a hearing on the matter when members of a cognizable racial group or gender are struck by the opposing party, (2) the proponent of the peremptory strikes must then offer a race‑neutral explanation for the strikes (although the proponent of the peremptory challenges no longer has any burden of presenting reasonably specific, and legitimate explanations for the strike), and (3) the opponent of the strikes must then show that the race‑neutral explanations given were mere pretext. State v. Adams (S.C. 1996) 322 S.C. 114, 470 S.E.2d 366.

Whether a party has used a peremptory challenge in a racially discriminatory manner must be determined by examining the totality of the facts and circumstances in the record; this determination necessarily relies upon a credibility determination by the trial court and is entitled to great deference on appeal. Matter of Dodson (S.C. 1996) 321 S.C. 376, 469 S.E.2d 57.

A party may not use its peremptory strikes in a racially discriminatory matter. Matter of Dodson (S.C. 1996) 321 S.C. 376, 469 S.E.2d 57.

Once a party makes a challenge to a peremptory strike on the ground of racial discrimination, the party exercising the strike must provide a racially neutral explanation for the use of the strikes, and, unless the discriminatory intent is inherent in the explanation, the reason offered will be deemed race neutral; a racially neutral reason cannot be established by merely denying a discriminatory motive. Matter of Dodson (S.C. 1996) 321 S.C. 376, 469 S.E.2d 57.

In providing an explanation rebutting a charge of racial discrimination in the use of a peremptory strike, the explanation must be related to the case to be tried, clear, reasonable, specific, and legitimate; however, the explanation need not rise to the level justifying a challenge for cause. Matter of Dodson (S.C. 1996) 321 S.C. 376, 469 S.E.2d 57.

Whether the solicitor’s proffered reason for exercising a peremptory strike is non‑discriminatory must be determined by the examining the totality of the facts and circumstances of the record. State v. Forney (S.C. 1996) 321 S.C. 353, 468 S.E.2d 641. Jury 33(5.15)

It is well established that the Batson case prohibits the State from exercising its peremptory strikes in a racially discriminatory manner. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478. Jury 121

The determinative issue in any Batson claim is whether, in light of the totality of the circumstances, a party engaged in purposeful, invidious discrimination. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478. Jury 33(5.15)

In determining whether a peremptory strike was made on the basis of race, the party exercising the strike must provide a racially neutral explanation for the use of the strike; unless the discriminatory intent is inherent in the explanation, the reason offered will be deemed race neutral. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478. Jury 33(5.15)

In rebutting a claim that a peremptory strike was made on racial grounds, the explanation must be reasonably related to the case to be tried, clear and reasonably specific, and legitimate; while the explanation need not rise to the level justifying a challenge for cause, a racially neutral reason cannot be established by merely denying a discriminatory motive. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478.

For the solicitor to prevail in a Batson hearing, the solicitor must present a racially neutral explanation for the challenges. State v. Kelley (S.C. 1995) 319 S.C. 173, 460 S.E.2d 368. Jury 33(5.15)

In a Batson hearing, whether a proffered reason is racially neutral is to be determined by examining the totality of the facts and circumstances in the record surrounding the strike, including the credibility and demeanor of the individual called upon to explain her strike. State v. Kelley (S.C. 1995) 319 S.C. 173, 460 S.E.2d 368. Jury 33(5.15)

Batson and its progeny prohibit a plaintiff or defendant from striking a juror solely because of the juror’s race, or because of the party’s stereotypical assumptions about the juror based on the juror’s race; however, Batson cannot be interpreted to prevent a plaintiff from striking a juror the plaintiff knows to be biased or prejudiced against the plaintiff because of the plaintiff’s race. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

In order to rebut a Batson challenge of discrimination, a party must give an explanation for the jury strike which is (1) neutral, (2) related to the case to be tried, (3) clear and reasonably specific, and (4) legitimate. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

A peremptory strike motivated in part by race does not necessarily constitute a Batson violation when other legitimate, racially neutral reasons are given for the strike. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205.

In the review of a peremptory strike, a court must examine the question of whether a proffered reason is racially neutral in light of the totality of the facts and circumstances in the record surrounding the strike, including the credibility and demeanor of the individual called upon to explain his strike. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

A peremptory strike will be deemed race‑neutral unless a discriminatory intent is inherent in the proffered reason. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

Age, demeanor, or disposition of a juror may constitute a legitimate, race‑neutral reason for a peremptory challenge. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

To rebut a prima facie case of the unconstitutional use of peremptory strikes, the party whose peremptory strikes have been challenged must provide race neutral explanations for the strikes; the race neutral explanations must be valid and not merely a pretext. McBeth v. TNS Mills, Inc. (S.C.App. 1995) 318 S.C. 388, 458 S.E.2d 52, rehearing denied, certiorari denied. Constitutional Law 3309; Jury 33(5.15)

In order to rebut a defendant’s prima facie case of discrimination,the State’s explanation for peremptory challenges must be neutral, related to the case to be tried, clear and reasonably specific, and legitimate. Although the explanation does not have to rise to the level of justifying exercise of a challenge for cause, the prosecutor may not merely state that it was his or her intuitive judgment that the juror would be partial because of his or her shared race with the defendant or by merely denying that he or she had a discriminatory motive. State v. Tomlin (S.C. 1989) 299 S.C. 294, 384 S.E.2d 707. Jury 33(5.15)

4. —— Hearing, Batson challenge

A Batson hearing is conducted in the following manner: first, the trial judge must hold a Batson hearing when members of a cognizable racial group or gender are struck and the opposing party requests a hearing; second, the proponent of the strike must present a race‑ or gender‑neutral explanation, although such reason need not be clear, reasonably specific, and legitimate; third, the opponent of the strike must show that the race‑ or gender‑neutral explanation given was mere pretext. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

When a party makes a challenge to a peremptory strike on the ground of racial discrimination, the trial court must hold a hearing to determine whether peremptory strikes were properly exercised. Matter of Dodson (S.C. 1996) 321 S.C. 376, 469 S.E.2d 57.

If a party raises a Batson objection (a claim that the State exercised its peremptory strikes in a racially discriminatory manner), the trial court should hold a hearing to determine whether the peremptory strikes were properly exercised. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478. Jury 121

The trial court erred in failing to conduct a “Batson hearing” before determining the non‑existence of a prima facie case of discrimination where the defendant was black, 2 black jury members were removed by the solicitor for the state, and defense counsel had requested a Batson hearing; however, this error was cured when the judge, “out of an abundance of caution,” required the state to explain its strikes of the 2 black jurors. State v. Wright (S.C. 1991) 304 S.C. 529, 405 S.E.2d 825.

A defendant was entitled to a “Batson hearing” on purposeful discrimination where an alternate juror of the same sex and minority race as the defendant was challenged by the state on the basis of similar age, but the state had a juror information sheet which showed that the juror was older than the defendant; however, this error was harmless where the juror was merely an alternate, the defense counsel agreed to proceed to trial without this alternate rather than begin a de novo selection of the jury, and since under Section 14‑7‑320 the calling of alternate jurors is within the discretion of the trial judge. State v. Thompson (S.C.App. 1991) 304 S.C. 85, 403 S.E.2d 139, certiorari denied.

5. —— Purposeful discrimination, Batson challenge

White warehouse manager was not similarly situated to black teachers, and thus defendant’s strike from jury of warehouse manager was not purposeful racial discrimination so as to support state’s Batson motion, since duties of teachers in general did not involve the same supervisory aspects as duties of warehouse manager, namely ability to hire, fire, or demote adult co‑workers. State v. Scott (S.C.App. 2013) 406 S.C. 108, 749 S.E.2d 160, rehearing denied. Jury 33(5.15)

While the composition of the jury panel is a factor that may be considered in evaluating purposeful discrimination in exercise of peremptory strikes, the mere fact that a defendant used most of his peremptory strikes against a particular race or gender is not by itself sufficient to establish it. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Jury 33(5.15)

In reviewing the trial courts’s ruling on a challenge to a peremptory strike on the ground of racial discrimination, the trial court’s findings regarding purposeful discrimination are entitled to great deference and are to be set side only if clearly erroneous. State v. Adams (S.C. 1996) 322 S.C. 114, 470 S.E.2d 366.

In determining whether a party has engaged in purposeful discrimination through the exercise of peremptory strikes, an invidious discriminatory purpose may be inferred from the totality of the relevant facts; however, the trial court’s finding at this stage will largely turn on an evaluation of credibility. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478.

In determining whether a peremptory strike was made on the basis of race, the composition of the jury is a factor that may be considered when determining whether a party engaged in purposeful discrimination. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478.

It is the trial court that must determine whether a party has engaged in purposeful discrimination through the exercise of peremptory strikes. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205.

The trial court did not err in finding that the striking of a venireman by the defendant was not racially motivated where there was no ascertainable evidence that the defendant was aware of the venireman’s race at the time it exercised its peremptory strike. McBeth v. TNS Mills, Inc. (S.C.App. 1995) 318 S.C. 388, 458 S.E.2d 52, rehearing denied, certiorari denied. Jury 33(5.15)

A defendant did not make a prima facie showing of purposeful racial discrimination in the prosecution’s selection of a jury venire where the jury consisted of 11 whites and 1 black, and although the solicitor used peremptory challenges in striking 2 black jurors, he accepted the first black presented and a black was also seated as the alternate juror. State v. Elmore (S.C. 1989) 300 S.C. 130, 386 S.E.2d 769, certiorari denied 110 S.Ct. 2633, 496 U.S. 931, 110 L.Ed.2d 652, rehearing denied 111 S.Ct. 9, 497 U.S. 1047, 111 L.Ed.2d 824.

6. —— Race‑neutral explanation, Batson challenge

Defendant’s stated race‑neutral reasons for striking seven white jurors, namely their status as government employees or other employment status, were pretextual, as required for state to prevail on its Batson challenge, where defendant did not strike similarly‑situated members of another race. State v. Palmer (S.C.App. 2016) 415 S.C. 502, 783 S.E.2d 823, rehearing denied. Jury 33(5.15)

Fact that defense counsel struck white warehouse manager from jury, while seating black stockroom manager, did not compel finding of purposeful racial discrimination so as to support state’s Batson motion, since counsel provided facially valid explanation in saying that he mistakenly wrote down that stockroom manager worked in home sales. State v. Scott (S.C.App. 2013) 406 S.C. 108, 749 S.E.2d 160, rehearing denied. Jury 33(5.15)

Defendants’ proffered reasons for striking prospective jurors, one because he was newspaper editor who may have knowledge of or have written story about case, and second because she was employee of Department of Motor Vehicles and interacted with law enforcement on regular basis, were sufficiently race‑neutral to survive Batson challenge, in trial for murder. State v. Edwards (S.C. 2009) 384 S.C. 504, 682 S.E.2d 820. Jury 33(5.15)

Prosecutor offered race‑neutral reason for exercising peremptory strike against black female venireperson, where prosecutor stated that he exercised strike because lead detective in defendant’s case knew that venireperson as high‑strung, critical person who would be polarizing force on jury. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

Prosecutor offered race‑neutral reasons for exercising peremptory strikes against three black female venire members, where he stated that he did so because one was too young and knew defendant, one had criminal conviction, and one was unemployed. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

Prospective juror’s employment in hardware store owned by longtime magistrate where local law enforcement officials gathered was race‑neutral reason for exercising peremptory strike against that juror. State v. Ford (S.C. 1999) 334 S.C. 59, 512 S.E.2d 500. Jury 33(5.15)

The trial court did not err in finding that defense counsel was unable to articulate a racially neutral explanation for his peremptory challenge against a black venire person where defense counsel asserted that he struck the juror because of his age; age could not be considered a racially neutral explanation of the striking by defense counsel where he failed to strike several white venire persons in the same age bracket. State v. Easler (S.C.App. 1996) 322 S.C. 333, 471 S.E.2d 745, rehearing denied, certiorari granted, affirmed as modified 327 S.C. 121, 489 S.E.2d 617.

The trial court did not err in finding that defense counsel was unable to articulate a racially neutral explanation for his peremptory challenge against a black venire person where defense counsel asserted that he struck the juror because of his “demeanor”; although demeanor can be considered a racially neutral explanation, defense counsel never pointed out any specific examples of why he disliked the juror’s demeanor, despite having the opportunity to do so. State v. Easler (S.C.App. 1996) 322 S.C. 333, 471 S.E.2d 745, rehearing denied, certiorari granted, affirmed as modified 327 S.C. 121, 489 S.E.2d 617.

The trial court erred in finding that the striking of a white jurors was racially discriminatory where the proffered reasons for the strikes were that one was a court reporter and looked “too intelligent,” and another juror knew the judge; these are racially neutral, legitimate reasons for exercising peremptory strikes. State v. Adams (S.C. 1996) 322 S.C. 114, 470 S.E.2d 366.

In the prosecution of a defendant for driving under the influence, the reasons given by the prosecution for using peremptory strikes against all 3 of the black veniremen was racially neutral where the trooper stated that (1) on at least 2 occasions he had stopped cars in which one of the venireman was an intoxicated passenger, the venireman had recently come into the police station intoxicated after having been in a fight, and he had also arrested that venireman’s brother, (2) he had stopped the second venireman a “couple of times” and the veniremen may not have been “suitable for . . . a driving under the influence case”, and (3) he had arrested a relative of the final veniremen’s relative for driving under the influence. Matter of Dodson (S.C. 1996) 321 S.C. 376, 469 S.E.2d 57.

The trial court did not err in finding that the striking of black jurors was not racially discriminatory because they vacillated on responses regarding the death penalty even though the State failed to strike a white juror who vacillated regarding the death penalty where the white juror hesitated only on the issue of giving a non‑triggerman death. State v. Forney (S.C. 1996) 321 S.C. 353, 468 S.E.2d 641.

The trial court did not err in finding that the striking of a black jurors was not racially discriminatory because he vacillated on responses regarding the death penalty even though the State failed to strike a white juror who also hesitated on the issue of giving a non‑triggerman death where the State also cited the black juror’s physical condition and the fact that he was late for court. State v. Forney (S.C. 1996) 321 S.C. 353, 468 S.E.2d 641.

Considering all the relevant factors and circumstances, the State did not exercise its peremptory strikes in violation of Batson where the record showed that the jury was composed of 8 whites and 4 blacks, and one of the 2 reasons offered for the peremptory strike was valid and race neutral ‑ i.e., the venireman had lived near the defendant. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478.

In an action where the solicitor used peremptory strikes against two black jurors and one white juror because they had been represented by defense counsel, but she did not use a strike against another white juror who had also been represented by the defense counsel, the solicitor provided a racially neutral reason for the use of her peremptory strikes where she stated that she did not want to use her last peremptory strike on the white juror, but rather wanted to save it to use on other potential jurors who had criminal records. State v. Kelley (S.C. 1995) 319 S.C. 173, 460 S.E.2d 368.

The explanation articulated by the defendant for a peremptory strike was race‑neutral, legitimate, specific, and clearly related to the case to be tried where he stated that jurors 1 and 5 were struck because of potential bias against the defendant’s claim ‑ i.e., that juror number 1 did not believe in legal actions involving automobile wrecks, and juror number 5’s husband was in the insurance business. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205.

In a personal injury action arising from an automobile accident, there was no Batson violation with regard to juror number 17 and the alternate juror where plaintiff’s counsel explained that he had information that the jurors were likely to be biased against the defendant because of his race in that they were “very conservative”; Batson cannot be interpreted to prevent a plaintiff from striking a juror the plaintiff knows to be biased or prejudice against the plaintiff because of the plaintiff’s race. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205.

The state did not meet its burden under Batson by asserting that a black juror was peremptorily struck because the solicitor’s investigator assisting in the case said “do not take him” and the victim agreed, since there was no assurance that the investigator and the victim did not base their decision on the juror’s race. State v. Marble (S.C. 1992) 311 S.C. 23, 426 S.E.2d 744. Jury 33(5.15)

The solicitor’s articulated reason for striking 2 black venirepersons, aged 22 and 28, because they appeared to be too young and he “wanted an older jury” was not racially neutral where he seated a 21‑year‑old white juror without making any inquiry regarding her age. State v. Grate (S.C. 1992) 310 S.C. 240, 423 S.E.2d 119.

The state did not meet its burden of articulating a sufficiently clear and reasonably specific explanation for its peremptory strike of a black male juror where the solicitor explained that the juror was struck because the docket clerk had placed several question marks by the juror’s name, which he believed indicated that the juror had a possible criminal record, since the state may not meet its burden by merely asserting that a third person made the decision to strike; furthermore, the assertion was negated where a white juror with questions marks by his name was not struck. State v. Adams (S.C. 1992) 307 S.C. 368, 415 S.E.2d 402. Jury 33(5.15)

The trial court erred in holding that a solicitor’s exercise of a peremptory challenge was race‑neutral where the venireperson stricken was the only qualified black member of the panel, she was stricken based on a reticence to impose the death penalty, but (1) the record showed only one instance of reticence, and (2) she subsequently indicated that she would be able to vote for the death penalty if the evidence warranted such. State v. Patterson (S.C. 1992) 307 S.C. 180, 414 S.E.2d 155, rehearing denied.

The state’s explanation that 2 black men were struck from the jury in the trial of another black man because they reported late for jury duty was racially neutral even though a white woman, who was also late, was not struck where the white woman overcame her lateness by saying that she did not want to be excused and was there to serve at the pleasure of the court. State v. Wilder (S.C. 1991) 306 S.C. 535, 413 S.E.2d 323. Jury 33(5.15)

The trial court erred in holding that a solicitor’s stated reason for the peremptory strike of a black female juror ‑ that she showed great reluctance to vote for the death penalty ‑ was race‑neutral where the juror stated that she “might have a little” trouble signing her name if the jury voted for the death penalty, but the remainder of her response did not show any reluctance. State v. Davis (S.C. 1991) 306 S.C. 246, 411 S.E.2d 220.

The trial court erred in holding that the peremptory striking of a black juror from the trial of a black man was racially neutral where the strike left the jury all‑white and the only reason given for the strike was that the solicitor wanted to seat other venire‑persons who had not yet been presented. State v. Grandy (S.C. 1991) 306 S.C. 224, 411 S.E.2d 207.

A trial judge properly found that the solicitor’s peremptory striking of 2 black jurors on the basis that they were unemployed was not a racially discriminatory reason where, even though such reason was not related to the case, the reason was credible because of the concern for a juror’s life experiences or sense of social duty. State v. Green (S.C. 1991) 306 S.C. 94, 409 S.E.2d 785, certiorari denied 112 S.Ct. 1566, 503 U.S. 962, 118 L.Ed.2d 212.

The solicitor’s reasons for striking 2 black jurors in the trial of a black man were racially neutral where the first juror, who had admitted having seen an outspoken advocate of the defendant on television, was struck for “general instability” based on her having changed employment several times after short periods of work, having had a child out of wedlock, and still living with her parents, and the second juror was merely a potential alternate and no reason was given for the strike. State v. Robinson (S.C. 1991) 305 S.C. 469, 409 S.E.2d 404, certiorari denied 112 S.Ct. 1477, 503 U.S. 937, 117 L.Ed.2d 620, grant of post‑conviction relief reversed 329 S.C. 65, 495 S.E.2d 433. Jury 33(5.15)

A solicitor did not violate the “Batson” requirements in the exercise of a peremptory strike against a juror who, during voir dire, was reluctant to answer death penalty questions and had several children the same age as the defendant, but who had ultimately told the judge that she could vote for the death penalty; vacillating responses to voir dire questions will support the use of a peremptory strike, even though merely expressing scruples against the death penalty would not be sufficient to excuse the juror for cause. State v. Bell (S.C. 1991) 305 S.C. 11, 406 S.E.2d 165, certiorari denied 112 S.Ct. 888, 502 U.S. 1038, 116 L.Ed.2d 791.

The trial court erred in determining that the state’s articulated reason for peremptorily striking a black juror, pursuant to a “Batson hearing,” was not racially neutral where the state based its strike on the juror’s disinterested attitude and demeanor observed throughout 3 days of courtroom proceedings, which was contrasted with other jurors who appeared to be interested. State v. Wright (S.C. 1991) 304 S.C. 529, 405 S.E.2d 825.

The State’s reason for exercising peremptory challenges against 3 black jurors ‑ reluctance to impose the death penalty ‑ was racially neutral, and therefore did not violate Batson, even though the State did not challenge a white juror who admitted that she would have difficulty in signing a death penalty verdict but who also testified that she was not strongly disposed either for or against the death penalty. Given the severity of capital punishment, coupled with searching voir dire interrogations, it is understandable that juror responses regarding the death penalty are frequently marked by inconsistency and vacillation and, under such circumstances, the solicitor may view the entirety of a juror’s voir dire responses in determining whether to accept or reject a prospective juror. Where the responses are susceptible of more than one conclusion, the Supreme Court will not substitute its own opinion for that of the solicitor. State v. Woodruff (S.C. 1989) 300 S.C. 265, 387 S.E.2d 453.

