CHAPTER 9

Offenses Against Public Justice

ARTICLE 1

Perjury

**SECTION 16‑9‑10.** Perjury and subornation of perjury.

(A)(1) It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to wilfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

(B)(1) A person who violates the provisions of subsection (A)(1) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

(2) A person who violates the provisions of subsection (A)(2) is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not less than one hundred dollars, or both.

(C) A person may be convicted under this section if he induces, procures, or persuades another person to commit perjury or if he commits perjury by his own act, consent, or agreement.

HISTORY: 1962 Code Section 16‑201; 1952 Code Section 16‑201; 1942 Code Section 1397; 1932 Code Section 1397; Cr. C. ‘22 Section 332; Cr. C. ‘12 Section 340; Cr. C. ‘02 Section 253; G. S. 2531; R. S. 217; 1712 (2) 487; 1993 Act No. 184, Section 89.

CROSS REFERENCES

Indictment for perjury, see Section 17‑19‑60.

Methods of satisfaction or release of security interest, affidavit, see Section 29‑3‑330.

Penalties for surety surrendering a defendant with an affidavit for less than good cause, see Section 38‑53‑50.

Library References

Perjury 1 to 13, 41.

Westlaw Topic No. 297.

C.J.S. Perjury Sections 1 to 3, 5 to 45, 73.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law. 38 S.C. L. Rev. 72 (Autumn 1986).

NOTES OF DECISIONS

In general 1

Construction and application 2

Indictment 3

Trial 4

1. In general

False swearing must relate to some fact material to issue. State v Hattaway (1819) 11 SCL 118. State v Kennerly (1856) 44 SCL 152.

Giving false information in a document or report required by the laws of the State is “perjury.” State v. Stanley (S.C.App. 2005) 365 S.C. 24, 615 S.E.2d 455, habeas corpus dismissed 2011 WL 1261376. Perjury 1

Since witness’ initial trial testimony directly contradicted his prior testimony given in a police statement, witness was guilty of “perjury” if the information given to officer was false, and if the information was true, witness perjured himself on the stand by contradicting it. State v. Stanley (S.C.App. 2005) 365 S.C. 24, 615 S.E.2d 455, habeas corpus dismissed 2011 WL 1261376. Perjury 1

Giving false testimony at trial constitutes the felony of perjury and subjects the perjurer to a fine and/or up to five years imprisonment. Collins v. Doe (S.C.App. 2000) 343 S.C. 119, 539 S.E.2d 62, rehearing denied, certiorari granted, reversed 352 S.C. 462, 574 S.E.2d 739. Perjury 1; Perjury 41

Testimony given under oath at a previous trial whose result is subsequently invalidated is admissible impeachment evidence, as perjury will not be condoned. State v. Brown (S.C. 1988) 296 S.C. 191, 371 S.E.2d 523. Witnesses 393(1)

Subornation of perjury consists of two essential elements, namely, (1) procuring or inducing one to commit perjury, and (2) his commission of perjury. Burns v. Clayton (S.C. 1960) 237 S.C. 316, 117 S.E.2d 300.

Perjury cannot be committed in giving evidence in a cause in which the court has no jurisdiction. State v. Jenkins (S.C. 1887) 26 S.C. 121, 1 S.E. 437.

False representation is perjury, if made to mitigate a sentence. State v. Keenan (S.C. 1832) 8 Rich. 456.

2. Construction and application

The former provision of Section 16‑9‑10 that a convicted perjurer’s oath shall not be received in court was repealed by implication by the later enactment of Section 19‑11‑60, providing that no person shall be disqualified to testify by reason of conviction of a crime. State v. Merriman (S.C.App. 1985) 287 S.C. 74, 337 S.E.2d 218. Witnesses 48(5)

3. Indictment

Indictment for perjury is not defective in failing to allege that the proceeding before magistrate was commenced by information under oath. State v. Byrd (S.C. 1888) 28 S.C. 18, 4 S.E. 793, 13 Am.St.Rep. 660.

Indictment need not expressly allege that the matter sworn to was material to the issue if it otherwise appears. State v. Byrd (S.C. 1888) 28 S.C. 18, 4 S.E. 793, 13 Am.St.Rep. 660.

It is sufficient for the indictment to allege that defendant was duly sworn. State v. Farrow (S.C. 1856) 10 Rich. 165.

Where the indictment sufficiently charges a common‑law perjury, its conclusion against this section [Code 1962 Section 16‑201] may be regarded as surplusage. State v. Kennerly (S.C. 1856) 10 Rich. 152. Indictment And Information 32(5)

4. Trial

It is essential that the falsity of the oath, the falsity of the statement laid in the indictment, be either proved by the testimony of more than one witness or by the testimony of one witness and corroborating circumstances. State v. Crowley (S.C. 1955) 226 S.C. 472, 85 S.E.2d 714. Perjury 34(1)

Defendant’s mental condition is a material fact in prosecution under this section. [Code 1962 Section 16‑201] State v. Gaymon (S.C. 1895) 44 S.C. 333, 22 S.E. 305.

Testimony showing location of defendant, when it affects the issue, is material. State v. Byrd (S.C. 1888) 28 S.C. 18, 4 S.E. 793, 13 Am.St.Rep. 660.

Prosecutor is a competent witness in prosecution for perjury unless he has an immediate interest in the record. State v. Farrow (S.C. 1856) 10 Rich. 165. Witnesses 102

**SECTION 16‑9‑20.** Subornation of perjury in civil actions.

(A) It is unlawful for a person to:

(1) wilfully induce, procure, or persuade another person by any means to commit perjury in initiating a civil action or proceeding; or

(2) wilfully induce, procure, or persuade another person to give false, misleading, or incomplete testimony while under oath in a civil action or proceeding.

(B) A person who violates the provision of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months and fined not less than two hundred dollars.

HISTORY: 1962 Code Section 16‑202; 1952 Code Section 16‑202; 1942 Code Section 1398; 1932 Code Section 1398; Cr. C. ‘22 Section 333; Cr. C. ‘12 Section 341; Cr. C. ‘02 Section 254; G. S. 2532; R. S. 218; 1712 (2) 487; 1993 Act No. 184, Section 90.

Library References

Perjury 13, 41.

Westlaw Topic No. 297.

C.J.S. Perjury Section 73.

NOTES OF DECISIONS

In general 1

1. In general

Subornation of perjury consists of two essential elements, namely, (1) procuring or inducing one to commit perjury, and (2) his commission of perjury. Burns v. Clayton (S.C. 1960) 237 S.C. 316, 117 S.E.2d 300.

Although the crime of subornation is not consummated, the attempt to commit it is in itself a crime, being an act done with the intention of preventing the due course of justice. Burns v. Clayton (S.C. 1960) 237 S.C. 316, 117 S.E.2d 300. Perjury 14

**SECTION 16‑9‑30.** False swearing before persons authorized to administer oaths.

It is unlawful for a person to wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 16‑203; 1952 Code Section 16‑203; 1942 Code Section 1400; 1932 Code Section 1400; Cr. C. ‘22 Section 335; Cr. C. ‘12 Section 343; Cr. C. ‘02 Section 256; G. S. 2534; R. S. 220; 1833 (2) 485; 1993 Act No. 184, Section 166.

CROSS REFERENCES

False swearing before employees of the Insurance Commission, see Section 38‑3‑180.

False swearing in applying for registration as elector, see Section 7‑25‑10.

Penalties for surety surrendering a defendant with an affidavit for less than good cause, see Section 38‑53‑50.

Swearing falsely in taking the prescribed oath at elections, see Section 7‑25‑150.

Library References

Perjury 1 to 12.

Westlaw Topic No. 297.

C.J.S. Perjury Sections 1 to 3, 5 to 45.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Burns v. Clayton (S.C. 1960) 237 S.C. 316, 117 S.E.2d 300.

A de facto deputy clerk of the court does not have legal authority to administer an oath upon which the statutory offense of false swearing may be based. State v. Brandon (S.C. 1938) 186 S.C. 448, 197 S.E. 113. Perjury 9(2)

In order to support conviction, under this section [Code 1962 Section 16‑203], it is only necessary to prove that defendant, under oath, swore to statement of facts alleged in the indictment, and that the statement sworn to was a false representation. State v. Bolyn (S.C. 1928) 143 S.C. 63, 141 S.E. 165.

It is not necessary to constitute the crime of perjury under this section [Code 1962 Section 16‑203] that the matter falsely sworn to should be material to the issue. It is sufficient if the oath required by law was administered by one authorized to do so, and was wilfully and knowingly false. State v. Byrd (S.C. 1888) 28 S.C. 18, 4 S.E. 793, 13 Am.St.Rep. 660.

It cannot be assigned as perjury, on application for naturalization, to make a false affidavit as to previous residence. State v. Helle (S.C. 1834).

Offense under this section [Code 1962 Section 16‑203] may be assigned for making false affidavit before one officer, charging another with a misdemeanor. State v. Cockran (S.C. 1828).

One cannot be tried for perjury, for taking an oath falsely before an officer not qualified to administer it. State v. Hayward (S.C. 1819).

