CHAPTER 17

Offenses Against Public Policy

ARTICLE 1

Barratry

**SECTION 16‑17‑10.** Barratry prohibited.

 Any person who shall:

 (1) Wilfully solicit or incite another to bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and

 (a) thereby seeks to obtain employment for himself or for another to prosecute or defend such action,

 (b) has no direct and substantial interest in the relief thereby sought,

 (c) does so with intent to distress or harass any party to such action,

 (d) directly or indirectly pays or promises to pay any money or other thing of value to, or the obligations of, any party to such an action or

 (e) directly or indirectly pays or promises to pay any money or other thing of value to any other person to bring about the prosecution or maintenance of such an action; or

 (2) Wilfully bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and

 (a) has no direct or substantial interest in the relief thereby sought,

 (b) thereby seeks to defraud or mislead the court,

 (c) brings such action with intent to distress or harass any party thereto or

 (d) directly or indirectly receives any money or other thing of value to induce the bringing of such action;

 Shall be guilty of the crime of barratry.

 The crime of barratry shall be punishable by a fine of not more than five thousand dollars or by imprisonment of not more than two years, or both.

HISTORY: 1962 Code Section 16‑521; 1957 (50) 23.

CROSS REFERENCES

Practice of law by corporations or voluntary associations, see Section 40‑5‑320.

Purchasing claims for suit, see Section 40‑5‑340.

Soliciting legal business, see Section 40‑5‑350.

Library References

Champerty and Maintenance 9, 10.

Westlaw Topic No. 74.

C.J.S. Champerty and Maintenance; Barratry and Related Matters Sections 30 to 34.

RESEARCH REFERENCES

ALR Library

139 ALR 620 , Offense of Barratry; Criminal Aspects of Champerty and Maintenance.

Encyclopedias

S.C. Jur. Appeal and Error Section 71, The Four Basic Requirements.

NOTES OF DECISIONS

In general 1⁄2

Private actions 1

1⁄2. In general

The essential purpose of South Carolina statute criminalizing barratry is to protect people from being subjected to litigation brought for no purpose other than to distress or harass. Wellin v. Wellin, 2015, 135 F.Supp.3d 502. Negligence 222

1. Private actions

Children’s allegations were sufficient to state negligence per se claim against father’s wife for allegedly violating South Carolina’s barratry statute; children alleged that wife enticed father and his attorneys to file two actions against them with intent to distress or harass them, that wife breached duty of care owed to them, and that they were subjected to litigation brought for no purpose other than to distress or harass. Wellin v. Wellin, 2015, 135 F.Supp.3d 502. Champerty and Maintenance 1

Servient estate owners alleged for the first time on appeal that dominant estate owners’ attorney breached an independent duty owed to them under the barratry statute and Rule 11 in connection with litigation over rearrangement of travel lane, and thus issue was not preserved for appeal and Supreme Court would not consider the issue. Pye v. Estate of Fox (S.C. 2006) 369 S.C. 555, 633 S.E.2d 505. Appeal And Error 170(1)

**SECTION 16‑17‑20.** Persons convicted of barratry barred from practice of law.

 Any person convicted of barratry shall be forever barred from practicing law in this State.

HISTORY: 1962 Code Section 16‑522; 1957 (50) 23.

Library References

Attorney and Client 39.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 72 to 75.

**SECTION 16‑17‑30.** Liability of corporations and unincorporated associations.

 As used in Section 16‑17‑10 the term “person” shall include corporations and unincorporated associations, and the statutes and laws of this State pertaining to criminal liability and enforcement thereof against corporations shall apply to any unincorporated association convicted of barratry.

HISTORY: 1962 Code Section 16‑523; 1957 (50) 23.

CROSS REFERENCES

Enforcing judgments in criminal cases against corporations, see Section 17‑25‑320.

Practice of law by corporations or voluntary associations, see Section 40‑5‑320.

Library References

Corporations and Business Organizations 2611.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 815 to 818.

**SECTION 16‑17‑40.** Corporations or unincorporated associations convicted of barratry barred from doing business in State.

 Any corporation or unincorporated association found guilty of the crime of barratry shall be forever barred from doing any business or carrying on any activity within this State, and in the case of a corporation its charter or certificate of domestication shall be summarily revoked by the Secretary of State.

HISTORY: 1962 Code Section 16‑524; 1957 (50) 23.

CROSS REFERENCES

Practice of law by corporations or voluntary associations, see Section 40‑5‑320.

Library References

Corporations and Business Organizations 2294.

Westlaw Topic No. 101.

C.J.S. Corporations Section 684.

**SECTION 16‑17‑50.** Article is cumulative.

 The provisions of this article are cumulative and shall not be construed as repealing any existing statute or the common law of this State with respect to the subject matter of any of the provisions hereof.

HISTORY: 1962 Code Section 16‑525; 1957 (50) 23.

ARTICLE 3

Desecration or Mutilation of Flags

**SECTION 16‑17‑210.** Definitions.

 The words “flag, standard, color or ensign,” as used in Sections 16‑17‑220 and 16‑17‑230, shall include any flag, standard, color or ensign or any picture or representation made of any substance or represented on any substance and of any size, evidently purporting to be of the flag, standard, color or ensign of the United States, the Confederate States of America or this State, or a picture or representation upon which shall be shown the colors, the stars and the stripes, in any number or either thereof or by which the person seeing such picture or representation without deliberation may believe it to represent the flag, colors, standard or ensign of the United States, the Confederate States of America or this State.

HISTORY: 1962 Code Section 16‑533; 1952 Code Section 16‑533; 1942 Code Section 1274; 1932 Code Section 1274; Cr. C. ‘22 Section 169; 1916 (29) 925; 1958 (50) 1676.

**SECTION 16‑17‑220.** Desecration or mutilation of United States, Confederate or State flags.

 Any person who in any manner, for exhibition or display, shall (a) knowingly place or cause to be placed any word, inscription, figure, mark, picture, design, device, symbol, name, characters, drawing, notice or advertisement of any nature upon any flag, standard, color or ensign of the United States, the Confederate States of America or this State or upon a flag, standard, color or ensign purporting to be such, (b) knowingly display, exhibit or expose or cause to be exposed to public view any such flag, standard, color or ensign upon which shall have been printed, painted or otherwise placed or to which shall be attached, appended, affixed or annexed any word, inscription, figure, mark, picture, design, device, symbol, name, characters, drawing, photographs, notice or advertisement of any nature, (c) expose to public view, manufacture, sell, expose for sale, give away or have in possession for sale, to give away, or for use for any purpose, any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for camping or transporting merchandise upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, color or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which placed or (d) publicly mutilate, deface, defile, defy, jeer at, trample upon or cast contempt, either by word or act, upon any such flag, standard, color or ensign shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days, or both, in the discretion of the court, and shall also forfeit a penalty of fifty dollars for each offense, to be recovered with costs in a civil action or suit in any court having jurisdiction. Such action or suit may be brought by and in the name of any citizen of this State, and such penalty when collected, less the reasonable cost and expense of action or suit and recovery to be certified by the clerk of court of the county in which the offense is committed, shall be paid into the State Treasury. Two or more penalties may be sued for and recovered in the same action or suit.

HISTORY: 1962 Code Section 16‑532; 1952 Code Sections 16‑531, 16‑532; 1942 Code Sections 1273, 1274; 1932 Code Sections 1273, 1274; Cr. C. ‘22 Sections 168, 169; Cr. C. ‘12 Section 207; 1910 (26) 753; 1916 (29) 925; 1950 (46) 1881; 1958 (50) 1676.

Library References

States 23.

United States 5.5.

Westlaw Topic Nos. 360, 393.

C.J.S. Flags Sections 1 to 4.

C.J.S. States Section 79.

LAW REVIEW AND JOURNAL COMMENTARIES

Driving Dixie down: removing the confederate flag from Southern state capitols. 101 Yale L. Journal 481 (Nov. 1991).

United States Supreme Court Annotations

Supreme Court’s views as to constitutionality of laws prohibiting, or of criminal convictions for, desecration, defiance, disrespect, or misuse of American flag. 105 L Ed 2d 809.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Prosecution under federal Flag Protection Act (18 USCA Section 700) for burning American flag violated Federal Constitution’s First Amendment, as defendants’ flag burning constituted expressive conduct; Court would not reconsider holding in earlier case that flag burning as mode of expression enjoys full protection of First Amendment; Act improperly suppressed expression out of concern for its likely communicative impact even though it contained no explicit content‑based limitation on scope of prohibited conduct, therefore was subject to most exacting scrutiny, Act did not advance government’s legitimate interest in preserving flag’s function as incident of sovereignty, and even assuming national consensus favoring prohibition against flag burning, suggestion that government’s interest in suppressing speech becomes more weighty as popular opposition grows is foreign to First Amendment. U.S. v. Eichman, U.S.Dist.Col.1990, 110 S.Ct. 2404, 496 U.S. 310, 110 L.Ed.2d 287.

Conviction of protestor for burning American flag as part of political demonstration violated First Amendment, since conduct was sufficiently imbued with elements of communication to implicate First Amendment, state’s interest in preventing breaches of peace was not implicated on record in particular case, and state’s asserted interest in preserving flag as symbol of nationhood and national unity does not justify conviction. Texas v. Johnson, U.S.Tex.1989, 109 S.Ct. 2533, 491 U.S. 397, 105 L.Ed.2d 342.

**SECTION 16‑17‑230.** Presumption from possession.

 It is permissible to infer that possession by any person, other than a public officer as such, of any flag, standard, color, or ensign on which is anything made unlawful at any time by Section 16‑17‑220 or of any article, substance, or thing on which is anything made unlawful at any time by that section is in violation of that section.

HISTORY: 1962 Code Section 16‑534; 1952 Code Section 16‑534; 1942 Code Section 1274; 1932 Code Section 1274; Cr. C. ‘22 Section 169; 1916 (29) 925; 1922 (32) 858; 1987 Act No. 95 Section 8.

Library References

States 23.

United States 5.5.

Westlaw Topic Nos. 360, 393.

C.J.S. Flags Sections 1 to 4.

C.J.S. States Section 79.

LAW REVIEW AND JOURNAL COMMENTARIES

Driving Dixie down: removing the confederate flag from Southern state capitols. 101 Yale L. Journal 481 (Nov. 1991).

United States Supreme Court Annotations

Supreme Court’s views as to constitutionality of laws prohibiting, or of criminal convictions for, desecration, defiance, disrespect, or misuse of American flag. 105 L Ed 2d 809.

ARTICLE 5

Improper Use of Names

**SECTION 16‑17‑310.** Imitation of organizations’ names, emblems and the like.

 No person, society or organization shall assume, use, adopt, become incorporated under or continue to use the name and style or emblems of any incorporated benevolent, fraternal, social, humane or charitable organization previously existing in this State or a name and style or emblem so nearly resembling the name and style of such incorporated organization as to be a colorable imitation thereof. When two or more of such societies, associations or corporations claim the right to the same name or to a name substantially similar as above provided, the organization which was first organized and used the name and first became incorporated under the laws of the United States or of any state of the Union, whether incorporated in this State or not, shall be entitled in this State to the prior and exclusive use of such name, and the rights of such societies, associations or corporations and of their individual members shall be fixed and determined accordingly.

 Any person who shall wear a badge, button or other emblem or shall use the name or claim to be a member of any benevolent, fraternal, social, humane or charitable organization which is entitled to the exclusive use of such name and emblems under this section, either in the identical form or in such near resemblance thereto as to be a colorable imitation of such emblems and name, unless entitled so to do under the laws, rules and regulations of such organization, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or imprisonment in the State Penitentiary for not less than thirty days nor more than one year.

HISTORY: 1962 Code Section 16‑542; 1952 Code Section 16‑542; 1942 Code Section 1243; 1932 Code Section 1243; Cr. C. ‘22 Section 139; Cr. C. ‘12 Section 285; 1906 (25) 118; 1910 (26) 723, 779; 1925 (34) 20.

Library References

Trademarks 1787.

Westlaw Topic No. 382T.

C.J.S. Trade‑Marks, Trade‑Names, and Unfair Competition Section 195.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Injunctions Section 22, Use of Certain Official Insignia.

Notes of Decisions

In general 1

1. In general

Under South Carolina law, national religious organization’s federally‑protected trademarks prevailed over state diocese’s state‑registered trademarks, and therefore cancellation of state‑registered trademarks was required, where organization’s use of trademarks led to confusion. Protestant Episcopal Church in the Diocese of South Carolina v. Episcopal Church (S.C. 2017) 2017 WL 3274123. Trademarks 1257

**SECTION 16‑17‑320.** Injunction to restrain improper use of name and emblems.

 Whenever there shall be an actual or threatened violation of the provisions of Section 16‑17‑310, the organization entitled to the exclusive use of the name in question, under the terms of said section, shall have the right to apply to the proper courts for an injunction to restrain the infringement of its name and the use of its emblems. If it shall be made to appear to the court that the defendants are in fact infringing or about to infringe upon the name and style of a previously existing incorporated benevolent, fraternal, social, humane or charitable organization in the manner prohibited in said section or that the defendant or defendants are wearing and using the badge, insignia or emblems of such organization, without the authority thereof in violation of said section, an injunction may be issued by the court under the principles of equity, without requiring proof that any person has been in fact misled or deceived by the infringement of such name or the use of such emblem.

HISTORY: 1962 Code Section 16‑543; 1952 Code Section 16‑543; 1942 Code Section 1243; 1932 Code Section 1243; Cr. C. ‘22 Section 139; Cr. C. ‘12 Section 285; 1906 (25) 118; 1910 (26) 723, 779; 1925 (34) 20.

CROSS REFERENCES

Injunctions, generally, see Rules of Civil Procedure, Rule 65.

Library References

Trademarks 1700 to 1724.

Westlaw Topic No. 382T.

C.J.S. Corporations Sections 141 to 142.

C.J.S. Trade‑Marks, Trade‑Names, and Unfair Competition Sections 155, 339 to 363.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Injunctions Section 22, Use of Certain Official Insignia.

ARTICLE 7

Miscellaneous Offenses

**SECTION 16‑17‑410.** Conspiracy.

 The common law crime known as “conspiracy” is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means.

 A person who commits the crime of conspiracy is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

 A person who is convicted of the crime of conspiracy must not be given a greater fine or sentence than he would receive if he carried out the unlawful act contemplated by the conspiracy and had been convicted of the unlawful act contemplated by the conspiracy or had he been convicted of the unlawful acts by which the conspiracy was to be carried out or effected.

HISTORY: 1962 Code Section 16‑550; 1957 (50) 58; 1993 Act No. 184, Section 35.