The use of racial stereotypes violated the mandates of Batson where the prosecutor stated that he struck a potential juror, a 43‑year‑old black woman, “because she walked slow, talked low and might not be able to withstand the trial,” and, rather than inquiring into the legitimacy of this explanation, the trial court suggested that the juror had a lack of education, was extremely sluggish and that she would be a “filler” if seated on the jury. State v. Tomlin (S.C. 1989) 299 S.C. 294, 384 S.E.2d 707. Jury 33(5.15)

One of the explanations given by a prosecutor for striking a black potential juror ‑ that he “shucked and jived” to the microphone ‑ was evidence of the prosecutor’s subjective intent to discriminate and clearly violated the mandates of Batson. State v. Tomlin (S.C. 1989) 299 S.C. 294, 384 S.E.2d 707. Jury 33(5.15)

7. —— Pretext, Batson challenge

Reason stated by defendant for exercising his peremptory strikes, that the jurors were either refusing to look at defendant’s counsel or were looking in a mean, stern, or accusatory manner, was race‑neutral, and trial court’s failure to require state to demonstrate that defendant’s race‑neutral reason was pretext for discrimination required reversal of convictions for first‑degree burglary and attempted grand larceny. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Criminal Law 1166.17; Jury 33(5.15)

Under some circumstances, the race‑neutral explanation given by the proponent of a peremptory strike may be so fundamentally implausible that the judge may determine, at the third step of the Batson analysis, that the explanation was mere pretext even without a showing of disparate treatment. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

Prosecutor’s explanation for exercising peremptory strike against black female venireperson, i.e., that she had served on criminal jury that returned not guilty verdict, was not pretext for discrimination, even if prosecutor seated white man who also had served on criminal jury that returned not guilty verdict; male and female were not similarly situated in that female had served on criminal jury five years earlier and definitely remembered verdict, while male had served on criminal jury some 20 years earlier and was unsure of verdict, and circumstances of jury selection process indicated that prosecutor did not strike potential jurors for racially motivated reasons, as, even though he struck four black prospective jurors, he seated four black people on regular jury and two black alternate jurors. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

Black female venireperson’s failure to reveal during voir dire that she was acquainted with lead detective in defendant’s case was irrelevant to whether prosecutor’s explanation for exercising peremptory strike against that venireperson, i.e., that lead detective in defendant’s case knew that venireperson as high‑strung, critical person who would be polarizing force on jury, was pretext for racial discrimination. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

Record did not support finding that defendant violated Batson by exercising peremptory strikes against white prospective juror with whose jury service defense counsel stated he would not be comfortable on grounds that juror was former co‑employee of counsel’s wife, and that every time counsel patronized juror’s employer’s place of business, juror “ask[ed counsel] about court, different cases going on”; explanations were facially race‑neutral, state offered no evidence of pretext, and, although defendant exercised most of his strikes against white jurors, he did not strike every white juror. State v. Ford (S.C. 1999) 334 S.C. 59, 512 S.E.2d 500. Jury 33(5.15)

Pretext in the exercise of peremptory strikes generally will be established by showing that similarly situated members of another race were seated on the jury. State v. Tucker (S.C. 1999) 334 S.C. 1, 512 S.E.2d 99, certiorari denied 119 S.Ct. 2407, 527 U.S. 1042, 144 L.Ed.2d 805. Jury 33(5.15)

At a Batson hearing, the proponent of a peremptory strike is required to offer a race‑neutral explanation, and unless a discriminatory intent is inherent in the proponent’s explanation, the reason offered will be deemed race‑neutral; the opponent of the strike must then show that the race‑neutral explanation given was mere pretext. State v. Tucker (S.C. 1999) 334 S.C. 1, 512 S.E.2d 99, certiorari denied 119 S.Ct. 2407, 527 U.S. 1042, 144 L.Ed.2d 805. Jury 33(5.15)

Defendant’s use of peremptory strikes against two white potential jurors did not violate Batson; defense counsel stated that he struck first juror because her husband was manager at store that had cases in court “just about every term” due to “shooting in the parking lot, bad checks, one thing and another,” counsel stated that he struck second juror because that juror was employed at same business where counsel’s brother was manager, these were race‑neutral reasons, and state failed to show mere pretext. State v. Short (S.C. 1999) 333 S.C. 473, 511 S.E.2d 358. Jury 33(5.15)

In attempting to show a party’s rebuttal to a charge of using peremptory strikes in a racially discriminating manner is pretextual, one shows pretext by demonstrating that similarly situated jurors of other races were seated. State v. Easler (S.C.App. 1996) 322 S.C. 333, 471 S.E.2d 745, rehearing denied, certiorari granted, affirmed as modified 327 S.C. 121, 489 S.E.2d 617.

In attempting to show a party’s rebuttal to a charge of using peremptory strikes in a racially discriminating manner is pretextual, one shows pretext by demonstrating the similarly situated jurors of other races were seated. State v. Adams (S.C. 1996) 322 S.C. 114, 470 S.E.2d 366.

Vacillating responses regarding the death penalty will support a finding that the reason for the strike was facially neutral; the defendant may show this reason is pretextual, however, by demonstrating the solicitor applied the allegedly neutral standard in a discriminatory manner. State v. Forney (S.C. 1996) 321 S.C. 353, 468 S.E.2d 641. Jury 33(5.15)

The defendant failed to preserve for purposes of appeal the assertion that the State gave a pretextual reason for its striking of black jurors where the defendant failed to object at the time the jurors were struck. State v. Forney (S.C. 1996) 321 S.C. 353, 468 S.E.2d 641.

In a Batson hearing, the defendant can demonstrate that the solicitor created a pretext for purposeful discrimination by applying her allegedly racially neutral standard in a discriminatory manner. State v. Kelley (S.C. 1995) 319 S.C. 173, 460 S.E.2d 368. Jury 33(5.15)

The trial judge did not abuse his discretion in finding that a defendant failed to meet his burden of proving that the state’s allegedly neutral reasons for using its peremptory challenges were pretextual because similarly situated white jurors were not struck on comparable grounds where, although the state used all of its peremptory challenges to strike black potential jurors, at a “Batson hearing” the state explained that the 2 black jurors were struck because one was single and the other was a college student, but that 2 single white jurors were not struck because they were both older teachers, and the white college student was not struck because the state had run out of peremptory challenges. State v. Richburg (S.C. 1991) 304 S.C. 162, 403 S.E.2d 315.

The State’s articulated reason for exercising a peremptory challenge to strike the only black juror who was qualified ‑ the juror’s reluctance to impose the death penalty ‑ was not a “pretext,” even though the juror maintained no opposition toward capital punishment, where her voir dire responses vacillated; juror responses regarding the death penalty are frequently marked by inconsistency and vacillation and where the responses are susceptible of more than one conclusion, the Supreme Court will not substitute its own opinion for that of the solicitor. State v. Patterson (S.C. 1990) 302 S.C. 384, 396 S.E.2d 366, vacated 111 S.Ct. 2253, 500 U.S. 950, 114 L.Ed.2d 707, on remand 307 S.C. 180, 414 S.E.2d 155, rehearing denied.

A solicitor’s explanations for exercising peremptory challenges to strike 6 black jurors were racially neutral and were sufficient to withstand a Batson inquiry, in spite of the defendant’s argument that the explanations were not sufficient because they were not related to the case and the solicitor failed to indicate whether the same standards were applied to white jurors who were seated, where the solicitor indicated that the jurors were struck for the following reasons: (1) the juror knew and associated with the defendant; (2) the juror’s neighbor had been arrested by one of the officers involved in the case; (3) the juror lived near and frequented an establishment which had had great conflict with the law enforcement of the county; (4) the juror’s brother had an indictment against him; (5) the juror lived in close proximity to the defendant; and (6) the juror lived next door to and had a close relationship with a man who had recently been convicted of a drug offense. The explanations set forth by the solicitor were sufficiently related to his view concerning the outcome of the case to be tried; the solicitor did not have a duty to indicate whether these standards were applied to white jurors who were seated since the burden is on the defense counsel to prove that the solicitor’s allegedly neutral reasons were pretextual because they were not applied in a neutral manner, and no evidence was presented that a white juror was seated who had the same disqualification as black jurors who were struck. State v. Johnson (S.C. 1990) 302 S.C. 243, 395 S.E.2d 167.

The State’s racially neutral reason for striking black jurors in the trial of a black defendant was a pretext, warranting reversal, because it was not applied in a neutral manner where the reason given for striking the jurors was that they were patients of a doctor who was a defense witness, but the State did not strike a white juror who was also a patient of the doctor. State v. Oglesby (S.C. 1989) 298 S.C. 279, 379 S.E.2d 891. Jury 120

8. —— Burden of proof, Batson challenge

An opponent of peremptory strike may meet burden to show that race or gender‑neutral reason offered for strike is mere pretext either by showing similarly situated members of another race or gender were seated on the jury, or by demonstrating the reason advanced for the strike is so fundamentally implausible as to constitute mere pretext despite the lack of disparate treatment. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Jury 33(5.15)

Once a race or gender‑neutral reason is stated for exercising peremptory strike of a member of a cognizable racial group or gender, the trial court must decide whether the opponent of the strike has proved purposeful discrimination, at which point the burden returns to the party challenging the strike to establish that the race or gender‑neutral reason is mere pretext. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Jury 33(5.15)

The burden of persuading the court that a Batson violation has occurred in the exercise of peremptory strikes remains at all times on the opponent of the strike. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

Under Batson, pretext in the exercise of peremptory strikes generally will be established by showing that similarly situated members of another race were seated on the jury. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Jury 33(5.15)

After a party objects to a jury strike on Batson grounds, the proponent of the strike must offer an explanation that is facially race‑neutral, but not necessarily persuasive or even plausible; once the proponent states a reason that is race‑neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing that similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. State v. Ford (S.C. 1999) 334 S.C. 59, 512 S.E.2d 500. Jury 33(5.15)

Under Batson, the proponent of a peremptory strike has no burden to present an explanation that is persuasive or even plausible; once the proponent states a reason that is race‑neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated jurors were seated, or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. State v. Short (S.C. 1999) 333 S.C. 473, 511 S.E.2d 358. Jury 33(5.15)

If the explanation offered in rebuttal of a charge of racial discrimination in the use of a peremptory strike is facially valid, the challenging party has the burden of showing race was the real reason for the strike and the reason given was mere pretext. State v. Adams (S.C. 1996) 322 S.C. 114, 470 S.E.2d 366.

If, in rebutting a claim that a peremptory strike was made on racial grounds, the proffered reason is facially valid, the challenging party bears the burden of showing that the reason is merely pretext, and that race was the reason for the strike. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478. Jury 33(5.15)

In a Batson hearing, the defendant has the burden to prove the solicitor’s allegedly neutral reasons are pretext. State v. Kelley (S.C. 1995) 319 S.C. 173, 460 S.E.2d 368. Jury 33(5.15)

Once a prima facie case of the improper use of peremptory strikes has been established, the burden shifts to the other party to provide a race‑neutral explanation for the use of the strikes. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.15)

9. Nature of right to challenge

The right to challenge is not a right to select a jury, but a right to reject a certain number of jurors. State v Wise, 7 Rich (41 SCL) 412. State v Coleman, 8 SC 237 (1876). State v Gill, 14 SC 410 (1881). State v Prater, 26 SC 198, 2 SE 108 (1887). State v Jacob, 30 SC 131, 8 SE 698 (1889). State v Jackson, 32 SC 27, 10 SE 769 (1890). State v Campbell, 35 SC 28, 14 SE 292 (1892).

The right to challenge is a sacred right. State v. Briggs (S.C. 1887) 27 S.C. 80, 2 S.E. 854.

10. Right to stand aside juror

The right to stand aside a juror was considered a right that might be abused, and the proviso of this section [Code 1962 Section 38‑211] was passed to destroy the right to “stand aside.” State v Goodwin, 131 SC 67, 126 SE 519 (1925). In this case the practice was described as follows: The prosecuting attorney, under the old practice, exercised the right to stand aside a juror. After the panel was exhausted, without filling the jury, and after the defense had exhausted its peremptory challenges, then the juror who had been “stood aside” was presented and the defense was at the mercy of the prosecution. State v. Goodwin (S.C. 1925) 131 S.C. 67, 126 S.E. 519.

11. Paper strikes

‘Paper strike” method of exercising peremptory strikes, whereby parties struck jurors on paper rather than having them physically present, used in capital sentencing proceeding, did not violate defendant’s right to a fair trial by an impartial jury; thorough screening process occurred with over 800 pages of capital voir direconsisting of individual examination of each juror by defense counsel, when defense counsel indicated they were unprepared for paper strike method, trial court granted defense more time to review notes prior to beginning striking process and promised to give counsel extra time to decide on a strike during the procedure, and defense counsel affirmatively chose to forego physical viewing of jurors and proceed with paper strike method as part of a strategic move to generate a strike list more beneficial to defendant. State v. Bryant (S.C. 2007) 372 S.C. 305, 642 S.E.2d 582, rehearing denied, certiorari denied 128 S.Ct. 245, 552 U.S. 899, 169 L.Ed.2d 169. Jury 33(5.15); Jury 139

“Paper strike” method of exercising peremptory strikes, whereby parties struck jurors on paper rather than having them physically present, used in capital sentencing proceeding, did not violate statute providing that, in impaneling juries in criminal cases, jurors had to be called, sworn, and impaneled anew for trial of each case, according to established practice. State v. Bryant (S.C. 2007) 372 S.C. 305, 642 S.E.2d 582, rehearing denied, certiorari denied 128 S.Ct. 245, 552 U.S. 899, 169 L.Ed.2d 169. Jury 139

12. Prejudice

Criminal defendant cannot demonstrate prejudice where he did not avail self of all peremptory strikes. Failure to exhaust peremptory strikes bars objection to trial judge’s refusal to excuse juror for cause, as it can be concluded that jury panel was seated with defendant’s approval. Adams v. Aiken (C.A.4 (S.C.) 1992) 965 F.2d 1306, certiorari denied 113 S.Ct. 2966, 508 U.S. 974, 125 L.Ed.2d 666, vacated on rehearing 114 S.Ct. 1365, 511 U.S. 1001, 128 L.Ed.2d 42, on remand 41 F.3d 175.

No showing of actual prejudice is required to find reversible error for the denial or impairment of the right to a peremptory challenge. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Criminal Law 1166.18

No showing of actual prejudice is required in order to find reversible error for the denial or impairment of the right to a peremptory challenge; overruling State v. Plath, 277 S.C. 126, 284 S.E.2d 221. State v. Short (S.C. 1999) 333 S.C. 473, 511 S.E.2d 358. Criminal Law 1166.18

The defendant failed to demonstrate that he was prejudiced by limitation of the voir dire of 2 veniremen, where he exercised 2 of his peremptory strikes to remove those veniremen, and he exercised only 7 of the 10 strikes permitted him. State v. Longworth (S.C. 1993) 313 S.C. 360, 438 S.E.2d 219, rehearing denied, certiorari denied 115 S.Ct. 105, 513 U.S. 831, 130 L.Ed.2d 53. Jury 110(14)

13. Mistrial

A defendant was not entitled to a mistrial on the ground that one juror was a third cousin of a witness against him where no evidence showed that the defendant would have exercised a peremptory challenge of the juror if this fact had been known and the juror indicated that (1) he hadn’t seen the witness in 3 years, (2) he wouldn’t believe the witness over anyone else based on their relationship, and (3) when the witness names were called he didn’t recognize his relation, who was testifying under a different name. State v. Savage (S.C.App. 1991) 306 S.C. 5, 409 S.E.2d 809, certiorari denied. Criminal Law 855(1)

14. Justiciability

Civil litigant may raise equal protection claim of a person whom the opposing party has excluded from jury service on account of race; although individual juror subjected to peremptory racial exclusion would have right to bring suit on their own behalf, barriers to suit by excluded juror would be daunting; moreover, litigant can demonstrate that he or she has suffered a concrete, redressable injury from exclusion of jurors on account of race, in that racial discrimination in jury selection casts doubt on integrity of the judicial process and places fairness of proceeding in doubt. Edmonson v. Leesville Concrete Co., Inc., U.S.La.1991, 111 S.Ct. 2077, 500 U.S. 614, 114 L.Ed.2d 660, on remand 943 F.2d 551, rehearing denied. Constitutional Law 915

Under equal protection clause, defendant has standing to object to race‑based exclusions of jurors through peremptory challenges whether or not defendant and excluded jurors share same race. Powers v. Ohio, 1991, 111 S.Ct. 1364, 499 U.S. 400, 113 L.Ed.2d 411. Constitutional Law 3295; Jury 33(5.20)

White defendant had standing to object, on “fair cross section” grounds, to prosecutor’s use of peremptory challenges to exclude blacks from jury. Holland v. Illinois, U.S.Ill.1990, 110 S.Ct. 803, 493 U.S. 474, 107 L.Ed.2d 905, rehearing denied 110 S.Ct. 1514, 494 U.S. 1050, 108 L.Ed.2d 650, habeas corpus conditionally granted 754 F.Supp. 1245, reversed 963 F.2d 1044, certiorari denied 113 S.Ct. 1053, 506 U.S. 1082, 122 L.Ed.2d 360. Jury 33(5.20)

A party has standing to object to race‑based peremptory strikes of venire persons even if the challenging party and the potential juror are of the same race. Payton v. Kearse (S.C.App. 1995) 319 S.C. 188, 460 S.E.2d 220, rehearing denied, certiorari granted, reversed 329 S.C. 51, 495 S.E.2d 205. Jury 33(5.20)

15. Review

Overruling challenges for cause is not to be considered as error when jury was completed without exhausting peremptory challenges. State v McQuaige, 5 SC 429 (1874). State v Dodson, 16 SC 453 (1882).

Where defendant did not exhaust his peremptory challenges, he was in no position to complain on appeal of the trial judge’s refusal to dismiss a juror for cause. State v Britt, 237 SC 293, 117 SE2d 379 (1960), citing State v Gantt, 223 SC 431, 76 SE2d 674 (1953), cert denied 347 US 906, 74 S Ct 433, 98 L Ed 1065 (1954).

In determining whether a party exercised peremptory strikes in violation of Batson, a reviewing court must examine the totality of facts and circumstances in the record surrounding the strikes. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Criminal Law 1134.7

The trial court’s findings as to whether a party was motivated by purposeful discrimination in exercising peremptory strikes are accorded great deference and will be set aside on appeal only if clearly erroneous. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Criminal Law 1158.17

When the record does not support a party’s stated reason for exercising a peremptory strike, the Supreme Court will overturn the trial court’s findings that are based on that reason. State v. Haigler (S.C. 1999) 334 S.C. 623, 515 S.E.2d 88. Criminal Law 1158.17

In reviewing a decision by the trial court as to whether a peremptory strike was made on the basis of race, the credibility determination by the lower court is entitled to great deference on appeal. State v. Gill (S.C.App. 1995) 319 S.C. 283, 460 S.E.2d 412, rehearing denied, vacated 327 S.C. 253, 489 S.E.2d 478.

One convicted of murder could not assign error in seating jurors where he did not exhaust his peremptory challenges. State v. South (S.C. 1985) 285 S.C. 529, 331 S.E.2d 775, certiorari denied 106 S.Ct. 209, 474 U.S. 888, 88 L.Ed.2d 178, denial of post‑conviction relief affirmed 310 S.C. 504, 427 S.E.2d 666. Criminal Law 1166.18

**SECTION 14‑7‑1120.** Challenges and strikes of alternate jurors.

 In criminal cases the prosecution is entitled to one and the defendant to two peremptory challenges for each alternate juror called under the provisions of Section 14‑7‑320 and in civil cases, each party shall have one strike for each alternate juror.

HISTORY: 1962 Code Section 38‑212; 1952 Code Section 38‑212; 1942 Code Section 626‑2; 1937 (40) 300; 1986 Act No. 340, Section 3, eff March 10, 1986.

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Jury 124.

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Hammond, Peremptory challenges: Edmonson v Leesville Concrete Co. and the Batson motion in civil litigation. 43 S.C. L. Rev. 617 (Spring 1992).

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United States Supreme Court Annotations

Habeas corpus, peremptory challenge, demeanor based explanation for challenge, see Thaler v. Haynes, 2010, 130 S.Ct. 1171, 559 U.S. 43, 175 L.Ed.2d 1003, rehearing denied 130 S.Ct. 2141, 559 U.S. 1088, 176 L.Ed.2d 758, on remand 438 Fed.Appx. 324, 2011 WL 3652598.

NOTES OF DECISIONS

In general 1

1. In general

Reversible error did not occur in capital murder trial when defendant was forced to use a peremptory strike on an erroneously qualified juror, as defendant was not deprived of a strike that he otherwise would have exercised, where only two jurors were presented after defendant used his last strike, defendant voiced no objection to either of those jurors, and his only objection was to an alternate juror for whom separate strikes were allocated. Green v. Maynard (S.C. 2002) 349 S.C. 535, 564 S.E.2d 83, rehearing denied, certiorari denied, certiorari denied 123 S.Ct. 15, 536 U.S. 980, 153 L.Ed.2d 879. Criminal Law 1166.18

**SECTION 14‑7‑1130.** Juror may take affirmation instead of oath.

 Any juror in any court of this State may make solemn and conscientious affirmation and declaration, according to the form of his religious belief or profession, as to any matter or thing whereof an oath is required and this affirmation and declaration must be held as valid and effectual as if the person had taken an oath on the Holy Bible.