**SECTION 16‑9‑50.** Disposition of fines.

The one moiety of the fines imposed by this article shall be for the State and the other moiety to such person as shall be grieved, hindered or molested by reason of the offense or offenses before mentioned that will sue for the same by action in any court of competent jurisdiction.

HISTORY: 1962 Code Section 16‑205; 1952 Code Section 16‑205; 1942 Code Section 1399; 1932 Code Section 1399; Cr. C. ‘22 Section 334; Cr. C. ‘12 Section 342; Cr. C. ‘02 Section 255; G. S. 2533; R. S. 219; 1712 (2) 488.

Library References

Fines 20.

Westlaw Topic No. 174.

C.J.S. Fines Section 6.

ARTICLE 3

Bribery, Corruption of Jurors and the Like

**SECTION 16‑9‑210.** Giving or offering bribes to officers.

Whoever corruptly gives, offers or promises to any executive, legislative or judicial officer, after his election or appointment, either before or after he is qualified or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be pending or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years or by a fine not exceeding three thousand dollars and imprisonment in jail not exceeding one year.

HISTORY: 1962 Code Section 16‑211; 1952 Code Section 16‑211; 1942 Code Section 1402; 1932 Code Section 1402; Cr. C. ‘22 Section 337; Cr. C. ‘12 Section 348; Cr. C. ‘02 Section 261; G. S. 2536; R. S. 225; 1869 (14) 308.

CROSS REFERENCES

Bribery of State highway commissioners and employees, see Section 57‑1‑40.

Library References

Bribery 1(2), 16.

Westlaw Topic No. 63.

C.J.S. Bribery Sections 1 to 3, 5 to 14, 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 3, Statutory Definition.

S.C. Jur. Bribery Section 5, Executive, Legislative and Judicial Officers‑ Giving or Offering Bribes.

S.C. Jur. Bribery Section 14, Indictment and Trial.

S.C. Jur. Bribery Section 17, Sentence and Punishment.

NOTES OF DECISIONS

In general 1

Instructions to jury 2

1. In general

The common‑law crime of bribery was not confined to cases involving a judicial, executive or legislative officer but extended to any party under a legal duty connected with the administration of public justice. Flowers v. Zayre Corp. (D.C.S.C. 1968) 286 F.Supp. 119.

At common law the distinction between bribery and the attempt to bribe was of little practical importance, as the offer to bribe, though there was no acceptance or delivery of the gift or reward, was indictable and punishable in the same way as if there had been both delivery and acceptance. Flowers v. Zayre Corp. (D.C.S.C. 1968) 286 F.Supp. 119.

The statutory charge of bribery includes equally an attempt to bribe and an actual delivery of the bribe. Flowers v. Zayre Corp. (D.C.S.C. 1968) 286 F.Supp. 119.

Applied in State v. Meehan (S.C. 1931) 160 S.C. 111, 158 S.E. 151.

2. Instructions to jury

A jury was adequately instructed as to the mental state required for the offense of bribery where the trial court stated that “the defendant is charged with violating a statute which reads ‘whoever correctly gives to any officer, including police officers, any gift, or gratuity with the intent to influence such officer’s act or judgment on any matter which is pending before him shall be guilty of an offense.”‘ State v. Ferguson (S.C. 1990) 302 S.C. 269, 395 S.E.2d 182.

**SECTION 16‑9‑220.** Acceptance of bribes by officers.

Every executive, legislative or judicial officer who corruptly accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to such an officer under an agreement or with an understanding that his vote, opinion or judgment shall be given in any particular manner or on any particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity or that, in such capacity, he shall make any particular nomination or appointment shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the laws of this State and be punished by imprisonment in the State Penitentiary at hard labor not exceeding ten years or by fine not exceeding five thousand dollars and imprisonment in jail not exceeding two years.

HISTORY: 1962 Code Section 16‑212; 1952 Code Section 16‑212; 1942 Code Section 1403; 1932 Code Section 1403; Cr. C. ‘22 Section 338; Cr. C. ‘12 Section 349; Cr. C. ‘02 Section 262; G. S. 2537; R. S. 226; 1869 (14) 308.

CROSS REFERENCES

Bribery of State highway commissioners and employees, see Section 57‑1‑40.

Sentencing, see Section 17‑25‑20 et seq.

Library References

Bribery 1(2), 16.

Westlaw Topic No. 63.

C.J.S. Bribery Sections 1 to 3, 5 to 14, 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 11, Conviction of a Crime.

S.C. Jur. Bribery Section 3, Statutory Definition.

S.C. Jur. Bribery Section 6, Executive, Legislative and Judicial Officers‑ Accepting Bribes.

Attorney General’s Opinions

Police officer is considered “public official” for purposes of Section 16‑3‑1040, which prohibits persons from making threats to take life of or to inflict bodily harm upon public official or their immediate families. 1984 Op.Atty.Gen., No 84‑103, p 241 (1984 WL 159910).

Offenses charged of accepting bribes by law enforcement officer constitute crimes involving moral turpitude. 1979 Op.Atty.Gen., No 79‑113, p 160 (1979 WL 34164).

NOTES OF DECISIONS

In general 1

Attorney discipline 3

Indictment 2

1. In general

Different degrees of culpability are recognized by 1962 Code Sections 16‑212 [Section 16‑9‑220 (1976)] and 16‑214 [16‑9‑240 (1976)], as is shown in the variation in punishments imposed and by the fact that in order to prove a violation of Section 16‑212, it is necessary to show that the officer acted “corruptly,” while this requirement is omitted from Section 6‑214. U. S. v. Burnsed (C.A.4 (S.C.) 1977) 566 F.2d 882, certiorari denied 98 S.Ct. 1270, 434 U.S. 1077, 55 L.Ed.2d 784.

Police officer is executive officer within meaning of 1962 Code Section 16‑212 [Section 16‑9‑220 (1976)]. U. S. v. Burnsed (C.A.4 (S.C.) 1977) 566 F.2d 882, certiorari denied 98 S.Ct. 1270, 434 U.S. 1077, 55 L.Ed.2d 784.

Policemen are “officers” within the meaning of the statute prohibiting public officers from accepting bribes. McClain v. Arnold (S.C. 1980) 275 S.C. 282, 270 S.E.2d 124.

Term “officer” as used in Section 16‑9‑220 includes policemen despite contention that policemen are “employees”; it is not necessary that act requested by bribe be one which officer has authority to undertake, and it is sufficient if he has official power, ability or apparent ability to bring about or contribute to desired end. State v. Crenshaw (S.C. 1980) 274 S.C. 475, 266 S.E.2d 61, certiorari denied 101 S.Ct. 236, 449 U.S. 883, 66 L.Ed.2d 108. Bribery 1(1)

When charging a bribe to vote for a certain resolution, it is sufficient to designate it by its title only. State v. Smalls (S.C. 1878) 11 S.C. 262. Bribery 6(1)

Where an accomplice testified that the bribe was by bank check, it is competent to prove by the books of the same bank a credit to defendant for like amount two days after the bribery. State v. Smalls (S.C. 1878) 11 S.C. 262.

2. Indictment

Indictment may join acceptance of gift and of promise to make one. State v. Smalls (S.C. 1878) 11 S.C. 262.

An indictment is not defective for repugnancy, because it charges the corrupt acceptance of a bribe to vote for a question “which was and might be by law brought before” the defendant as State senator. State v. Smalls (S.C. 1878) 11 S.C. 262. Indictment And Information 73(1)

3. Attorney discipline

Deputy solicitor’s convictions for acceptance of bribe and criminal sexual conduct warranted Supreme Court’s acceptance of agreement providing for disbarment. Matter of Roberts (S.C. 1998) 331 S.C. 325, 503 S.E.2d 160. Attorney And Client 59.14(4)

Acceptance of a bribe and criminal sexual conduct are serious crimes, for purposes of attorney disciplinary proceedings, since the circumstances of the commission of those crimes adversely reflect on an attorney’s honesty, trustworthiness, and fitness as a lawyer. Matter of Roberts (S.C. 1998) 331 S.C. 325, 503 S.E.2d 160. Attorney And Client 39

Acceptance of a bribe for the dismissal of criminal charges is a crime of moral turpitude, for purposes of attorney disciplinary proceedings. Matter of Roberts (S.C. 1998) 331 S.C. 325, 503 S.E.2d 160. Attorney And Client 39

Acceptance of a bribe and criminal sexual conduct are conduct involving dishonesty, fraud, deceit, or misrepresentation. Matter of Roberts (S.C. 1998) 331 S.C. 325, 503 S.E.2d 160. Attorney And Client 39

**SECTION 16‑9‑230.** Acceptance of rebates or extra compensation.

No person holding an office or position of trust or profit in this State or in the public institutions thereof shall accept rebates or extra compensation in addition to that provided by law. Any person violating the provisions of this section shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars or be imprisoned for not less than three months nor more than five years.

This section shall not apply to officers accepting rebates not for their individual use but for the benefit and in behalf of the State.

HISTORY: 1962 Code Section 16‑213; 1952 Code Section 16‑213; 1942 Code Section 1518; 1932 Code Section 1518; Cr. C. ‘22 Section 466; Cr. C. ‘12 Section 539; Cr. C. ‘02 Section 382; 1899 (23) 96.