CROSS REFERENCES

Accessories before the fact, see Sections 16‑1‑40, 16‑1‑50.

Common law crime of conspiracy, penalty, see Section 59‑150‑400.

Conspiracy against civil rights, see Section 16‑5‑10.

Conspiracy to kidnap, see Section 16‑3‑920.

Conspiracy to violate provisions as to treason, sabotage, regulations as to aliens, see Section 25‑7‑60.

Conspiring to rob a train, see Section 16‑11‑350.

Penalties for conspiracy to violate game and fish laws, see Section 50‑1‑136.

Trusts, monopolies, and conspiracies in restraint of trade, see Section 39‑3‑10 et seq.

Library References

Conspiracy 23 to 36, 51.

Westlaw Topic No. 91.

C.J.S. Conspiracy Sections 94 to 112, 115 to 139, 141 to 149, 159 to 160, 168, 228 to 293.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Civil Conspiracy Section 3, Criminal Conspiracy Distinguished.

S.C. Jur. Civil Conspiracy Section 8, Overt Act.

Treatises and Practice Aids

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

Attorney General’s Opinions

A defendant convicted of a conspiracy to commit a crime classified as a misdemeanor is guilty of a felony so long as the individual is charged with violating this section. SC Op.Atty.Gen. (November 13, 2015) 2015 WL 7573852.

The General Assembly intended Section 50‑1‑136 to be the exclusive punishment for conspiracies to violate Title 50, thus making this offense a General Sessions offense. SC Op.Atty.Gen. (Feb. 9, 1996) 1996 WL 94001.

Crime of conspiracy is misdemeanor under South Carolina law, but there may be other charging decisions that could cause same event to be felony. 1985 Op.Atty.Gen., No 85‑57, p 165 (1985 WL 166027).

Review of South Carolina Code reveals no specific “conspiracy to violate Section 24‑3‑950” that would raise that act to felony. 1985 Op.Atty.Gen., No 85‑57, p 165 (1985 WL 166027).

NOTES OF DECISIONS

In general 1

Accessory before the fact 9

Admissibility of evidence 14

Agreement, elements 5

Circumstantial evidence 7

Civil conspiracy distinguished 10

Constitutional issues 2

Deemed acts and declarations 8

Elements 3‑5

In general 3

Agreement 5

Overt acts 4

Indictment 13

Instructions 16

Jurisdiction 12

Lesser included offenses 11

Overt acts, elements 4

Proof of conspiracy 6

Questions for jury 15

Review 19

Sentence and punishment 18

Sufficiency of evidence 17

1. In general

This section [Code 1962 Section 16‑550] is declaratory of the common‑law definition of conspiracy. State v Fleming (1963) 243 SC 265, 133 SE2d 800. State v Lagerquist (1971) 256 SC 69, 180 SE2d 882, cert den 404 US 852, 30 L Ed 2d 91, 92 S Ct 89.

It was held in State v Puckett (1960) 237 SC 369, 117 SE2d 369. State v Jacobs (1961) 238 SC 234, 119 SE2d 735. State v Ameker (1906) 73 SC 330, 53 SE 484. State v Davis (1911) 88 SC 229, 70 SE 811. State v Hightower (1952) 221 SC 91, 69 SE2d 363.

Because it takes at least two persons to enter into an agreement, there must be at least two members of a criminal conspiracy; yet they need not all be indicted or named. State v. Crawford (S.C.App. 2005) 362 S.C. 627, 608 S.E.2d 886. Conspiracy 24(4.1); Conspiracy 24(8)

Mere presence at the scene of a crime is insufficient to convict one as a principal on the theory of aiding and abetting. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Criminal Law 59(3)

2. Constitutional issues

In prosecution of defendant under this section [Section 16‑17‑410] for conspiracy to distribute marijuana and cocaine, state deputy’s hearsay testimony that law enforcement officers served search warrant because they had information that defendant and co‑defendant would be present in same apartment at the time violated defendant’s Sixth Amendment right to confront witnesses and constituted reversible error in that jury could have inferred from deputy’s statement that the police had additional evidence tying defendant not only to the apartment, but to the co‑defendant and to an ongoing drug conspiracy. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709.

Defendant waived his right to counsel following arraignment, at which he requested appointment of counsel, by signing Miranda waiver prior to giving statement during police‑initiated interview, such that interview did not violate defendant’s right to counsel and statement was admissible at trial for assault and battery of a high and aggravated nature, armed robbery, possessing a firearm during the commission of a violent crime, and criminal conspiracy, absent allegations that defendant requested that his counsel be present or that his waiver was otherwise not knowing and voluntary. State v. Reid (S.C. 2014) 408 S.C. 461, 758 S.E.2d 904, rehearing denied. Criminal Law 1752

Trial court did not erroneously consider defendant’s exercise of right to jury trial in sentencing her more severely than codefendants who pled guilty in connection with scandal involving defrauding school district through diversion of funds, where defendant and codefendants were not all employees of school district, were not all charged with identical crimes, and faced different sentences, defendant’s sentence was well within sentencing range for her convictions for aiding and abetting embezzlement, conspiracy, and obtaining goods and services by false pretenses, and although court commented on a codefendant’s guilty plea and consideration given to him for pleading guilty, court repeatedly noted that court was not considering defendant’s exercise of her right to a jury trial in rendering her sentence. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Sentencing And Punishment 115(3)

In prosecution for cocaine conspiracy, admission of State witnesses’ testimony concerning their and defendants’ marijuana use and distribution denied defendants fair trial; evidence against defendants was far from overwhelming, resting entirely on testimony of several individuals, all “higher up” in cocaine conspiracy hierarchy, who had turned State’s evidence in order to receive reduced sentences, and extensive evidence of extraneous bad acts by State’s witnesses served to bolster their credibility, in that they were presented to jurors as repentant persons determined to clear their consciences and assist State in restoring law and order. State v. Barroso (S.C. 1997) 328 S.C. 268, 493 S.E.2d 854. Criminal Law 368.47; Criminal Law 1169.11

Conviction of both criminal conspiracy and accessory before the fact did not offend constitutional provisions against double jeopardy. State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712.

3. Elements—In general

The gravamen of the offense of conspiracy is the agreement or combination. State v. Sanders (S.C.App. 2009) 388 S.C. 292, 696 S.E.2d 592; State v. Sims (S.C.App. 2008) 377 S.C. 598, 661 S.E.2d 122, rehearing denied, certiorari granted, affirmed but criticized 387 S.C. 557, 694 S.E.2d 9; State v. Crocker (S.C.App. 2005) 366 S.C. 394, 621 S.E.2d 890; State v. Dudley (S.C.App. 2003) 354 S.C. 514, 581 S.E.2d 171, certiorari granted, affirmed as modified 364 S.C. 578, 614 S.E.2d 623; State v. Stuckey (S.C.App. 2001) 347 S.C. 484, 556 S.E.2d 403, rehearing denied, certiorari denied.

To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. State v. Larmand (S.C. 2015) 415 S.C. 23, 780 S.E.2d 892, rehearing granted, rehearing denied, on remand 2016 WL 3950905. Conspiracy 47(2)

A “conspiracy” is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or of achieving by criminal or unlawful means an object that is neither criminal nor unlawful. State v. Sims (S.C.App. 2008) 377 S.C. 598, 661 S.E.2d 122, rehearing denied, certiorari granted, affirmed but criticized 387 S.C. 557, 694 S.E.2d 9, habeas corpus dismissed 2016 WL 748930. Conspiracy 23.1

A “conspiracy” is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object, or achieving by criminal or unlawful means an object that is neither criminal nor unlawful. State v. Buckmon (S.C. 2001) 347 S.C. 316, 555 S.E.2d 402. Conspiracy 23.1

Although the gravamen of the offense of conspiracy is the agreement, it is the individual participation of the actor by agreeing which subjects him to criminal liability as a co‑conspirator. State v. Hammitt (S.C.App. 2000) 341 S.C. 638, 535 S.E.2d 459, rehearing denied, certiorari granted, affirmed 351 S.C. 634, 572 S.E.2d 263. Conspiracy 40.1

The gravamen of conspiracy is the agreement or mutual understanding. State v. Hammitt (S.C.App. 2000) 341 S.C. 638, 535 S.E.2d 459, rehearing denied, certiorari granted, affirmed 351 S.C. 634, 572 S.E.2d 263. Conspiracy 24(1)

The gravamen of conspiracy is the agreement or mutual understanding. State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453. Conspiracy 24(1)

Guilt as a principal is established by presence at the scene through prearrangement to aid, encourage, or abet in the perpetration of a crime. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Criminal Law 59(3)

A conspiracy is a combination or agreement between 2 or more persons for the purpose of accomplishing a criminal or unlawful object, or achieving by criminal or unlawful means an object that is neither criminal nor unlawful. 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.

In order to establish a criminal conspiracy it is not necessary that the purpose of the conspiracy be accomplished. State v. Greuling (S.C. 1972) 257 S.C. 515, 186 S.E.2d 706. Conspiracy 24.10

4. —— Overt acts

No overt acts need be shown to establish a conspiracy; the crime consists of the agreement or mutual understanding. State v. Larmand (S.C.App. 2013) 402 S.C. 184, 739 S.E.2d 898, certiorari granted, reversed 415 S.C. 23, 780 S.E.2d 892, rehearing granted, rehearing denied, on remand 2016 WL 3950905. Conspiracy 24(1); Conspiracy 27

An overt act in furtherance of the conspiracy is not necessary to prove the crime. State v. Crocker (S.C.App. 2005) 366 S.C. 394, 621 S.E.2d 890. Conspiracy 27

A conspiracy does not require overt acts committed in furtherance of the conspiracy. State v. Dudley (S.C.App. 2003) 354 S.C. 514, 581 S.E.2d 171, certiorari granted, affirmed as modified 364 S.C. 578, 614 S.E.2d 623. Conspiracy 27

Under South Carolina law, no overt acts need be shown to establish a conspiracy; the crime consists of the agreement or mutual understanding. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Conspiracy 27

Under an accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Criminal Law 59(3); Criminal Law 59(5)

The essence of a conspiracy is the agreement; it may be proven by the specific overt acts done in furtherance of the conspiracy but the crime is the agreement. State v. Buckmon (S.C. 2001) 347 S.C. 316, 555 S.E.2d 402. Conspiracy 24(1); Conspiracy 27

Overt acts committed in furtherance of the conspiracy are not elements of the crime. State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453. Conspiracy 27

No overt acts need be shown to establish a conspiracy. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Conspiracy 27

5. —— Agreement

Criminal conspiracy requires an agreement or a mutual understanding. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Conspiracy 24(1)

A formally expressed agreement is not necessary to establish the conspiracy; it may be shown by circumstantial evidence and the conduct of the parties. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Conspiracy 24(1); Conspiracy 47(2)

Crime of “conspiracy” consists of mutual understanding or agreement. State v. Anders (S.C.App. 1997) 326 S.C. 392, 483 S.E.2d 780, rehearing denied, certiorari granted, affirmed 1998 WL 333454, withdrawn and superseded on denial of rehearing 331 S.C. 474, 503 S.E.2d 443. Conspiracy 24(1)

Crime of conspiracy consists of the agreement or mutual understanding. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Conspiracy 24(1)

6. Proof of conspiracy

It need not be shown that either the object or the means agreed upon is an indictable offense in order to establish a criminal conspiracy. It is sufficient if the one or the other is unlawful. Nor need a formal or express agreement be established. A tacit, mutual understanding, resulting in the willful and intentional adoption of a common design by two or more persons is sufficient provided the common purpose is to do an unlawful act either as a means or an end. State v Fleming (1963) 243 SC 265, 133 SE2d 800. State v Lagerquist (1971) 256 SC 69, 180 SE2d 882, cert den 404 US 852, 30 L Ed 2d 91, 92 S Ct 89.

Although the offense of conspiracy may be complete without proof of overt acts, such acts may nevertheless be shown, since from them an inference may be drawn as to the existence and object of the conspiracy. It sometimes happens that the conspiracy can be proved in no other way. State v Fleming (1963) 243 SC 265, 133 SE2d 800. State v Lagerquist (1971) 256 SC 69, 180 SE2d 882. cert den 404 US 852, 30 L Ed 2d 91, 92 S Ct 89.

Once a conspiracy has been established, evidence establishing beyond a reasonable doubt the connection of a defendant to the conspiracy, even though the connection is slight, is sufficient to convict him of knowing participation in the conspiracy. State v. Vasquez (S.C.App. 2000) 341 S.C. 648, 535 S.E.2d 465, rehearing denied, certiorari denied, habeas corpus dismissed 2007 WL 2822430, appeal dismissed 267 Fed.Appx. 262, 2008 WL 539532, certiorari denied 129 S.Ct. 207, 172 L.Ed.2d 165, rehearing denied 129 S.Ct. 676, 172 L.Ed.2d 645; State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453; State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied.