HISTORY: 1962 Code Section 38‑213; 1952 Code Section 38‑213; 1942 Code Section 341; 1932 Code Section 341; Civ. P. ‘22 Section 297; Civ. C. ‘12 Section 3930; Civ. C. ‘02 Section 2827; G. S. 2174; R. S. 2303; 1721 (3) 281; 1986 Act No. 340, Section 3, eff March 10, 1986.

Library References

Jury 148.

Westlaw Topic No. 230.

C.J.S. Juries Sections 520 to 523.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Dismissal of juror who was unwilling to take religious oath violated juror’s constitutional rights, and thus, inmates were denied a fair and impartial jury when trial judge erroneously excused such juror in prosecution for taking a hostage and carrying a weapon while an inmate. State v. Floyd (S.C. 2003) 353 S.C. 55, 577 S.E.2d 215. Jury 33(2.10); Jury 149

When the jury that tries the defendant is affected by impermissible dismissal of a juror who is unwilling to take religious oath, the line of cases which hold a defendant is entitled only to a fair and impartial jury, but has no right to trial by a particular jury, do not apply. State v. Floyd (S.C. 2003) 353 S.C. 55, 577 S.E.2d 215. Jury 33(2.10); Jury 79.3

**SECTION 14‑7‑1140.** Effect on verdict of irregularity in venire or drawing of jurors.

 No irregularity in any writ of venire facias or in the drawing, summoning, returning, or impaneling of jurors is sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection is made before the returning of the verdict.

HISTORY: 1962 Code Section 38‑214; 1952 Code Section 38‑214; 1942 Code Section 640; 1932 Code Section 640; Civ. P. ‘22 Section 580; Civ. C. ‘12 Section 4048; Civ. C. ‘02 Section 2947; G. S. 2266; R. S. 2407; 1797 (5) 358; 1986 Act No. 340, Section 3, eff March 10, 1986.

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Gamecocks spur trouble in jury deliberations: What the Fourth Circuit really thinks about Wikipedia as a legal resource in United States v. Lawson. Brittany M. McIntosh, 64 S.C. L. Rev. 1157 (Summer 2013).

NOTES OF DECISIONS

In general 1

Prejudice 2

Review 3

1. In general

Verdict is not set aside on technical irregularity. This section [Code 1962 Section 38‑214] proceeds on the principle that a party shall not be allowed to go to trial and take for himself the possibilities of a favorable result, and, in case of disappointment, have the verdict set aside upon a bare technical irregularity. State v Johnson, 66 SC 23, 44 SE 58 (1903). State v Harreld, 228 SC 311, 89 SE2d 879 (1955). Spencer v Kirby, 234 SC 59, 106 SE2d 883 (1959), commented on in 12 SCLQ 370 (1960).

Stated in Garrett v Weinberg, 54 SC 127, 31 SE 341, 34 SE 70 (1899). State v Smalls, 73 SC 516, 53 SE 976 (1906). State v Wood, 130 SC 88, 125 SE 566 (1924).

Failure of clerk to affix seal to venire facias is not jurisdictional defect. The failure of the clerk to affix the seal to the venire facias is an irregularity within the meaning of this section [Code 1962 Section 38‑214], and is not a jurisdictional defect which can be raised in the appellate court without objection taken below on contention that both the grand and the petit jury were illegal and the trial a nullity. State v Lazarus, 83 SC 215, 65 SE 270 (1909). State v Benton, 85 SC 107, 67 SE 143 (1910).

Section applies to grand jurors as well as to petit jurors. This section [Code 1962 Section 38‑214] does not make any distinction between grand and petit jurors, but, on the contrary, it speaks generally of “jurors.” State v Jeffcoat, 26 SC 114, 1 SE 440 (1887). State v Blackledge, 7 Rich (41 SCL) 327.

This section [Code 1962 Section 38‑214] applies to both grand and petit jurors. Lollis v. Manning (S.C. 1963) 242 S.C. 316, 130 S.E.2d 847.

Drawing of extra venire for murder prosecution in judge’s chambers, immediately adjoining courtroom, instead of in clerk’s office in accordance with statutes was error, but was not reversible error. State v. Livingston (S.C. 1958) 233 S.C. 400, 105 S.E.2d 73. Criminal Law 1166.15; Jury 70(8)

Evidence required. In a motion for a new trial on the ground of disqualification of a juror, movant must show (1) the fact of disqualification, (2) that it was unknown before verdict and (3) that it was not negligent in making discovery of the disqualification before verdict. State v. Rayfield (S.C. 1958) 232 S.C. 230, 101 S.E.2d 505.

Attorney for plaintiff by failure to make objections to juror which attorney could by due diligence have discovered before jury was selected waived such objections and could not later make them (Code 1932, Sections 173, 639, 640). Altman v. Efird Bros. Co. (S.C. 1936) 180 S.C. 205, 185 S.E. 543.

Irregularities in directing jury commissioners to draw, as extra jurors, jurors living more than five miles from courthouse, and in directing commissioners to draw extra venire from general jury box, held not ground for new trial, in absence of showing that defendant did not have knowledge thereof before the trial, that he exhausted challenges, or that he was prejudiced on account of irregularities. State v. Wood (S.C. 1924) 130 S.C. 88, 125 S.E. 566.

The venire to the sheriff commanded him, in the name of the state, to serve upon certain persons named \*36 men, whom he should immediately summon to appear before the common pleas court. Held that the writ was not fatally defective for the omission at the place marked with an asterisk, of the words “jury commissioners of the county, this writ of venire requiring them, the said jury commissioners, to draw and annex to the panel of this writ as provided by law the names of.” State v. Washington (S.C. 1909) 82 S.C. 341, 64 S.E. 386.

Where the jury commissioner, in drawing a grand jury, instead of following the provisions of Cr.Code 1902, Section 39, (See Code 1942, Section 940), providing that the persons whose names are first drawn, to the number required, shall be returned as grand jurors, and those afterwards drawn, as trial jurors, assigned to the grand jury as their names were drawn those persons whom he supposed best qualified for grand jury duties, it was an irregularity, and where known to defendants before trial, was waived where no objection was made under Civ.Code 1902, Section 2947, providing that no irregularity in drawing jurors shall set aside the verdict unless the party objecting was injured by the irregularity, or objection was made before return of the verdict. State v. Smalls (S.C. 1906) 73 S.C. 516, 53 S.E. 976.

An indictment found by grand jury drawn under unconstitutional statute is void, and defendant does not waive his right by pleading to indictment. State v. Edwards (S.C. 1904) 68 S.C. 318, 47 S.E. 395.

Under Rev.St.1893, Section 2406 (See Code 1942, Section 639), which provides that, if any party knows of any objection to a juror in season to propose it before trial, and omits to do so, he shall not afterwards be permitted to do so unless by leave of court, an objection that a juror is disqualified because convicted of larceny may be made after verdict, if not discovered before, although Rev.St.1893, Section 2407 (See Code 1942, Section 640), provides that “no irregularity in any writ of venire facias, or in drawing, summoning, returning or empaneling of juries shall be sufficient to set aside the verdict, unless the party making the objection was injured by the irregularity or unless the objection was made before the returning of the verdict.” Garrett v. Weinberg (S.C. 1898) 54 S.C. 127, 31 S.E. 341.

But defects appearing upon record may be considered on motion in arrest of judgment. State v. Stephens (S.C. 1879) 11 S.C. 319.

2. Prejudice

Error in referencing incorrect charge in oath administered to jurors did not prejudice defendant, where trial judge referred to correct charge both before jury was seated and immediately after seating through corrective instruction. State v. Ballen (S.C.App. 1998) 333 S.C. 378, 510 S.E.2d 226. Criminal Law 1166.16

The plaintiff was not prejudiced by the presence of a foreign national on the jury where the plaintiff’s counsel could have discovered the juror’s nationality through the exercise of due diligence, and in response to a voir dire question, the juror stated he could give both parties an impartial trial. Wilson v. Childs (S.C.App. 1993) 315 S.C. 431, 434 S.E.2d 286.

Irregularities in empanelling the jury will not constitute reversible error unless it affirmatively appears that the objecting party was prejudiced thereby. Southern Welding Works, Inc. v. K & S Const. Co. (S.C.App. 1985) 286 S.C. 158, 332 S.E.2d 102. Appeal And Error 1045(1)

In a prosecution for murder, in which direct voir dire by defense counsel was guaranteed, pursuant to Section 16‑3‑20(D), defendant was not prejudiced by his counsel’s absence during the simple drawing of names for the impaneling of the jury where defendant did not exercise his full entitlement of peremptory challenges, from which it could be concluded that the jury panel was seated with his approval. State v. Smart (S.C. 1982) 278 S.C. 515, 299 S.E.2d 686, certiorari denied 103 S.Ct. 1784, 460 U.S. 1088, 76 L.Ed.2d 353, habeas corpus granted 677 F.Supp. 414, affirmed 856 F.2d 609, rehearing granted, opinion vacated on rehearing 873 F.2d 1558, certiorari denied 110 S.Ct. 189, 493 U.S. 867, 107 L.Ed.2d 144.

Error held harmless. Where applicants failed to object to irregularity in selection of grand jurors before entering pleas of guilty to charges in indictment and there was no showing of prejudice or injury to them by such irregularity, they were not entitled to release from custody. Lollis v. Manning (S.C. 1963) 242 S.C. 316, 130 S.E.2d 847.

Error held harmless. Where applicant neither showed nor attempted to show prejudice to him resulting from the irregularity complained of, or that any of his rights were in any way impaired or interfered with, when in fact the error, if any, was beneficial to him, such error was harmless and insufficient to set aside a verdict against him. State v. Britt (S.C. 1960) 237 S.C. 293, 117 S.E.2d 379, certiorari denied 81 S.Ct. 1040, 365 U.S. 886, 6 L.Ed.2d 197.

No prejudice where juror previously served on grand jury returning “no bill.” ‑ Defendant in a civil suit could not have been prejudiced by the fact a juror had previously served on a grand jury considering an indictment against defendant, since the grand jury returned a “no bill” as to defendant. Spencer v. Kirby (S.C. 1959) 234 S.C. 59, 106 S.E.2d 883.

3. Review

A defendant must challenge the legality and sufficiency of the process of the state grand jury before the jury renders a verdict in order to preserve the error for direct appellate review. Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Criminal Law 1032(2)

ARTICLE 11

Service as Jurors and Compensation

**SECTION 14‑7‑1310.** Foreman.

 The foreman of each jury, after the jury has been empanelled, may be appointed by the court or the jury may retire and choose its foreman.

HISTORY: 1962 Code Section 38‑301; 1952 Code Section 38‑301; 1942 Code Section 635; 1932 Code Section 635; Civ. P. ‘22 Section 575; Civ. C. ‘12 Section 4043; Civ. C. ‘02 Section 2941; G. S. 2253; R. S. 2396; 1905 (24) 846.

Library References

Jury 147.

Westlaw Topic No. 230.

C.J.S. Juries Section 517.

**SECTION 14‑7‑1320.** Jury may view place, property, or thing; expenses.

 The jury in any case may, at the request of either party, be taken to view the place or premises in question or any property, matter or thing relating to the controversy between the parties when it appears to the court that such view is necessary to a just decision, if the party making the motion advances a sum sufficient to pay the actual expenses of the jury and the officers who attend them in taking the view, which shall be afterwards taxed like other legal costs if the party who advanced them prevails in the suit.

HISTORY: 1962 Code Section 38‑302; 1952 Code Section 38‑302; 1942 Code Section 643; 1932 Code Section 643; Civ. P. ‘22 Section 583; Civ. C. ‘12 Section 4051; Civ. C. ‘02 Section 2950; G. S. 2271; R. S. 2410; 1871 (14) 693.

Library References

Criminal Law 651.

Trial 28.

Westlaw Topic Nos. 110, 388.

C.J.S. Criminal Law Section 1568.

C.J.S. Homicide Sections 478 to 479.

C.J.S. Trial Sections 133 to 135.

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S.C. Jur. Appeal and Error Section 129, Trial Matters.

S.C. Jur. Costs Section 38, Jury Views.

Forms

South Carolina Litigation Forms and Analysis Section 36:15 , Motion for Jury View.

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1. In general

Allowance of view is discretionary with court. Under this section [Code 1962 Section 38‑302], it is discretionary with the trial court whether it will allow the jury to view the place in controversy, and in the absence of abuse of discretion, the Supreme Court will not interfere. Rodgers v Hodge, 83 SC 569, 65 SE 819 (1909). State v Suber, 89 SC 100, 71 SE 466 (1911). Jacks v Townsend, 228 SC 26, 88 SE2d 776 (1955). Johnson v South Carolina State Highway Dept., 236 SC 424, 114 SE2d 591 (1960). Johnson v Williams, 238 SC 623, 121 SE2d 223 (1961). State v Spinks, 260 SC 404, 196 SE2d 313 (1973). Peyton v Strickland, 262 SC 210, 203 SE2d 388 (1974).

Applied in McCarley v Glenn‑Lowry Mfg. Co., 75 SC 390, 56 SE 1 (1906). Moody v Dillon Co., 210 SC 458, 43 SE2d 201 (1947).

Trial court did not abuse its discretion by refusing to permit a jury view of the crime scene, namely the house where defendant lived with his mother and his stepfather, whom he killed; State introduced a diagram that showed the layout of the home, but the diagram was not drawn to scale, jury knew the diagram was not drawn to scale but that it correctly portrayed the layout of the house, and thus, the jury was not misled or confused regarding layout of the house. State v. Brown (S.C.App. 2010) 389 S.C. 84, 697 S.E.2d 622, rehearing denied, certiorari denied. Criminal Law 651(1)

The trial court in a slip‑and‑fall action did not err in refusing the plaintiff’s motion for a jury view of the accident scene where several photographs of the scene were admitted in evidence, and the plaintiff was permitted to introduce evidence that the hardwood floors at the scene of her fall were “slick.” Sturkie v. Constance (S.C.App. 1992) 309 S.C. 526, 424 S.E.2d 545. Trial 28(2)

A jury view of the scene is a matter within the discretion of the trial judge. Kincaid v. Landing Development Corp. (S.C.App. 1986) 289 S.C. 89, 344 S.E.2d 869.

Trial judge did not abuse his discretion in permitting jury to view an alleged negligently constructed house before hearing testimony from defendants’ structural engineer, where the timing of the view was to enable the judge to attend a scheduled conference with the sheriff concerning important law enforcement matters. Kincaid v. Landing Development Corp. (S.C.App. 1986) 289 S.C. 89, 344 S.E.2d 869.

A request to allow the jury to view the place in controversy is addressed to the discretion of the trial judge, and the trial judge’s decision in this regard will not be reversed on appeal absent an abuse of discretion. City of Columbia v. Jennings (S.C.App. 1986) 288 S.C. 79, 339 S.E.2d 534. Appeal And Error 969; Trial 28(2)

There was no abuse of discretion in refusing to permit a jury view of the premises involved in a condemnation case where the testimony and the exhibits, including several photographs, a video tape, a plat, and a topographical map, sufficiently described the scene. City of Columbia v. Jennings (S.C.App. 1986) 288 S.C. 79, 339 S.E.2d 534. Eminent Domain 220

Defendants’ objection to the State’s motion for a jury visit to the scene of the crime was properly overruled, pursuant to Section 14‑7‑1320, and constitutional protections were not denied, where the trial judge accompanied the jury to the scene in the absence of defendants and their counsel, and where all arrangements for the jury view had been thoroughly discussed with counsel in the presence of defendants, and they had expressed no hint of opposition. State v. Plath (S.C. 1984) 281 S.C. 1, 313 S.E.2d 619, certiorari denied 104 S.Ct. 3560, 467 U.S. 1265, 82 L.Ed.2d 862, rehearing denied 105 S.Ct. 27, 468 U.S. 1226, 82 L.Ed.2d 920, rehearing denied 105 S.Ct. 28, 468 U.S. 1226, 82 L.Ed.2d 920, denial of habeas corpus affirmed 113 F.3d 1352, certiorari denied 118 S.Ct. 715, 139 L.Ed.2d 655, denial of habeas corpus affirmed 130 F.3d 595, certiorari denied 118 S.Ct. 1854, 140 L.Ed.2d 1102.

Since trial judge has discretionary power to grant a new trial nisi upon his disapproval of the factual grounds of the verdict, he should view the premises which are subject of a jury view in order that he might properly understand and apply all the oral testimony descriptive of it. South Carolina State Highway Dept. v. Townsend (S.C. 1975) 265 S.C. 253, 217 S.E.2d 778. New Trial 68.3; New Trial 162(1)

But he may consider facts observed in ruling on motion. The facts observed by the judge upon an inspection of the locus, when the latter is had pursuant to this section [Code 1962 Section 38‑302] and the rules laid down in the decisions, may be considered by the judge along with all of the other evidence in his consideration of the motion to direct the verdict or grant judgment notwithstanding the verdict. Sanders v. State Highway Dept. (S.C. 1948) 212 S.C. 224, 47 S.E.2d 306.

Unless he views place of accident independently. In Ralph v Southern R. Co., 160 SC 229, 158 SE 409 (1931), the action of the trial judge in inspecting place of collision and predicating refusal of motion for new trial in part on information so obtained, was held erroneous where he inspected such place without the jury or counsel. Ralph v. Southern Ry. Co. (S.C. 1931) 160 S.C. 229, 158 S.E. 409.

And judge is not required to view premises. There is no statute which requires a presiding judge in a partition suit to view the premises, and his refusal to do so is not error. Parrott v. Barrett (S.C. 1908) 81 S.C. 255, 62 S.E. 241. Partition 67

2. Evidence

Jury view of crime scene, conducted at defendant’s request, did not amount to a presentation or admission of evidence that deprived defendant of the right to present final closing argument. State v. Mouzon (S.C. 1997) 326 S.C. 199, 485 S.E.2d 918. Criminal Law 645; Criminal Law 651(1)

Viewing of scene of crime is not regarded as evidence or taking of testimony; rather, its purpose is simply to enable jurors to better understand evidence that has been presented to them in court room. State v. Mouzon (S.C. 1997) 326 S.C. 199, 485 S.E.2d 918. Criminal Law 651(1)

A trial judge made a technical error in characterizing the jury’s view of the scene of the crime as other “evidence” since viewing the premises is not regarded as taking evidence and the jury’s view of the crime situs need not be “offered into evidence.” However, the trial judge was correct in his view that he had no discretion to allow the jury to visit the scene, upon the jury’s request during deliberations to view the scene of the crime, since Section 14‑7‑1320 mandates that a party make a motion before the jury may be allowed to view the crime situs. Gossett v. State (S.C. 1990) 300 S.C. 473, 388 S.E.2d 804.

The purpose of a jury view is to enable the jury better to understand the evidence that has been presented to them in the courtroom, and is not regarded as the taking of evidence. Jacks v. Townsend (S.C. 1955) 228 S.C. 26, 88 S.E.2d 776. Trial 28(1)

Viewing the premises is not regarded as taking evidence. The purpose is to throw light upon the testimony in the record, and to enable the jury to understand the evidence already taken in the courtroom. Baroody v. Anderson (S.C. 1940) 195 S.C. 422, 11 S.E.2d 860.

3. Experiment by jury

Experiment by jury outside courtroom without counsel is grounds for new trial. The conducting of an experiment by the jury, amounting to the taking of testimony by them outside of the courtroom without the knowledge or consent of counsel, and allowing counsel no opportunity to argue to the jury the inferences to be drawn from such experiment, is improper and affords proper grounds for granting a new trial. Baroody v. Anderson (S.C. 1940) 195 S.C. 422, 11 S.E.2d 860.

**SECTION 14‑7‑1330.** Procedure when jury fails to agree.

 When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.

HISTORY: 1962 Code Section 38‑303; 1952 Code Section 38‑303; 1942 Code Section 642; 1932 Code Section 642; Civ. P. ‘22 Section 582; Civ. C. ‘12 Section 4050; Civ. C. ‘02 Section 2949; G. S. 2268; R. S. 2409; 1797 (5) 358.

Library References

Criminal Law 865.

Trial 314.

Westlaw Topic Nos. 110, 388.

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Criminal Procedure, Second Edition Section 24.9(D), The Deadlocked Jury.

United States Supreme Court Annotations

Double jeopardy, deadlocked jury’s reported vote to acquit on greater offenses was not final decision for double jeopardy purposes, see Blueford v. Arkansas, 2012, 132 S.Ct. 2044, 566 U.S. 599, 182 L.Ed.2d 937. Double Jeopardy 164

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1. In general

Jury may indicate when time for deliberation has elapsed. It is the clear intendment of this section [Code 1962 Section 38‑303] to give the jury the right to indicate to the court its own view as to when time for due and thorough deliberation has elapsed. State v Simon, 126 SC 437, 120 SE 230 (1923). Rowland v Harris, 218 SC 42, 61 SE2d 397 (1950).