Library References

Officers and Public Employees 121, 122.

States 81.

Westlaw Topic Nos. 283, 360.

C.J.S. Officers and Public Employees Sections 445 to 456.

C.J.S. States Sections 238 to 239.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 3, Statutory Definition.

S.C. Jur. Bribery Section 13, Acceptance of Rebates and Extra Compensation.

**SECTION 16‑9‑240.** Taking of consideration or the like by sheriff or other officer for not performing duties.

If a sheriff, deputy sheriff, constable or other officer authorized to serve legal process receives from the defendant or any other person any money or other valuable thing as a consideration, reward or inducement for omitting or delaying to arrest a defendant or to carry him before a magistrate, for delaying to take a person to prison, for postponing the sale of property under an execution or for omitting or delaying to perform any duty pertaining to his office he shall be punished by a fine not exceeding three hundred dollars.

HISTORY: 1962 Code Section 16‑214; 1952 Code Section 16‑214; 1942 Code Section 1522; 1932 Code Section 1522; Cr. C. ‘22 Section 470; Cr. C. ‘12 Section 543; Cr. C. ‘02 Section 386; G. S. 2554; R. S. 303; 1869 (14) 308.

CROSS REFERENCES

Indictment of sheriffs for neglect of duty, see Section 8‑1‑60.

Penalty for neglect of duty by sheriff, see Section 17‑17‑170.

Library References

Sheriffs and Constables 153.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 494 to 498.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 7, Sheriffs and Other Officers.

NOTES OF DECISIONS

In general 1

1. In general

Different degrees of culpability are recognized by 1962 Code Sections 16‑212 [Section 16‑9‑220 (1976)] and 16‑214 [16‑9‑240 (1976)], as is shown in the variation in punishments imposed and by the fact that in order to prove a violation of Section 16‑212, it is necessary to show that officer acted “corruptly,” while this requirement is omitted from Section 16‑214. U. S. v. Burnsed (C.A.4 (S.C.) 1977) 566 F.2d 882, certiorari denied 98 S.Ct. 1270, 434 U.S. 1077, 55 L.Ed.2d 784.

**SECTION 16‑9‑250.** Unlawful acceptance of remuneration by peace officers for performing official duties.

It shall be a misdemeanor for any sheriff or other peace officer in South Carolina to make any charge for the arrest, detention, conveying or delivering of any person charged with the commission of crime in this State, except the mileage and necessary expenses as now provided by law. Any sheriff or other officer who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty‑five dollars nor more than two hundred dollars or imprisoned not less than thirty days and not more than six months, or both fined and imprisoned at the discretion of the court.

HISTORY: 1962 Code Section 16‑215; 1952 Code Section 16‑215; 1942 Code Section 1523; 1932 Code Section 1523; 1931 (37) 76.

CROSS REFERENCES

Charge of sheriffs or jailors for federal prisoners, see Section 23‑19‑20.

Fees of sheriffs, generally, see Section 23‑19‑10.

Library References

Municipal Corporations 190.

Sheriffs and Constables 153.

Westlaw Topic Nos. 268, 353.

C.J.S. Municipal Corporations Sections 620 to 622, 655, 657, 660.

C.J.S. Sheriffs and Constables Sections 494 to 498.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 17, Sentence and Punishment.

**SECTION 16‑9‑260.** Corrupting jurors, arbitrators, umpires or referees.

Whoever corrupts or attempts to corrupt any juror, arbitrator, umpire or referee by giving, offering or promising any gift or gratuity whatever with intent to bias the opinion or influence the decision of such juror, arbitrator, umpire or referee in relation to any cause or matter pending in the court or before an inquest or for the decision of which such arbitrator, umpire or referee has been chosen or appointed shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years or by fine not exceeding one thousand dollars and imprisonment in jail not exceeding one year.

HISTORY: 1962 Code Section 16‑217; 1952 Code Section 16‑217; 1942 Code Section 1404; 1932 Code Section 1404; Cr. C. ‘22 Section 339; Cr. C. ‘12 Section 350; Cr. C. ‘02 Section 263; G. S. 2538; R. S. 227; 1869 (14) 309.

Library References

Bribery 1(2), 16.

Westlaw Topic No. 63.

C.J.S. Bribery Sections 1 to 3, 5 to 14, 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 9, Jurors, Arbitrators, Umpires and Referees.

S.C. Jur. Bribery Section 17, Sentence and Punishment.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 40:32, Bribery or Improper Influence of Arbitrators.

Employment Coordinator Labor Relations Section 62:206, Criminal Offenses.

NOTES OF DECISIONS

In general 1

1. In general

Attempts to influence jurors such as by phone calls, through personal influence rather than by gifts or gratuities do not fall under Section 16‑9‑260; rather, they are punishable as contempts. State v. Bowers (S.C. 1978) 270 S.C. 124, 241 S.E.2d 409. Bribery 1(2); Contempt 14

For some purposes, the actual taking of the oath may be essential to constitute a “juror”; but, as soon as a citizen is designated by law as one chosen to sit as a juror, he falls within the letter and spirit of this section [Code 1962 Section 16‑217] punishing attempt to corrupt any juror; and the fact that a juror appears on oral notice, without more formal summons, cannot avail an accused who has attempted to influence such juror before he was sworn. State v. Maddox (S.C. 1908) 80 S.C. 452, 61 S.E. 964. Criminal Law 45.35

An attempt to improperly influence a juror by mere personal influence is punishable as a contempt, since it is not within this section [Code 1962 Section 16‑217]. In re Moore (S.C. 1908) 79 S.C. 399, 60 S.E. 947. Contempt 14

For additional related case, see State v. Blackwell (S.C. 1878) 10 S.C. 35.

**SECTION 16‑9‑270.** Acceptance of bribes by jurors, arbitrators, umpires or referees.

If any person summoned as a juror or chosen or appointed as an arbitrator, umpire or referee corruptly receives any gift or gratuity whatever from a party to a suit, cause or proceeding for the trial or decision of which such juror has been summoned or for the hearing or determination of which such arbitrator, umpire or referee has been chosen or appointed, he shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years or by fine not exceeding one thousand dollars and imprisonment in jail not exceeding one year.

HISTORY: 1962 Code Section 16‑218; 1952 Code Section 16‑218; 1942 Code Section 1405; 1932 Code Section 1405; Cr. C. ‘22 Section 340; Cr. C. ‘12 Section 351; Cr. C. ‘02 Section 264; G. S. 2639; R. S. 228; 1869 (14) 309.

Library References

Bribery 1(2), 16.

Westlaw Topic No. 63.

C.J.S. Bribery Sections 1 to 3, 5 to 14, 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 9, Jurors, Arbitrators, Umpires and Referees.

**SECTION 16‑9‑280.** Offering bribe for purpose of inducing another to procure public office.

If any person shall, directly or indirectly, offer to give or engage to pay any sum of money or other valuable consideration to another in order to induce such other person to procure for him by his interest, influence or any other means whatsoever any office or place of trust within this State, whether such office is to be obtained through any general, special or primary election or from any elective tribunal, or shall offer, give, promise or bestow any reward by meat, drink or otherwise, for the aforesaid purpose, and be thereof convicted, he shall forfeit the sum of not less than one hundred nor more than five hundred dollars and suffer imprisonment for a term not exceeding six months.

HISTORY: 1962 Code Section 16‑558.1; 1952 Code Section 16‑558.1; 1950 (46) 2059.

CROSS REFERENCES

Bribery at elections, see Sections 7‑25‑50, 7‑25‑60.

Library References

Bribery 1(1), 16.

Westlaw Topic No. 63.

C.J.S. Bribery Sections 1 to 3, 5 to 10, 13 to 14, 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 12, Procurement of Public Office.

S.C. Jur. Bribery Section 14, Indictment and Trial.

S.C. Jur. Elections Section 94, Statutory Provisions.

**SECTION 16‑9‑290.** Accepting bribes for purpose of procuring public office.

If any person shall receive of another any sum of money or reward of meat, drink or other valuable consideration for procuring or assisting to procure any office or place of trust in this State, whether such office is to be obtained through any general, special or primary election or from any elective tribunal, for any other person whatever and be convicted thereof, he shall forfeit the sum of not more than one hundred dollars and suffer imprisonment at the discretion of the court having cognizance of the same. And if such offender be in any office he shall, on conviction, be disabled from holding such office.

HISTORY: 1962 Code Section 16‑558.2; 1952 Code Section 16‑558.2; 1950 (46) 2059.

Library References

Bribery 1(1), 16.

Westlaw Topic No. 63.

C.J.S. Bribery Sections 1 to 3, 5 to 10, 13 to 14, 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 3, Statutory Definition.

S.C. Jur. Elections Section 94, Statutory Provisions.

**SECTION 16‑9‑300.** Trial of offenses against Sections 16‑9‑280 and 16‑9‑290.

All offenses against the provisions of Sections 16‑9‑280 and 16‑9‑290 shall be heard, tried and determined before the court of general sessions after the indictment.