The law calls for an objective, rather than subjective, test in determining the existence of a conspiracy. State v. Sanders (S.C.App. 2009) 388 S.C. 292, 696 S.E.2d 592. Conspiracy 23.1

An overt act in furtherance of the conspiracy is not necessary to prove the crime; what is needed to establish criminal conspiracy is proof the defendants intended to act together for their shared mutual benefit within the scope of the conspiracy charged. State v. Sims (S.C.App. 2008) 377 S.C. 598, 661 S.E.2d 122, rehearing denied, certiorari granted, affirmed but criticized 387 S.C. 557, 694 S.E.2d 9, habeas corpus dismissed 2016 WL 748930. Conspiracy 23.1; Conspiracy 27

To prove conspiracy, it is sufficient to show that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe his own benefits were dependent upon the success of the entire venture. State v. Crocker (S.C.App. 2005) 366 S.C. 394, 621 S.E.2d 890. Conspiracy 24.5

What is needed to establish criminal conspiracy is proof the defendants intended to act together for their shared mutual benefit within the scope of the conspiracy charged. State v. Stuckey (S.C.App. 2001) 347 S.C. 484, 556 S.E.2d 403, rehearing denied, certiorari denied. Conspiracy 23.1; Conspiracy 24.5

Proof of a buyer‑seller relationship alone is inadequate to connect the buyer to a larger conspiracy, as is nominal association with members of the conspiracy; this is so because guilt remains individual and personal and is not a matter of mass application. State v. Hammitt (S.C.App. 2000) 341 S.C. 638, 535 S.E.2d 459, rehearing denied, certiorari granted, affirmed 351 S.C. 634, 572 S.E.2d 263. Conspiracy 40.1

To prove participation in conspiracy, the government need not show direct contact or explicit agreement between the defendants; it is sufficient to show that each defendant knew or had reason to know of the scope of the conspiracy and that each defendant had reason to believe his own benefits were dependent upon the success of the entire venture. State v. Hammitt (S.C.App. 2000) 341 S.C. 638, 535 S.E.2d 459, rehearing denied, certiorari granted, affirmed 351 S.C. 634, 572 S.E.2d 263. Conspiracy 40.1

What is required for a conspiracy to traffic in drugs is a shared, single criminal objective, not just similar or parallel objectives between similarly situated people; it is not enough that a group of people separately intend to distribute drugs in a single area, nor enough that their activities occasionally or sporadically place them in contact with each other. State v. Hammitt (S.C.App. 2000) 341 S.C. 638, 535 S.E.2d 459, rehearing denied, certiorari granted, affirmed 351 S.C. 634, 572 S.E.2d 263. Conspiracy 28(3)

When several people pursue a common design to commit an unlawful act and each takes the part agreed upon or assigned to him in an effort to insure the success of the common undertaking, the act of one is the act of all and all are presumed to be present and guilty. State v. Jennings (S.C.App. 1999) 335 S.C. 82, 515 S.E.2d 107. Criminal Law 59(2)

Mere association with admitted members of conspiracy is insufficient to tie other persons to conspiracy. State v. Barroso (S.C. 1997) 328 S.C. 268, 493 S.E.2d 854. Conspiracy 40

It is not enough for offense of conspiracy that group of people separately intend to distribute drugs in a single area, nor enough that their activities occasionally or sporadically place them in contact with each other. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Conspiracy 24(1)

Proof of buyer‑seller relationship, without more, is inadequate to tie buyer to larger conspiracy; however, agreement to distribute drugs can rationally be inferred from frequent contacts among defendants and from their joint appearances at transactions and negotiations. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Conspiracy 40; Conspiracy 44.2

The uncorroborated testimony of a co‑conspirator is sufficient to sustain a conviction for conspiracy. State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712. Criminal Law 510

In criminal conspiracy it is not necessary to prove an overt act. The gist of the crime is the unlawful combination. The crime is then complete, even though nothing further is done. State v. Greuling (S.C. 1972) 257 S.C. 515, 186 S.E.2d 706.

7. Circumstantial evidence

To establish sufficiently the existence of the conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. The circumstantial evidence and the conduct of the parties may consist of concert of action State v Fleming (1963) 243 SC 265, 133 SE2d 800. State v Lagerquist (1971) 256 SC 69, 180 SE2d 882. cert den 404 US 852, 30 L Ed 2d 91, 92 S Ct 89.

The fact of a conspiracy may be proved by any relevant competent evidence, having a legitimate tendency to support the accusation. The conspiracy may be shown not only by direct evidence, but by circumstantial evidence, or by both. In the reception of circumstantial evidence, great latitude must be allowed. State v Puckett (1960) 237 SC 369, 117 SE2d 369. State v Jacobs (1961) 238 SC 234, 119 SE2d 735.

To convict a person of conspiracy, the state must show the existence of a conspiracy either by formal express agreement or by circumstantial evidence and conduct of the parties, after which the state need prove only a slight connection between the conspiracy and the defendant to convict him of knowing participation in the conspiracy; the state here, however, presented no evidence, even circumstantial, to show the existence of a conspiracy. It is true, that the jury could have inferred the accused’s knowledge of the drugs, however, such a conclusion that the accused was part of a conspiracy to distribute marijuana or cocaine requires bridging an evidentiary gap with rank speculation. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709.

Because the crime of conspiracy is the agreement itself, the State need not show any overt acts in furtherance of the common scheme or plan; nonetheless, substantive crimes committed in furtherance of the conspiracy may constitute circumstantial evidence from which a jury could infer the existence of the conspiracy, its object, and scope. State v. Larmand (S.C. 2015) 415 S.C. 23, 780 S.E.2d 892, rehearing granted, rehearing denied, on remand 2016 WL 3950905. Conspiracy 27; Conspiracy 44.2

To establish sufficiently the existence of the conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. State v. Sims (S.C.App. 2008) 377 S.C. 598, 661 S.E.2d 122, rehearing denied, certiorari granted, affirmed but criticized 387 S.C. 557, 694 S.E.2d 9, habeas corpus dismissed 2016 WL 748930. Conspiracy 24(1); Conspiracy 47(2)

To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. State v. Crocker (S.C.App. 2005) 366 S.C. 394, 621 S.E.2d 890. Conspiracy 24(1); Conspiracy 47(2)

Proof of an express agreement is not necessary to establish the existence of a conspiracy, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. State v. Dudley (S.C.App. 2003) 354 S.C. 514, 581 S.E.2d 171, certiorari granted, affirmed as modified 364 S.C. 578, 614 S.E.2d 623. Conspiracy 24(1); Conspiracy 47(2)

Proof of express agreement or direct evidence of agreement is not essential to establish a conspiracy; conspiracy may be shown by circumstantial evidence and actions of parties. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Conspiracy 24(1); Conspiracy 47(2)

Substantive crimes committed in furtherance of conspiracy constitute circumstantial evidence of existence of conspiracy, its object, and scope. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Conspiracy 45

To establish civil conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. Robertson v. First Union Nat. Bank (S.C.App. 2002) 350 S.C. 339, 565 S.E.2d 309, rehearing denied, certiorari denied, certiorari dismissed as improvidently granted 357 S.C. 191, 592 S.E.2d 625. Conspiracy 19

A conspiracy may be proved by direct or circumstantial evidence or by circumstantial evidence alone. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Conspiracy 47(2)

Substantive crimes committed in furtherance of the conspiracy constitute circumstantial evidence of the existence of the conspiracy, its object, and scope. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Conspiracy 47(2)

A formal agreement is not necessary to establish a conspiracy, as the conspiracy may be proven by circumstantial evidence and the conduct of the parties. State v. Stuckey (S.C.App. 2001) 347 S.C. 484, 556 S.E.2d 403, rehearing denied, certiorari denied. Conspiracy 24(1)

To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. State v. Buckmon (S.C. 2001) 347 S.C. 316, 555 S.E.2d 402. Conspiracy 47(1); Conspiracy 47(2)

The substantive crimes committed in furtherance of the conspiracy constitute circumstantial evidence of the existence of the conspiracy, its object, and scope. State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453. Conspiracy 47(2)

To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. State v. Kelsey (S.C. 1998) 331 S.C. 50, 502 S.E.2d 63, rehearing denied. Conspiracy 47(2)

Conspiracy may be proved by direct or circumstantial evidence or by circumstantial evidence alone. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Conspiracy 47(1); Conspiracy 47(2)

Substantive crimes committed in furtherance of conspiracy constitute circumstantial evidence of existence of conspiracy, its object, and its scope. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Conspiracy 45

The fact of conspiracy may be proven by any relevant competent evidence having a legitimate tendency to support the accusation. The conspiracy may be shown not only by direct evidence, but by circumstantial evidence, or both. State v. Childs (S.C. 1989) 299 S.C. 471, 385 S.E.2d 839.

Although there may be no direct evidence that defendant and codefendants had mutual understanding to commit housebreaking and larceny, facts and circumstances may be susceptible to reasonable inference that they did in fact conspire to commit unlawful acts. State v. Oliver (S.C. 1980) 275 S.C. 79, 267 S.E.2d 529.

8. Deemed acts and declarations

Once a conspiracy has been established, evidence establishing beyond a reasonable doubt the connection of a defendant to the conspiracy, even though the connection is slight, is sufficient to convict him with knowing participation in the conspiracy; the acts and declarations of any conspirator made during the conspiracy and in furtherance thereof are deemed to be the acts and declarations of every other conspirator and are admissible against all. State v. Larmand (S.C.App. 2013) 402 S.C. 184, 739 S.E.2d 898, certiorari granted, reversed 415 S.C. 23, 780 S.E.2d 892, rehearing granted, rehearing denied, on remand 2016 WL 3950905. Conspiracy 41; Conspiracy 47(1)

The acts and declarations of any conspirator made during the conspiracy and in furtherance thereof are deemed to be the acts and declarations of every other conspirator and are admissible against all. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Conspiracy 41; Conspiracy 45

Under the “hand of one is the hand of all” theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Criminal Law 59(5)

The acts and declarations of any conspirator made during the conspiracy and in furtherance thereof are deemed to be the acts and declarations of every other conspirator and are admissible against all. State v. Vasquez (S.C.App. 2000) 341 S.C. 648, 535 S.E.2d 465, rehearing denied, certiorari denied, habeas corpus dismissed 2007 WL 2822430, appeal dismissed 267 Fed.Appx. 262, 2008 WL 539532, certiorari denied 129 S.Ct. 207, 172 L.Ed.2d 165, rehearing denied 129 S.Ct. 676, 172 L.Ed.2d 645. Conspiracy 45; Criminal Law 422(1)

The acts and declarations of any conspirator made during the conspiracy and in furtherance thereof are deemed to be the acts and declarations of every other conspirator and are admissible against all. State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453. Criminal Law 423(1)

Acts and declarations of any conspirator made during conspiracy and in furtherance thereof are deemed to be acts and declarations of every other conspirator and are admissible against all. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Criminal Law 422(1); Criminal Law 423(1)

9. Accessory before the fact

Conspiracy and accessory before the fact are separate and distinct offenses. State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712. Burglary 41(1)

In accessory before the fact, it must be shown that defendant aided, counselled or encouraged the actual commission of the crime, which is unnecessary to the establishment of a conspiracy. State v. Greuling (S.C. 1972) 257 S.C. 515, 186 S.E.2d 706. Conspiracy 28(1); Criminal Law 69

In conspiracy, an unlawful combination must be shown, which is not necessary in establishing the offense of accessory before the fact. State v. Greuling (S.C. 1972) 257 S.C. 515, 186 S.E.2d 706. Conspiracy 28(1); Criminal Law 71

The offenses of criminal conspiracy and accessory before the fact constitute separate and distinct offenses. State v. Greuling (S.C. 1972) 257 S.C. 515, 186 S.E.2d 706. Criminal Law 29(5.5)

10. Civil conspiracy distinguished

A “civil conspiracy” is the combination of two or more persons to injure a plaintiff and cause him special injuries thereby; in contrast with a criminal conspiracy, a civil conspiracy is actionable only if overt acts pursuant to the conspiracy proximately cause damage to the plaintiff. Pinion ex rel. Montague v. Pinion (S.C.App. 2005) 363 S.C. 564, 611 S.E.2d 271, rehearing denied. Conspiracy 1.1; Conspiracy 5; Conspiracy 6

Mortgagors, who claimed that they were harmed by entering into mortgage agreement secured by property with over‑estimated appraisal value, failed to establish that mortgagee bank and appraiser engaged in civil conspiracy to harm mortgagors; appraiser was employed by bank to appraise property as was bank’s practice when new or re‑financed loans were contemplated, appraiser testified that he was never told why the property was being appraised, and mortgagors did not present evidence of concerted effort by bank and appraiser to harm mortgagors. Robertson v. First Union Nat. Bank (S.C.App. 2002) 350 S.C. 339, 565 S.E.2d 309, rehearing denied, certiorari denied, certiorari dismissed as improvidently granted 357 S.C. 191, 592 S.E.2d 625. Conspiracy 19

11. Lesser included offenses

Solicitation is not a lesser included offense of conspiracy since a conspiracy involves the combination of 2 or more persons while solicitation contains the additional element of inducing another to commit a crime. State v. Prince (S.C. 1993) 316 S.C. 57, 447 S.E.2d 177, rehearing denied. Indictment And Information 191(4)

12. Jurisdiction

State lacked extraterritorial jurisdiction to prosecute nonresident defendant for trafficking cocaine and conspiracy to traffic cocaine based on defendant’s alleged conduct that did not occur within territorial borders of state, even though police officers stopped vehicle of defendant’s alleged coconspirators in state and discovered cocaine in vehicle; the only evidence was that defendant and her alleged coconspirators conspired and conducted drug transaction in Georgia, the financial benefit derived by defendant was also completed in Georgia and was not dependent on subsequent acts of alleged coconspirators, and there was no evidence that defendant knew the route the alleged coconspirators would take through state, that she intended for cocaine to be brought into state, or that she intended for her acts to create a detrimental effect within state. State v. Dudley (S.C.App. 2003) 354 S.C. 514, 581 S.E.2d 171, certiorari granted, affirmed as modified 364 S.C. 578, 614 S.E.2d 623. Criminal Law 97(1)

Critical determination for exercising extraterritorial jurisdiction over drug trafficking and conspiracy offenses arising from actions outside territorial boundaries of state was whether defendant intended a detrimental effect to occur in state; two key elements of that requirement were specific intent to act and the intent that the harm occur in state. State v. Dudley (S.C.App. 2003) 354 S.C. 514, 581 S.E.2d 171, certiorari granted, affirmed as modified 364 S.C. 578, 614 S.E.2d 623. Criminal Law 97(1)

13. Indictment

Failure to include phrase “with another or others” as essential element in indictments for criminal conspiracy did not deprive trial court of subject matter jurisdiction to accept guilty plea; by definition, allegation in indictments that defendant did “unite, combine, conspire, confederate, and agree to commit” alleged offenses necessarily implied action with another, and indictment cited to relevant statute, which included all requisite elements. Thompson v. State (S.C. 2004) 357 S.C. 192, 593 S.E.2d 139, rehearing denied. Conspiracy 43(2); Criminal Law 273(4.1)

A variance between a single drug trafficking conspiracy charged in an indictment and several conspiracies proved at trial is a material variance and cannot support the convictions of defendants not involved in the charged conspiracy, but only those who are so involved. State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453. Conspiracy 43(12)

Indictment charging defendants with conspiring to cheat and defraud county of certain property and services clearly charges defendants with conspiracy to defraud government, a recognized common law offense and therefore subsumed under statute. State v. Sweat (S.C. 1981) 276 S.C. 448, 279 S.E.2d 375. Conspiracy 43(10)

An indictment under this section [Code 1962 Section 16‑550] is ordinarily sufficient if it is in the language of the section. State v. Jacobs (S.C. 1961) 238 S.C. 234, 119 S.E.2d 735. Indictment And Information 110(3)

14. Admissibility of evidence

A statement is not hearsay if the statement is offered against a party and is a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. State v. Sims (S.C.App. 2008) 377 S.C. 598, 661 S.E.2d 122, rehearing denied, certiorari granted, affirmed but criticized 387 S.C. 557, 694 S.E.2d 9, habeas corpus dismissed 2016 WL 748930. Criminal Law 423(1)