Stated in State v Rowell, 75 SC 494, 56 SE 23 (1906). State v Underwood, 127 SC 1, 120 SE 719 (1923).

Judge’s discretion determines “due and thorough deliberation upon any cause.” ‑ What constitutes “due and thorough deliberation upon any cause” by the jury is unquestionably a matter primarily for the determination of the circuit judge in the exercise of a sound discretion. State v Drakeford, 120 SC 400, 113 SE 307 (1922). State v Simon, 126 SC 437, 120 SE 230 (1923).

For additional related cases, see State v Kelley, 45 SC 659, 24 SE 45 (1896). State v Williams, 76 SC 135, 56 SE 783 (1907). McGill Bros. v Seaboard, etc., Ry., 75 SC 177, 55 SE 216 (1906). State v Haines, 36 SC 504, 15 SE 555 (1892).

For purposes of South Carolina statute prohibiting Allen charge sending jury out for further deliberations after jury had returned twice without agreeing upon verdict, unless jury requested further instruction, first “return” of jury occurred in capital trial when jury noted that it was deadlocked “11‑1,” even though, on previous day, jury had claimed deadlock of “10‑2” but also requested to rehear defendant’s testimony. Tucker v. Catoe (C.A.4 (S.C.) 2000) 221 F.3d 600, certiorari denied 121 S.Ct. 661, 531 U.S. 1054, 148 L.Ed.2d 563. Criminal Law 865(1.5)

Record in prosecution for assault and battery of a high and aggravated nature did not support defendant’s contention that the trial judge erred in sending the jury out for a second and a third time without having agreed upon a verdict. State v. Darr (S.C. 1974) 262 S.C. 585, 206 S.E.2d 870.

Where record clearly showed that jury returned to courtroom the first time for further explanation of law on burden of proof and only returned once without having agreed on record, trial judge did not commit error in sending jury back the second time for further deliberation. Code 1962, Section 38‑303. Gamble v. Travelers Ins. Co. (S.C. 1968) 251 S.C. 98, 160 S.E.2d 523.

There was no showing of abuse of discretion on part of trial judge who was alleged to have overheard jury foreman state that jury was deadlocked in failing to recall jurors and examine them concerning such. State v. Morris (S.C. 1963) 243 S.C. 225, 133 S.E.2d 744. Criminal Law 865(1.5)

“Return” primarily implies voluntary action, actuated by and based upon the jury’s inability to agree. Kirven v. Lawrence (S.C. 1959) 235 S.C. 380, 111 S.E.2d 692.

Hence, where judge had requested clerk of court to call jury and declare a mistrial if jury had not reached a verdict by a certain time, the clerk’s contact with jury, informing them that they could come out, was not a “return” within the meaning of this section [Code 1962 Section 38‑303], where jury requested further time to deliberate. Kirven v. Lawrence (S.C. 1959) 235 S.C. 380, 111 S.E.2d 692.

Where the jury in a murder prosecution announced late Saturday night that it was unable to agree, keeping the jury together until Sunday morning held not error under Code Civ.Proc. 1922, Section 582 (See Code 1942, Section 642). State v. Underwood (S.C. 1923) 127 S.C. 1, 120 S.E. 719.

The jury on a murder trial, came into court a second time, and announced they could not agree. The judge, in strong terms, stated the importance of an agreement, and some of the jurors asked him to state again the law of self‑defense. Held not error to send them back a third time to consider the case. State v. Rowell (S.C. 1906) 75 S.C. 494, 56 S.E. 23.

Verdicts may not be coerced by confinement of jury. The implication of this section [Code 1962 Section 38‑303] is that verdicts may not be coerced in this State by confinement of the jury after they have maturely deliberated upon the case and failed to agree, and that the judge is not required to remand the jury if, after due deliberation, they come into court without agreeing upon a verdict and without asking for further instructions. State v. Stephenson (S.C. 1899) 54 S.C. 234, 32 S.E. 305.

2. Constitutional issues

Defense counsel’s failure to object to “Allen” charge given during jury deliberations based on statute prohibiting a judge from returning a jury for further deliberations, without its own consent, where it has twice returned without having reached a verdict did not constitute ineffective assistance; “due and thorough” deliberation had first been accorded by the jury at the time it sent in a note, immediately prior to trial judge giving the “Allen” charge. Tucker v. Moore, 1999, 56 F.Supp.2d 611, affirmed 221 F.3d 600, certiorari denied 121 S.Ct. 661, 531 U.S. 1054, 148 L.Ed.2d 563. Criminal Law 1948

3. Purpose

Statute, setting forth procedure when jury fails to agree, is intended to prevent forced verdicts, and to prevent undue severity of jury service. State v. Barnes (S.C. 2013) 402 S.C. 135, 739 S.E.2d 629. Criminal Law 865(1)

4. Consent to deliberate

Trial court’s Allen charge to deadlocked jury on Friday night before holiday weekend was not coercive, where court stated that it could order dinner for jurors, the jury could come back on Saturday morning or the morning after the holiday, and court requested that the jurors attempt to respect each other and try to work out a verdict. Johnson v. Sam English Grading, Inc. (S.C.App. 2015) 412 S.C. 433, 772 S.E.2d 544, rehearing denied, certiorari denied. Trial 314(1)

Jury foreman’s diplomatic response, that he did not think that further deliberations would be fruitful, manifested a lack of consent to resume deliberations, and thus, trial judge abused his discretion in finding that jury consented to continued deliberations and, therefore, erred in declining to declare a mistrial; fact that the jury did in fact return the next day did not convince appellate court that jury manifested consent through its conduct, especially in light of its having been told that the judge would order continued deliberations if necessary. State v. Barnes (S.C. 2013) 402 S.C. 135, 739 S.E.2d 629. Criminal Law 865(1); Criminal Law 867.16

While there is no requirement that the judge inform the jury that its consent to resume deliberations is necessary, Supreme Court does not permit coercion. State v. Barnes (S.C. 2013) 402 S.C. 135, 739 S.E.2d 629. Criminal Law 865(1)

Record supported finding that jury consented to continue deliberations after it indicated for second time that it might be deadlocked; judge informed jury of desirability of reaching verdict, judge reminded jury that no juror should surrender his or her conviction simply to reach unanimous verdict, judge did not require that deliberations continue for certain length of time or imply that jury must reach verdict, and jurors did not express any unwillingness to comply with judge’s request. Buff v. South Carolina Dept. of Transp. (S.C. 2000) 342 S.C. 416, 537 S.E.2d 279. Criminal Law 865(1)

The purpose of statute providing that, if a jury returns to court a second time without reaching a verdict, it may not be sent out against without its consent is to prevent forced verdicts, and to prevent undue severity of jury service. Buff v. South Carolina Dept. of Transp. (S.C. 2000) 342 S.C. 416, 537 S.E.2d 279. Criminal Law 865(1)

A jury’s consent to resume or to discontinue deliberations, for purposes of statute requiring that a jury, which has twice indicated it was deadlocked, consent before being asked to deliberate a third time, is determined, either expressly or impliedly, by the jury’s response to the trial judge’s comments. Buff v. South Carolina Dept. of Transp. (S.C. 2000) 342 S.C. 416, 537 S.E.2d 279. Criminal Law 865(1)

Trial court’s instruction to jury that it was “going to continue the trial in the other case and ask you to make a continued effort to reach a unanimous verdict and let me know,” given after jury informed the court following a second round of deliberations that it was still “deadlocked eleven to one with no chance of reaching an agreement,” was not adequate to convey to jury that it, and not the trial court, controlled the extent of future deliberations, and thus a new trial was warranted on grounds that jury’s consent to further deliberations could not be inferred. Buff v. South Carolina Dept. of Transp. (S.C.App. 1998) 332 S.C. 472, 505 S.E.2d 360, rehearing denied, certiorari granted, reversed 342 S.C. 416, 537 S.E.2d 279. Trial 312(2)

It is unrealistic to assume jurors know, absent instruction, that they cannot be compelled to continue deliberations, and have the option of refusing to do so, after they have returned to court without having agreed upon a verdict and have been sent back for further deliberation. Buff v. South Carolina Dept. of Transp. (S.C.App. 1998) 332 S.C. 472, 505 S.E.2d 360, rehearing denied, certiorari granted, reversed 342 S.C. 416, 537 S.E.2d 279. Trial 314(1)

If a judge is satisfied that the jury consents to return for further deliberation, he should not dismiss it, but should permit further deliberation. State v. Pauling (S.C. 1996) 322 S.C. 95, 470 S.E.2d 106, post‑conviction relief granted 350 S.C. 278, 565 S.E.2d 769. Criminal Law 865(2)

The trial court did not err is finding that the jury consented to return to deliberation even though the foreperson expressed doubt that opinions regarding 2 of the counts would change where other jurors indicated that a verdict on the 2 remaining counts was possible. State v. Pauling (S.C. 1996) 322 S.C. 95, 470 S.E.2d 106, post‑conviction relief granted 350 S.C. 278, 565 S.E.2d 769.

Judge may permit further deliberation. If the judge is satisfied in the exercise of his discretion that the jury consents to return for further deliberation he should not dismiss them but permit further deliberation. Edwards v. Edwards (S.C. 1961) 239 S.C. 85, 121 S.E.2d 432.

Consent of jury implied. See Edwards v. Edwards (S.C. 1961) 239 S.C. 85, 121 S.E.2d 432.

And such discretion is not disturbed unless obviously wrong. If the circumstances satisfy the judge, in a wise exercise of his discretion, that the jury consent to go out again, after returning into court a second time, it is lawful to send them out, and the exercise of such discretion will not be disturbed unless obviously wrong. State v. Freely (S.C. 1916) 105 S.C. 243, 89 S.E. 643.

5. Mistrial

Jury’s inability to reach a unanimous verdict on conspiracy and armed robbery offenses constituted manifest necessity for declaration of a mistrial, and thus retrial for such offenses was not barred by double jeopardy clause; record indicated that deliberations for two‑day criminal trial lasted an entire day, that upon receiving notification of jury deadlock, trial judge administered an Allen charge, and that when judge received further notice of deadlock, he inquired whether more time would help facilitate unanimity and jury responded with unequivocal answer that additional time would not break the deadlock. State v. Robinson (S.C.App. 2004) 360 S.C. 187, 600 S.E.2d 100, rehearing denied, certiorari denied. Double Jeopardy 98

The trial judge in a contested will case properly denied appellant’s motion for a mistrial on the asserted ground that the verdict was not unanimous, in violation of Section 14‑7‑1330, where the record showed that the verdict as returned by the jury was signed by the foreman in accordance with the judge’s instructions, the foreman answered affirmatively to the clerk’s question as to whether the jury had reached a verdict, and the foreman’s assent to and acquiescence in the verdict was unequivocal, notwithstanding his attempt to explain his reasoning process in deliberating on the verdict, or to discuss extraneous matters. Byrd v. Byrd (S.C. 1983) 279 S.C. 425, 308 S.E.2d 788. Trial 325(2)

**SECTION 14‑7‑1340.** Duties and service of alternate jurors.

 Such alternate jurors shall sit near the jury panel charged with the case, shall have the same opportunities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already sworn and shall attend at all times the trial of the cause in company with the other jurors. They shall obey the orders of, and be bound by, the admonition of the court upon each adjournment of the court and, if the regular jurors are ordered to be kept in custody by the court during the trial of the cause, such alternate jurors shall also be kept in confinement with the other jurors and, except as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If, before the final submission of the case to the jury, a juror thereon dies or becomes so ill or disabled as to be unable in the judgment of the court to perform his duties thereon, the court shall order him to be discharged and draw the name of one of the alternates, if there be more than one, by ballot to serve in the place of such dead or discharged juror throughout the remainder of the proceedings, being subject to the same rules and regulations as applied to the remainder of jurors, just as though he had been one of the original jurors. If there be but one alternate, he shall be placed upon the jury panel for all further proceedings in such cause.

HISTORY: 1962 Code Section 38‑304; 1952 Code Section 38‑304; 1942 Code Section 626‑2; 1937 (40) 300.

CROSS REFERENCES

Alternate jurors under South Carolina Rules of Civil Procedure, see Rule 47, SCRCP.

Library References

Jury 149.

Westlaw Topic No. 230.

C.J.S. Juries Sections 258, 518 to 519, 525 to 531.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 47.1, Reporter’s Notes.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Presence in jury room 3

Review 4

1. In general

Defendants were not entitled to dismissal of juror who appeared to be asleep, where trial judge stated on record that he concluded that juror was awake and listening with her eyes closed because, on several occasions, she surprised him by picking up her notebook and writing something down, and defendants did not request that trial court question juror in order to determine whether juror was in fact asleep. State v. Smith (S.C.App. 1999) 338 S.C. 66, 525 S.E.2d 263, rehearing denied, certiorari denied. Jury 149

A decision on whether to dismiss a juror and replace her with an alternate lies within the sound discretion of the trial court. State v. Smith (S.C.App. 1999) 338 S.C. 66, 525 S.E.2d 263, rehearing denied, certiorari denied. Jury 149

Until discharged, alternate juror is as much juror as one who ultimately participates in verdict for purposes of rule that juror testimony may not be basis for impeaching jury verdict; alternate jurors should not be treated differently from any other jurors for purposes of verdict impeachment rule. State v. Aldret (S.C.App. 1997) 327 S.C. 321, 489 S.E.2d 635, amended on denial of rehearing, certiorari granted, affirmed in part, reversed in part 333 S.C. 307, 509 S.E.2d 811, rehearing denied. Criminal Law 957(1)

Statute granting presiding judge right to direct the calling of an alternate or 13th juror is remedial and is intended to prevent mistrials in criminal cases of long duration where a juror dies or becomes so ill as to be unable to continue his duties. State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410. Jury 32(1)

2. Constitutional issues

Statute granting presiding judge right to direct the calling of an alternate or 13th juror, does not violate constitutional provision that petit jury of circuit courts shall consist of 12 men, all of whom must be agreed as to verdict in order to render it. State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410. Jury 32(1)

3. Presence in jury room

Error arising from alternate juror’s presence in jury room during first 20 to 30 minutes of deliberations was cured by trial court’s inquiry and jury instructions; when trial court discovered alternate’s presence in jury room, alternate was immediately removed and questioned regarding her participation, she advised that jury had taken one preliminary vote in which she had participated, and had discussed case “a little bit ... not much,” trial court then called jury to courtroom and instructed that it was jury’s responsibility to reach verdict without regard to anything alternate had said or done, after which court thoroughly inquired as to whether jurors could put aside anything alternate had said or done, and after no juror responded and no further request for inquiry was made by counsel, jury was permitted to return to its deliberations. State v. Grovenstein (S.C. 1999) 335 S.C. 347, 517 S.E.2d 216, rehearing denied. Criminal Law 868; Criminal Law 1174(1)

Upon discovering an alternate has inadvertently been permitted into the jury room, the trial judge should remove the alternate and inquire as to the extent of that juror’s participation; the court should then conduct such voir dire as is necessary of the remaining jury panel to ascertain prejudice and, if practicable, tailor instructions requiring the jury to disregard the alternate’s input and, in essence, requiring the jury to begin deliberations anew; if the trial court finds deliberations have proceeded too far, or that the alternate’s impact upon remaining jury members may not be remedied, a mistrial should be had and a new trial ordered. State v. Grovenstein (S.C. 1999) 335 S.C. 347, 517 S.E.2d 216, rehearing denied. Criminal Law 857(1); Criminal Law 868

4. Review

Objection that two alternate jurors participated in jury deliberations prior to introduction of all evidence thereby denying defendant a fair trial was waived where defendant failed to object to trial court’s failure to admonish jury that they were not to so deliberate until all of the evidence had been introduced; objection could not be raised for the first time on appeal. State v. Neeley (S.C. 1978) 271 S.C. 33, 244 S.E.2d 522.

**SECTION 14‑7‑1350.** Petit jurors may be held beyond period for which summoned.

 All jurors summoned to serve at any term of the courts of general sessions or common pleas may be held beyond the period for which they were summoned until all cases in both of such courts to be tried by jury are disposed of or until another jury shall have been empanelled to try such cases.

HISTORY: 1962 Code Section 38‑305; 1952 Code Section 38‑305; 1942 Code Section 636; 1932 Code Section 636; Civ. P. ‘22 Section 576; Civ. C. ‘12 Section 4044; Civ. C. ‘02 Section 2942; 1896 (22) 18.

Library References

Jury 76.

Westlaw Topic No. 230.

C.J.S. Juries Sections 350, 533 to 534.

**SECTION 14‑7‑1360.** Verdict may be set aside on gratuity given to juror by party.

 If either party in a case in which a verdict is returned during the same term of the court, before the trial, gives to any of the jurors who try the cause anything by way of treat or gratuity the court may, on the motion of the adverse party, set aside the verdict and award a new trial of the cause.

HISTORY: 1962 Code Section 38‑307; 1952 Code Section 38‑307; 1942 Code Section 641; 1932 Code Section 641; Civ. P. ‘22 Section 581; Civ. C. ‘12 Section 4049; Civ. C. ‘02 Section 2948; G. S. 2267; R. S. 2408; 1797 (5) 358.

Library References

Criminal Law 855.

Trial 304.

Westlaw Topic Nos. 110, 388.

C.J.S. Criminal Law Sections 1848 to 1853, 1910 to 1912.

C.J.S. Trial Sections 928 to 932, 934 to 943, 945 to 948.

NOTES OF DECISIONS

In general 1

1. In general

In actions for burning over lands by a railroad company, the verdict for defendants will be set aside where the foreman of the jury accepted entertainment from the claim agent of the railroad company one night during the trial, and several of the jurors after the verdict were treated by such agent to liquor, and thanked for what they had done. McGill Bros. v. Seaboard Air Line Ry. (S.C. 1906) 75 S.C. 177, 55 S.E. 216.

**SECTION 14‑7‑1370.** Compensation of jurors in circuit courts.

 Jurors serving in the circuit courts of this State shall, in addition to mileage at the rate of five cents per mile going to and returning from court, receive a per diem in the several counties of this State, as follows:

 (1) In the counties of Anderson, Calhoun, Clarendon, Dillon, Edgefield, Greenville, Greenwood, Lancaster, Laurens, Marion, Marlboro, Richland and York, two dollars; provided, that in Marlboro County petit jurors shall receive, in addition to the per diem, two dollars for each night when detained on jury duty after ten o’clock P.M.;

 (2) In Union County, two dollars and fifty cents; provided, that petit jurors shall receive, in addition to the per diem, two dollars and fifty cents for each night when detained on jury duty after ten o’clock P. M.;

 (3) In the counties of Bamberg, Barnwell, Cherokee, Chester, Colleton, Fairfield, Jasper, Lexington, Oconee and Orangeburg, three dollars; provided, that if any juror in Chester County is kept on duty after eleven o’clock at night, he shall be paid for an additional day; provided, further, that in Orangeburg County each juror shall receive mileage for going to and returning from court for each day of attendance at court;

 (4) In Kershaw and Spartanburg Counties, four dollars;

 (5) In Abbeville County, ten dollars;

 (6) In Berkeley, Fairfield, Horry, McCormick, Newberry and Sumter Counties, five dollars; provided, however, that:

 (a) Jurors in Berkeley County shall be paid mileage at the rate of ten cents per mile going to and returning from court;

 (b) If in Newberry County any juror serving upon any case is detained by such jury service after twelve o’clock midnight, it shall be considered that the jury shall have entered into a new day of jury service; and if a juror in either such county is discharged from jury service before one o’clock P. M. on any day he shall be paid only two dollars and fifty cents;

 (c) Jurors in Chesterfield County shall be paid mileage at seven cents per mile for each day’s attendance on court;

 (d) In Horry County petit jurors shall receive an additional five dollars per night when detained on jury duty after eleven o’clock P. M.; and if any juror in Horry County is excused from jury service at his own request he shall not be paid compensation as a juror but shall only be entitled to receive compensation for mileage;

 (e) In Georgetown County, jurors shall be paid mileage at the rate of seven cents per mile going to and from court;

 (7) The pay for all jurors of Darlington County shall be as follows: The foreman of a grand jury, five dollars per day and ten cents mileage one way; all other jurors, grand and petit, three dollars per day and ten cents mileage one way, and the county auditor of Darlington County shall levy and the treasurer and the tax collector shall collect sufficient funds for the purposes of this paragraph;

 (8) In Saluda County, seven dollars per day and mileage for each trip going to and returning from court;

 (9) In Aiken County, six dollars; and

 (10) In Allendale County, seven dollars;

 (11) In Charleston County the circuit court grand and petit jurors shall receive seven dollars per day whether or not they are discharged from jury service before one o’clock P. M. on any day, and mileage at the rate of ten cents per mile for going to and returning from court for each day of attendance at court;

 (12) In Beaufort County, twelve dollars and fifty cents, and if any juror serving upon any case is detained by such jury service after twelve o’clock midnight, it shall be considered that the jury shall have entered into a new day of jury service. In addition jurors shall be paid mileage for going to and returning from court for each day of attendance at court at the same rate as authorized by law for an employee of the State. Such mileage shall be paid each day.