HISTORY: 1962 Code Section 16‑558.3; 1952 Code Section 16‑558.3; 1950 (46) 2059.

Library References

Criminal Law 93.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 198.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bribery Section 14, Indictment and Trial.

ARTICLE 4

Interference With Judicial Process

**SECTION 16‑9‑310.** “Law enforcement officer” defined.

For purposes of this article “law enforcement officer” shall mean any duly appointed or commissioned law enforcement officer of the State, a county or municipality.

HISTORY: 1980 Act No. 511, Section 3.

Attorney General’s Opinions

Arresting officer’s obligation to provide medical treatment is readily apparent even though case law does not comment directly on arresting officer’s responsibilities vis‑a‑vis jailer’s regarding sick or injured inmates since it has emphasized general rule that due process mandates pretrial detainees are entitled to treatment. 1993 Op.Atty.Gen. No 93‑3 (1993 WL 720070).

NOTES OF DECISIONS

In general 1

1. In general

In a prosecution for resisting arrest, pursuant to Section 16‑9‑320, the arresting security guard was a law enforcement officer under the statute and thus the charge and arrest were valid where, under Section 40‑17‑130, a security guard licensed by the State Law Enforcement Division stands in the shoes of the sheriff for purposes of arrest while he is on the property he is hired to protect and is, therefore, clearly a “law enforcement officer.” State v. Brant (S.C. 1982) 278 S.C. 188, 293 S.E.2d 703.

**SECTION 16‑9‑320.** Opposing or resisting law enforcement officer serving process; assaulting officer engaged in serving process.

(A) It is unlawful for a person knowingly and wilfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process or to resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned not more than one year, or both.

(B) It is unlawful for a person to knowingly and wilfully assault, beat, or wound a law enforcement officer engaged in serving, executing, or attempting to serve or execute a legal writ or process or to assault, beat, or wound an officer when the person is resisting an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned not more than ten years, or both.

HISTORY: 1980 Act No. 511, Section 3; 1990 Act No. 598, Section 2; 1993 Act No. 184, Section 24.

Library References

Obstructing Justice 117, 176.

Westlaw Topic No. 282.

C.J.S. Escape and Related Offenses; Rescue Section 32.

C.J.S. Obstructing Justice or Governmental Administration Sections 11 to 19, 22 to 34, 36 to 66, 73 to 74, 80, 85 to 89, 93 to 94.

RESEARCH REFERENCES

ALR Library

119 ALR, Federal 319 , What Constitutes “Violent Felony” for Purpose of Sentence Enhancement Under Armed Career Criminal Act (18 U.S.C.A. Section 924(E)(1)).

Encyclopedias

S.C. Jur. Arrest Section 26, Resisting Arrest.

Attorney General’s Opinions

Discussion of various fact scenarios and whether in each situation the individual could be charged with resisting arrest. SC Op.Atty.Gen. (Jan. 22, 2009) 2009 WL 276750.

The authority of a county to enact an ordinance relating to the offense of resisting arrest which would be within the jurisdiction of a magistrate. SC Op.Atty.Gen. (August 16, 2007) 2007 WL 3244887.

Conviction of offense of resisting arrest under subsection (1) (formerly subsection (a)), which concerns non‑violent resistance, does not constitute crime of moral turpitude. 1991 Op.Atty.Gen., No 91‑11, p 43 (1991 WL 474741).

Whether conviction of offense of resisting arrest which requires use of force, under subsection (2), (formally subsection (b)) is crime of moral turpitude depends on facts of case, inquiry being similar to that required prior to determining whether particular conviction for assault and battery of high and aggravated nature constitutes crime of moral turpitude. 1991 Op.Atty.Gen., No 91‑11, p 43 (1991 WL 474741).

Police officer is considered “public official” for purposes of Section 16‑3‑1040, which prohibits persons from making threats to take life of or to inflict bodily harm upon public official or their immediate families. 1984 Op.Atty.Gen., No 84‑103, p. 241 (1984 WL 159910).

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1. In general

Fleeing police officer’s demand to stop did not constitute resisting arrest; there was no allegation defendant opposed or resisted officer in serving, executing, or attempting to serve or execute legal writ or process, conviction was founded upon resisting arrest being made by one whom person knows or reasonably should have known was law enforcement officer, and by clear, unambivalent language of statute, conviction for the offense could only stand if there was indeed arrest being made. State v. Brannon (S.C.App. 2008) 379 S.C. 487, 666 S.E.2d 272, rehearing denied, certiorari granted, affirmed 388 S.C. 498, 697 S.E.2d 593. Obstructing Justice 126(1)

An individual, under the appropriate circumstances, has the right to utilize the amount of resistance reasonably necessary to defend himself in the event excessive force is utilized incident to a lawful arrest. State v. Williams (S.C.App. 2005) 367 S.C. 192, 624 S.E.2d 443, certiorari denied. Assault And Battery 67

Just as an underlying arrest need not be prosecuted in order to successfully prosecute for resisting arrest, neither should the absence of a charge on the underlying arrest bar evidence seized subsequent to a proper resisting arrest charge. State v. Goodwin (S.C.App. 2002) 351 S.C. 105, 567 S.E.2d 912, habeas corpus dismissed 2008 WL 4458186. Criminal Law 392.17(2); Obstructing Justice 126(4)

Defendant’s assault on detective was in connection with defendant’s arrest, thus warranting conviction for resisting arrest/assaulting officer; although defendant was in pre‑trial confinement on other charges at time of his arrest on new charges, law required that he be formally arrested and given opportunity for bail, he had just been served with new arrest warrants and brought before magistrate for setting of bond when incident occurred, he had not yet been placed in confinement on new charges in cell at jail, and although detective did not serve warrants and did not have custody of defendant, detective came to aid of custodial officer when defendant resisted her authority. State v. Garvin (S.C.App. 2000) 341 S.C. 122, 533 S.E.2d 591, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 347 S.C. 280, 554 S.E.2d 681. Obstructing Justice 126(3)

Fact that defendant was never indicted or tried for the offense for which he was arrested could not serve as a bar to his prosecution for resisting arrest. State v. Tyndall (S.C.App. 1999) 336 S.C. 8, 518 S.E.2d 278, rehearing denied. Obstructing Justice 160

Statute providing that an arrestee has the right to be informed of the ground of his or her arrest did not require the state to file documents for prosecution of offense for which arrest occurred in order to prosecute for resisting arrest. State v. Tyndall (S.C.App. 1999) 336 S.C. 8, 518 S.E.2d 278, rehearing denied. Obstructing Justice 126(1)

A defendant convicted of assaulting a police officer in violation of Section 16‑9‑320 was properly arrested by that officer for disorderly conduct in the lobby of a hotel which rented rooms to guests, since the lobby was a “public place” within the meaning of the disorderly conduct statute. State v. Williams (S.C. 1984) 280 S.C. 305, 312 S.E.2d 555.

In a prosecution for resisting arrest, pursuant to Section 16‑9‑320, the arresting security guard was a law enforcement officer under the statute and thus the charge and arrest were valid where, under Section 40‑17‑130, a security guard licensed by the State Law Enforcement Division stands in the shoes of the sheriff for purposes of arrest while he is on the property he is hired to protect and is, therefore, clearly a “law enforcement officer.” State v. Brant (S.C. 1982) 278 S.C. 188, 293 S.E.2d 703.

2. Constitutional issues

Resisting arrest and assault and battery of a high and aggravated nature (ABHAN) were not the same offense, for double jeopardy purposes, since ABHAN required proof of a circumstance of aggravation, which was not required for resisting arrest, and resisting arrest required proof that the person assaulted was a law enforcement officer, which was not an element of ABHAN; overruling, State v. Hollman, 232 S.C. 489, 102 S.E.2d 873. Stevenson v. State (S.C. 1999) 335 S.C. 193, 516 S.E.2d 434, subsequent habeas corpus proceeding 108 Fed.Appx. 73, 2004 WL 1809748, subsequent habeas corpus proceeding 2008 WL 2076770. Double Jeopardy 141

The defendant’s conviction for assaulting a police officer while resisting arrest was not a violation of the Double Jeopardy Clause even though the defendant had previously been convicted in municipal court for failure to stop on police command for the same conduct that gave rise to the assault while resisting arrest charge; the two offenses do not have identical statutory elements, and one is not a lesser included offense of the other. State v. Lewis (S.C.App. 1996) 321 S.C. 146, 467 S.E.2d 265.

3. Lesser included offenses

Since Section 16‑9‑320(b) includes all of the elements of Section 16‑9‑320(a) ‑ knowingly and willfully resisting a lawful arrest ‑ subsection (a) is necessarily a lesser included offense of subsection (b). State v. Ritter (S.C. 1988) 296 S.C. 51, 370 S.E.2d 610.