Co‑conspirator’s testimony about another co‑conspirator’s statement relating defendant’s own statement of guilt was admissible non‑hearsay evidence; there was evidence presented, in form of co‑conspirator’s own testimony, indicating conspirators had mutual understanding and conspired to hide victim’s body and dispose of all remaining evidence of shooting, while testimony implied she knew nothing of victim’s death until statement by co‑conspirator, her testimony directly prior to statement was sufficient to show she knew or should have known scope of conspiracy, and her conduct subsequent to co‑conspirator’s statement proved her involvement in conspiracy. State v. Sims (S.C.App. 2008) 377 S.C. 598, 661 S.E.2d 122, rehearing denied, certiorari granted, affirmed but criticized 387 S.C. 557, 694 S.E.2d 9, habeas corpus dismissed 2016 WL 748930. Criminal Law 423(1); Criminal Law 427(5)

Testimony on prior statement made by witness to police regarding defendant’s role in burglary, which contradicted witness’s trial testimony, constituted substantive evidence at defendant’s conspiracy trial; the later testimony did not obviate the efficacy of the first statement that was made closer in time to the event in question. State v. Crawford (S.C.App. 2005) 362 S.C. 627, 608 S.E.2d 886. Criminal Law 405.19

Statement of defendant’s friend, that defendant was fixing to shoot victim, was not admissible under Rule of Evidence that provided that statement by co‑conspirator during course and in furtherance of conspiracy was not hearsay, even though friend had been indicted of criminal conspiracy, where statement did not further any conspiracy, and there was no independent evidence of conspiracy between friend and defendant, in light of fact that indictment was not evidence of crime charged. State v. Gilchrist (S.C. 2000) 342 S.C. 369, 536 S.E.2d 868, rehearing denied, habeas corpus dismissed 2005 WL 3747428, denial of post‑conviction relief affirmed 364 S.C. 173, 612 S.E.2d 702, habeas corpus denied 2007 WL 951749, appeal dismissed 250 Fed.Appx. 573, 2007 WL 2974033. Criminal Law 423(6); Criminal Law 427(2)

While evidence of commission by accused of another crime is generally inadmissible, one recognized exception is when evidence is admitted to show common scheme; evidence that charges against individual were dropped after he paid money to defendant was admissible in trial of defendant, attorney, for obstruction and conspiracy to obstruct justice where second charge against individual was allegedly dismissed after he paid defendant $800. State v. Caskey (S.C. 1979) 273 S.C. 325, 256 S.E.2d 737, certiorari denied 100 S.Ct. 660, 444 U.S. 1012, 62 L.Ed.2d 641.

15. Questions for jury

Circumstantial evidence was sufficient to create a jury question as to whether an agreement existed between defendant and co‑defendant with respect to assault and murder of co‑defendant’s child, and thus criminal conspiracy charge was properly submitted to jury; DNA evidence on victim’s body, along with co‑defendant’s admissions about his interactions with victim shortly before she died, placed co‑defendant and defendant together at the time of the assault on victim, and testimony regarding lack of forced entry into victim’s home and the cluttered condition of the home constituted evidence that defendant, who had no known connection to victim’s family, received assistance to navigate his way to victim’s bedroom. State v. Sanders (S.C.App. 2009) 388 S.C. 292, 696 S.E.2d 592. Conspiracy 48.1(2.1)

Issues regarding whether defendant was coerced or under duress to enter into criminal conspiracy to commit burglary were factual issues for the jury to decide. State v. Crawford (S.C.App. 2005) 362 S.C. 627, 608 S.E.2d 886. Conspiracy 48.1(1); Criminal Law 38

Issue of whether defendant conspired to commit burglary for purposes of criminal conspiracy was for jury, where defendant was in vehicle immediately after burglary was perpetrated, he fled when stopped by police, witness told police that he saw defendant carrying stolen saws from store and loading them into vehicle, and police found bolt cutters, gloves, and flashlights in the vehicle. State v. Crawford (S.C.App. 2005) 362 S.C. 627, 608 S.E.2d 886. Conspiracy 48.1(2.1)

Evidence was sufficient to submit conspiracy charge to jury; evidence indicated that defendant was instrumental in constructing pipe bombs, that he was with coconspirators on night of murder, that he helped coconspirator carry unconscious victim into woods, that he and coconspirator were alone together in woods with victim, that he placed pipe bomb into victim’s mouth, and that bomb exploded after coconspirator lit it. State v. Kelsey (S.C. 1998) 331 S.C. 50, 502 S.E.2d 63, rehearing denied. Conspiracy 48.1(2.1)

In a prosecution for conspiracy to commit murder, the prosecution presented sufficient evidence of conspiracy to withstand a directed verdict motion where a witness testified that the defendant solicited him to find someone to murder the victim on his behalf and later the defendant told the witness that he had found someone else to do the killing. State v. Prince (S.C. 1993) 316 S.C. 57, 447 S.E.2d 177, rehearing denied.

Charges of conspiracy to distribute marijuana and cocaine were properly submitted to the jury based on evidence that the defendant was alone in another’s residence with controlled substances and paraphernalia in his constructive possession when an alleged co‑conspirator attempted to prevent law enforcement officers from entering the apartment. State v. Goldsmith (S.C. 1990) 301 S.C. 463, 392 S.E.2d 787, habeas corpus granted 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709. Conspiracy 28(3)

In a prosecution for conspiracy, armed robbery, and murder, evidence that the defendant knew the codefendant, that the defendant was seen running from the area where the victim’s body was discovered, and that bloodhounds tracked a scent from the victim’s body to the home of the codefendant tended to prove the guilt of the defendant as to the charge of conspiracy, such that the trial judge did not err in denying the defendant’s motion for a directed verdict of acquittal. State v. Childs (S.C. 1989) 299 S.C. 471, 385 S.E.2d 839. Conspiracy 48.1(2.1)

16. Instructions

Although statute that prevented a person who murdered another from benefiting from the death was a civil statute, it only applied in situations where the deceased was intentionally and feloniously killed, which was a crime, and thus, any conspiracy triggering the statute would have to be criminal, rather than civil; therefore, son’s widow was not entitled to a jury instruction that proof of an overt act was required to prove the alleged conspiracy to kill son in son’s parents’ action against widow to prevent her from benefiting from his murder. Pinion ex rel. Montague v. Pinion (S.C.App. 2005) 363 S.C. 564, 611 S.E.2d 271, rehearing denied. Conspiracy 7; Conspiracy 21

Defendant was not entitled to a directed verdict on the charge of criminal conspiracy; evidence favorable to the State established that defendant formed an agreement with co‑defendant that co‑defendant would steal shoes from his work truck, the defendants would meet and exchange the shoes, and defendant would pay co‑defendant for the shoes. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Criminal Law 753.2(3.1)

Instructing jury to consider conspiracy to traffic in cocaine in lesser amounts as lesser included offenses against two co‑defendants was not tantamount to charge on facts that indirectly indicated to jury that judge perceived evidence as to defendant to more directly establish his participation in conspiracy to traffic in 400 grams or more of cocaine, and thus did not entitle defendant to new trial, where there were multiple defendants in conspiracy and defendant was not alleged to be directly connected with either co‑defendant. State v. Hammitt (S.C.App. 2000) 341 S.C. 638, 535 S.E.2d 459, rehearing denied, certiorari granted, affirmed 351 S.C. 634, 572 S.E.2d 263. Criminal Law 922(4)

Where trial judge charged Code 1962 Section 16‑92 in full and explained its meaning to the jury and charged conspiracy in the language of this section [Code 1962 Section 16‑550], there was no error, because this section [Code 1962 Section 16‑550] defines conspiracy and must be taken in connection with Code 1962 Section 16‑92. State v. Jacobs (S.C. 1961) 238 S.C. 234, 119 S.E.2d 735.

17. Sufficiency of evidence

Evidence was insufficient to support defendant’s convictions for conspiracy to distribute marijuana and cocaine where the State did not even present circumstantial evidence to show existence of a conspiracy or defendant’s participation in alleged conspiracy; thus, conviction was apparently based only on evidence that defendant was alone in another’s residence with controlled substances and paraphernalia in his constructive possession when an alleged co‑conspirator attempted to prevent law enforcement officers from entering apartment. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709. Conspiracy 47(12)

State presented sufficient circumstantial evidence to prove a common plan or scheme existed between defendant and his companion, as an element of the crime of conspiracy; the state demonstrated that defendant and his companion drove approximately one and one‑half hours to get to victim’s house, parked over one‑quarter mile from the house, leaving their vehicle facing the sole exit to the neighborhood, approached the house on foot while wearing black clothing, and then confronted victim, with defendant’s companion brandishing a gun. State v. Larmand (S.C. 2015) 415 S.C. 23, 780 S.E.2d 892, rehearing granted, rehearing denied, on remand 2016 WL 3950905. Conspiracy 47(3.1)

Circumstantial evidence was sufficient to show that an agreement to perpetrate sexual assault of child victim existed between defendant and codefendant, so as to support a conviction for criminal conspiracy; assault occurred at night at victim and defendant’s home, there were no signs of forced entry on any of the windows, evidence was presented that a door chain had been latched, the house was in such disarray that it would have been almost impossible for codefendant to navigate the house in the dark without someone guiding him, defendant on three separate occasions confessed to sexually assaulting victim, and, inter alia, a bite mark on victim that contained codefendant’s DNA was determined to have been inflicted contemporaneously with victim’s other injuries. State v. Cope (S.C. 2013) 405 S.C. 317, 748 S.E.2d 194, motion for relief from judgment denied 135 S.Ct. 400, 190 L.Ed.2d 289. Conspiracy 47(8)

Evidence that defendant and his companion arrived together at the scene of a confrontation with victim was insufficient to prove that defendant conspired in any way with his companion to harm victim, bring a gun to the confrontation, or brandish the gun, absent any showing from which the jury could infer that defendant and his companion had a common agreement or understanding to injure victim or point a firearm at him. State v. Larmand (S.C.App. 2013) 402 S.C. 184, 739 S.E.2d 898, certiorari granted, reversed 415 S.C. 23, 780 S.E.2d 892, rehearing granted, rehearing denied, on remand 2016 WL 3950905. Conspiracy 47(8)

Evidence was insufficient to prove that defendant pointed and presented a firearm at victim on the basis that the acts of a conspirator are deemed to be the acts of every other conspirator; it was undisputed that defendant never had possession of the gun, and the only evidence of a conspiracy presented by the state was that the defendant and his companion arrived at the scene of the confrontation with victim at the same time. State v. Larmand (S.C.App. 2013) 402 S.C. 184, 739 S.E.2d 898, certiorari granted, reversed 415 S.C. 23, 780 S.E.2d 892, rehearing granted, rehearing denied, on remand 2016 WL 3950905. Weapons 296

Circumstantial evidence was sufficient to create a jury question as to whether an agreement existed between defendant and co‑defendant with respect to assault and murder of co‑defendant’s child, and thus criminal conspiracy charge was properly submitted to jury; DNA evidence on victim’s body, along with co‑defendant’s admissions about his interactions with victim shortly before she died, placed co‑defendant and defendant together at the time of the assault on victim, and testimony regarding lack of forced entry into victim’s home and the cluttered condition of the home constituted evidence that defendant, who had no known connection to victim’s family, received assistance to navigate his way to victim’s bedroom. State v. Sanders (S.C.App. 2009) 388 S.C. 292, 696 S.E.2d 592. Conspiracy 48.1(2.1)

Evidence was sufficient to support conviction for conspiracy; forensic evidence established that bite mark on victim where accomplice’s DNA was found was inflicted within the same two‑hour time frame as the injuries that defendant confessed to inflicting, testimony established that there was no forced entry into home, and defendant staged the crime scene after child died. State v. Cope (S.C.App. 2009) 385 S.C. 274, 684 S.E.2d 177, affirmed 405 S.C. 317, 748 S.E.2d 194, motion for relief from judgment denied 135 S.Ct. 400, 190 L.Ed.2d 289. Conspiracy 47(8)

Once a conspiracy has been established, evidence establishing beyond a reasonable doubt the connection of a defendant to the conspiracy, even though the connection is slight, is sufficient to convict him of knowing participation in the conspiracy. State v. Sims (S.C.App. 2008) 377 S.C. 598, 661 S.E.2d 122, rehearing denied, certiorari granted, affirmed but criticized 387 S.C. 557, 694 S.E.2d 9, habeas corpus dismissed 2016 WL 748930. Conspiracy 24.5; Conspiracy 47(1)

Evidence that defendant fled the scene when police attempted to arrest him constituted evidence of his guilt in criminal conspiracy trial. State v. Crawford (S.C.App. 2005) 362 S.C. 627, 608 S.E.2d 886. Criminal Law 351(3)

Evidence was sufficient to support finding that defendant, who was a travel agent, knowingly entered into agreement with assistant superintendent to defraud school district of $1.4 million through a fake travel scheme, and thus, evidence was sufficient to support defendant’s conviction for criminal conspiracy, even though agreement was not written or verbalized; uncontradicted evidence showed that defendant knowingly assisted the assistant superintendent by creating false records indicating that school district had a credit, and assistant superintendent testified that he and defendant conspired through their actions. State v. Follin (S.C.App. 2002) 352 S.C. 235, 573 S.E.2d 812, rehearing denied, certiorari denied. Conspiracy 47(4)

Evidence supported the trial court’s jury charge concerning the accomplice liability theory of the “hand of one is the hand of all”; co‑defendant testified that defendant approached him about obtaining some shoes, that the defendants met several times where defendant unloaded shoes from co‑defendant’s work truck into defendant’s vehicle, that defendant paid co‑defendant for the shoes, and that defendant then sold the shoes at a flea market. State v. Condrey (S.C.App. 2002) 349 S.C. 184, 562 S.E.2d 320. Criminal Law 779

Evidence supported finding that defendant engaged in criminal conspiracy with co‑defendants; victim was held at defendant’s trailer, defendant assisted in transporting victim from his trailer to an abandoned house and then to the creek where her body was left, and defendant spoke with co‑defendants regarding getting rid of victim. State v. Stuckey (S.C.App. 2001) 347 S.C. 484, 556 S.E.2d 403, rehearing denied, certiorari denied. Conspiracy 47(8)

18. Sentence and punishment

As to punishment for conspiracy prior to the enactment of this section [Code 1962 Section 16‑550], see State v Ferguson (1952) 221 SC 300, 70 SE2d 355, cert den 344 US 830, 97 L Ed 646, 73 S Ct 35. State v McIntire (1952) 221 SC 504, 71 SE2d 410.