 (13) In Chesterfield County, eight dollars;

 (14) In Hampton and Georgetown Counties, ten dollars; and

 (15) In Lee County, seven dollars.

 (16) In Pickens and Florence Counties, ten dollars and if any juror serving upon any case is detained by such jury service after twelve o’clock midnight, it shall be considered that the jury shall have entered into a new day of jury service. Jurors shall be paid mileage at the rate of ten cents per mile for going to and returning from court for each day of attendance at court.

 (17) In Edgefield County ten dollars and mileage at the rate of ten cents per mile going to and returning from court for each day’s attendance at court.

 (18) In Dorchester County ten dollars per day and mileage at the rate of ten cents per mile going to and returning from court for each weekly session.

 (19) In Williamsburg County, twelve dollars, and if any juror serving upon any case is detained by such jury service after twelve o’clock midnight, it shall be considered that the jury shall have entered into a new day of jury service. In addition jurors shall be paid mileage for going to and returning from court for each day of attendance at court at the rate of ten cents per mile. Such mileage shall be paid each day.

HISTORY: 1962 Code Section 38‑308; 1952 Code Section 38‑308; 1942 Code Section 632; 1932 Code Section 632; Civ. P. ‘22 Section 572; Civ. C. ‘12 Section 4040; Civ. C. ‘02 Section 2938; G. S. 2269; R. S. 2384; 1874 (15) 608; 1878 (16) 630; 1907 (25) 518; 1911 (27) 86; 1920 (31) 735; 1925 (34) 233; 1933 (38) 8, 14, 76, 111; 1934 (38) 1598; 1935 (39) 220; 1936 (39); 1936 (39) 1304, 1315, 1321, 1544; 1937 (40) 36, 45, 177, 190, 209, 385; 1938 (40) 1563, 1590, 1602, 1698; 1939 (41) 415; 1940 (41) 1938; 1942 (42) 1577; 1943 (43) 13; 1945 (44) 20, 44, 49, 77, 87; 1946 (44) 1356; 1947 (45) 1, 82; 1948 (45) 1722, 1830; 1949 (46) 110, 224; 1950 (46) 2391; 1951 (47) 39, 237; 1952 (47) 1914; 1953 (48) 184, 300; 1954 (48) 1749; 1956 (49) 1750; 1957 (50) 98, 565; 1959 (51) 297, 339; 1960 (51) 1984; 1962 (52) 2220; 1963 (53) 234; 1964 (53) 1739, 2068, 2340; 1966 (54) 3242; 1967 (55) 55, 224, 1014; 1968 (55) 2295, 3530; 1970 (56) 1989; 1971 (57) 1065; 1972 (57) 2647; 1973 (58) 781; 1974 (58) 1938, 2988; 1976 Act No. 504 Sections 1, 2; 1978 Act No. 407 Section 1.

CROSS REFERENCES

Computation of mileage, see Section 8‑21‑20.

Giving false certificates to jurors of mileage traveled, see Section 8‑1‑30.

Monies received by jurors as constituting expense allowance, see Section 14‑1‑190.

Library References

Jury 77.

Westlaw Topic No. 230.

C.J.S. Juries Section 351.

**SECTION 14‑7‑1380.** Cost of feeding juries paid by county.

 Whenever any circuit judge shall order food to be furnished by the sheriff to any jury charged with the consideration of a case, the expenses connected therewith shall be paid by the governing body of the county in which such case is being tried, upon presentation of the bill of the sheriff certified as correct by the presiding judge.

HISTORY: 1962 Code Section 38‑310; 1952 Code Section 38‑310; 1942 Code Section 647; 1932 Code Section 647; Civ. P. ‘22 Section 587; Civ. C. ‘12 Section 4055; Civ. C. ‘02 Section 2954; R. S. 2414; 1891 (20) 1053.

Library References

Jury 77.

Westlaw Topic No. 230.

C.J.S. Juries Section 351.

**SECTION 14‑7‑1390.** Penalty for nonattendance.

 If a person duly drawn and summoned to attend as a juror in any court neglects to attend, without sufficient excuse, he shall pay a civil penalty not exceeding one hundred dollars which must be imposed by the court to which the juror was summoned and paid into the county treasury.

HISTORY: 1962 Code Section 38‑311; 1952 Code Section 38‑311; 1942 Code Section 644; 1932 Code Section 644; Civ. P. ‘22 Section 584; Civ. C. ‘12 Section 4052; Civ. C. ‘02 Section 2951; G. S. 2272; R. S. 2411; 1871 (14) 694; 1997 Act No. 64, Section 1, eff June 10, 1997.

Library References

Jury 74.

Westlaw Topic No. 230.

C.J.S. Juries Section 346.

NOTES OF DECISIONS

In general 1

1. In general

No escape of duty by payment of money. The provisions of this section [Code 1962 Section 38‑311] do not mean that a juror, properly drawn and summoned to attend a session of the court, should be permitted to escape the duty required of him upon the payment of twenty dollars or any other sum of money. State v. King (S.C. 1930) 158 S.C. 251, 155 S.E. 409.

ARTICLE 13

Grand Juries

**SECTION 14‑7‑1510.** Six grand jurors to be selected for second year; periodic exemption from further service.

 (A) During the last term of the court of general sessions held in each county for any year, the clerk of court shall randomly draw from the twelve members serving their first year on the grand jury the names of six of the grand jurors who, together with twelve grand jurors selected in the manner prescribed in this article, shall constitute the grand jury for the succeeding year. The drawing of these names by the clerk of court has the same force and effect as if the names of the six grand jurors had been drawn in the presence of the presiding judge.

 (B) No person shall serve as a grand juror for more than two consecutive years.

 (C) A person completing service as a grand juror under the provisions of this article, including any service as a holdover grand juror, is exempt from any further jury service in any court of this State for a period of five calendar years.

HISTORY: 1962 Code Section 38‑401; 1952 Code Section 38‑401; 1942 Code Section 973; 1932 Code Section 973; Cr. P. ‘22 Section 64; Cr. C. ‘12 Section 62; Cr. C. ‘02 Section 38; 1901 (23) 634; 1903 (24) 108; 1939 (41) 27; 1941 (42) 70; 1943 (43) 263; 1986 Act No. 340, Section 4, eff March 10, 1986; 1998 Act No. 373, Section 1, eff May 26, 1998.

Library References

Grand Jury 3, 6.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 36 to 37, 52, 55, 111.

LAW REVIEW AND JOURNAL COMMENTARIES

“Secrecy and the Grand Jury in South Carolina,” 7 SC L Q 455 (1955).

Attorney General’s Opinions

A grand jury consists of 18 members, 12 new jurors being selected each year, and grand jury members are immune from malicious prosecution actions. 1983 Op.Atty.Gen. No. 83‑30, p. 47 (July 8, 1983) 1983 WL 142701.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

In this State it is only required that twelve new men be drawn once a year to serve as grand jurors and they together with six hold‑over members drawn by lot from the previous grand jury constitute the grand jury for that year. Moorer v State, 244 SC 102, 135 SE2d 713 (1964). Bostick v State, 247 SC 22, 145 SE2d 439 (1965).

This section [Code 1962 Section 38‑401] is directory only and not mandatory. State v. Powers (S.C. 1901) 59 S.C. 200, 37 S.E. 690.

2. Constitutional issues

Provisions do not deny equal protection. There is certainly no denial of the equal protection of the laws in any of the constitutional or statutory provisions as to qualifications of jurors and the method of selecting them. Moorer v State, 244 SC 102, 135 SE2d 713 (1964). Bostick v State, 247 SC 22, 145 SE2d 439 (1965).

The subsequent change of the Constitution would not act to make illegal a grand jury which was legally constituted at the time it was drawn. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

The grand jury was properly constituted at the time it was drawn, although women were excluded from service thereon, since their exclusion was in accord with the Constitution at that time. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563.

Statistical evidence showing that African Americans represented 13% of county’s population but that only 7.5% of those summoned for grand jury service over six‑year period were African American was insufficient to make a prima facie showing of equal protection violation through the systematic discrimination against African Americans in county grand jury selection process, where statistical evidence was not based on persons actually eligible for grand jury service, did not take into account excusals, and failed to take into account holdover jurors. State v. George (S.C. 1998) 331 S.C. 342, 503 S.E.2d 168, rehearing denied, certiorari denied 119 S.Ct. 1050, 525 U.S. 1149, 143 L.Ed.2d 55. Constitutional Law 3310; Grand Jury 2.5

**SECTION 14‑7‑1520.** Drawing of juror names; writs of venire facias; issuance and delivery of writs.

 Not less than fifteen days before the convening of the first term of the court of general sessions for the calendar year, the jury commissioners shall proceed to draw from the jury box the number of grand jurors which the clerk of court or chief administrative judge for the circuit has determined to be sufficient in order to impanel a grand jury. The grand jurors must be randomly drawn and listed as are jurors for trials, and the jury commissioners shall not disqualify or excuse any juror drawn. Immediately after these grand jurors are drawn, the clerk of court shall issue writs of venire facias for these grand jurors, requiring their attendance on the first day of the first week of criminal court in the county or at such other time as the clerk of court may designate. These writs of venire facias must be delivered immediately to the sheriff of the county or otherwise served as provided by law.

HISTORY: 1962 Code Section 38‑402; 1952 Code Section 38‑402; 1942 Code Section 973; 1932 Code Section 973; Cr. P. ‘22 Section 64; Cr. C. ‘12 Section 62; Cr. C. ‘02 Section 38; 1901 (23) 634; 1903 (24) 108; 1939 (41) 27; 1941 (42) 70; 1943 (43) 263; 1986 Act No. 340, Section 4, eff March 10, 1986; 1998 Act No. 373, Section 1, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

NOTES OF DECISIONS

In general 1

1. In general

Effect of commissioner’s assigning names for jury drawing. Although it was an irregularity under this section [Code 1962 Section 38‑405], the jury commissioner’s assigning of those he supposed best suited for grand jury duty in the drawing of names for the grand and petit jury was not such a defect as to affect the verdict. State v Smalls, 73 SC 516, 53 SE 976 (1906). State v Wood, 130 SC 88, 125 SE 566 (1924).

Effect of absence of members of defendant’s race on jury. The fact that the grand jury which found the indictment contained no member of the race to which the defendant belongs is not of itself a ground for quashing indictment. State v. Brownfield (S.C. 1901) 60 S.C. 509, 39 S.E. 2, affirmed 23 S.Ct. 513, 189 U.S. 426, 47 L.Ed. 882.

Since grand jurors are not “impaneled for or charged with the trial,” Act 1899, 23 St. at Large, p. 39, requiring objections to the qualifications of jurors to be made before the jury is “impaneled or charged with the trial,” does not apply to objections to the qualifications of grand jurors. State v. Boyd (S.C. 1900) 56 S.C. 382, 34 S.E. 661.

Objection to juror’s qualification after pleading. Objection as to qualification of grand juror comes too late after pleading to the indictment. State v. Boyd (S.C. 1900) 56 S.C. 382, 34 S.E. 661.

Deficiency in number of grand jurors is to be supplied as in Code 1962 Section 38‑72. State v. Merriman (S.C. 1891) 34 S.C. 16, 12 S.E. 619, rehearing denied 34 S.C. 576, 13 S.E. 328.

The accused is not entitled to a copy of the jury list. State v. Merriman (S.C. 1891) 34 S.C. 16, 12 S.E. 619, rehearing denied 34 S.C. 576, 13 S.E. 328.

**SECTION 14‑7‑1530.** Judge to ascertain qualifications of jurors; lists of excused or disqualified jurors; jurors not served writs.

 On the first day of the term of court, the presiding judge shall ascertain the qualifications of those jurors who have appeared pursuant to the writs of venire facias. No juror may be excused or disqualified except in accordance with existing law as determined by the presiding judge. The clerk of court shall maintain a list of all jurors who are excused or disqualified by the presiding judge and state the reasons given by the presiding judge for excusing or disqualifying the jurors. The sheriff of the county also shall report to the presiding judge the names of those persons who were not served with writs of venire facias, and that reasonable effort was made to obtain service. The clerk of court shall maintain a list of the jurors who were not served with the writs of venire facias and the reasons service was not effected.

HISTORY: 1962 Code Section 38‑403; 1952 Code Section 38‑403; 1942 Code Section 975; 1932 Code Section 975; Cr. P. ‘22 Section 66; Cr. C. ‘12 Section 64; Cr. C. ‘02 Section 38; 1903 (24) 108; 1986 Act No. 340, Section 4, eff March 10, 1986; 1998 Act No. 373, Section 1, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

**SECTION 14‑7‑1540.** Drawing of grand jurors and alternates.

 After the grand jury venire has been duly qualified by the presiding judge, the clerk of court shall place the names of all qualified grand jurors in a container from which twelve grand jurors must be chosen. The clerk of court shall randomly draw twelve jurors from the container, and those twelve jurors drawn shall serve as grand jurors, together with those grand jurors selected as provided under Section 14‑7‑1510(A). The clerk of court shall randomly draw three or more additional jurors, with those three or more jurors serving as alternate grand jurors in the event one or more of the original grand jurors are incapacitated, excused, or disqualified during their term. The names of the alternate grand jurors must be kept separate and numbered in the order drawn and in this order, unless excused by the presiding judge, shall serve when necessary. The remainder of the grand jury venire may be discharged.

HISTORY: 1962 Code Section 38‑404; 1952 Code Section 38‑404; 1942 Code Section 974; 1932 Code Section 974; Cr. P. ‘22 Section 65; Cr. C. ‘12 Section 63; Cr. C. ‘02 Section 38, Subdivision d; 1903 (24) 108; 1986 Act No. 340, Section 4, eff March 10, 1986; 1998 Act No. 373, Section 1, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

NOTES OF DECISIONS

In general 1

1. In general

Witnesses examined before grand jury must be sworn in open court. State v. Kilcrease (S.C. 1876) 6 S.C. 444.

**SECTION 14‑7‑1550.** Authority of grand jury foreman to swear witnesses; procedures to obtain attendance of witnesses.

 The foreman of the grand jury or acting foreman in the circuit courts of any county of the State may swear the witnesses whose names shall appear on the bill of indictment in the grand jury room. No witnesses shall be sworn except those who have been bound over or subpoenaed in the manner provided by law. In order to obtain attendance of any witness, the grand jury may proceed as provided by the South Carolina Rules of Civil Procedure and Sections 19‑9‑10 through 19‑9‑130.

HISTORY: 1962 Code Section 38‑405; 1952 Code Section 38‑405; 1942 Code Section 976; 1932 Code Section 976; Cr. P. ‘22 Section 67; Cr. C. ‘12 Section 65; Cr. C. ‘02 Section 39; G. S. 2630; R. S. 39; 1871 (14) 694; 1986 Act No. 340, Section 4, eff March 10, 1986; 1992 Act No. 483, Section 4, eff July 1, 1992; 1998 Act No. 373, Section 1, eff May 26, 1998.

Library References

Grand Jury 24.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 10, 88 to 99, 103.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

United States Supreme Court Annotations

Immunity, grand jury witness has absolute immunity from any Section 1983 claim based on his or her testimony, see Rehberg v. Paulk, 2012, 132 S.Ct. 1497, 566 U.S. 356, 182 L.Ed.2d 593. Civil Rights 1375

NOTES OF DECISIONS

In general 1

Constitutional issues 3

Construction with other laws 2

1. In general

The appropriation of public funds is a legislative function, and therefore beyond the power of a grand jury, or of a county board of commissioners or board of directors, and it is likewise beyond the province of the judiciary. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487. Constitutional Law 2525; Counties 162

Grand jury may only fix amount of accountant’s compensation. This section [Code 1962 Section 38‑409] does not purport to give the grand jury any power with regard to the cost of the audit authorized, other than to fix the amount of the accountant’s compensation “upon the approval of the presiding or circuit judge.” Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487.

It may not compel payment thereof by mandamus. The Lancaster County appropriation act for 1954‑1955 contemplated but one audit for the fiscal year 1954, so that an action by the grand jury for a writ of mandamus to compel the issuance of warrants to pay for a second audit under this section [Code 1962 Section 38‑409] would not lie. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487.

2. Construction with other laws

This section [Code 1962 Section 38‑409] and county appropriation act must be construed together. In so far as they concern the auditing of the books of the officers of Lancaster County for the fiscal year July 1, 1953‑June 30, 1954, this section [Code 1962 Section 38‑409] and the Lancaster County appropriation act for the fiscal year 1954‑1955, being in pari materia, must be construed together in order to ascertain the intention of the legislature. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487. Counties 159

And in event of conflict, the latter prevails. Since this section [Code 1962 Section 38‑409] is a general law and the Lancaster County appropriation act for the fiscal year 1954‑1955 a special one, the latter must prevail where the two are in conflict. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487. Statutes 1217

3. Constitutional issues

Florida statute prohibiting witness from ever disclosing testimony given before grand jury violates First Amendment insofar as it prohibits witness from disclosing his own testimony after grand jury’s term has ended; State’s interest in preserving grand jury secrecy was either not served by, or insufficient to warrant, proscription of truthful speech on matters of public concern. Butterworth v. Smith, U.S.Fla.1990, 110 S.Ct. 1376, 494 U.S. 624, 108 L.Ed.2d 572. Constitutional Law 2117; Grand Jury 2

**SECTION 14‑7‑1560.** Employment of expert accountants.

 Grand juries may, whenever in their judgment it becomes necessary, employ one or more expert accountants to aid them to examine and investigate the offices, books, papers, vouchers, and accounts of any public officer of their respective counties and to fix the amount of compensation or per diem to be paid therefor, upon the approval of the presiding or circuit judge given before any expert is employed.

HISTORY: 1962 Code Section 38‑406; 1952 Code Section 38‑406; 1942 Code Section 626‑1; 1936 (39) 1458; 1969 (56) 216; 1986 Act No. 340, Section 4, eff March 10, 1986; 1998 Act No. 373, Section 1, eff May 26, 1998.

Library References

Grand Jury 33.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 90, 110 to 112, 114.

NOTES OF DECISIONS

In general 1

1. In general

In so far as they concern the auditing of the books of the officers of Lancaster County for the fiscal year July 1, 1953‑June 30, 1954, this section [Code 1962 Section 38‑409] and the Lancaster County appropriation act for the fiscal year 1954‑1955, being in pari materia, must be construed together in order to ascertain the intention of the legislature. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487.

Since this section [Code 1962 Section 38‑409] is a general law and the Lancaster County appropriation act for the fiscal year 1954‑1955 a special one, the latter must prevail where the two are in conflict. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487. Statutes 1217

The appropriation of public funds is a legislative function, and therefore beyond the power of a grand jury, or of a county board of commissioners or board of directors, and it is likewise beyond the province of the judiciary. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487. Constitutional Law 2525; Counties 162

This section [Code 1962 Section 38‑409] does not purport to give the grand jury any power with regard to the cost of the audit authorized, other than to fix the amount of the accountant’s compensation “upon the approval of the presiding or circuit judge.” Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487.

The Lancaster County appropriation act for 1954‑1955 contemplated but one audit for the fiscal year 1954, so that an action by the grand jury for a writ of mandamus to compel the issuance of warrants to pay for a second audit under this section [Code 1962 Section 38‑409] would not lie. Gregory v. Rollins (S.C. 1956) 230 S.C. 269, 95 S.E.2d 487.

ARTICLE 15

State Grand Jury Act

**SECTION 14‑7‑1600.** Short title; State Grand Jury of South Carolina defined.

 This article may be cited as the “State Grand Jury Act”, and any state grand jury which may be convened as provided herein to be known as a “State Grand Jury of South Carolina”.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Editor’s Note

Laws 1987 Act No. 150, Section 3, provides as follows:

“Section 3. This act takes effect upon the ratification of amendments to Article 1 and Article V of the Constitution of this State, permitting the establishment of a state grand jury and indictments to be issued by same.”. The amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution on February 8, 1989. See 1989 Act No. 5, Sections 1 and 2, 1989 Act No. 7, Section 1, and 1989 Act No. 8, Section 1.

CROSS REFERENCES

Trafficking in persons, definitions, see Section 16‑3‑2010.

Trafficking in persons, penalties, defenses, see Section 16‑3‑2020.

RESEARCH REFERENCES

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 8.1(B), Special Grand Juries.

**SECTION 14‑7‑1610.** Legislative findings and intent; applicability.

 (A) It is the intent of the General Assembly to enhance the grand jury system and to improve the ability of the State to detect and eliminate criminal activity. The General Assembly recognizes the great importance of having the federal authorities available for certain investigations. The General Assembly finds that crimes involving narcotics, dangerous drugs, or controlled substances, trafficking in persons, as well as crimes involving obscenity, often transpire or have significance in more than one county of this State. When this occurs, these crimes are most effectively detected and investigated by a grand jury system with the authority to cross county lines.

 (B) The General Assembly finds that there is a critical need to enhance the grand jury system to improve the ability of the State to prevent, detect, investigate, and prosecute crimes involving criminal gang activity or a pattern of criminal gang activity pursuant to the provisions of Article 3 of Chapter 8, Title 16. Crimes involving criminal gang activity or a pattern of criminal gang activity transpire at times in a single county, but often transpire or have significance in more than one county of this State. The General Assembly believes criminal gang activity poses an immediate, serious, and unacceptable threat to the citizens of the State and therefore warrants the state grand jury possessing considerably broader investigative authority.