4. Civil rights actions

Decision in Heck v. Humphrey, which bars a Sections 1983 action if it is clear from record that its successful prosecution would necessarily imply that plaintiff’s earlier conviction was invalid, did not bar arrestee’s Sections 1983 action against arresting officer for use of excessive force, despite arrestee’s plea of guilty to assaulting a police officer while resisting arrest, as it was unclear from record when police officer hit arrestee, and if officer hit arrestee after his resisting arrest, validity of prior conviction would not be implicated. Riddick v. Lott (C.A.4 (S.C.) 2006) 202 Fed.Appx. 615, 2006 WL 2923905, Unreported. Civil Rights 1088(4)

5. Federal courts

Four‑level enhancement for defendant convicted of being a felon in possession of a firearm and ammunition was warranted for his use of the firearm in connection the separate felony offense, under South Carolina law, of assaulting a law enforcement officer while resisting arrest; in his struggle with deputies while resisting arrest, defendant made multiple attempts to access firearm in his back pants pocket. U.S. v. Hampton (C.A.4 (S.C.) 2010) 628 F.3d 654, post‑conviction relief dismissed 2012 WL 3686085, reconsideration denied 2012 WL 4051227, dismissed 506 Fed.Appx. 214, 2013 WL 239085, post‑conviction relief granted 2016 WL 4702356. Sentencing and Punishment 731

6. Probable cause

Officers had probable cause to arrest defendant, and thus, defendant was not permitted to resist arrest; officers observed marijuana lying in plain view in defendant’s motel room and officers saw crack cocaine in defendant’s hand. State v. Maybank (S.C.App. 2002) 352 S.C. 310, 573 S.E.2d 851. Arrest 63.4(16)

Defendant’s arrest for resisting arrest following his stop for improper operation of moped and search of defendant with his consent, which escalated into assault of officer and resulted in discovery of drugs on defendant after he was arrested, was lawful, although defendant alleged that no valid underlying arrest was made to support resisting arrest charge because defendant was not charged with assault and traffic offenses were not “arrestable offenses” that carried jail time, where, at the moment arrest was made, officer had probable cause to make it based on assault. State v. Goodwin (S.C.App. 2002) 351 S.C. 105, 567 S.E.2d 912, habeas corpus dismissed 2008 WL 4458186. Automobiles 349(8)

Police officers had probable cause to arrest defendant for committing misdemeanor offense of trespass after notice, and thus defendant was not entitled to dismissal of resisting arrest charge based on officers’ failure to obtain arrest warrant, where friend drove defendant to his father’s residence for a visit, friend contacted police to report an escalating altercation between defendant and his father, police went to father’s residence, father told police to ask defendant to leave, and defendant refused to leave when officers asked him to. State v. Tyndall (S.C.App. 1999) 336 S.C. 8, 518 S.E.2d 278, rehearing denied. Arrest 63.4(17); Obstructing Justice 126(4)

7. Indictments

Indictment charging defendant with assault on a police officer while resisting arrest was sufficient to vest trial court with subject matter jurisdiction; although indictment contained typographical error which placed date of offense three days later than actual offense, text of indictment charged crime of resisting arrest in substantially same language as statute and put defendant on notice of charges against him. State v. Perry (S.C.App. 2004) 358 S.C. 633, 595 S.E.2d 883, habeas corpus dismissed 2012 WL 315644, appeal dismissed 474 Fed.Appx. 916, 2012 WL 3192609, certiorari denied 133 S.Ct. 872, 184 L.Ed.2d 684. Assault And Battery 74; Indictment And Information 87(2); Indictment And Information 110(17)

Amendment to indictment replaced properly‑indicted count of assaulting officer while resisting arrest with second unindicted count of assaulting different officer while resisting arrest, thus substituting different charge from charge presented to grand jury and divesting circuit court of subject matter jurisdiction to try defendant for assaulting officer while resisting arrest; plain language of statute indicated crime involved assault on one officer, defendant fought with several sheriff’s deputies who subsequently arrested defendant, and defendant could have been indicted for two counts of assaulting officer, but was only indicted for assaulting one officer at time grand jury convened. State v. Bryson (S.C.App. 2003) 357 S.C. 106, 591 S.E.2d 637, rehearing denied. Criminal Law 102

A defendant charged with assaulting an officer under Section 16‑9‑320 waived any right to object to the defective indictment where the indictment charged him with a felony under the amended statute as opposed to a misdemeanor under the version of the statute in effect at the time of the crime and his indictment; because the defect was apparent from the face of the indictment, the defendant waived any objection. State v. Lewis (S.C.App. 1996) 321 S.C. 146, 467 S.E.2d 265. Assault And Battery 74; Criminal Law 1032(5)

8. Guilty pleas

Defendant was not entitled to withdraw his guilty pleas to two counts of resisting arrest as a matter of right; guilty pleas were accepted by court, once state completed its recitation of facts, hearing entered sentencing phase, and no further ruling was required to accept guilty pleas, and thus, whether to allow defendant to withdraw his guilty pleas was a matter resting within sound discretion of the circuit court, and defendant could not withdraw his pleas as a matter of right. State v. Thomason (S.C.App. 2003) 355 S.C. 278, 584 S.E.2d 143. Criminal Law 274(2)

Trial court’s refusal to allow defendant to withdraw his guilty pleas to two counts of resisting arrest based on state’s alleged breach of a plea agreement was not an abuse of discretion; there was no written plea agreement in record, neither state nor defendant alerted circuit court to any plea agreement specifically limiting factual presentation given by state, and thus, defendant failed to present an enforceable plea agreement. State v. Thomason (S.C.App. 2003) 355 S.C. 278, 584 S.E.2d 143. Criminal Law 273(4.1)

9. Admissibility of evidence

The trial court correctly refused to permit defense counsel to impeach the state’s main witness, in a trial for murder, with convictions for (1) first offense driving under the influence, which does not involve moral turpitude, and (2) resisting arrest, where no evidence in the record indicated that the arrest involved violent resistance. State v. Hall (S.C.App. 1991) 306 S.C. 293, 411 S.E.2d 441.

10. Questions for jury

An arrest was not unlawful, and thus the defendant was not entitled to a directed verdict on a charge of resisting arrest even though the arresting officer did not have actual possession of the arrest warrant at the time of the arrest, where the officer had reason to believe that a warrant was outstanding against the defendant and called to verify that it had not been served before he effectuated the arrest. State v. Grate (S.C. 1992) 310 S.C. 240, 423 S.E.2d 119.

The trial court properly denied a defendant’s motion for a directed verdict on the charge of resisting arrest where the defendant was the passenger in a vehicle stopped for weaving, shouted obscenities at a deputy, continued to shout after being warned to stop, was told that he was under arrest for public drunkenness and disorderly conduct, refused to exit the car, and required 2 officers to remove him from the car. State v. Galloway (S.C.App. 1991) 305 S.C. 258, 407 S.E.2d 662.

11. Sufficiency of evidence

Evidence was sufficient to support submission of the charge of resisting arrest to the jury, in prosecution for resisting arrest, disorderly conduct, and assault; police officer arrived wearing police uniform and driving a marked police vehicle, when police officer attempted to arrest defendant he resisted verbally and physically, defendant was sprayed with pepper spray by two different officers and defendant continued to resist arrest by holding his arms stiff to prevent the officers from handcuffing him, and defendant was not handcuffed until additional officers arrived. State v. LaCoste (S.C.App. 2001) 347 S.C. 153, 553 S.E.2d 464, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 353 S.C. 538, 579 S.E.2d 318. Obstructing Justice 173

Sufficient evidence supported a defendant’s conviction for resisting arrest where, after the defendant submitted to the arresting officer at the scene of the crime, he stuck his arm and leg in the doorway of the cell he was being placed in, preventing it from closing and necessitating other officers’ assistance in forcing him back into his cell; the defendant’s arrest wasn’t complete upon submitting to the officer, and his attempt to leave constituted evidence of resisting arrest. State v. Dowd (S.C. 1991) 306 S.C. 268, 411 S.E.2d 428.

**SECTION 16‑9‑330.** Refusal or wilful failure to obey subpoena; refusal to take oath or answer questions as required by court.

Any person who:

(a) Being duly served with a subpoena legally issued in any cause pending in any court or in any matter before any legal authority, shall refuse or wilfully fail to obey such subpoena or shall secret himself shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not more than six months, or both;

(b) Being present before any court and being called upon to give testimony, shall refuse to take an oath or affirmation or, being sworn or affirmed, shall refuse to answer any questions required by such court shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars or be imprisoned for not more than six months, or both. Nothing in this item shall be construed to prohibit or punish the exercise by any person of his right not to be compelled to incriminate himself, as set forth in the Constitutions of this State and the United States and construed by the courts of this State and the United States.

HISTORY: 1980 Act No. 511, Section 3.

Library References

Witnesses 22, 309.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 62 to 64, 588 to 589, 619.

**SECTION 16‑9‑340.** Intimidation of court officials, jurors or witnesses.

(A) It is unlawful for a person by threat or force to:

(1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or

(2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

HISTORY: 1980 Act No. 511, Section 3; 1993 Act No. 184, Section 25; 1996 Act No. 255, Section 1.

Library References

Obstructing Justice 134, 143, 176.

Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental Administration Sections 10 to 12, 67 to 72, 78, 82 to 83, 88, 93 to 94.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 2, Definitions.

S.C. Jur. Extortion, Blackmail, and Threats Section 22, Threats to Frighten.