Conviction for conspiracy to traffic in cocaine was properly classified as “violent crime,” given that legislature, via statute that provided that person convicted of conspiracy had to be sentenced with full sentence and not one‑half of sentence as otherwise provided, indicated intent that conspiracy to traffic be treated as trafficking. Harris v. State (S.C. 2002) 349 S.C. 46, 562 S.E.2d 311. Sentencing And Punishment 75

A sentence to both fine and imprisonment exceeds the bounds of this section [Code 1962 Section 16‑550] and is illegal. State v. Petty (S.C. 1964) 245 S.C. 40, 138 S.E.2d 643.

A sentence, under this section [Code 1962 Section 16‑550], to imprisonment and a fine with a provision that after serving a portion of the sentence and paying a portion of the fine the balance would be suspended and the defendant placed on probation was illegal since this section [Code 1962 Section 16‑550] does not provide for both a fine and imprisonment, and the sentence cannot be justified on the basis of Code 1962 Sections 55‑591 and 55‑593, relating to terms of probation. State v. Petty (S.C. 1964) 245 S.C. 40, 138 S.E.2d 643.

19. Review

In viewing the sufficiency of the evidence to support a charge of conspiracy, an appellate court must exercise caution to ensure the proof is not obtained by piling inference upon inference. State v. Sanders (S.C.App. 2009) 388 S.C. 292, 696 S.E.2d 592. Criminal Law 1159.6

**SECTION 16‑17‑420.** Disturbing schools; summary court jurisdiction.

 (A) It shall be unlawful:

 (1) for any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or

 (2) for any person to (a) enter upon any such school or college premises or (b) loiter around the premises, except on business, without the permission of the principal or president in charge.

 (B) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall pay a fine of not more than one thousand dollars or be imprisoned in the county jail for not more than ninety days.

 (C) The summary courts are vested with jurisdiction to hear and dispose of cases involving a violation of this section. If the person is a child as defined by Section 63‑19‑20, jurisdiction must remain vested in the Family Court.

HISTORY: 1962 Code Section 16‑551; 1952 Code Section 16‑551; 1942 Code Section 1129; 1932 Code Section 1129; Cr. C. ‘22 Section 28; 1919 (31) 239; 1968 (55) 2308; 1972 (57) 2620; 2010 Act No. 273, Section 12, eff June 2, 2010.

Library References

Disorderly Conduct 116, 151.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4, 12 to 13.

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S.C. Jur. Colleges and Universities Section 22, Discipline Matters.

S.C. Jur. Constitutional Law Section 6.1, Justiciability.

S.C. Jur. Disorderly Conduct Section 6, Boisterous Conduct.

S.C. Jur. Disorderly Conduct Section 10, Particular Places.

LAW REVIEW AND JOURNAL COMMENTARIES

Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

Attorney General’s Opinions

Discussion of whether a student can be charged with disturbing school, while at school. SC Op.Atty.Gen. (July 12, 1999) 1999 WL 626642.

Picketing or protesting at the entrance or around a State supported college. SC Op.Atty.Gen. (July 23, 1997) 1997 WL 569039.

Failure by a student or other person to leave a school campus or school bus, when requested to do so by a principal, could, under particular circumstances, constitute a criminal offense. 1994 Op.Atty.Gen., No 94‑25, p 62 (1994 WL 199757).

South Carolina Code Section 16‑17‑420 makes it unlawful to interfere with or to disturb in any way the students or teachers of any school. Fighting would be included within the prohibition of Section 16‑17‑420. 1994 Op.Atty.Gen., No 94‑25, p 62 (1994 WL 199757).

Use of foul or offensive language toward a principal, teacher, or police officer can constitute a crime. 1994 Op.Atty.Gen., No 94‑25, p 62 (1994 WL 199757).

Section 16‑17‑420, prohibiting loitering about or entering school or college premises, may be enforced regardless of whether school is in session. 1990 Op.Atty.Gen. No 90‑61 (1990 WL 482448).

The Greenville County Commission for Technical Education can prohibit all salesmen from going onto the campus of Greenville TEC during regular working hours. 1975‑76 Op.Atty.Gen., No 4292, p 111 (1976 WL 22912).

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Guilty pleas 4

Justiciability 3

1. In general

A “takeover” of a campus building, where a minority group of dissidents sought to force University officialdom, and other students, from the building and prevent the use of the building for ordinary scheduled and expected purposes, was a form of expression which took the form of action that materially and substantially interfered with the normal activities of the University and invaded the rights and privileges of others. Bistrick v. University of S. C. (D.C.S.C. 1971) 324 F.Supp. 942. Constitutional Law 2012; Education 1201

A juvenile was guilty of the crime of disturbing a school where there was evidence that (1) he began kicking, punching, fighting and pushing a table after a teacher attempted to look in his book bag, (2) he screamed for an hour during which time classes were being held, (3) several school personnel were required to deal with the juvenile, (4) the juvenile’s violent behavior led him to being restrained by 2 teachers, and (5) the juvenile hit the teacher’s aide and tried to kill himself. In Interest of Doe (S.C.App. 1995) 318 S.C. 527, 458 S.E.2d 556. Infants 2466

2. Constitutional issues

The First Amendment loses none of its awesome force when taken to the campuses of America. Students and teachers have every right to freedom of expression. Bistrick v. University of S. C. (D.C.S.C. 1971) 324 F.Supp. 942.

The First Amendment imposes on a state university, fully as much as on a state itself, three rules: (1) Expression cannot be prohibited because of disagreement with or dislike for its contents. (2) Expression is subject to reasonable and nondiscriminatory regulations of time, place, and manner. (3) Expression can be prohibited if it takes the form of action that materially and substantially interferes with the normal activities of the institution or invades the rights of others. Bistrick v. University of S. C. (D.C.S.C. 1971) 324 F.Supp. 942.

Statute prohibiting any person from wilfully or unnecessarily interfering with or disturbing a school was not impermissibly overbroad in violation of First Amendment; statute, by its terms, did not apply to protected speech, in that it did not prohibit spoken words or conduct akin to pure speech, nor did it broadly regulate conduct, statute was limited in its application so as to remove any substantial threat to constitutionally protected expression, in that it dealt with disturbance of students and teachers in schools, and not a disturbance in just any public forum, and statute did not explicitly prohibit any type of gathering or expression except those which disturbed a school’s learning environment. In re Amir X.S. (S.C. 2006) 371 S.C. 380, 639 S.E.2d 144, rehearing denied, certiorari denied 127 S.Ct. 2981, 551 U.S. 1132, 168 L.Ed.2d 704. Constitutional Law 1967; Education 112

3. Justiciability

Juvenile lacked standing to challenge statute prohibiting any person from wilfully or unnecessarily interfering with or disturbing a school as facially vague, in violation of due process, as juvenile’s conduct fell within the most narrow application of statute; for period of over two hours, juvenile behaved in classroom in a way that was wilfully disruptive and unnecessary by pacing about and refusing to remain in his desk, and cursing to his teacher and other students, as juvenile was removed from classroom, he yelled and cursed, swung a punch at teacher, and continued his tirade as he was escorted down the hall, and juvenile had prior notice that his conduct was prohibited, as prior juvenile petition had charged him for violation of the same statute. In re Amir X.S. (S.C. 2006) 371 S.C. 380, 639 S.E.2d 144, rehearing denied, certiorari denied 127 S.Ct. 2981, 551 U.S. 1132, 168 L.Ed.2d 704. Constitutional Law 895

4. Guilty pleas

Trial court in delinquency proceeding could not accept juvenile’s pleas of guilty to three charges of disturbing school, where pleas were conditioned on juvenile’s right to appeal issue of whether disturbing‑school statute was unconstitutional. In re Johnny Lee W. (S.C. 2006) 371 S.C. 217, 638 S.E.2d 682. Infants 2540

**SECTION 16‑17‑430.** Unlawful communication.

 (A) It is unlawful for a person to:

 (1) use in a telephonic communication or any other electronic means, any words or language of a profane, vulgar, lewd, lascivious, or an indecent nature, or to communicate or convey by telephonic or other electronic means an obscene, vulgar, indecent, profane, suggestive, or immoral message to another person;

 (2) threaten in a telephonic communication or any other electronic means an unlawful act with the intent to coerce, intimidate, or harass another person;

 (3) telephone or electronically contact another repeatedly, whether or not conversation ensues, for the purpose of annoying or harassing another person or his family;

 (4) make a telephone call and intentionally fail to hang up or disengage the connection for the purpose of interfering with the telephone service of another;

 (5) telephone or contact by electronic means another and make false statements concerning either the death or injury of a member of the family of the person who is telephoned or electronically contacted, with the intent to annoy, frighten, or terrify that person; or

 (6) knowingly permit a telephone under his control to be used for any purpose prohibited by this section.

 (B) A person who violates any provision of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not more than thirty days.

HISTORY: 1962 Code Section 16‑552.1; 1961 (52) 451; 1967 (55) 626; 1993 Act No. 184, Section 36; 2001 Act No. 81, Section 13.

Library References

Telecommunications 1013, 1022.

Threats, Stalking, and Harassment 7, 55.

Westlaw Topic Nos. 372, 377E.

C.J.S. Telecommunications Sections 121, 124.

RESEARCH REFERENCES

Encyclopedias

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

Attorney General’s Opinions

The status of the offense of unlawful use of the telephone. SC Op.Atty.Gen. (Oct. 20, 2004) 2004 WL 2451469.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 3

Constitutional issues 2

Instruction 4

Sufficiency of evidence 5

1. In general

Since harassing, hang‑up type telephone calls are misdemeanors under Section 16‑17‑430, the Court of Appeals was not prepared to rule that a telephone company has a duty, under the statute, to notify a suspected offender prior to notifying the police, since obviously any such ruling would impede enforcement of the statute. Araujo v. Southern Bell Tel. & Tel. Co. (S.C.App. 1986) 291 S.C. 54, 351 S.E.2d 908.

2. Constitutional issues

Ban, under 47 USCA Section 223(b), on obscene or indecent interstate commercial telephone communications, violated First Amendment insofar as it banned indecent communications, but not insofar as it banned obscene communications, because denial of adult access to telephone messages which are indecent but not obscene far exceeds that which is necessary to serve compelling governmental interest in limiting access of minors to such messages. Sable Communications of California, Inc. v. F.C.C., U.S.Cal.1989, 109 S.Ct. 2829, 492 U.S. 115, 106 L.Ed.2d 93.

Statute defining offense of unlawful use of telephone to include use in telephonic communication of any words or language of “a profane, vulgar, lewd, lascivious, or an indecent nature,” is vague and overbroad without a limiting instruction stating that the statute prohibits only calls initiated by one with intent and sole purpose of conveying an unsolicited obscene, imminently threatening and/or harassing message to unwilling recipient, as the statutory terms “vulgar,” “profane,” “immoral” and “indecent” were substantially overbroad. State v. Buckner (S.C.App. 2000) 341 S.C. 241, 534 S.E.2d 15, rehearing denied, certiorari denied. Constitutional Law 1132(39); Constitutional Law 1132(50); Constitutional Law 1143(18); Constitutional Law 4509(20); Telecommunications 730

Although language of Section 16‑17‑430 is broad, it is not so vague as to be easily misunderstood nor so broad as to extend beyond State’s power to enact and is constitutional; state has legitimate interest in prohibiting obscene, threatening or harassing telephone calls; as applied to phone calls initiated by one with intent and sole purpose of conveying unsolicited obscene, imminently threatening and/or harassing message to unwilling recipient, statute is neither vague nor overbroad and is constitutional. State v. Brown (S.C. 1980) 274 S.C. 506, 266 S.E.2d 64.

3. Admissibility of evidence

Evidence that defendant would go out of his way to drive by victim’s home and office after they broke up was relevant in prosecution for unlawful use of telephone to rebut defendant’s claim that he did not call victim with intent to harass her. State v. Varvil (S.C.App. 2000) 338 S.C. 335, 526 S.E.2d 248. Criminal Law 368.25

4. Instruction

Trial court erroneously instructed jury on offense of unlawful use of telephone, where court first correctly gave limiting instruction stating that jurors could find defendant guilty only if state proved that defendant made telephone call with intent and sole purpose of conveying unsolicited obscene, imminently threatening and/or harassing message to unwilling recipient, but then proceeded to define vague statutory terms “lewd,” “lascivious,” “indecent,” “vulgar” and “immoral,” which was inconsistent with Supreme Court’s narrow construction of the statute. State v. Buckner (S.C.App. 2000) 341 S.C. 241, 534 S.E.2d 15, rehearing denied, certiorari denied. Telecommunications 1021

Trial court’s error in giving jury instruction which contained both the correct and incorrect law relating to the offense of unlawful use of telephone was not harmless; by erroneously giving the jury definitions of vague statutory terms such as “vulgar” and “indecent,” which was inconsistent with Supreme Court’s narrow construction of the statute, trial court lowered burden necessary for jury to find defendant guilty. State v. Buckner (S.C.App. 2000) 341 S.C. 241, 534 S.E.2d 15, rehearing denied, certiorari denied. Criminal Law 1172.4

5. Sufficiency of evidence

Evidence that defendant telephoned victim five times in 12‑day period was sufficient in prosecution for unlawful use of telephone to support finding that defendant telephoned victim “repeatedly.” State v. Varvil (S.C.App. 2000) 338 S.C. 335, 526 S.E.2d 248. Telecommunications 1018(4)

**SECTION 16‑17‑440.** Venue for prosecution under Section 16‑17‑430.

 Venue for prosecution pursuant to the provisions of Section 16‑17‑430 shall be either in the county wherein the telephonic communications originated or the county where it was received.

HISTORY: 1962 Code Section 16‑552.2; 1961 (52) 451.

Library References

Criminal Law 112(1).

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 227 to 228.

**SECTION 16‑17‑445.** Regulation of unsolicited consumer telephone calls.

 (A) As used in this section:

 (1) “Consumer telephone call” means a call made by a telephone solicitor for the purpose of soliciting a sale of any consumer goods or services to the person called, or for the purpose of soliciting an extension of credit for consumer goods or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services to the person called or an extension of credit for these purposes.

 (2) “Consumer goods or services” means any tangible personal property which is normally used for personal, family, financial, or household purposes, including any property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and interests in vacation timesharing plans or vacation ownership plans and any services related to this property. Services sold by institutions licensed and regulated under Title 38 are not consumer goods or services for purposes of this section.