 (C) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and eliminate public corruption. Crimes involving public corruption transpire at times in a single county, but often transpire or have significance in more than one county of this State. The General Assembly believes that a state grand jury, possessing considerably broader investigative authority than individual county grand juries, should be available to investigate public corruption offenses in South Carolina.

 (D) The General Assembly finds it fundamentally necessary to improve the ability of the State to prevent, detect, investigate, and prosecute crimes that involve the depiction of children under the age of eighteen in sexual activity, and obscenity crimes that are directed toward or involve children under the age of eighteen. The serious and unacceptable threat that these crimes pose to children is self‑evident and impacts the State as a whole even if the actual criminal act occurs only in one county of the State. An effective effort to eliminate these heinous crimes requires a coordinated effort, which is accomplished more effectively through the state grand jury system. The effective prevention, detection, investigation, and prosecution of these crimes may require the use and application of state obscenity statutes or common law offenses not specifically directed toward the prevention and punishment of obscenity crimes involving children. Because many of these crimes involve computers, statewide jurisdiction over these crimes is consistent with the jurisdiction of a state grand jury over offenses defined in the Computer Crime Act. The General Assembly concludes that a state grand jury must be available to employ its broad investigative powers in the investigation of child‑related obscenity by enabling the state grand jury to investigate all obscenity offenses, regardless of their multi‑county impact, or whether they transpire or have significance in more than one county of this State.

 (E) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and investigate crimes involving the election laws including, but not limited to, those named offenses as specified in Title 7, or common law crimes involving the election laws where not superseded, or a crime arising out of or in connection with the election laws, or attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

 (F) The General Assembly finds that there is a need to enhance the grand jury system to improve the ability of the State to detect and investigate knowing and wilful crimes which result in actual and substantial harm to the environment. These crimes include knowing and wilful offenses specified in Titles 13, 44, and 48, or any knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages including, but not limited to, the cost of remediation, are two million dollars or more, as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control.

 (1) The General Assembly finds that the South Carolina Department of Health and Environmental Control possesses the expertise and knowledge to determine whether there has occurred an alleged environmental offense as defined in this article.

 (2) The General Assembly finds that, because of its expertise and knowledge, the Department of Health and Environmental Control must play a substantial role in the investigation of any such alleged environmental offense.

 (3) The General Assembly finds that, while the Department of Health and Environmental Control must not make prosecutorial decisions regarding such alleged environmental offense as defined in this article, the department must be integrally involved in the investigation of any such alleged environmental offense before and after the impaneling of a state grand jury pursuant to Section 14‑7‑1630.

 (4) The General Assembly finds that it is in the public interest to avoid duplicative and overlapping prosecutions to the extent that the Attorney General considers possible. Therefore, the Attorney General shall consult with and advise the Environmental Protection and Enforcement Coordinating Subcommittee and cooperate with other state and federal prosecutorial authorities having jurisdiction over environmental enforcement in order to carry out the provisions of Sections 14‑7‑1630(A)(8) and 14‑7‑1630(C).

 (G) The General Assembly finds that related criminal activity often arises out of or in connection with crimes involving narcotics, dangerous drugs or controlled substances, criminal gang activity, obscenity, public corruption, or environmental offenses and that the mechanism for detecting and investigating these related crimes must be improved.

 (H) Accordingly, the General Assembly concludes that a state grand jury should be allowed to investigate certain crimes related to narcotics, dangerous drugs, or controlled substances, criminal gang activity, trafficking in persons, and obscenity and also should be allowed to investigate crimes involving public corruption, election laws, and environmental offenses.

 (I) This section does not limit the authority of a county grand jury, solicitor, or other appropriate law enforcement personnel to investigate, indict, or prosecute offenses within the jurisdiction of the state grand jury.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution was ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992; 2004 Act No. 208, Section 1, eff April 26, 2004; 2005 Act No. 75, Section 1, eff May 24, 2005; 2007 Act No. 82, Section 2, eff June 12, 2007; 2015 Act No. 7 (S.196), Section 1, eff April 2, 2015.

Library References

Grand Jury 1.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 4, 9 to 11.

NOTES OF DECISIONS

In general 1

Multi‑county impact 2

1. In general

State grand jury has subject matter jurisdiction to issue indictments in factual scenarios involving an investigation lasting longer than two years, or an investigation transferred from one state grand jury to a subsequent state grand jury; although legislature limited time period for which a single state grand jury may investigate a particular matter to two years, nothing in grand jury statute purports to forbid a subsequent referral to another state grand jury or to limit the number of grand juries which may investigate a matter, and legislature granted prosecutors the authority to disclose matters before one state grand jury to a subsequent state grand jury to assist in the investigation. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Grand Jury 25

The state grand jury operates under a very specialized procedure under which a defendant is permitted to obtain and review all evidence which was considered in handing down an indictment. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

A defendant can attack the state grand jury’s subject matter jurisdiction by challenging the sufficiency of the evidence presented at the grand jury proceeding before the jury is sworn. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

The state grand jury was created to improve the state’s ability to detect and eliminate multi‑county criminal activity; to this end, the grand jury has statewide authority, but its jurisdiction is limited to certain offenses. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

2. Multi‑county impact

Evidence permitted state grand jury to conclude that cocaine trafficking offenses with which defendant was charged had multi‑county significance, and thus, state grand jury had subject matter jurisdiction over those offenses; state’s informant testified before state grand jury that he delivered and received payment for heroin and cocaine from defendant’s accomplice in two counties, and law enforcement officer testified that defendant’s arrest resulted from investigation of large drug distribution ring involving six counties. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 26

The state grand jury has subject matter jurisdiction over any crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances, if the crimes are of a multi‑county nature or have significance in more than one South Carolina county. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 26

The jurisdictional mandate governing the state grand jury requires only that an otherwise valid indictment contain an allegation of multi‑county significance. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

The state grand jury may properly return an indictment alleging a single‑county offense if the offense has multi‑county significance and the indictment contains this allegation. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 26

Once jurisdiction vests in the state grand jury, the state need not prove multi‑county impact at trial unless multi‑county impact is actually an element of the offense charged. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

In determining whether cocaine trafficking offenses were of multi‑county nature or had significance in more than one county, and whether state grand jury thus had subject matter jurisdiction, trial court erroneously focused on evidence presented at preliminary hearing, rather than evidence before state grand jury. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

**SECTION 14‑7‑1615.** Definitions.

 For purposes of this article:

 (A) the phrase “Attorney General or his designee” also includes:

 (1) the Attorney General or his designees;

 (2) the Attorney General and his designee or designees.

 (B) The term “public corruption” means any unlawful activity, under color of or in connection with any public office or employment, of:

 (1) any public official, public member, or public employee, or the agent, servant, assignee, consultant, contractor, vendor, designee, appointee, representative, or any other person of like relationship, by whatever designation known, of any public official, public member, or public employee under color of or in connection with any public office or employment; or

 (2) any candidate for public office or the agent, servant, assignee, consultant, contractor, vendor, designee, appointee, representative of, or any other person of like relationship, by whatever name known, of any candidate for public office.

HISTORY: 1989 Act No. 2, Section 1, eff February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution; See 1989 Act No. 5, Sections 1 and 2, 1989 Act No. 7, Section 1, and 1989 Act No. 8, Section 1.); 1992 Act No. 335, Section 1, eff May 4, 1992.

CROSS REFERENCES

State grand jury jurisdiction over offense involving public corruption, see Section 14‑7‑1630.

**SECTION 14‑7‑1620.** State grand jury system established; meeting place; quorum.

 There is established a state grand jury system, each state grand jury consisting of eighteen persons who shall meet in Columbia or at another suitable place in this State designated by the chief administrative judge of the judicial circuit in which the Attorney General seeks to impanel a state grand jury for a term hereinafter provided. Twelve members of a state grand jury constitute a quorum.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 2.5.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 5, 11, 13 to 21.

United States Supreme Court Annotations

Group or class discrimination in selection of grand or petit jury as prohibited by Federal Constitution—Supreme Court cases. 33 L Ed 2d 783.

**SECTION 14‑7‑1630.** Jurisdiction of juries; notification to impanel juries; powers and duties of impaneling and presiding judges; transfer of incomplete investigations; effective date and notice requirements with respect to orders of judge; appeals.

Text of (A) effective until the later of June 9, 2017 or publication in the State Register of final regulations implementing 2016 Act No. 266.

 (A) The jurisdiction of a state grand jury impaneled pursuant to this article extends throughout the State. The subject matter jurisdiction of a state grand jury in all cases is limited to the following offenses:

 (1) a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances, including, but not limited to, money laundering as specified in Section 44‑53‑475, obstruction of justice, perjury or subornation of perjury, or any attempt, aiding, abetting, solicitation, or conspiracy to commit one of the aforementioned crimes, if the crime is of a multi‑county nature or has transpired or is transpiring or has significance in more than one county of this State;

 (2) a crime involving criminal gang activity or a pattern of criminal gang activity pursuant to Article 3, Chapter 8, Title 16;

 (3) a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615, a crime, statutory, common law or other, arising out of or in connection with a crime involving public corruption as defined in Section 14‑7‑1615, and any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615;

 (4) a crime involving the election laws, including, but not limited to, those named offenses specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws;

 (5) a crime involving computer crimes, pursuant to Chapter 16, Title 16, or a conspiracy or solicitation to commit a crime involving computer crimes;

 (6) a crime involving terrorism, or a conspiracy or solicitation to commit a crime involving terrorism. Terrorism includes an activity that:

 (a) involves an act dangerous to human life that is a violation of the criminal laws of this State;

 (b) appears to be intended to:

 (i) intimidate or coerce a civilian population;

 (ii) influence the policy of a government by intimidation or coercion; or

 (iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

 (c) occurs primarily within the territorial jurisdiction of this State;

 (7) a crime involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws;

 (8) a crime involving obscenity, including, but not limited to, a crime as provided in Article 3, Chapter 15, Title 16, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving obscenity;

 (9) a crime involving the knowing and wilful making of, aiding and abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in an affidavit regarding an alien’s lawful presence in the United States, as defined by law, if the number of violations exceeds twenty or if the public benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

 (10) a crime involving financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of documents used in an immigration matter as defined in Section 16‑13‑525, if the number of violations exceeds twenty, or if the value of the ascertainable loss of money or property suffered by a person or persons from a violation or combination of violations exceeds twenty thousand dollars;

 (11) a crime involving the knowing and wilful making of, aiding or abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in a document prepared or executed as part of the provision of immigration assistance services in an immigration matter, as defined by law, if the number of violations exceeds twenty, or if a benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

 (12) a knowing and wilful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and wilful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages, including, but not limited to, the cost of remediation, is two million dollars or more, as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control. If the knowing and wilful crime is a violation of federal law, a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section; and

 (13) a crime involving or relating to the offense of trafficking in persons, as defined in Section 16‑3‑2020, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county.

Text of (A) effective upon the later of June 9, 2017 or publication in the State Register of final regulations implementing 2016 Act No. 266.

 (A) The jurisdiction of a state grand jury impaneled pursuant to this article extends throughout the State. The subject matter jurisdiction of a state grand jury in all cases is limited to the following offenses:

 (1) a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances, including, but not limited to, money laundering as specified in Section 44‑53‑475, obstruction of justice, perjury or subornation of perjury, or any attempt, aiding, abetting, solicitation, or conspiracy to commit one of the aforementioned crimes, if the crime is of a multi‑county nature or has transpired or is transpiring or has significance in more than one county of this State;

 (2) a crime involving criminal gang activity or a pattern of criminal gang activity pursuant to Article 3, Chapter 8, Title 16;

 (3) a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615, a crime, statutory, common law or other, arising out of or in connection with a crime involving public corruption as defined in Section 14‑7‑1615, and any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime, statutory, common law or other, involving public corruption as defined in Section 14‑7‑1615;

 (4) a crime involving the election laws, including, but not limited to, those named offenses specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws;

 (5) a crime involving computer crimes, pursuant to Chapter 16, Title 16, or a conspiracy or solicitation to commit a crime involving computer crimes;

 (6) a crime involving terrorism, or a conspiracy or solicitation to commit a crime involving terrorism. Terrorism includes an activity that:

 (a) involves an act dangerous to human life that is a violation of the criminal laws of this State;

 (b) appears to be intended to:

 (i) intimidate or coerce a civilian population;

 (ii) influence the policy of a government by intimidation or coercion; or

 (iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

 (c) occurs primarily within the territorial jurisdiction of this State;

 (7) a crime involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws;

 (8) a crime involving obscenity, including, but not limited to, a crime as provided in Article 3, Chapter 15, Title 16, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving obscenity;

 (9) a crime involving the knowing and wilful making of, aiding and abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in an affidavit regarding an alien’s lawful presence in the United States, as defined by law, if the number of violations exceeds twenty or if the public benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

 (10) a crime involving financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of documents used in an immigration matter as defined in Section 16‑13‑525, if the number of violations exceeds twenty, or if the value of the ascertainable loss of money or property suffered by a person or persons from a violation or combination of violations exceeds twenty thousand dollars;

 (11) a crime involving the knowing and wilful making of, aiding or abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in a document prepared or executed as part of the provision of immigration assistance services in an immigration matter, as defined by law, if the number of violations exceeds twenty, or if a benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

 (12) a knowing and wilful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and wilful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages, including, but not limited to, the cost of remediation, is two million dollars or more, as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control. If the knowing and wilful crime is a violation of federal law, a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section;

 (13) a crime involving or relating to the offense of trafficking in persons, as defined in Section 16‑3‑2020, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county; and

 (14) a crime involving a violation of the South Carolina Anti‑Money Laundering Act as set forth in Chapter 11, Title 35, or a crime related to a violation of the Anti‑Money Laundering Act.

 (B) When the Attorney General and the Chief of the South Carolina Law Enforcement Division consider a state grand jury necessary to enhance the effectiveness of investigative or prosecutorial procedures, the Attorney General may notify in writing to the chief administrative judge for general sessions in the judicial circuit in which he seeks to impanel a state grand jury that a state grand jury investigation is being initiated. This judge is referred to in this article as the presiding judge. The notification must allege the type of offenses to be inquired into and, in the case of those offenses contained in subsection (A)(1), must allege that these offenses may be of a multicounty nature or have transpired or are transpiring or have significance in more than one county of the State. The notification in all instances must specify that the public interest is served by the impanelment.

 (C) In all investigations of crimes specified in subsection (A)(12), except in matters where the Department of Health and Environmental Control or its officers or employees are the subjects of the investigation, the Commissioner of the Department of Health and Environmental Control must consult with and, after investigation, provide a formal written recommendation to the Attorney General and the Chief of the South Carolina Law Enforcement Division. The Attorney General and the Chief of the South Carolina Law Enforcement Division must consider the impaneling of a state grand jury necessary and the commissioner must sign a written recommendation before the Attorney General notifies the chief administrative judge pursuant to subsection (B).

 (1) In the case of evidence brought to the attention of the Attorney General, the Chief of the South Carolina Law Enforcement Division, or the Department of Health and Environmental Control by an employee or former employee of the alleged violating entity, there also must be separate, credible evidence of the violation in addition to the testimony or documents provided by the employee or former employee of the alleged violating entity.

 (2) When an individual employee performs a criminal violation of the environmental laws that results in actual and substantial harm pursuant to subsection (A)(12) and which prompts an investigation authorized by this article, only the individual employee is subject to the investigation unless or until there is separate, credible evidence that the individual’s employer knew of, concealed, directed, or condoned the employee’s action.

 (D) If the notification properly alleges inquiry into crimes within the jurisdiction of the state grand jury and the notification is otherwise in order pursuant to the requirements of this section, the presiding judge must impanel a state grand jury. State grand juries are impaneled for a term of twelve calendar months. Upon the request by the Attorney General, the then chief administrative judge for general sessions in the judicial circuit in which a state grand jury was impaneled, by order, must extend the term of that state grand jury for a period of six months but the term of that state grand jury, including an extension of the term, must not exceed two years. If at the conclusion of a state grand jury’s term a particular investigation is not completed, the Attorney General may notify the presiding judge in writing that the investigation is being transferred to the subsequently impaneled state grand jury.

 A decision by the presiding judge not to impanel a state grand jury after notification by the Attorney General may be appealed to the Supreme Court and shall be handled in an expedited fashion.

 (E) The chief administrative judge of the circuit wherein a state grand jury is sitting shall preside over that state grand jury during his tenure as chief administrative judge. The successor chief administrative judge shall assume all duties and responsibilities with regard to a state grand jury impaneled before his term including, but not limited to, presiding over the state grand jury and ruling on petitions to extend its term.

 (F) Upon the request of the Attorney General, the presiding judge may discharge a state grand jury prior to the end of its original term or an extension of the term.

 (G) An order limiting or ending a state grand jury investigation only shall be granted upon a finding of arbitrary action, compelling circumstances, or serious abuses of law or procedure by or before the state grand jury, and does not become effective less than ten days after the date on which it is issued and actual notice given to the Attorney General and the foreman of the state grand jury, and may be appealed by the Attorney General or the legal advisor to the state grand jury to the Supreme Court. If an appeal from the order is made, the state grand jury, except as is otherwise ordered by the Supreme Court, shall continue to exercise its powers pending disposition of the appeal. Appeals by the Attorney General or the legal advisor to the state grand jury of orders limiting or ending a state grand jury investigation, and appeals from orders granting or denying motions to quash or contempt citations therefrom which are immediately appealable under the law, must be handled by the South Carolina Supreme Court in an expedited fashion.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1989 Act No. 2, Section 3, eff February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992; 2002 Act No. 339, Section 7, eff July 2, 2002; 2003 Act No. 78, Section 1, eff June 4, 2003; 2004 Act No. 208, Section 2, eff April 26, 2004; 2005 Act No. 75, Section 2, eff May 24, 2005; 2007 Act No. 82, Section 3, eff June 12, 2007; 2008 Act No. 280, Section 14, eff June 4, 2008; 2015 Act No. 7 (S.196), Section 2, eff April 2, 2015; 2015 Act No. 45 (S.268), Section 1, eff June 3, 2015; 2016 Act No. 266 (H.4554), Section 2, eff upon contingency.

Editor’s Note

2016 Act No. 266, Section 5, provides:

“SECTION 5. This act takes effect one year after approval of this act by the Governor or upon the publication in the State Register of final regulations implementing the act, whichever occurs later. The commissioner is authorized to begin promulgating these regulations upon approval of this act by the Governor which shall take effect when this act takes effect as provided in this section.”

Effect of Amendment

2016 Act No. 266, Section 2, in (A), added (14), related to the Anti‑Money Laundering Act.

CROSS REFERENCES

Jurisdiction of presiding judge, see Section 14‑7‑1730.

Role of Attorney General in investigating and prosecuting crimes specified in this section, see Section 14‑7‑1650.

Library References

Grand Jury 24.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 10, 88 to 99, 103.

RESEARCH REFERENCES

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S.C. Jur. Forfeitures Section 12, Venue and Jurisdiction.

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Facing the Fear of Fraud: The Rise of Senate Bill 555 After the Fall of Carolina Investors. 55 SC Law Rev 653 (Spring 2004).

Land of the free, home of the slave: Human trafficking legislation in South Carolina. Caroline A. Ross, 68 S.C. L. Rev. 1015 (Spring 2017).

United States Supreme Court Annotations

Group or class discrimination in selection of grand or petit jury as prohibited by Federal Constitution—Supreme Court cases. 33 L Ed 2d 783.