LAW REVIEW AND JOURNAL COMMENTARIES

Note, South Carolina adopts a harmless error rule for cases involving government intimidation of a witness, 49 S.C. L. Rev. 1143, Summer 1998.

United States Supreme Court Annotations

Witness tampering, murder, see Fowler v. U.S., 2011, 131 S.Ct. 2045, 563 U.S. 668, 179 L.Ed.2d 1099, on remand 654 F.3d 1178.

NOTES OF DECISIONS

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1. In general

Although statute governing intimidation of court officials codifies various common‑law crimes, it does not purport to codify or supersede all of them. State v. Lyles‑Gray (S.C.App. 1997) 328 S.C. 458, 492 S.E.2d 802, rehearing denied. Criminal Law 8.5; Obstructing Justice 143

Although person can commit obstruction of justice by use of force or threats, such conduct is neither essential element of, nor only means of committing, crime of common‑law obstruction of justice. State v. Lyles‑Gray (S.C.App. 1997) 328 S.C. 458, 492 S.E.2d 802, rehearing denied. Obstructing Justice 108

Statute governing intimidation of court officials did not supersede or otherwise prevent state’s prosecution of police officer for conduct amounting to common‑law obstruction of justice. State v. Lyles‑Gray (S.C.App. 1997) 328 S.C. 458, 492 S.E.2d 802, rehearing denied. Criminal Law 8.5; Obstructing Justice 143

2. Private actions

No statutory basis existed for public policy exception to at‑will employment doctrine for reporting suspected crime, and thus, at‑will employee did not have cause of action in tort for wrongful termination when employee reasonably suspected that criminal activity had occurred on employer’s premises and reported suspected criminal activity to law enforcement and employee was terminated in retaliation for reporting suspected criminal activity; statute providing that it is unlawful for person to intimidate witness was not applicable, as employee was discharged for incorrectly reporting crime, and no broad public policy protecting those who report suspected crimes could be read from statute, and while legislative intent section of Victim and Witness Service Act recognized importance of people’s civic duty to cooperate with law enforcement, there was no indication this concept extended outside context of ongoing criminal proceeding. Taghivand v. Rite Aid Corp. (S.C. 2015) 411 S.C. 240, 768 S.E.2d 385. Labor and Employment 778

The provisions of Section 16‑9‑340 could not be applied retroactively to give a right of action against an employer who discharged a subpoenaed employee for testifying before the Employment Security Commission in a wrongful discharge proceeding. Ludwick v. This Minute of Carolina, Inc. (S.C.App. 1984) 283 S.C. 149, 321 S.E.2d 618, writ granted 285 S.C. 85, 328 S.E.2d 480, reversed 287 S.C. 219, 337 S.E.2d 213. Labor And Employment 755

3. Admissibility of evidence

Evidence that defendant was charged with criminal sexual conduct and that his daughter was victim and primary witness was admissible under res gestae theory to explain context of crime of intimidating witness; nature of underlying charges was interwoven into charge of intimidation of daughter as victim and primary witness, and in order for jury to fully understand why daughter would be threatened by defendant’s references to her baby girl, jury had to know that daughter accused defendant of sexually assaulting her, and without reference to charges, jury would not be able to discern context in which questions became threats, and reference to charges was necessary for full presentation of evidence. State v. Preslar (S.C.App. 2005) 364 S.C. 466, 613 S.E.2d 381. Criminal Law 363

4. Jury questions

Whether defendant intimidated court official by threatening post‑conviction judge was question for jury, in light of evidence that defendant threatened to put counsel and judge “out of practice,” in letters to counsel in which he also stated he was “set to destroying” counsel, and in view of judge’s knowledge of defendant’s violent criminal history. State v. McCombs (S.C. 2006) 368 S.C. 489, 629 S.E.2d 361. Obstructing Justice 173

**SECTION 16‑9‑350.** Attempting to influence juror by written or oral communication; communications authorized by court not prohibited.

Any person who attempts personally or through third parties to influence the action or decision of any grand or petit juror of any court in this State or any prospective juror, upon any issue or matter which is or may be pending before such juror or before the jury of which he is or may become a member, by writing or sending him any written communication or making any oral communication relating to such issue or matter, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury, or other communication authorized by the court.

HISTORY: 1980 Act No. 511, Section 3.

Library References

Obstructing Justice 143, 176.

Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental Administration Sections 10, 93 to 94.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 51, Attempting to Influence.

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1. Contempt

Juror’s failure to disclose her relationship with capital murder defendant and defense witness, and juror’s repeated initiation of discussions about case with other jurors during guilt phase of trial, despite warnings by judge to contrary, occurred “in the presence of the court,” thus warranting direct contempt conviction, even if such conduct occurred outside judge’s sight and hearing. State v. Kennerly (S.C. 1999) 337 S.C. 617, 524 S.E.2d 837. Contempt 14

The jury pool constitutes an integral, constituent part of the court, and contemptuous acts within their sight or hearing will constitute “direct contempt”; overruling State v. Johnson, 249 S.C. 1, 152 S.E.2d 669, and State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842. State v. Kennerly (S.C. 1999) 337 S.C. 617, 524 S.E.2d 837. Contempt 14

In a prosecution for contempt, in which defendant was accused of attempting to influence a grand jury by contacting its foreman, the court properly refused defendant’s request for a jury trial where, at the beginning of the trial, the State elected to proceed under the inherent contempt power of the Court of General Sessions, electing not to proceed under Section 16‑9‑350. State v. Blanton (S.C. 1983) 278 S.C. 597, 300 S.E.2d 286, certiorari denied 104 S.Ct. 97, 464 U.S. 826, 78 L.Ed.2d 103. Jury 24.5

**SECTION 16‑9‑360.** Unauthorized recording of grand or petit jury proceedings.

Any person who knowingly and wilfully, without authorization of the court, by any means or device, records or attempts to record the proceedings of any grand or petit jury in any court of this State while such jury is investigating or deliberating shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 1980 Act No. 511, Section 3.

Library References

Grand Jury 41.60(1).

Obstructing Justice 111(2), 176.

Westlaw Topic Nos. 193, 282.

C.J.S. Grand Juries Sections 206 to 207, 215, 220 to 223.

C.J.S. Obstructing Justice or Governmental Administration Sections 6 to 8, 10 to 12, 14 to 16, 79, 81, 93 to 94.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Jury Section 52, Recording Proceedings.

**SECTION 16‑9‑370.** Taking money or reward to compound or conceal offense.

Any person who, knowing of the commission of an offense, takes any money or reward, upon an agreement or undertaking expressed or implied, to compound or conceal such offense or not to prosecute or give evidence shall:

(a) If such offense is a felony be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned not more than one year, or both;

(b) If such offense is a misdemeanor be deemed guilty of a misdemeanor and upon conviction be fined not more than one hundred dollars or imprisoned not more than three months, or both.

HISTORY: 1980 Act No. 511, Section 3.

Library References

Bribery 1(1), 16.

Westlaw Topic No. 63.

C.J.S. Bribery Sections 1 to 3, 5 to 10, 13 to 14, 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compounding Offenses Section 2, Background.

S.C. Jur. Compounding Offenses Section 4, Statutory.

**SECTION 16‑9‑380.** Relationship between Article 4, common law, civil relief and other statutes.

This article codifies various common law crimes and supersedes them but no person shall be prosecuted or convicted for the commission of the crimes defined herein if a contempt proceeding is instituted against him in any court of this State on account of conduct defined as a crime herein nor shall injunctive or other civil relief against such conduct be denied upon the ground that the conduct constitutes a crime. If any other statute of this State more specifically describes and prohibits the conduct also prohibited in this article and provides penalties, that statute shall govern and no prosecution may be instituted under this article.

HISTORY: 1980 Act No. 511, Section 3.

Library References

Criminal Law 29(5.5).

Westlaw Topic No. 110.

C.J.S. Gaming Sections 137, 150, 161 to 162.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compounding Offenses Section 2, Background.

ARTICLE 5

Aiding or Permitting Escape or Taking of Prisoners

**SECTION 16‑9‑410.** Aiding escapes from prison; rescuing prisoners.

(A) It is unlawful for a person to:

(1) convey into a jail, correctional facility, or other like place of confinement any disguise, instrument, tool, weapon, or other thing adapted or useful to aid a prisoner in making his escape, with intent to facilitate the escape of a prisoner lawfully committed or detained; or

(2) aid or assist a prisoner by any means in his endeavor to escape, whether the escape is effected or attempted or not.

(B) It is unlawful for a person to forcibly rescue a prisoner held in custody.

(C) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be imprisoned not more than ten years;

(2) misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five hundred dollars if the person whose escape or rescue was effected or intended was charged with a noncapital offense.

HISTORY: 1962 Code Section 16‑231; 1952 Code Section 16‑231; 1942 Code Section 1409; 1932 Code Section 1409; Cr. C. ‘22 Section 344; Cr. C. ‘12 Section 355; Cr. C. ‘02 Section 268; G. S. 2543; R. S. 232; 1824 (6) 244; 1993 Act No. 184, Section 167.

CROSS REFERENCES

Escaping or attempting to escape from prison, etc., being a misdemeanor, see Section 24‑13‑410.