 (3) “Prize promotion” means:

 (a) a sweepstakes or other game of chance; or

 (b) an oral or written representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

 (4) “Unsolicited consumer telephone call” means a consumer telephone call other than a call made:

 (a) in response to an express request of the person called;

 (b) primarily in connection with an existing debt or contract, payment, or performance of which has not been completed at the time of the call; or

 (c) to a person with whom the telephone solicitor has an existing business relationship or had a previous business relationship.

 (5) “Telephone solicitor” means an individual, firm or organization, partnership, association, or corporation who makes or causes to be made a consumer telephone call.

 (6) “Department” means the Department of Consumer Affairs.

 (B) A telephone solicitor who makes an unsolicited consumer telephone call must disclose promptly and in a clear conspicuous manner to the person receiving the call, the following information:

 (1) the identity of the seller;

 (2) that the purpose of the call is to sell goods or services;

 (3) the nature of the goods or services;

 (4) that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no purchase/no payment entry method for the prize promotion; and

 (5) remove the called party’s name and telephone number from in‑house calling lists if the called party asks the solicitor, whether verbally or in writing, not to call again. If the called party prefers to make his request in writing, then the telephone solicitor must immediately provide the called party with the appropriate address to send and make effective his written request to be removed from the in‑house calling lists.

 (C) Unsolicited consumer telephone calls are prohibited after nine o’clock p.m. or before eight o’clock a.m. on any day.

 (D) Unsolicited calls must disclose to the buyer at the time of solicitations:

 (1) cost of merchandise or method of estimation;

 (2) payment plan; and

 (3) extra or special charges such as shipping, handling, and taxes.

 (E) Every telephone solicitor operating in this State who makes unsolicited consumer telephone calls shall implement in‑house systems and procedures whereby every effort is made not to call subscribers who ask not to be called again. The department has the authority to monitor compliance with this provision. A person or his agent who has an interest in a vacation ownership plan or vacation timesharing plan may have the unit telephone number removed from a solicitor’s in‑house calling lists by sending written notification to the solicitor.

 (F) The department shall investigate any complaints received concerning violations of this section. If the department has reason to believe that there has been a violation of this section, it may request a contested case hearing before the Administrative Law Court to impose a civil penalty not to exceed one hundred dollars for a first violation, two hundred dollars for a second violation, and one thousand dollars for a third or subsequent violation. The department may also bring a civil action in the Court of Common Pleas seeking other relief, including injunctive relief, as the court considers appropriate against the telephone solicitor. In addition, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction for a first or second offense, must be fined not more than two hundred dollars or imprisoned for not more than thirty days, and for a third or subsequent offense must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days. Each violation constitutes a separate offense for purposes of the civil and criminal penalties in this section.

 (G) Telephone companies are not responsible for the enforcement of the provisions of this section and are not liable for any error or omission in the listings made pursuant to this section.

HISTORY: 1988 Act No. 656, Section 1; 2000 Act No. 408, Section 1; 2005 Act No. 128, Section 1, eff July 1, 2005.

Editor’s Note

2005 Act No. 128, Section 27, provides as follows:

“This act takes effect on July 1, 2005, and applies to all licensing and administrative hearings involving the South Carolina Department of Consumer Affairs.”

Library References

Telecommunications 1013, 1022.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 121, 124.

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S.C. Jur. Advertising Section 7, Unsolicited Telephone Advertising.

Treatises and Practice Aids

62 Causes of Action 2d 601, Cause of Action for Violation of National Do‑Not‑Call Registry and Entity‑Specific Do‑Not‑Call List Requirements Pursuant to Telephone Consumer Protection Act.

**SECTION 16‑17‑446.** Regulation of automatically dialed announcing device (ADAD).

 (A) “Adad” means an automatically dialed announcing device which delivers a recorded message without assistance by a live operator for the purpose of making an unsolicited consumer telephone call as defined in Section 16‑17‑445(A)(3). Adad calls include automatically announced calls of a political nature including, but not limited to, calls relating to political campaigns.

 (B) Adad calls are prohibited except:

 (1) in response to an express request of the person called;

 (2) when primarily connected with an existing debt or contract, payment or performance of which has not been completed at the time of the call;

 (3) in response to a person with whom the telephone solicitor has an existing business relationship or has had a previous business relationship.

 (C) Adad calls which are not prohibited under subsection (B):

 (1) are subject to Section 16‑17‑445(B)(1), (2), and (3);

 (2) shall disconnect immediately when the called party hangs up;

 (3) are prohibited after seven p.m. or before eight a.m.;

 (4) may not ring at hospitals, police stations, fire departments, nursing homes, hotels, or vacation rental units.

 (D) A person who violates this section, upon conviction, must be punished as provided in Section 16‑17‑445(F).

HISTORY: 1988 Act No. 656, Section 2; 1991 Act No. 89, Section 1.

Validity

For validity of this section, see Cahaly v. LaRosa, 25 F.Supp.3d 817 (D.S.C.,2014); 796 F.3d 399 (C.A.4 (S.C.)).

Library References

Telecommunications 1012, 1022.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 123, 125 to 127.

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61 ALR, Federal 7 , Defense of Good Faith in Action for Damages Against Law Enforcement Official Under 42 U.S.C.A. Section 1983, Providing for Liability of Person Who, Under Color of Law, Subjects Another to Deprivation of...

24 ALR 7th 6 , Construction and Application of Reed v. Town of Gilbert, Ariz., Providing that Speech Regulation Targeted at Specific Subject Matter is Content‑Based Even If it Does Not Discriminate Among Viewpoints Within that...

Encyclopedias

59 Am. Jur. Proof of Facts 3d 291, Proof of Qualified Immunity Defense in 42 U.S.C.A. S1983 or Bivens Actions Against Law Enforcement Officers.

15 Am. Jur. Trials 555, Police Misconduct Litigation‑Plaintiff’s Remedies.

137 Am. Jur. Trials 1, Litigating Violations of Prohibition Against Prerecorded Commercial Phone Calls to Residential Numbers Pursuant to Telephone Consumer Protection Act, 47 U.S.C.A. S227.

Am. Jur. 2d Searches and Seizures Section 331, Acting Under Authority of Warrant‑Qualified Immunity.

S.C. Jur. Advertising Section 7, Unsolicited Telephone Advertising.

Treatises and Practice Aids

59 Causes of Action 2d 739, Cause of Action Under 42 U.S.C.A. S1983 for Unlawful Arrest or Detention.

62 Causes of Action 2d 601, Cause of Action for Violation of National Do‑Not‑Call Registry and Entity‑Specific Do‑Not‑Call List Requirements Pursuant to Telephone Consumer Protection Act.

Attorney General’s Opinions

Organizations may routinely conduct automated survey telephone calls for political purposes in South Carolina that require the recipient’s responses via a phone key. S.C. Op.Atty.Gen. (Sept. 22, 2010) 2010 WL 3896174.

NOTES OF DECISIONS

Civil rights actions 2

Constitutional issues 4

Justiciability 3

Validity 1

1. Validity

South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD) violated First Amendment; even if government’s purported interest in enacting statute, to protect residential privacy and tranquility from unwanted and intrusive “robocalls,” was compelling, plausible, less restrictive alternatives existed, which would achieve those interests, statute was overinclusive, since unwanted commercial calls were far bigger problem than unsolicited calls from political or charitable organizations, and statute targeted both commercial and political calls, and statute was underinclusive, in that it only restricted political and consumer calls, but permitted unlimited proliferation of all other types of calls. Cahaly v. Larosa (C.A.4 (S.C.) 2015) 796 F.3d 399. Constitutional Law 2145; Telecommunications 730

South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD) restricted speech on basis of content, and thus violated political consultant’s First Amendment free speech rights, despite state’s contention that its purpose in banning political ADAD calls was to protect residential privacy, where state did not ban ADAD calls containing other types of messages, and state failed to provide evidence regarding legislature’s purpose for restricting ADAD calls on basis of their political content. Cahaly v. LaRosa, 2014, 25 F.Supp.3d 817, affirmed in part, vacated in part and remanded 796 F.3d 399. Constitutional Law 2145; Telecommunications 730

2. Civil rights actions

Law enforcement officer had probable cause to arrest political consultant for alleged violation of South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD), and was thus entitled to qualified immunity from consultant’s Section 1983 action, even if arrest warrant included false information and the officer acted with reckless disregard for truth by including that information, where, even if the false information was omitted, warrant was still based on affidavits alleging that political consultant made automatic calls of political nature, which, if proven, constituted violation of statute. Cahaly v. Larosa (C.A.4 (S.C.) 2015) 796 F.3d 399. Civil Rights 1376(6)

Law enforcement officer did not lack probable cause to arrest political consultant for alleged violation of South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD), as required for political consultant to state claim, under South Carolina law, for false imprisonment and malicious prosecution. Cahaly v. Larosa (C.A.4 (S.C.) 2015) 796 F.3d 399. False Imprisonment 13; Malicious Prosecution 18(1)

State law enforcement officers were entitled to qualified immunity from liability under Section 1983 arising from their enforcement of South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD), where no state or federal court opinion had at time of enforcement addressed statute’s constitutionality, and officers’ actions were arguably consistent with state attorney general’s interpretation of statute. Cahaly v. LaRosa, 2014, 25 F.Supp.3d 817, affirmed in part, vacated in part and remanded 796 F.3d 399. Civil Rights 1376(6)

3. Justiciability

Political consultant who was arrested for alleged violations of South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD) lacked standing to challenge, as compelled speech, provision of statute requiring that, if calls fell within exception within the statute, the calls had to disclose identity of seller, purpose of call, and nature of goods or services, since consultant was charged only with violating provisions of statute which banned ADAD calls outright, and not with provision of statute requiring such disclosures. Cahaly v. Larosa (C.A.4 (S.C.) 2015) 796 F.3d 399. Constitutional Law 863

Political consultant who was arrested for alleged violations of South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD) lacked standing to challenge statute for vagueness, since consultant’s calls were of a political nature, which the statute expressly applied to. Cahaly v. Larosa (C.A.4 (S.C.) 2015) 796 F.3d 399. Constitutional Law 743

Political consultant lacked standing to challenge South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD) on ground that it was unconstitutionally vague, where consultant’s calls involved political campaigns, and were clearly political in nature. Cahaly v. LaRosa, 2014, 25 F.Supp.3d 817, affirmed in part, vacated in part and remanded 796 F.3d 399. Constitutional Law 695

4. Constitutional issues

South Carolina statute prohibiting politically‑related unsolicited calls made by automatically dialed announcing devices (ADAD) was content based, and was thus subject to strict scrutiny, since it made content distinction on its face in that it applied to calls with a consumer or political message but did not reach calls made for any other purpose. Cahaly v. Larosa (C.A.4 (S.C.) 2015) 796 F.3d 399. Constitutional Law 2145

**SECTION 16‑17‑450.** Refusal to relinquish party telephone line for emergency call.

 (1) Any person who shall wilfully refuse to relinquish immediately a party telephone line when informed that such line is needed for an emergency call to a fire department or police department or for medical aid or ambulance service shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

 (2) It shall constitute a defense to a prosecution under subsection (1) that the accused did not know of the emergency in question, or that the accused was using the party telephone line for an emergency call.

 (3) Any person who requests another to relinquish a telephone party line on the pretext that he must place an emergency call, knowing such pretext to be false, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

 (4) As used in this section

 The term “party line” shall mean a subscriber’s line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

 The term “emergency” shall mean a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

HISTORY: 1962 Code Section 16‑552.3; 1967 (55) 624.

Library References

Telecommunications 1012, 1022.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 123, 125 to 127.

**SECTION 16‑17‑470.** Eavesdropping, peeping, voyeurism.

 (A) It is unlawful for a person to be an eavesdropper or a peeping tom on or about the premises of another or to go upon the premises of another for the purpose of becoming an eavesdropper or a peeping tom. The term “peeping tom”, as used in this section, is defined as a person who peeps through windows, doors, or other like places, on or about the premises of another, for the purpose of spying upon or invading the privacy of the persons spied upon and any other conduct of a similar nature, that tends to invade the privacy of others. The term “peeping tom” also includes any person who employs the use of video or audio equipment for the purposes set forth in this section. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than three years, or both.

 (B) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying sexual desire of any person, he or she knowingly views, photographs, audio records, video records, produces, or creates a digital electronic file, or films another person, without that person’s knowledge and consent, while the person is in a place where he or she would have a reasonable expectation of privacy. A person who violates the provisions of this subsection:

 (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than three years, or both; or

 (2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not less than five hundred dollars or more than five thousand dollars or imprisoned not more than five years, or both.

 (C) A person commits the crime of aggravated voyeurism if he or she knowingly sells or distributes any photograph, audio recording, video recording, digital electronic file, or film of another person taken or made in violation of this section. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not less than five hundred dollars or more than five thousand dollars or imprisoned not more than ten years, or both.

 (D) As used in this section:

 (1) “Place where a person would have a reasonable expectation of privacy” means:

 (a) a place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed, filmed, or videotaped by another; or

 (b) a place where one would reasonably expect to be safe from hostile intrusion or surveillance.

 (2) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

 (3) “View” means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

 (E) The provisions of subsection (A) do not apply to:

 (1) viewing, photographing, videotaping, or filming by personnel of the Department of Corrections or of a county, municipal, or local jail or detention center or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the Department of Corrections or a county, municipal, or local jail or detention center or correctional facility;

 (2) security surveillance for the purposes of decreasing or prosecuting theft, shoplifting, or other security surveillance measures in bona fide business establishments;

 (3) any official law enforcement activities conducted pursuant to Section 16‑17‑480;

 (4) private detectives and investigators conducting surveillance in the ordinary course of business; or

 (5) any bona fide news gathering activities.

 (F) In addition to any other punishment prescribed by this section or other provision of law, a person procuring photographs, audio recordings, video recordings, digital electronic files, or films in violation of this section shall immediately forfeit all items. These items must be destroyed when no longer required for evidentiary purposes.

HISTORY: 1962 Code Section 16‑554; 1952 Code Section 16‑554; 1942 Code Section 1192‑1; 1937 (40) 478; 1993 Act No. 184, Section 99; 2000 Act No; 363, Section 1; 2001 Act No. 81, Section 14.

CROSS REFERENCES

Offender registry information available to public, see Section 23‑3‑490.

Persons convicted under this section must register for sex offender registry, see Section 23‑3‑430.

Right against unreasonable invasions of privacy, see SC Const. Art. I, Section 10.

Violent crimes defined, see Section 16‑1‑60.

Library References

Disorderly Conduct 123, 141, 151.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 5, 12 to 13.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

S.C. Jur. Telecommunications Section 19, State Law.