NOTES OF DECISIONS

In general 1

Indictment 2

Review 3

1. In general

A state grand jury proceeding is an investigatory tool that is available to the Attorney General or his designee vested with the authority over an investigation within the subject matter jurisdiction of the State Grand Jury Act; the individual acting with the authority of the Attorney General may lawfully seek to impanel a state grand jury. Pascoe v. Wilson (S.C. 2016) 416 S.C. 628, 788 S.E.2d 686. Grand Jury 25

The responsibility to initiate a state grand jury proceeding should only be exercised by an individual with thorough knowledge of the investigation leading up to the request for a state grand jury. Pascoe v. Wilson (S.C. 2016) 416 S.C. 628, 788 S.E.2d 686. Grand Jury 25

The purpose of the State Grand Jury Act provision regarding authorization of an investigation is to provide the mechanism for the initiation of a state grand jury proceeding. Pascoe v. Wilson (S.C. 2016) 416 S.C. 628, 788 S.E.2d 686. Grand Jury 25

Phrase “or a crime related to,” in statutory provision giving state grand jury subject matter jurisdiction over securities fraud and violations of securities laws, is broad enough to encompass those crimes committed in the same course of conduct as an enumerated crime. State v. Sheppard (S.C. 2011) 391 S.C. 415, 706 S.E.2d 16. Grand Jury 26

State grand jury had subject matter jurisdiction over counts of conspiracy and obtaining property under false pretenses, even though those specific crimes may not have been enumerated in statute governing jurisdiction of a state grand jury, because they were committed in the same course of conduct as securities fraud. State v. Sheppard (S.C. 2011) 391 S.C. 415, 706 S.E.2d 16. Grand Jury 26

A defendant can attack the state grand jury’s subject matter jurisdiction by challenging the sufficiency of the evidence presented at the grand jury proceeding before the jury is sworn. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

The state grand jury has subject matter jurisdiction over any crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances, if the crimes are of a multi‑county nature or have significance in more than one South Carolina county. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 26

Evidence permitted state grand jury to conclude that cocaine trafficking offenses with which defendant was charged had multi‑county significance, and thus, state grand jury had subject matter jurisdiction over those offenses; state’s informant testified before state grand jury that he delivered and received payment for heroin and cocaine from defendant’s accomplice in two counties, and law enforcement officer testified that defendant’s arrest resulted from investigation of large drug distribution ring involving six counties. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 26

Once jurisdiction vests in the state grand jury, the state need not prove multi‑county impact at trial unless multi‑county impact is actually an element of the offense charged. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

In determining whether cocaine trafficking offenses were of multi‑county nature or had significance in more than one county, and whether state grand jury thus had subject matter jurisdiction, trial court erroneously focused on evidence presented at preliminary hearing, rather than evidence before state grand jury. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

The State Grand Jury does not have subject matter jurisdiction to hear civil forfeiture actions. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373.

A confirmation of forfeiture proceeding would not be overturned on the ground of lack of subject matter jurisdiction because the forfeiture complaint had been filed with the State Grand Jury where the case was tried in a Court of Common Pleas to a civil jury. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373. Forfeitures 100

In a prosecution for trafficking in cocaine, the Attorney General fully complied with Section 14‑7‑1630, and properly impaneled the grand jury, where the petitions to order impanelment (1) specifically traced the language of Section 14‑7‑1630, (2) stated that the offenses to be inquired into by the grand jury included possession, distribution and trafficking in controlled substances, or conspiracy to commit these offenses, and (3) stated that the offenses were multi‑county in nature and that the public interest would be served by impaneling the state grand jury, and where the judges, in their impaneling orders, stated that they gave the petitions consideration as required by Section 14‑7‑1630(C). State v. Adams (S.C.App. 1995) 319 S.C. 509, 462 S.E.2d 308, rehearing denied.

The state grand jury was created to improve the state’s ability to detect and eliminate multi‑county criminal activity; to this end, the grand jury has statewide authority, but its jurisdiction is limited to certain offenses. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

The state grand jury’s jurisdiction over some enumerated offenses is limited to those which are of a multi‑county nature or have transpired or are transpiring or have significance in more than one county of the state. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

2. Indictment

State grand jury has subject matter jurisdiction to issue indictments in factual scenarios involving an investigation lasting longer than two years, or an investigation transferred from one state grand jury to a subsequent state grand jury; although legislature limited time period for which a single state grand jury may investigate a particular matter to two years, nothing in grand jury statute purports to forbid a subsequent referral to another state grand jury or to limit the number of grand juries which may investigate a matter, and legislature granted prosecutors the authority to disclose matters before one state grand jury to a subsequent state grand jury to assist in the investigation. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Grand Jury 25

The state grand jury may properly return an indictment alleging a single‑county offense if the offense has multi‑county significance and the indictment contains this allegation. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 26

The state grand jury operates under a very specialized procedure under which a defendant is permitted to obtain and review all evidence which was considered in handing down an indictment. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

The jurisdictional mandate governing the state grand jury requires only that an otherwise valid indictment contain an allegation of multi‑county significance. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Grand Jury 25

The trial court did not err in refusing defendant’s motion for a directed verdict on the ground that the State failed to prove “multi‑county impact” where such was not an element of the offense of trafficking; the fact that an indictment is handed down by a State Grand Jury rather than a county grand jury does not change the elements of an offense. State v. Evans (S.C. 1996) 322 S.C. 78, 470 S.E.2d 97, rehearing denied, denial of post‑conviction relief affirmed in part, reversed in part 363 S.C. 495, 611 S.E.2d 510.

In the prosecution of a matter alleging drug trafficking having significance in more than one county of the state, the State Grand Jury acted within its jurisdiction where the indictment alleged the drug trafficking offense and included the phrase “said activity having significance in more than one county of the state;” the State Grand Jury was not required to specifically enumerate those counties in which the defendant’s drug trafficking had multi‑county impact. State v. Evans (S.C. 1996) 322 S.C. 78, 470 S.E.2d 97, rehearing denied, denial of post‑conviction relief affirmed in part, reversed in part 363 S.C. 495, 611 S.E.2d 510.

The trial court did not err in refusing defendant’s motion for a directed on the ground that the allegation of multi‑county significance found in the indictment was at variance with the State’s proof of trafficking in cocaine in a single county where the charge of trafficking cocaine a in a single county was included in the indictment and the allegation of multi‑county significance was simply a jurisdictional statement for purposes of the State Grand Jury. State v. Evans (S.C. 1996) 322 S.C. 78, 470 S.E.2d 97, rehearing denied, denial of post‑conviction relief affirmed in part, reversed in part 363 S.C. 495, 611 S.E.2d 510. Controlled Substances 67

Although an indictment charging the trafficking in cocaine pursuant to Section 44‑53‑370 contained an allegation of multi‑county significance, the charge failed to convey jurisdiction to the State Grand Jury based on multi‑county criminal activity where there was absolutely no evidence that the offense did in fact, have multi‑county significance; to require only that the indictment allege multi‑county significance to convey jurisdiction to the State Grand Jury would subvert the clear intent of Section 14‑7‑1630(A)(1). State v. Evans (S.C.App. 1995) 319 S.C. 320, 460 S.E.2d 578, certiorari denied, reversed 322 S.C. 78, 470 S.E.2d 97, rehearing denied, denial of post‑conviction relief affirmed in part, reversed in part 363 S.C. 495, 611 S.E.2d 510.

The conviction and sentences of the appellants would be vacated on the grounds of lack of subject matter jurisdiction where the indictment failed to allege that the offense charged had significance in other counties; multi‑county impact is necessary to establish the subject matter jurisdiction of the state grand jury. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

Facts supporting the state grand jury’s jurisdiction must be set forth in the indictment. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

3. Review

State’s appeal from dismissal of six‑count state grand jury indictment was moot to extent that defendant pled guilty to county grand jury indictment on four of six counts contained in state grand jury indictment, but not as to remaining two counts of state grand jury indictment; even though, in return for defendant’s guilty plea on four charges, state agreed to recommend concurrent sentences if he were convicted or pled guilty to remaining charges, there were possible legal consequences stemming from remaining charges, as conviction itself was legal consequence, and state’s sentence recommendation was not binding on trial judge. State v. Green (S.C.App. 1999) 337 S.C. 67, 522 S.E.2d 602. Criminal Law 1134.26

**SECTION 14‑7‑1640.** Indictment by state grand jury; powers and duties of state grand jury.

 A state grand jury may return indictments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it must be certified and transferred for prosecution to the county where the offense was committed in accordance with Section 14‑7‑1750. The powers and duties of and the law applicable to county grand juries apply to a state grand jury, except when these are inconsistent with the provisions of this article.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 24.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 10, 88 to 99, 103.

**SECTION 14‑7‑1650.** Duties and obligations of Attorney General; recusal; motion to disqualify.

 (A) The Attorney General or his designee shall attend sessions of a state grand jury and shall serve as its legal advisor. The Attorney General or his designee shall examine witnesses, present evidence, and draft indictments and reports upon the direction of a state grand jury.

 (B) In all investigations of the crimes specified in Section 14‑7‑1630, except in matters where the solicitor(s) or his staff are the subject(s) of such investigation, the Attorney General shall consult with the appropriate solicitor(s) of the jurisdiction(s) where the crime or crimes occurred. After consultation, the Attorney General shall determine whether the investigation should be presented to a county grand jury or whether to initiate, under Section 14‑7‑1630(B), a state grand jury investigation.

 (C) When the Attorney General determines that he should recuse himself from participation in a state grand jury investigation and prosecution, the Attorney General may either refer the matter to a solicitor for investigation and prosecution, or remove himself entirely from any involvement in the case and designate a prosecutor to assume his functions and duties pursuant to this article. When a solicitor determines that he should recuse himself from participation in a state grand jury matter, the Attorney General shall conduct such investigation and prosecution but the Attorney General, in his discretion, may designate another solicitor or appoint a special prosecutor not subject to a conflict to handle or assist him in the state grand jury investigation as the Attorney General deems appropriate.

 (D)(1) A hearing on a motion to disqualify the Attorney General or legal advisor for the state grand jury from a state grand jury investigation shall be held in public, however the presiding judge must conduct the hearing in a manner to insure the secrecy and integrity of the investigation. The presiding judge shall protect the identity of the person or persons being investigated to the extent practicable. In order to disqualify the Attorney General or legal advisor for the state grand jury, the presiding judge must find an actual conflict of interest resulting in actual prejudice against the moving party. If the Attorney General or legal advisor for the state grand jury or a member of the staff is disqualified then the Attorney General must refer the matter to a circuit solicitor for investigation and prosecution. If a circuit solicitor or special prosecutor, or member of their staff, is disqualified, the matter must be referred to the Office of the Attorney General for investigation or prosecution.

 (2) An order to disqualify the Attorney General or legal advisor for the state grand jury from a state grand jury investigation, issued prior to the issuance of an indictment or arrest warrant, shall not become effective less than ten days after the date issued and notice is given to the opposing parties unless appealed. If an appeal from the order is made, the state grand jury and the Attorney General or legal advisor for the state grand jury, except as is otherwise ordered by the Supreme Court, shall continue to exercise their powers pending disposition of the appeal. The Supreme Court must handle all appeals from this section in an expedited manner.

 (3) The state grand jury may continue with its investigation and the Attorney General or the solicitor or his designee may continue to serve as legal advisor to the state grand jury with all authority, functions, and responsibilities set forth in this article, until the final order becomes effective or upon the issuance of the final order of the Supreme Court if appealed, whichever occurs later.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992; 2015 Act No. 45 (S.268), Section 2, eff June 3, 2015.

CROSS REFERENCES

Jurisdiction of presiding judge, see Section 14‑7‑1730.

Library References

Grand Jury 24.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 10, 88 to 99, 103.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 11, Investigative Powers.

S.C. Jur. Attorney General Section 17, Criminal Prosecutions.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 15.1(D), Indictment Jurisdictions.

United States Supreme Court Annotations

Group or class discrimination in selection of grand or petit jury as prohibited by Federal Constitution—Supreme Court cases. 33 L Ed 2d 783.

Notes of Decisions

In general 1

1. In general

Attorney General’s Office in its entirety was recused from investigation of state legislators, and solicitor was vested with full authority to act as Attorney General for purpose of investigation; correspondence from Attorney General’s Office to solicitor and Chief of Law Enforcement Division stated that Office was recused from investigation, leaving only solicitor as state’s highest prosecutor in that matter, Chief, a neutral witness, understood that entire Office was recused from further involvement, and presiding judge and state grand jury clerk accepted that solicitor had authority to act in initiating state grand jury investigation prior to concerns being raised by individuals at Office. Pascoe v. Wilson (S.C. 2016) 416 S.C. 628, 788 S.E.2d 686. Attorney General 6

Attorney General’s transfer of authority to investigate state legislators to chief deputy, and subsequent transfer of authority from chief deputy to solicitor, were not governed by State Grand Jury Act; Act only applied to removal of Attorney General by disqualification after state grand jury initiation process had begun, and Attorney General’s recusal and both transfers of authority occurred outside context of state grand jury proceeding. Pascoe v. Wilson (S.C. 2016) 416 S.C. 628, 788 S.E.2d 686. Attorney General 6

**SECTION 14‑7‑1660.** Selection of grand jurors.

 (A) In the January following the effective date of this article and each January thereafter, the jury commissioners for each county shall proceed to draw at random from the jury box the name of one person for each one thousand residents or fraction thereof of the county as determined by the latest United States census but following the effective date of this article, the presiding judge may authorize an interim procedure for the selection of state grand jurors to constitute the first state grand jury established pursuant to this article. The jury commissioners shall not disqualify or excuse any individual whose name is drawn. When the list is compiled, the clerk of court shall forward the list to the person designated as the clerk of the state grand jury by the presiding judge. Upon receipt of all the lists from the clerks of court, the clerk of the state grand jury shall draw therefrom at random a list of seven hundred eligible state grand jurors, this list to be known as the master list. The clerk of the state grand jury shall mail to every person whose name is drawn a juror qualification form, the form and the manner of qualifying potential state grand jurors to be determined by the Supreme Court. Based upon these inquiries, the presiding judge shall determine whether an individual is unqualified for, or exempt, or to be excused from jury service. The clerk of the state grand jury shall prepare annually a jury list of persons qualified to serve as state grand jurors, this list to be known as the qualified state grand jury list. No state grand juror may be excused or disqualified except in accordance with existing law.

 (B) Upon the presiding judge ordering a term of a state grand jury upon notification of initiation of a state grand jury investigation by the Attorney General, the clerk of the state grand jury, upon the random drawing of the names of sixty persons from the qualified jury list, shall summon these individuals to attend the jury selection process for the state grand jury. The jury selection process must be conducted by the presiding judge. The clerk of the state grand jury shall issue his writ of venire facias for these persons, requiring their attendance at the time designated. The writ of venire facias must be delivered immediately to the sheriff of the county where the person resides and served as provided by law. From the sixty persons so summoned, a state grand jury for that term of eighteen persons plus four alternates must be drawn in the same manner as jurors are drawn for service on the county grand jury. Nothing in this section may be construed to limit the right of the Attorney General or his designee to request that a potential state grand juror be excused for cause. Jurors of a state grand jury shall receive a daily subsistence expense equal to the maximum allowable for the Columbia, South Carolina area, by regulation of the Internal Revenue Code when summoned or serving, and also must be paid the same per diem and mileage as are members of state boards, commissions, and committees.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1989 Act No. 2, Section 4, eff February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992; 2015 Act No. 45 (S.268), Section 3, eff June 3, 2015.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

United States Supreme Court Annotations

Group or class discrimination in selection of grand or petit jury as prohibited by Federal Constitution—Supreme Court cases. 33 L Ed 2d 783.

**SECTION 14‑7‑1670.** Appointment of foreman and deputy foreman.

 The presiding judge shall appoint one of the jurors to be foreman and another to be deputy foreman. During the absence of the foreman, the deputy foreman shall act as foreman.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 21.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 61 to 64.

**SECTION 14‑7‑1680.** Issuance of subpoenas and subpoenas duces tecum; contempt for failure to respond.

 The clerk of the state grand jury, upon the request of the Attorney General or his designee, shall issue subpoenas or subpoenas duces tecum to compel individuals, documents, or other materials to be brought from anywhere in this State to a state grand jury. In addition, a state grand jury may proceed in the same manner as provided by the subpoena rules of the South Carolina Rules of Civil Procedure and Sections 19‑9‑10 through 19‑9‑130, except where either is inconsistent with the provisions of this article; provided the subpoena rules of the South Carolina Rules of Civil Procedure and Sections 19‑9‑10 through 19‑9‑130 are not considered a limitation upon this section, but supplemental thereto. The subpoenas and subpoenas duces tecum may be for investigative purposes and for the retention of documents or other materials so subpoenaed for proper criminal proceedings. Any law enforcement officer with appropriate jurisdiction is empowered to serve these subpoenas and subpoenas duces tecum and receive these documents and other materials for return to a state grand jury. Any person violating a subpoena or subpoena duces tecum issued pursuant to this article, or who fails to fully answer all questions put to him before proceedings of a state grand jury where the response thereto is not privileged or otherwise protected by law, including the granting of immunity as authorized by Section 14‑7‑1760, may be punished by the presiding judge for contempt. To this end, where the violation or failure to answer is alleged to have occurred, the Attorney General or his designee may petition the presiding judge to compel compliance by the person alleged to have committed the violation or who has failed to answer. If the presiding judge considers compliance is warranted, he may order this compliance and may punish the individual for contempt where the compliance does not occur.

 The clerk of the state grand jury also may issue subpoenas and subpoenas duces tecum to compel individuals, documents, or other materials to be brought from anywhere in this State to the trial of any indictment returned by a state grand jury or the trial of any civil forfeiture action arising out of an investigation conducted by a state grand jury.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 36.4.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 134 to 151, 153, 155 to 164.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 11, Investigative Powers.

United States Supreme Court Annotations

Supreme Court’s views as to application of Fifth Amendment privilege against self‑incrimination to compulsory production of documents. 48 L Ed 2d 852.

**SECTION 14‑7‑1690.** Notification of expansion of areas of inquiry.

 Once a state grand jury has entered into a term, the Attorney General or solicitor, in the appropriate case, may notify the presiding judge in writing as often as is necessary and appropriate that the state grand jury’s areas of inquiry have been expanded or additional areas of inquiry have been added thereto.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992; 2015 Act No. 45 (S.268), Section 4, eff June 3, 2015.

Library References

Grand Jury 33.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 90, 110 to 112, 114.

**SECTION 14‑7‑1700.** Record of testimony and other proceedings of grand jury; furnishing of copy to defendant; transcripts, reporter’s notes and all other documents to remain in custody and control of Attorney General.

 A court reporter shall record, either stenographically or by use of an electronic recording device, all proceedings except when a state grand jury is deliberating or voting. Subject to the limitations of Section 14‑7‑1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a defendant has the right to review and to reproduce the stenographically or electronically recorded materials. Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. Subject to the limitations of Section 14‑7‑1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a copy of the transcript of the recorded testimony or proceedings requested by the Attorney General or his designee shall be provided to the defendant by the court reporter, upon request, at the transcript rate established by the Office of Court Administration. An unintentional failure of any recording to reproduce all or any portion of the testimony or proceedings does not affect the validity of the prosecution. The recording or reporter’s notes or any transcript prepared therefrom and all books, papers, records, correspondence, or other documents produced before a state grand jury must remain in the custody and control of the Attorney General or his designee unless otherwise ordered by the court in a particular case.

HISTORY: 1987 Act No. 150 Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1989 Act No. 2, Section 5, eff February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 38.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 113, 121.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 11, Investigative Powers.

NOTES OF DECISIONS

In general 1

1. In general

A defendant’s right to obtain recorded proceedings and testimony before state grand jury in preparing his defense, which right is subject to limitations imposed by statute and rule, necessarily arises post‑indictment; although maintaining secrecy is essential while a matter is under deliberation by the grand jury, such concerns diminish following issuance of a true bill of indictment, and, thus, a defendant is allowed to obtain and use the impanelment documents in preparing a defense and ensuring protection of his due process rights. Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Criminal Law 627.9(1); Grand Jury 41.50(3)

It is not necessary to detail evidence of the conspiracy in the indictment nor to recite the facts connecting all of the accused with one another in the web of the conspiracy with the same degree of particularity required in describing the substantive offense. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383.

An indictment for conspiracy that gave no indication of the state’s theory or any specifics involved in the conspiracy but instead simply incorporated the language of the trafficking statute was not vague and overbroad since, under the specialized procedure for the return of the indictment by the state grand jury, a defendant is permitted to review, and to reproduce, the transcript of the testimony of a witness who appeared before the grand jury. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383.

**SECTION 14‑7‑1710.** Administrating oath or affirmation by foreman.

 The foreman shall administer an oath or affirmation in the manner prescribed by law to any witness who testifies before a state grand jury.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 36.6.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 123 to 126, 134 to 136, 145, 193 to 195.

**SECTION 14‑7‑1720.** Proceedings to be secret; juror not to disclose; persons entitled to attend grand jury session; persons attending not to disclose; exceptions; penalties.

 (A) State grand jury proceedings are secret, and a state grand juror shall not disclose the nature or substance of the deliberations or vote of the state grand jury. The only persons who may be present in the state grand jury room when a state grand jury is in session, except for deliberations and voting, are the state grand jurors, the Attorney General or his designee, the court reporter, an interpreter if necessary, and the witness testifying. A state grand juror, the Attorney General or his designee, any interpreter used, the court reporter, and any person to whom disclosure is made pursuant to subsection (B)(2) of this section may not disclose the testimony of a witness examined before a state grand jury or other evidence received by it except when directed by a court for the purpose of:

 (1) ascertaining whether it is consistent with the testimony given by the witness before the court in any subsequent criminal proceeding;

 (2) determining whether the witness is guilty of perjury;

 (3) assisting local, state, other state or federal law enforcement or investigating agencies, including another grand jury, in investigating crimes under their investigative jurisdiction;

 (4) providing the defendant the materials to which he is entitled pursuant to Section 14‑7‑1700;

 (5) complying with constitutional, statutory, or other legal requirements or to further justice.

 If the court orders disclosure of matters occurring before a state grand jury, the disclosure must be made in that manner, at that time, and under those conditions as the court directs. The court must grant a request made by the Attorney General pursuant to this subsection in an expedited manner so as to not interfere with or delay the operation of the state grand jury or its legal advisor when the requested disclosure is authorized by this subsection.