Harboring or employing escaped convicts, see Section 24‑13‑420.

Penalty for hindering officers or rescuing prisoners taken in connection with a conspiracy against civil rights, see Section 16‑5‑50.

Prohibition on furnishing or possessing contraband in county or municipal prison, see Section 24‑7‑155.

Library References

Escape 5, 13.

Rescue 1.

Westlaw Topic Nos. 151, 337.

C.J.S. Escape and Related Offenses; Rescue Sections 24 to 28, 30, 33 to 36, 38, 50 to 51.

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Review 5

1. In general

Where one of defendants on one occasion, in the presence of the other, furnished certain prisoners with a chisel and hammer, and the other defendant at a different time passed in certain keys in the presence of his codefendant, to be used by the prisoners in attempting to escape, defendants were jointly guilty of a single offense. State v. Ballew (S.C. 1909) 83 S.C. 82, 63 S.E. 688, 18 Am.Ann.Cas. 569.

Where there was evidence of defendant’s presence at the jail in communication with certain prisoners who escaped, and there was no evidence of any one else having had an opportunity to furnish an implement which was obtained by the prisoners and used in their attempt, the jailer having also testified that a hatchet was found by him outside the cell, it sufficiently corroborated the evidence of accomplices that defendants furnished the prisoners with a cold‑chisel and a bunch of keys. State v. Ballew (S.C. 1909) 83 S.C. 82, 63 S.E. 688, 18 Am.Ann.Cas. 569.

2. Questions for jury

In a prosecution for conveying hack saws to a prisoner in the county jail, circumstantial evidence that the saws were found on a prisoner, who stated they were given to him by a friend of accused whom accused had visited in the jail, and who had no place to secrete them, held sufficient to require the submission of defendant’s guilt to the jury, and the trial judge properly refused a new trial on the ground that the verdict was wholly without evidence to support it. State v. Jackson (S.C. 1923) 122 S.C. 493, 115 S.E. 750.

In a prosecution for conveying hack saws to a prisoner in the county jail, circumstantial evidence that the saws were found on a prisoner, who stated they were given to him by a friend of accused, whom accused had visited in the jail, and who had no place to secrete them, held sufficient to require the submission of defendant’s guilt to the jury. State v. Jackson (S.C. 1923) 122 S.C. 493, 115 S.E. 750.

3. Instructions

Where accused was a negro woman, who was being prosecuted for conveying hack saws to a prisoner, a charge that the case was a plain proposition which the jury should decide on the facts, regardless of who may be involved in it one way or the other, was beneficial, and not prejudicial, to accused. State v. Jackson (S.C. 1923) 122 S.C. 493, 115 S.E. 750.

4. New Trial

Where accused was convicted of conveying hack saws to a prisoner in the county jail largely on the testimony of a prisoner on whom the saws were found that he obtained them from another prisoner whom accused had visited, newly discovered evidence that prior to the discovery of the saws similar saws were in the possession of a third prisoner was not of such weight as to show an abuse of the trial court’s discretion in refusing a new trial. State v. Jackson (S.C. 1923) 122 S.C. 493, 115 S.E. 750.

5. Review

Defendants could not object for the first time on appeal that there was no proof that at the time of the alleged aiding in an escape the jail contained any prisoners lawfully committed. State v. Ballew (S.C. 1909) 83 S.C. 82, 63 S.E. 688, 18 Am.Ann.Cas. 569.

**SECTION 16‑9‑420.** Aiding escape from custody of officers.

Whoever aids or assists a prisoner in escaping or attempting to escape from an officer or person who has the lawful custody of such prisoner shall be punished by imprisonment in the State Penitentiary, at hard labor, not exceeding two years or by fine not exceeding five hundred dollars.

HISTORY: 1962 Code Section 16‑232; 1952 Code Section 16‑232; 1942 Code Section 1410; 1932 Code Section 1410; Cr. C. ‘22 Section 345; Cr. C. ‘12 Section 356; Cr. C. ‘02 Section 269; G. S. 2544; R. S. 233; 1824 (6) 244.

CROSS REFERENCES

Penalty for hindering officers or rescuing prisoners taken in connection with offenses against civil rights, see Section 16‑5‑50.

Library References

Escape 5, 13.

Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue Sections 24 to 28, 30, 51.

**SECTION 16‑9‑430.** Jailer or other officer wilfully suffering escapes.

If a jailer or other officer wilfully suffers a prisoner in his custody upon conviction or on any criminal charge to escape he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to or would be liable to suffer upon conviction of the crime or offense wherein he stood charged.

HISTORY: 1962 Code Section 16‑233; 1952 Code Section 16‑233; 1942 Code Section 1411; 1932 Code Section 1411; Cr. C. ‘22 Section 346; Cr. C. ‘12 Section 357; Cr. C. ‘02 Section 270; G. S. 2545; R. S. 234; 1824 (6) 244.

CROSS REFERENCES

Penalty for connivance at escape, see Section 24‑3‑910.

Library References

Escape 3, 13.

Westlaw Topic No. 151.

C.J.S. Escape and Related Offenses; Rescue Section 51.

NOTES OF DECISIONS

In general 1

Indictment 2

1. In general

Where two Justices, under the habeas corpus Act, had admitted a person to bail, who was charged with murder in the warrant, it was held that they were guilty of an escape, and might very properly be indicted. State v. Arthur & Guignard, 1838, 1838 WL 1667, Unreported.

2. Indictment

In an indictment for an escape, it is sufficient to set out that the prisoner did escape; and this may be expressed by other words besides exivit ad largum. State v. Maberry, 1848, 1848 WL 2487, Unreported.

It is not a valid objection to an indictment for an escape, that the defendant, who although not formally appointed and qualified as a constable, had assumed to act as such, was charged therein with negligence as a lawful constable. State v. Maberry, 1848, 1848 WL 2487, Unreported.

**SECTION 16‑9‑440.** Officer permitting prisoner to be taken by a mob or other unlawful assemblage of persons.

If any prisoner lawfully in the charge, custody or control of any officer, State, county or municipal, shall be seized and taken from such officer through his negligence, permission or connivance by a mob or other unlawful assemblage of persons and at their hands suffering bodily violence or death, the officer shall be deemed guilty of a misdemeanor and, upon true bill found, shall be deposed from his office pending his trial and, upon conviction, shall forfeit his office and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State.

HISTORY: 1962 Code Section 16‑234; 1952 Code Section 16‑234; 1942 Code Section 1128; 1932 Code Section 1128; Cr. C. ‘22 Section 27; Cr. C. ‘12 Section 173; Cr. C. ‘02 Section 142; 1896 (22) 213; 1908 (25) 1019.

CROSS REFERENCES

Penalty for connivance at escape, see Section 24‑3‑910.

Library References

Prisons 439.

Westlaw Topic No. 310.

C.J.S. Prisons and Rights of Prisoners Sections 123 to 125, 127.

**SECTION 16‑9‑450.** Prosecution of officers violating Section 16‑9‑440; fees and costs.

It shall be the duty of the prosecuting attorney within whose circuit or county any such offense as is described in Section 16‑9‑440 may be committed to forthwith institute a prosecution against such officer. The officer shall be tried in such county in the same circuit, other than the one in which the offense was committed, as the Attorney General may elect. The fees and mileage of all material witnesses, both for the State and the defense, shall be paid by the county treasurer of the county in which the case originated on a certificate issued by the clerk and signed by the presiding judge showing the amounts due the witnesses.

HISTORY: 1962 Code Section 16‑235; 1952 Code Section 16‑235; 1942 Code Section 1128; 1932 Code Section 1128; Cr. C. ‘22 Section 27; Cr. C. ‘12 Section 173; Cr. C. ‘02 Section 142; 1896 (22) 213; 1908 (25) 1019.

Library References

Costs 295, 310.

Criminal Law 108(1).

Westlaw Topic Nos. 102, 110.

C.J.S. Criminal Law Section 226.

**SECTION 16‑9‑460.** Unlawful entry into the United States; furthering illegal entry by or avoidance of detection of undocumented alien; penalties; exceptions.

(A) It is a felony for a person who has come to, entered, or remained in the United States in violation of law to allow themselves to be transported, moved, or attempted to be transported within the State or to solicit or conspire to be transported or moved within the State with intent to further the person’s unlawful entry into the United States or avoiding apprehension or detection of the person’s unlawful immigration status by state or federal authorities.

(B) It is a felony for a person knowingly or in reckless disregard of the fact that another person has come to, entered, or remained in the United States in violation of law to transport, move, or attempt to transport that person within the State or to solicit or conspire to transport or move that person within the State with intent to further that person’s unlawful entry into the United States or avoiding apprehension or detection of that person’s unlawful immigration status by state or federal authorities.

(C) It is a felony for a person who has come to, entered, or remained in the United States in violation of law to conceal, harbor, or shelter themselves from detection or to solicit or conspire to conceal, harbor, or shelter themselves from detection in any place, including a building or means of transportation, with intent to further that person’s unlawful entry into the United States or avoiding apprehension or detection of the person’s unlawful immigration status by state or federal authorities.