LAW REVIEW AND JOURNAL COMMENTARIES

The surveillance society and the third‑party privacy problem. Shaun B. Spencer, 65 S.C. L. Rev. 373 (Winter 2013).

Attorney General’s Opinions

Absent a showing of lewd and lascivious intent by the defendant, there is no violation of Section 16‑17‑470. S.C. Op.Atty.Gen. (March 11, 2011) 2011 WL 1444718.

The Peeping Tom statute is violated when a person enters a public restroom, designated for the opposite sex, in order to purposefully spy on the members of the opposite sex within. SC Op.Atty.Gen. (May 5, 1998) 1998 WL 317578.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

Sufficiency of evidence 3

1. In general

Crime of “Peeping Tom” is crime of moral turpitude, as it involves peering into private places and breaches duty one owes his neighbors, and is inherently immoral, and therefore, trial court committed no error in ruling that defendant’s testimony could be impeached with his prior conviction of this offense. State v. Harris (S.C. 1987) 293 S.C. 75, 358 S.E.2d 713.

“Peeping Tom” is crime of moral turpitude and may be used to impeach credibility of witness. State v. Harris (S.C. 1987) 293 S.C. 75, 358 S.E.2d 713. Witnesses 345(2)

The “Peeping Tom” statute was inapplicable to the conduct of newspaper reporters who sought to overhear proceedings of city council while in executive session, since the reporters were on public property and not on or about the premises of another. Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878. Trespass 11

2. Admissibility of evidence

Probative value of testimony on how victims felt was not substantially outweighed by danger of unfair prejudice in prosecution for eavesdropping; although testimony may not have been necessary to State’s case, it was logically relevant to establishment of invasion of privacy element of crime by aiding in determination of whether conduct of defendant tended to invade privacy of the three young victims, trial court limited State to eliciting concise statement from victims on privacy issue to keep any prejudice to minimum, and State did not stray beyond those parameters. State v. Caldwell (S.C.App. 2008) 378 S.C. 268, 662 S.E.2d 474, rehearing denied. Criminal Law 338(7)

3. Sufficiency of evidence

Evidence that defendant intentionally looked at privates of three young victims for more than just brief period of time in other than casual or cursory manner while in boys’ bathroom supported conviction for eavesdropping. State v. Caldwell (S.C.App. 2008) 378 S.C. 268, 662 S.E.2d 474, rehearing denied. Disorderly Conduct 123

Evidence was sufficient to establish that defendant was spying upon or invading the privacy of another so as to support conviction for eavesdropping; children were participating in swim meet, young, male victims used boys’ bathroom, while another bathroom for adults was located elsewhere, while in boys’ bathroom, victims encountered defendant at least five times, defendant more than once was either in another area of bathroom or appeared to be exiting bathroom when he purposely came back to urinal just as victim went to use other urinal, and on each occasion defendant specifically looked directly at boys’ privates. State v. Caldwell (S.C.App. 2008) 378 S.C. 268, 662 S.E.2d 474, rehearing denied. Disorderly Conduct 123

Evidence was sufficient to establish that defendant was on or about premises of another so as to support conviction for eavesdropping; although swim meet was open to public, pool area was on private property, and State presented evidence that it was uncommon for people who were not family members or friends of child participants to attend swim meets. State v. Caldwell (S.C.App. 2008) 378 S.C. 268, 662 S.E.2d 474, rehearing denied. Disorderly Conduct 123

**SECTION 16‑17‑480.** Section 16‑17‑470 not applicable to law officers.

 Nothing in Section 16‑17‑470 shall prevent duly constituted officers of the law from performing their official duties in ferreting out offenders or suspected offenders against violating the laws of this State or any municipality therein for the purpose of apprehending such suspected violator. But the provisions of this section shall not be construed as giving such officers any additional rights or powers upon private property but shall be construed as preserving only such powers as they had before.

HISTORY: 1962 Code Section 16‑555; 1952 Code Section 16‑555; 1942 Code Section 1192‑1; 1937 (40) 478.

CROSS REFERENCES

Right against unreasonable invasions of privacy, see SC Const. Art. I, Section 10.

Library References

Criminal Law 1224(1).

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 2402 to 2403.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Private Detectives and Private Security Businesses Section 29, Violation of Statutes.

S.C. Jur. Telecommunications Section 19, State Law.

**SECTION 16‑17‑490.** Contributing to delinquency of a minor.

 It shall be unlawful for any person over eighteen years of age to knowingly and wilfully encourage, aid or cause or to do any act which shall cause or influence a minor:

 (1) To violate any law or any municipal ordinance;

 (2) To become and be incorrigible or ungovernable or habitually disobedient and beyond the control of his or her parent, guardian, custodian or other lawful authority;

 (3) To become and be habitually truant;

 (4) To without just cause and without the consent of his or her parent, guardian or other custodian, repeatedly desert his or her home or place of abode;

 (5) To engage in any occupation which is in violation of law;

 (6) To associate with immoral or vicious persons;

 (7) To frequent any place the existence of which is in violation of law;

 (8) To habitually use obscene or profane language;

 (9) To beg or solicit alms in any public places under any pretense;

 (10) To so deport himself or herself as to wilfully injure or endanger his or her morals or health or the morals or health of others.

 Any person violating the provisions of this section shall upon conviction be fined not more than three thousand dollars or imprisoned for not more than three years, or both, in the discretion of the court.

 This section is intended to be cumulative and shall not be construed so as to defeat prosecutions under any other law which is applicable to unlawful acts embraced herein.

 The provisions of this section shall not apply to any school board of trustees promulgating rules and regulations as authorized by Section 59‑19‑90(3) which prescribe standards of conduct and behavior in the public schools of the district. Provided, however, that any such rule or regulation which contravenes any portion of the provisions of this section shall first require the consent of the parent or legal guardian of the minor or minors concerned.

HISTORY: 1962 Code Section 16‑555.1; 1957 (50) 572, 1971 (57) 848; 1976 Act No. 629.

CROSS REFERENCES

Appointment of guardian ad litem for abuse, neglect, or exploitation proceedings, criminal background checks, see Section 43‑35‑240.

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

Limited immunity for a person who seeks medical assistance for another, see Section 44‑53‑1920.

Management, administration, and staffing, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑503.

Management, administration, and staffing, regulations for the licensing of group child care homes, see S.C. Code of Regulations R. 114‑513.

Management, regulations for the registration of child care centers operated by churches or religious entities, see S.C. Code of Regulations R. 114‑523.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Past conviction check prior to initial employment of teachers, see Section 59‑26‑40.

Persons convicted of Title 16, Chapter 3 crimes prohibited from appointment as guardian ad litem for child in abuse or neglect proceeding, see Section 63‑11‑520.

Restrictions on foster care or adoption placements, see Section 63‑7‑2350.

Library References

Infants 1566, 1638.

Westlaw Topic No. 211.

C.J.S. Evidence Section 380.

C.J.S. Infants Sections 198 to 199.

RESEARCH REFERENCES

ALR Library

66 ALR 6th 315 , Validity, Construction, and Application of State and Local Laws Providing for Civil Liability for Tobacco Sales or Distribution to Minors.

Encyclopedias

113 Am. Jur. Proof of Facts 3d 111, Proof of Corruption of Minors Charge in a Criminal Case.

S.C. Jur. Action Section 14, Determination of Private Rights.

S.C. Jur. Constitutional Law Section 5, Construction of the South Carolina Constitution.

S.C. Jur. Poisons Section 10, Criminal Liability.

Attorney General’s Opinions

Section 16‑17‑490 (Contributing to the delinquency of a minor), and Sections 61‑4‑90 and 61‑6‑4070 (prohibiting the transfer or giving of alcoholic beverages to persons under the age of 21), offer law enforcement and prosecutors certain discretion as to the type of criminal charges to bring against an individual found to be in violation of these statutes. S.C. Op.Atty.Gen. (April 18, 2013) 2013 WL 1803938.

Law enforcement’s use of an individual under the age of eighteen in association with an undercover drug buy would not be construed as violating this section. SC Op.Atty.Gen. (March 24, 2008) 2008 WL 903963.

NOTES OF DECISIONS

Admissibility of evidence 5

Indictment 4

Justiciability 3

Private cause of action 2

Validity 1

1. Validity

Provision prohibiting person over 18 years of age from causing minor to endanger minor’s morals or health, which was contained in statute governing offense of contributing to the delinquency of a minor, was not unconstitutionally vague, since person of ordinary intelligence and judgment would not need to guess at conduct which would endanger minor’s morals or health. State v. Michau (S.C. 2003) 355 S.C. 73, 583 S.E.2d 756, rehearing denied. Constitutional Law 4509(15); Infants 1006(12)

2. Private cause of action

No implied private cause of action is created by Sections 16‑17‑490 and 16‑17‑500. Accordingly, a retail seller was entitled to summary judgment in an action brought against it by two minors who alleged that the store repeatedly sold them cigarettes despite their mother’s complaints, with the result that they had become addicted to tobacco, had damaged the home and furnishings of their mother, had stolen money from their mother, and had exhibited ungovernable and habitually disobedient behavior when denied cigarettes. Whitworth v. Fast Fare Markets of South Carolina, Inc. (S.C. 1985) 289 S.C. 418, 338 S.E.2d 155, 55 A.L.R.4th 1235. Infants 1285(1)

3. Justiciability

In prosecution for contributing to the delinquency of a minor, defendant lacked standing to challenge for unconstitutional vagueness that portion of statute prohibiting person over 18 years of age from causing minor to endanger minor’s morals or health, since defendant’s act of encouraging minor to drink beer and smoke marijuana clearly endangered the morals, if not the health, of minor. State v. Michau (S.C. 2003) 355 S.C. 73, 583 S.E.2d 756, rehearing denied. Constitutional Law 739

4. Indictment

Indictment charging defendant with contributing to the delinquency of a minor was sufficient, since phrase “endanger the morals or health” in indictment derived directly from language of underlying statute that defendant was accused of violating. State v. Michau (S.C. 2003) 355 S.C. 73, 583 S.E.2d 756, rehearing denied. Indictment And Information 110(48)

Indictments sufficiently charged a defendant with the offenses of first degree sexual conduct and contributing to the delinquency of a minor where the indictments, dated December 5, 1988, charged that the conduct occurred between July 4, 1988 and August 25, 1988; time is not an essential element of either offense, and thus the indictment need not have specifically charged the time, but rather must have apprised the defendant of what he should have been prepared to meet and shown that the offense was committed prior to the finding of the indictment. State v. Wingo (S.C.App. 1991) 304 S.C. 173, 403 S.E.2d 322.

5. Admissibility of evidence

Defendant’s statements that he did not understand why he was attracted to minor, that defendant thought that he was attracted to minor because minor appeared to be 15 years old, and that it seemed perfect when defendant found out that minor was older did not constitute inadmissible “propensity evidence” in prosecution for contributing to the delinquency of a minor and participating in prostitution of a minor, since statements did not refer to any crimes, wrongs, or acts that were generally inadmissible. State v. Michau (S.C. 2003) 355 S.C. 73, 583 S.E.2d 756, rehearing denied. Criminal Law 373.4

The introduction of the testimony of a 9‑year‑old victim’s 12‑year‑old cousin, that the defendant in an action for first degree sexual conduct and contributing to the delinquency of a minor had also sexually assaulted the victim’s 12‑year‑old sister, was not reversible error where the manner of the assault was identical and the victim’s sister testified without objection to the same events; not only was this testimony cumulative, but it tended to show a common scheme or plan, and thus its probative value outweighed its prejudicial effect. State v. Wingo (S.C.App. 1991) 304 S.C. 173, 403 S.E.2d 322.

**SECTION 16‑17‑495.** Custodial interference.

 (A)(1) When a court of competent jurisdiction in this State or another state has awarded custody of a child under the age of sixteen years or when custody of a child under the age of sixteen years is established pursuant to Section 63‑17‑20(B), it is unlawful for a person with the intent to violate the court order or Section 63‑17‑20(B) to take or transport, or cause to be taken or transported, the child from the legal custodian for the purpose of concealing the child, or circumventing or avoiding the custody order or statute.

 (2) When a pleading has been filed and served seeking a determination of custody of a child under the age of sixteen, it is unlawful for a person with the intent to circumvent or avoid the custody proceeding to take or transport, or cause to be taken or transported, the child for the purpose of concealing the child, or circumventing or avoiding the custody proceeding. It is permissible to infer that a person keeping a child outside the limits of this State for more than seventy‑two hours without notice to a legal custodian intended to violate this subsection.

 (B) A person who violates subsection (A)(1) or (2) 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.

 (C) If a person who violates subsection (A)(1) or (2) returns the child to the legal custodian or to the jurisdiction of the court in which the custody petition was filed within three days of the violation, the person is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

 (D) Notwithstanding the provisions of this section, if the taking or transporting of a child in violation of subsections (A)(1) or (2), is by physical force or the threat of physical force, the person is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

 (E) A person who violates the provisions of this section may be required by the court to pay necessary travel and other reasonable expenses including, but not limited to, attorney’s fees incurred by the party entitled to the custody or by a witness or law enforcement.

HISTORY: 1976 Act No. 592; 1990 Act No. 470, Section 1; 1995 Act No. 28, Section 1; 1997 Act No. 95, Section 4.

Library References

Kidnapping 23.

Westlaw Topic No. 231E.

C.J.S. Kidnapping Sections 30 to 32.

Attorney General’s Opinions

Questions relating to the fact scenario where the father of a child takes that child from the possession of the child’s mother, who is the child’s legal custodian, and refuses to return the child. SC Op.Atty.Gen. (July 1, 2004) 2004 WL 1557090.

NOTES OF DECISIONS

Instructions 1

1. Instructions

In a prosecution under Section 16‑17‑495, a jury charge stating that the statutory language that keeping a child out of the state in violation of a custody order for a period in excess of 72 hours shall be prima facie evidence that the person charged intended to violate the court order at the time of the taking and that the presumption was rebuttable, was improper and the defendant was unfairly prejudiced by the erroneous charge because the evidence of her intent to violate the custody order was conflicting. State v. Neva (S.C. 1990) 300 S.C. 450, 388 S.E.2d 791. Criminal Law 772(6)

**SECTION 16‑17‑500.** Sale or purchase of tobacco products or alternative nicotine products for minors; proof of age; location of vending machines; penalties; smoking cessation programs.

 (A) It is unlawful for an individual to sell, furnish, give, distribute, purchase for, or provide a tobacco product or an alternative nicotine product to a minor under the age of eighteen years.