 (B) In addition, disclosure of testimony of a witness examined before a state grand jury or other evidence received by it may be made without being directed by a court to:

 (1) the Attorney General or his designee for use in the performance of their duties; and

 (2) those governmental personnel, including personnel of the State or its political subdivisions, as are considered necessary by the Attorney General or his designee to assist in the performance of their duties to enforce the criminal laws of the State; provided that any person to whom matters are disclosed under this item shall not utilize that state grand jury material for purposes other than assisting the Attorney General or his designee in the performance of their duties to enforce the criminal laws of the State. The Attorney General or his designee promptly shall provide the presiding judge before whom was impaneled the state grand jury whose material has been disclosed, the names of the persons to whom the disclosure has been made, and shall certify that he has advised these persons of their obligation of secrecy under this section.

 (C) Nothing in this section affects the attorney‑client relationship. A client has the right to communicate to his attorney any testimony given by the client to a state grand jury, any matters involving the client discussed in the client’s presence before a state grand jury, and evidence involving the client received by or proffered to a state grand jury in the client’s presence.

 (D) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding five thousand dollars or by a term of imprisonment not exceeding one year, or both.

 (E) State grand jurors, the Attorney General or his designee, the court reporter, any interpreter used, and the clerk of the state grand jury must be sworn to secrecy and also may be punished for criminal contempt for violations of this section. Once he is sworn to secrecy, the clerk of the state grand jury is authorized, only if requested by the Attorney General or his designee, to give the oath of secrecy to members of the Attorney General’s staff; experts or other individuals contracted by the Attorney General or law enforcement for assistance in a state grand jury investigation; federal, state, or local prosecutors and their staff; and federal, state, or local law enforcement officers and their staff. Once he is sworn, the clerk of the state grand jury is authorized at any time to give the oath of secrecy to members of his own staff or to the court reporter.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution; 1989 Act No. 2, Section 6, eff February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992; 2015 Act No. 45 (S.268), Section 5, eff June 3, 2015.

CROSS REFERENCES

Furnishing of copy of transcript of recorded testimony or proceedings to defendant, see Section 14‑7‑1700.

Library References

Grand Jury 41.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 206 to 223.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 11, Investigative Powers.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Contempt 3

1. In general

State grand jury proceedings are secret, pursuant to statute, and those involved in such proceedings are prohibited from disclosing the nature or substance of the deliberations or vote of the state grand jury, or the testimony of a witness, unless otherwise ordered by a court. Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Grand Jury 41.10; Grand Jury 41.30; Grand Jury 41.50(1)

A defendant’s right to obtain recorded proceedings and testimony before state grand jury in preparing his defense, which right is subject to limitations imposed by statute and rule, necessarily arises post‑indictment; although maintaining secrecy is essential while a matter is under deliberation by the grand jury, such concerns diminish following issuance of a true bill of indictment, and, thus, a defendant is allowed to obtain and use the impanelment documents in preparing a defense and ensuring protection of his due process rights. Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Criminal Law 627.9(1); Grand Jury 41.50(3)

The attorney general and other specified persons involved in grand jury proceedings may not disclose the testimony of a witness except when directed by the court in limited circumstances, including “complying with constitutional, statutory, or other legal requirements or to further justice.” Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Grand Jury 41.20; Grand Jury 41.50(1)

State grand jury has subject matter jurisdiction to issue indictments in factual scenarios involving an investigation lasting longer than two years, or an investigation transferred from one state grand jury to a subsequent state grand jury; although legislature limited time period for which a single state grand jury may investigate a particular matter to two years, nothing in grand jury statute purports to forbid a subsequent referral to another state grand jury or to limit the number of grand juries which may investigate a matter, and legislature granted prosecutors the authority to disclose matters before one state grand jury to a subsequent state grand jury to assist in the investigation. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Grand Jury 25

2. Constitutional issues

Florida statute prohibiting witness from ever disclosing testimony given before grand jury violates First Amendment insofar as it prohibits witness from disclosing his own testimony after grand jury’s term has ended; State’s interest in preserving grand jury secrecy was either not served by, or insufficient to warrant, proscription of truthful speech on matters of public concern. Butterworth v. Smith, U.S.Fla.1990, 110 S.Ct. 1376, 494 U.S. 624, 108 L.Ed.2d 572. Constitutional Law 2117; Grand Jury 2

3. Contempt

Trial court’s finding, in criminal contempt proceeding, that criminal defense attorney had disclosed grand jury material, that was subject of secrecy order, to private investigator, without instructing investigator about not releasing information to any other individual, was not supported by evidence; attorney testified that, before he gave information to investigator, he told investigator not to disclose contents to anyone, and investigator testified that attorney told him to keep material under lock and key at all times. State v. Sowell (S.C. 2006) 370 S.C. 330, 635 S.E.2d 81, rehearing denied. Grand Jury 41.60(2)

Even if statute on secrecy of grand jury proceedings applied to criminal defense attorney, attorney could not be found to be in willful contempt for disclosing grand jury material to his private investigator, as statute would authorize attorney’s disclosure to necessary personnel, such as private investigator, to aid him in his duties. State v. Sowell (S.C. 2006) 370 S.C. 330, 635 S.E.2d 81, rehearing denied. Grand Jury 41.60(1)

Circuit Court’s order finding criminal defense attorney in criminal contempt for disclosing grand jury material, that was subject of secrecy order, to attorney’s private investigator for purpose of investigating case against attorney’s client, could not be affirmed on basis that private investigator had disclosed information to prosecution witness, where state specifically maintained at contempt hearing that is was not seeking contempt violation for private investigator’s disclosure to third party but, rather, due solely to attorney’s disclosure to private investigator. State v. Sowell (S.C. 2006) 370 S.C. 330, 635 S.E.2d 81, rehearing denied. Contempt 66(7)

Trial court’s decision to hold criminal defense attorney in criminal contempt for disclosing grand jury material, that was subject of secrecy order, to attorney’s private investigator was not based on attorney’s failure to give trial court notice of such disclosure, and thus Court of Appeals could not use that failure to give notice as basis for affirming contempt order. State v. Sowell (S.C. 2006) 370 S.C. 330, 635 S.E.2d 81, rehearing denied. Contempt 66(7)

Provisions of statute on secrecy of grand jury proceedings applied to Attorney General and governmental personnel, and thus statute provided no basis for finding criminal defense attorney to be in criminal contempt for willfully violating statute by releasing grand jury information, that was subject of secrecy order, to his private investigator for purposes of investigating case against attorney’s client; statute, on its face, did not apply to attorney. State v. Sowell (S.C. 2006) 370 S.C. 330, 635 S.E.2d 81, rehearing denied. Grand Jury 41.60(1)

**SECTION 14‑7‑1730.** Jurisdiction of presiding judge.

 (A) Except for the prosecution of cases arising from indictments issued by the state grand jury, and subject to the provisions and standards provided in Sections 14‑7‑1630 and 14‑7‑1650, the presiding judge has jurisdiction to hear all matters arising from the proceedings of a state grand jury, including, but not limited to, matters relating to the impanelment or removal of state grand jurors, the quashing of subpoenas, the punishment for contempt, and the matter of bail for persons indicted by a state grand jury.

 (B) A person indicted by a state grand jury for a bailable offense must have a bond hearing before the end of the second business day following the day he was arrested in the State of South Carolina for that offense or the day he was delivered within the State of South Carolina following extradition for that offense from another State or jurisdiction, and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility. If the presiding judge or acting presiding judge is not available, the initial bond hearing following arrest for a state grand jury indictment may be conducted by any circuit judge of competent jurisdiction in the county where the grand jury was impaneled. A “business day” pursuant to this subsection is any day in which the county courthouse is open in the county where the grand jury was impaneled.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992; 2015 Act No. 45 (S.268), Section 6, eff June 3, 2015.

Library References

Grand Jury 24.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 10, 88 to 99, 103.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 17, Criminal Prosecutions.

**SECTION 14‑7‑1740.** Scheduling of activities of state grand jury.

 The Attorney General or his designee shall coordinate the scheduling of activities of any state grand jury.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 28.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 76 to 84.

**SECTION 14‑7‑1750.** Indictment by state grand jury; sealed indictment.

 In order to return a “true bill” of indictment, twelve or more state grand jurors must find that probable cause exists for the indictment and vote in favor of it. Upon indictment by a state grand jury, the indictment must be returned to the presiding judge. If the presiding judge considers the indictment to be within the authority of the state grand jury and otherwise in accordance with the provisions of this article, he shall return the indictment by order to the county where venue is appropriate under South Carolina law for prosecution by the Attorney General or his designee. The presiding judge may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon, the clerk of the state grand jury shall seal the indictment, and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1989 Act No. 2, Section 7, eff February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

CROSS REFERENCES

Appointment of designee to conduct investigation and prosecution in event of conflict of interest, see Section 14‑7‑1650.

Requirement that returned indictment be certified and transferred for prosecution to the county where the offense was committed in accordance with this section, see Section 14‑7‑1640.

Library References

Grand Jury 42.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 100 to 109.

RESEARCH REFERENCES

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 15.2(F), Quantum of Proof.

**SECTION 14‑7‑1760.** Evidence given or information derived from evidence not to be received against witness in criminal prosecution; waiver of immunity; perjury.

 If any person asks to be excused from testifying before a state grand jury or from producing any books, papers, records, correspondence, or other documents before a state grand jury on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty or forfeiture and is notwithstanding directed by the presiding judge to give the testimony or produce the evidence, he must comply with this direction, but no testimony so given or other information produced, or any information directly or indirectly derived from such testimony or such other information, may be received against him in any criminal action, criminal investigation, or criminal proceeding. No individual testifying or producing evidence or documents is exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence given or produced is admissible against him upon any criminal action, criminal investigation, or criminal proceeding concerning this perjury; provided that any individual may execute, acknowledge, and file a statement with the appropriate court expressly waiving immunity or privilege in respect to any testimony or evidence given or produced and thereupon the testimony or evidence given or produced may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise, and if so received or produced, the individual is not entitled to any immunity or privilege on account of any testimony he may give or evidence produced.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

CROSS REFERENCES

Penalty for failure to answer questions put to witness given limited immunity under this section, see Section 14‑7‑1680.

Library References

Witnesses 310.

Westlaw Topic No. 410.

C.J.S. Witnesses Section 589.

RESEARCH REFERENCES

ALR Library

29 ALR 5th 1 , Propriety, Under State Constitutional Provisions, of Granting Use or Transactional Immunity for Compelled Incriminating Testimony‑Post‑Kastigar Cases.

Encyclopedias

S.C. Jur. Constitutional Law Section 80, Criminal Proceedings.

NOTES OF DECISIONS

In general 1

Constitutional issues 3

Validity 2

1. In general

Transactional immunity granted to owners of a paving company, who were compelled to testify before a grand jury with regard to public corruption, did not preclude the Highway Department from initiating disbarment proceedings against them or against the paving company, since a contractor’s disbarment as a qualified bidder serves as a remedial measure to insure protection of the public at large, not as punishment. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Witnesses 310

2. Validity

The portion of Section 14‑7‑1760, whereby the immunity granted to a compelled witness before the state grand jury is restricted to “use” immunity, violates SC Art I Section 12, which permits only transactional immunity and, as such, can only be amended by the citizens of South Carolina by referendum. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Witnesses 304(2)

3. Constitutional issues

Public corruption indictments would be dismissed since they were obtained in violation of the defendants’ constitutional right against compelled self‑incrimination (SC Const Art I Section 12) where the defendants were compelled to testify before the grand jury under grant of use immunity pursuant to Section 14‑7‑1760 and, after testifying, they were indicted by the grand jury that heard their testimony. State v. Thrift (S.C. 1994) 312 S.C. 282, 440 S.E.2d 341. Witnesses 310

**SECTION 14‑7‑1770.** Sealing of records, orders, and subpoenas.

 Records, orders, and subpoenas relating to state grand jury proceedings must be kept under seal to the extent and for that time as is necessary to prevent disclosure of matters occurring before a state grand jury.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 41.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 206 to 223.

NOTES OF DECISIONS

In general 1

1. In general

A defendant’s right to obtain recorded proceedings and testimony before state grand jury in preparing his defense, which right is subject to limitations imposed by statute and rule, necessarily arises post‑indictment; although maintaining secrecy is essential while a matter is under deliberation by the grand jury, such concerns diminish following issuance of a true bill of indictment, and, thus, a defendant is allowed to obtain and use the impanelment documents in preparing a defense and ensuring protection of his due process rights. Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Criminal Law 627.9(1); Grand Jury 41.50(3)

Terms of statute governing the sealing of grand jury records did not impose complete prohibition on release of impanelment documents or other records, such that they had to remain secret forever; removing veil of secrecy after a defendant has been indicted was consistent with legislative intent expressed in statute. Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Grand Jury 41.10; Grand Jury 41.50(8)

**SECTION 14‑7‑1780.** Availability of space for grand jury; State Law Enforcement Division to provide services; cost of state grand juries.

 The Attorney General shall make available suitable space for state grand juries to meet. The State Law Enforcement Division also shall provide service as the state grand juries require. The other costs associated with the state grand jury system, including juror per diem, mileage, and subsistence must be paid from funds appropriated to the Attorney General’s office for this purpose by the General Assembly in the annual general appropriations act. Nothing herein authorizes the Attorney General to expend general funds above the level of appropriations authorized annually in the general appropriations act or acts supplemental thereto.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

CROSS REFERENCES

Appropriation of funds for the cost of employing experts by state grand juries by the General Assembly as provided for in this section, see Section 14‑7‑1790.

Library References

Grand Jury 33.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 90, 110 to 112, 114.

**SECTION 14‑7‑1790.** Employment of experts by state grand jury.

 A state grand jury, whenever it considers necessary, may employ experts to assist it and fix the amount of compensation or per diem to be paid therefor, upon the approval of the presiding judge as to the amount being given before any expert is employed and upon appropriation of sufficient funds therefor by the General Assembly as provided in Section 14‑7‑1780.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 33.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 90, 110 to 112, 114.

**SECTION 14‑7‑1800.** Rules for operation of state grand jury system.

 The Supreme Court may promulgate rules as are necessary for the operation of the state grand jury system established herein.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Grand Jury 33.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 1 to 3, 90, 110 to 112, 114.

**SECTION 14‑7‑1810.** Severability clause.

 If any part of this article is declared invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, it is hereby declared severable from the remaining portions of this article which portions shall remain in full force and effect as if the invalid, unenforceable, or unconstitutional portion were omitted.

HISTORY: 1987 Act No. 150, Section 1, eff from and after February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution); 1992 Act No. 335, Section 1, eff May 4, 1992.

Library References

Statutes 1535(6).

Westlaw Topic No. 361.

C.J.S. Statutes Section 124.

**SECTION 14‑7‑1820.** Application of article.

 This article applies to offenses committed both before and after its effective date.

HISTORY: 1989 Act No. 2, Section 2, eff February 8, 1989 (the date the amendments to Article I, Section 11, and Article V, Section 22, of the South Carolina Constitution were ratified and declared to be part of the Constitution; See 1989 Act No. 5, Sections 1 and 2, 1989 Act No. 7, Section 1, and 1989 Act No. 8, Section 1.); 1992 Act No. 335, Section 1, eff May 4, 1992.

Editor’s Note

1992 Act No. 335 Section 2, eff May 4, 1992, provides as follows:

“SECTION 2. The expanded jurisdiction of the state grand jury system applies to offenses committed both before and after the effective date of this act.”

RESEARCH REFERENCES

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 8.1(B), Special Grand Juries.

NOTES OF DECISIONS

In general 1

1. In general

Defendant did not preserve for appellate review his ex post facto argument regarding statute providing that the article on state grand jury system applied to offenses committed both before and after its effective date, where argument was made for the first time on appeal. State v. Sheppard (S.C. 2011) 391 S.C. 415, 706 S.E.2d 16. Criminal Law 1030(2)

ARTICLE 17

Alternative Method of Selecting and Impaneling Grand Juries

**SECTION 14‑7‑1910.** Six month terms with possible additional term; drawing of member names; maximum terms.

 (A) Grand jurors shall serve terms of six months and may be held over for one additional six‑month term.

 (B) During the last term of the court of general sessions held in each county before December thirty‑first of each year, the clerk of court shall randomly draw from the twelve members serving their first six‑month term on the grand jury the names of six of the grand jurors who have not served two consecutive six‑month terms. Those six members together with twelve grand jurors selected in the manner prescribed in this article shall constitute the grand jury for the six‑month period beginning on January first of the succeeding year and ending on June thirtieth of that year.

 (C) During the last term of the court of general sessions held in each county before July first of each year, the clerk of court shall randomly draw from the twelve members serving their first six‑month term on the grand jury the names of six of the grand jurors who have not served two consecutive six‑month terms. Those six members together with twelve grand jurors selected in the manner prescribed in this article shall constitute the grand jury for the ensuing period beginning on July first and ending on December thirty‑first of that year.

 (D) The drawing of these names by the clerk of court has the same force and effect as if the names of the six grand jurors had been drawn in the presence of the presiding judge.

 (E) No person shall serve as a grand juror for more than two consecutive six‑month terms.

HISTORY: 1998 Act No. 373, Section 2, eff May 26, 1998.

Library References

Grand Jury 3, 6.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 36 to 37, 52, 55, 111.

**SECTION 14‑7‑1920.** Impanelment of grand jurors; issuance and delivery of writs of venire facias.

 Not less than fifteen days before the convening of the first term of the court of general sessions on or after January first and July first of each year, the jury commissioners shall proceed to draw from the jury box the number of grand jurors which the clerk of court or chief administrative judge for the circuit has determined to be sufficient in order to impanel a grand jury. The grand jurors must be randomly drawn and listed as are jurors for trials, and the jury commissioners shall not disqualify or excuse any juror drawn. Immediately after these grand jurors are drawn, the clerk of court shall issue writs of venire facias for these grand jurors, requiring their attendance on the first day of the first week of criminal court in the county on or after January first or July first of each year or at such other time as the clerk of court may designate. These writs of venire facias must be delivered immediately to the sheriff of the county or otherwise served as provided by law.

HISTORY: 1998 Act No. 373, Section 2, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

**SECTION 14‑7‑1930.** Judge to ascertain juror qualifications; lists of excused or disqualified jurors; jurors not served with writs.

 On the first day of the term of court on or after January first and July first of each year, the presiding judge shall ascertain the qualifications of those jurors as have appeared pursuant to the writs of venire facias. No juror may be excused or disqualified except in accordance with existing law as determined by the presiding judge. The clerk of court shall maintain a list of all jurors who are excused or disqualified by the presiding judge and state the reasons given by the presiding judge for excusing or disqualifying the jurors. The sheriff of the county also shall report to the presiding judge the names of those persons who were not served with writs of venire facias, and that reasonable effort was made to obtain service. The clerk of court shall maintain a list of the jurors who were not served with the writs of venire facias and the reasons service was not effected.

HISTORY: 1998 Act No. 373, Section 2, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

**SECTION 14‑7‑1940.** Drawing of grand juror and alternate names; discharge of remaining jury venire.

 After the grand jury venire has been duly qualified by the presiding judge, the clerk of court shall place the names of all qualified grand jurors in a container from which twelve grand jurors must be chosen. The clerk of court shall randomly draw twelve jurors from the container, and those twelve jurors drawn shall serve as grand jurors, together with those grand jurors selected as provided under Section 14‑7‑1910. The clerk of court shall randomly draw three or more additional jurors, with those three or more jurors serving as alternate grand jurors in the event one or more of the original grand jurors are incapacitated, excused, or disqualified during their term. The names of the alternate grand jurors must be kept separate and numbered in the order drawn and in this order, unless excused by the presiding judge, shall serve when necessary. The remainder of the grand jury venire may be discharged.

HISTORY: 1998 Act No. 373, Section 2, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

**SECTION 14‑7‑1950.** Application of other law relating to grand juries and jurors.

 Except for the alternative method of selecting and impaneling grand jurors as provided in this article, all other provisions of law relating to grand juries and grand jurors shall continue to apply.

HISTORY: 1998 Act No. 373, Section 2, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

**SECTION 14‑7‑1960.** Election of alternate provisions by county ordinance.

 A county governing body, by ordinance, may elect to use the provisions of this article as the method of selecting and impaneling grand juries and grand jurors in that county based on its determination that grand jury case loads, length of time persons must serve as grand jurors, and other similar concerns require this alternative method.

HISTORY: 1998 Act No. 373, Section 2, eff May 26, 1998.

Library References

Grand Jury 8.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 13 to 15, 17, 20 to 21, 38 to 41, 43 to 45.

**SECTION 14‑7‑1970.** Periodic exemption of jurors from subsequent duty.

 A person completing service as a grand juror under the alternative method provided by this article, including any service as a holdover grand juror, is exempt from any further jury service in any court of this State for a period of five calendar years.

HISTORY: 1998 Act No. 373, Section 2, eff May 26, 1998.

Library References

Grand Jury 6.

Westlaw Topic No. 193.

C.J.S. Grand Juries Sections 36 to 37.