(D) It is a felony for a person knowingly or in reckless disregard of the fact that another person has come to, entered, or remained in the United States in violation of law to conceal, harbor, or shelter from detection or to solicit or conspire to conceal, harbor, or shelter from detection that person in any place, including a building or means of transportation, with intent to further that person’s unlawful entry into the United States or avoiding apprehension or detection of that person’s unlawful immigration status by state or federal authorities.

(E) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by a fine not to exceed five thousand dollars or by imprisonment for a term not to exceed five years, or both.

(F) A person who is convicted of, pleads guilty to, or enters into a plea of nolo contendere to a violation of this section must not be permitted to seek or obtain any professional license offered by the State or any agency or political subdivision of the State.

(G) This section does not apply to programs, services, or assistance including soup kitchens, crisis counseling, and intervention; churches or other religious institutions that are recognized as 501(c)(3) organizations by the Internal Revenue Service; or short‑term shelters specified by the United States Attorney General, in the United States Attorney General’s sole discretion after consultation with appropriate federal agencies and departments, which:

(i) deliver in‑kind services at the community level, including through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and

(iii) are necessary for the protection of life or safety.

Shelter provided for strictly humanitarian purposes or provided under the Violence Against Women Act is not a violation of this section, so long as the shelter is not provided in furtherance of or in an attempt to conceal a person’s illegal presence in the United States.

(H) Providing health care treatment or services to a natural person who is in the United States unlawfully is not a violation of this section.

HISTORY: 2008 Act No. 280, Section 9, eff June 4, 2008; 2011 Act No. 69, Section 4, eff January 1, 2012.

Validity

For validity of this section, see U.S. v. South Carolina, 840 F.Supp.2d 898 (D.S.C. December 22, 2011).

Library References

Aliens, Immigration, and Citizenship 771, 799.

Westlaw Topic No. 24.

C.J.S. Aliens Sections 1535, 1560 to 1561, 1573, 1582 to 1600.

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ALR Library

75 ALR 6th 541 , Preemption of State Statute, Law, Ordinance, or Policy With Respect to Law Enforcement or Criminal Prosecution as to Aliens.

174 ALR 549 , Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

LAW REVIEW AND JOURNAL COMMENTARIES

Preemption and United States v. South Carolina: Undermining our nation’s border and the Constitution’s border between State and Federal sovereignty. Honorable George E. “Chip” Campsen, III, 65 S.C. L. Rev. 901 (Summer 2014).

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 567 U.S. 387, 183 L.Ed.2d 351, on remand 689 F.3d 1132. Aliens, Immigration, and Citizenship 103; States 18.43

NOTES OF DECISIONS

Constitutional issues 2

Injunctive relief 4

Justiciability 3

Validity 1

1. Validity

South Carolina statutory provisions creating state felony to transport, move, or attempt to transport or conceal, harbor, or shelter person with intent to further that person’s unlawful entry or to help that person avoid apprehension or detection by state or federal authorities, were preempted by federal law; provisions infringed upon a comprehensive federal statutory scheme and would interfere with the federal government’s supremacy in the realm of immigration, and the statutory provisions would allow state officials to exercise discretion regarding the prosecution of persons allegedly harboring or sheltering persons unlawfully present in the United States, creating a conflict with federal law since that discretion had previously been the exclusive province of the federal government. U.S. v. South Carolina, 2012, 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, and Citizenship 777; Aliens, Immigration, and Citizenship 778; Injunction 1496; States 18.43

Immigration and Nationality Act (INA) provisions and federal regulations preempted provisions of newly‑adopted South Carolina immigration law creating criminal offense for persons unlawfully present in United States to allow himself or herself to be transported or moved within state or to be harbored or sheltered to avoid apprehension or detection, where state law criminalized what Congress chose to treat only as civil offenses, and federal regulation of immigration was pervasive and comprehensive and specifically limited state and local law enforcement powers. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, and Citizenship 103; States 18.43

Immigration and Nationality Act (INA) provisions and federal regulations preempted provisions of newly‑adopted South Carolina immigration law creating state felony to transport, move, or attempt to transport or conceal, harbor, or shelter person with intent to further that person’s unlawful entry or to help that person avoid apprehension or detection by state or federal authorities, where federal regulation of immigration was pervasive and comprehensive and left no room for state supplementation, INA authorized state and local authorities only to act as enforcers of federal law, immigration was not area traditionally regulated by states, and INA and South Carolina law contained conflicting provisions as to federal safe harbor provision. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

2. Constitutional issues

Presumption against preemption did not apply to state immigration laws because immigration was an area traditionally regulated by the federal government. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

Provisions of state immigration law which operated to criminalize unlawful presence in United States were conflict preempted because they stood as an obstacle to the execution of the federal removal system and interfered with the discretion entrusted to federal immigration officials. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

Provisions of state immigration law making it a state felony to “transport, move or attempt to transport” or “conceal, harbor or shelter” a person “with intent to further that person’s unlawful entry into the United States” or to help that person avoid apprehension or detection were field preempted because the vast array of federal laws and regulations on the subject was so pervasive that Congress left no room for the states to supplement it; furthermore, the sections were conflict preempted because there was a federal interest so dominant that the federal system would be assumed to preclude enforcement of state laws on the same subject. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

State immigration law which made it a state misdemeanor for any person 18 years or older to fail to carry a certificate of alien registration or alien registration receipt card was field preempted by federal law; provision was almost identical to the federal registration statute. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

State immigration law making it unlawful for any person to display or possess a false or counterfeit identification (ID) for the purpose of proving lawful presence in the United States was field preempted in that Congress had passed several laws dealing with creating, possessing, and using fraudulent immigration documents; in addition, section was conflict preempted because enforcement of federal statutes necessarily involved the discretion of federal officials, and a state’s own law in the area, inviting state prosecution, would stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

When fraud at issue involves federal immigration documents, the presumption against preemption of state immigration law targeting fraud does not apply. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Aliens, Immigration, And Citizenship 103; States 18.43

Younger abstention was inapplicable where state proceedings had not begun against the federal plaintiffs and the plaintiffs sought injunctive relief to protect their constitutional rights; plaintiffs did not have to wait to be arrested under the challenged state immigration laws and live under a cloud of “prolonged uncertainty” before they could assert a constitutional claim. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Federal Courts 2596

3. Justiciability

Various immigration rights groups and individuals lacked standing to bring their constitutional challenge to section of newly‑adopted South Carolina immigration law that required verification of immigration status of any person incarcerated or detained in jail facility and provided for potential delivery of incarcerated persons to federal facilities if they were determined to be unlawfully present in United States, even though section appeared to expose some plaintiffs to concrete and particularized potential injury by operation of other sections that could have led to plaintiffs being arrested and detained at local or state prison facilities, where, in light of preliminarily injunction to enjoin enforcement of those other sections, injuries stemming from verification section were too remote and speculative. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Constitutional Law 695

4. Injunctive relief

Parties raising pre‑enforcement challenge to state immigration laws, who established that they were likely to succeed on the merits of their challenge based on federal preemption, made a clear showing they would likely suffer irreparable harm if preliminary injunction was not granted, that the balance of equities tipped in their favor, and that preliminary injunctive relief was in the public interest; irreparable injury to the nation’s foreign policy if the relevant sections took effect had been clearly established by the United States, and for individual, unlawfully present immigrants and others, the likelihood of chaos resulting from state enforcing its separate immigration regime was apparent. U.S. v. South Carolina (C.A.4 (S.C.) 2013) 720 F.3d 518. Injunction 1496

United States and various immigration rights groups and individuals, which sought preliminary injunction against various South Carolina statutes addressing immigration‑related issues through criminal provisions, established a substantial likelihood of success on merits of their claims that South Carolina’s “self harboring” statute, which made it a state criminal offense for persons unlawfully present in the United States “to allow themselves to be transported” or to “conceal, harbor or shelter themselves from detection,” conflicted with a well ordered and settled federal statutory scheme for dealing with unlawfully present persons, and was therefore preempted by federal law. U.S. v. South Carolina, 2012, 906 F.Supp.2d 463, affirmed 720 F.3d 518. Injunction 1496

Having found that federal immigration regulations preempted South Carolina’s newly‑adopted immigration law provisions creating state crime for third parties to harbor, shelter, or transport unlawfully present persons, preliminary injunction was warranted to enjoin enforcement of state’s law, where United States and various immigration rights groups and individuals were likely to suffer irreparable injury if provisions became effective, balance of equities tipped decidedly in their favor, and public interest was served by preliminary injunctive relief. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Injunction 1496

Having found that federal immigration regulations preempted South Carolina’s newly‑adopted immigration law provisions creating state crime for persons unlawfully present in United States to harbor, shelter, or transport themselves, preliminary injunction was warranted to enjoin enforcement of state’s law, where state law conflicted with federal regulations treating unlawful presence as civil enforcement matter, creating potentially chaotic situation and raising potential foreign affairs sensitivities, such that United States and various immigration rights groups and individuals were likely to suffer irreparable injury if provisions became effective, balance of equities tipped decidedly in their favor, and public interest was served by preliminary injunctive relief. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Injunction 1496