 (B) It is unlawful to sell a tobacco product or an alternative nicotine product to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual’s age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual’s proof of age is a defense to an action initiated pursuant to this subsection.

 (C) A person engaged in the sale of alternative nicotine products made through the Internet or other remote sales methods shall perform an age verification through an independent, third‑party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older.

 (D) It is unlawful to sell a tobacco product or an alternative nicotine product through a vending machine unless the vending machine is located in an establishment:

 (1) which is open only to individuals who are eighteen years of age or older; or

 (2) where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed.

 (E)(1) An individual who knowingly violates a provision of subsections (A), (B), (C), or (D) in person, by agent, or in any other way is guilty of a misdemeanor and, upon conviction, must be:

 (a) for a first offense, fined not less than one hundred dollars nor more than two hundred dollars;

 (b) for a second offense, which occurs within three years of the first offense, fined not less than two hundred dollars nor more than three hundred dollars;

 (c) for a third or subsequent offense, which occurs within three years of the first offense, fined not less than three hundred dollars nor more than four hundred dollars.

 (2) In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program.

 (F)(1) A minor under the age of eighteen years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product or an alternative nicotine product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing these products.

 (2) A minor who knowingly violates a provision of item (1) in person, by agent, or in any other way commits a noncriminal offense and is subject to a civil fine of twenty‑five dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges.

 (3) In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution.

 (4) If a minor fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor’s driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days beginning from the date provided by the court. If the minor does not have a driver’s license or permit, the court may delay the issuance of the minor’s driver’s license or permit for a period of ninety days beginning from the date the minor applies for a driver’s license or permit. Upon restricting or delaying the issuance of the minor’s driver’s license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver’s license or permit to the court or the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate on the minor’s driving record that the restriction or delayed issuance of the minor’s driver’s license or permit is not a traffic violation or a driver’s license suspension. The Department of Motor Vehicles must notify the minor’s parent, guardian, or custodian of the restriction or delayed issuance of the minor’s driver’s license or permit. At the completion of the ninety‑day period, the Department of Motor Vehicles must remove the restriction or allow for the issuance of the minor’s license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction or delayed issuance of the minor’s driver’s license or permit after the ninety‑day period. The restriction or delayed issuance of the minor’s driver’s license or permit must not be considered by any insurance company for automobile insurance purposes or result in any automobile insurance penalty, including any penalty under the Merit Rating Plan promulgated by the Department of Insurance.

 (5) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection or for the failure to pay a fine, successfully complete a smoking cessation or tobacco prevention program, or perform community service.

 (6) A violation of this subsection is not grounds for denying, suspending, or revoking an individual’s participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need‑based grant.

 (7) The uniform traffic ticket, established pursuant to Section 56‑7‑10, may be used by law enforcement officers for a violation of this subsection. A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco product or alternative nicotine product. The law enforcement officer also must notify a minor’s parent, guardian, or custodian of the minor’s offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

 (G) This section does not apply to the possession of a tobacco product or an alternative nicotine product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

 (H) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing pursuant to subsection (F) must be placed on the court’s appropriate docket for traffic violations, and not on the court’s docket for civil matters.

 (I) A retail establishment that distributes tobacco products or alternative nicotine products must train all retail sales employees regarding the unlawful distribution of tobacco products or alternative nicotine products to minors.

 (J) Notwithstanding any other provision of law, a violation of this section does not violate the terms and conditions of an establishment’s beer and wine permit and is not grounds for revocation or suspension of a beer and wine permit.

HISTORY: 1962 Code Section 16‑556; 1952 Code Section 16‑556; 1942 Code Section 1465; 1932 Code Section 1465; Cr. C. ‘22 Section 410; Cr. C. ‘12 Section 420; Cr. C. ‘02 Section 320; R. S. 267; 1889 (20) 321; 1996 Act No. 445, Section 3; 2006 Act No. 231, Section 2, eff six months after approval (approved February 21, 2006); 2013 Act No. 35, Section 1, eff June 7, 2013.

Editor’s Note

2006 Act No. 231, Section 1, provides as follows:

“This act may be cited as the ‘Youth Access to Tobacco Prevention Act of 2006’. “

CROSS REFERENCES

Enforcement, reporting requirements, see Section 16‑17‑503.

Library References

Infants 1554, 1636.

Westlaw Topic No. 211.

C.J.S. Evidence Section 380.

C.J.S. Infants Section 218.

RESEARCH REFERENCES

ALR Library

66 ALR 6th 315 , Validity, Construction, and Application of State and Local Laws Providing for Civil Liability for Tobacco Sales or Distribution to Minors.

Encyclopedias

S.C. Jur. Action Section 14, Determination of Private Rights.

LAW REVIEW AND JOURNAL COMMENTARIES

Banning the flames: Constitutionality, preemption, and local smoking ordinances. 59 S.C. Law Rev. 475 (Spring 2008).

Attorney General’s Opinions

The use of undercover minors to assist FDA‑commissioned inspectors to enforce Tobacco Control Act is clearly within the authorization contained in Section 16‑17‑500(F). S.C. Op.Atty.Gen. (June 6, 2012) 2012 WL 2168289.

An unsupervised cigarette vending machine provides another way by which the owner of the establishment may be charged with violating this section. SC Op.Atty.Gen. (August 18, 1999) 1999 WL 1581413.

NOTES OF DECISIONS

In general 1

Private cause of action 2

1. In general

Legislative act amending Clean Indoor Air Act and amending and adding statutes relating to the distribution of tobacco products to minors, providing that ordinances enacted pertaining to tobacco products could not supercede state law, did not preempt city ordinance banning smoking in restaurants and bars; language regarding ordinances was intended to relate specifically to the distribution of tobacco products to minors, and not to the regulation of indoor smoking. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 252; Municipal Corporations 592(1)

2. Private cause of action

No implied private cause of action is created by Sections 16‑17‑490 and 16‑17‑500. Accordingly, a retail seller was entitled to summary judgment in an action brought against it by two minors who alleged that the store repeatedly sold them cigarettes despite their mother’s complaints, with the result that they had become addicted to tobacco, had damaged the home and furnishings of their mother, had stolen money from their mother, and had exhibited ungovernable and habitually disobedient behavior when denied cigarettes. Whitworth v. Fast Fare Markets of South Carolina, Inc. (S.C. 1985) 289 S.C. 418, 338 S.E.2d 155, 55 A.L.R.4th 1235. Infants 1285(1)

**SECTION 16‑17‑501.** Definitions.

 As used in this section and Sections 16‑17‑502, 16‑17‑503, and 16‑17‑504:

 (1) “‘Distribute”‘ means to sell, furnish, give, or provide tobacco products and alternative nicotine products, including tobacco product samples and alternative nicotine product samples, cigarette paper, or a substitute for them, to the ultimate consumer.

 (2) “Proof of age” means a driver’s license or identification card issued by this State or a United States Armed Services identification card.

 (3) “Sample” means a tobacco product or an alternative nicotine product distributed to members of the general public at no cost for the purpose of promoting the products.

 (4) “Sampling” means the distribution of samples to members of the general public in a public place.

 (5) “Tobacco product” means a product that contains tobacco and is intended for human consumption. “Tobacco product” does not include an alternative nicotine product.

 (6) “Alternative nicotine product” means a product, including electronic cigarettes, that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means. “Alternative nicotine product” does not include:

 (a) a cigarette, as defined in Section 12‑21‑620, or other tobacco products, as defined in Section 12‑21‑800;

 (b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

 (c) a device pursuant to 21 U.S.C. 321(h); or

 (d) a combination product described in 21 U.S.C. 353(g).

 (7) “Electronic cigarette” means an electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to be offered to, or purchased by, consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe. “Electronic cigarette” does not include:

 (a) a cigarette, as defined in Section 12‑21‑620, or other tobacco products, as defined in Section 12‑21‑800;

 (b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

 (c) a device pursuant to 21 U.S.C. 321(h); or

 (d) a combination product described in 21 U.S.C. 353(g).

HISTORY: 1996 Act No. 445, Section 2; 2006 Act No. 231, Section 3, eff six months after approval (approved February 21, 2006); 2013 Act No. 35, Section 2, eff June 7, 2013.

NOTES OF DECISIONS

In general 1

1. In general

Legislative act amending Clean Indoor Air Act and amending and adding statutes relating to the distribution of tobacco products to minors, providing that ordinances enacted pertaining to tobacco products could not supercede state law, did not preempt city ordinance banning smoking in restaurants and bars; language regarding ordinances was intended to relate specifically to the distribution of tobacco products to minors, and not to the regulation of indoor smoking. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 252; Municipal Corporations 592(1)

**SECTION 16‑17‑502.** Distribution of tobacco product or alternative nicotine product samples.

 (A) It is unlawful for a person to distribute a tobacco product or an alternative nicotine product sample to a person under the age of eighteen years.

 (B) A person engaged in sampling shall demand proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be under the age of eighteen years.

 (C) A person violating this section is subject to a civil penalty of not more than twenty‑five dollars for a first violation, not more than fifty dollars for a second violation, and not less than one hundred dollars for a third or subsequent violation. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense to an action brought pursuant to this section.

HISTORY: 1996 Act No. 445, Section 2; 2013 Act No. 35, Section 3, eff June 7, 2013.

Library References

Infants 1554, 1636.

Westlaw Topic No. 211.

C.J.S. Evidence Section 380.

C.J.S. Infants Section 218.

LAW REVIEW AND JOURNAL COMMENTARIES

Banning the flames: Constitutionality, preemption, and local smoking ordinances. 59 S.C. Law Rev. 475 (Spring 2008).

NOTES OF DECISIONS

In general 1

1. In general

Legislative act amending Clean Indoor Air Act and amending and adding statutes relating to the distribution of tobacco products to minors, providing that ordinances enacted pertaining to tobacco products could not supercede state law, did not preempt city ordinance banning smoking in restaurants and bars; language regarding ordinances was intended to relate specifically to the distribution of tobacco products to minors, and not to the regulation of indoor smoking. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 252; Municipal Corporations 592(1)

**SECTION 16‑17‑503.** Enforcement; reporting requirements.

 (A) Except as otherwise provided by law, the Director of the Department of Revenue shall provide for the enforcement of Sections 16‑17‑500 and 16‑17‑502 in a manner that reasonably may be expected to reduce the extent to which tobacco products or alternative nicotine products are sold or distributed to persons under the age of eighteen years and annually shall conduct random, unannounced inspections at locations where tobacco products or alternative nicotine products are sold or distributed to ensure compliance with the section. The department shall designate an enforcement officer to conduct the annual inspections. Penalties collected pursuant to Section 16‑17‑502 must be used to offset the costs of enforcement.

 (B) The director shall provide for the preparation of and submission annually to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. 300x‑26) and otherwise is responsible for ensuring the state’s compliance with that provision of federal law and implementing regulations promulgated by the United States Department of Health and Human Services.

HISTORY: 1996 Act No. 445; 2013 Act No. 35, Section 4, eff June 7, 2013.

Library References

Health 367.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9, 16 to 26, 41 to 42.

LAW REVIEW AND JOURNAL COMMENTARIES

Banning the flames: Constitutionality, preemption, and local smoking ordinances. 59 S.C. Law Rev. 475 (Spring 2008).

NOTES OF DECISIONS

In general 1

1. In general

Legislative act amending Clean Indoor Air Act and amending and adding statutes relating to the distribution of tobacco products to minors, providing that ordinances enacted pertaining to tobacco products could not supercede state law, did not preempt city ordinance banning smoking in restaurants and bars; language regarding ordinances was intended to relate specifically to the distribution of tobacco products to minors, and not to the regulation of indoor smoking. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 252; Municipal Corporations 592(1)

**SECTION 16‑17‑504.** Implementation; local laws.

 (A) Sections 16‑17‑500, 16‑17‑502, and 16‑17‑503 must be implemented in an equitable and uniform manner throughout the State and enforced to ensure the eligibility for and receipt of federal funds or grants the State receives or may receive relating to the sections. Any laws, ordinances, or rules enacted pertaining to tobacco products or alternative nicotine products may not supersede state law or regulation. Nothing in this section affects the right of any person having ownership or otherwise controlling private property to allow or prohibit the use of tobacco products or alternative nicotine products on the property.

 (B) Smoking ordinances in effect before the effective date of this act are exempt from the requirements of subsection (A).

HISTORY: 1996 Act No. 445, Section 2; 2013 Act No. 35, Section 5, eff June 7, 2013.

Library References

Municipal Corporations 592.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations Sections 187 to 193, 195 to 202.

LAW REVIEW AND JOURNAL COMMENTARIES

Banning the flames: Constitutionality, preemption, and local smoking ordinances. 59 S.C. Law Rev. 475 (Spring 2008).

NOTES OF DECISIONS

In general 1

1. In general

Legislative act amending Clean Indoor Air Act and amending and adding statutes relating to the distribution of tobacco products to minors, providing that ordinances enacted pertaining to tobacco products could not supercede state law, did not preempt city ordinance banning smoking in restaurants and bars; language regarding ordinances was intended to relate specifically to the distribution of tobacco products to minors, and not to the regulation of indoor smoking. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 252; Municipal Corporations 592(1)

**SECTION 16‑17‑505.** Cigarette packages violating certain federal laws; illegal sale or distribution; penalties; seizure.

 (1) For purposes of this section, “package” means a pack, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed, or intended for distribution to consumers.

 (2) It is unlawful to sell, hold for sale, or distribute a package of cigarettes if:

 (a) the package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331, for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States;

 (b) the package is labeled “For Export Only”, “U.S. Tax Exempt”, “For Use Outside U.S.”, or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

 (c) the package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, labels, or warnings described in (a) or (b) of this subsection;

 (d) the package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. 5754; or

 (e) the package in any way violates federal trademark or copyright laws.

 (3) A person who knowingly sells, holds for sale, or distributes cigarette packages in violation of subsection (2) is guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than three years or fined not more than one thousand dollars, or both.

 (4) In addition to the other penalties provided by law, law enforcement may seize and destroy or sell to the manufacturer, for export only, any packages described in subsection (2).

HISTORY: 1999 Act No. 92, Section 1.

Library References

Antitrust and Trade Regulation 236.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 64.

United States Supreme Court Annotations

Cigarette advertising, misrepresentations, unfair trade practices, federal preemption, Cigarette Labeling and Advertising Act, see Altria Group, Inc. v. Good, 2008, 129 S.Ct. 538, 555 U.S. 70, 172 L.Ed.2d 398.

**SECTION 16‑17‑510.** Enticing enrolled child from attendance in school.

 It is unlawful for a person to encourage, entice, or conspire to encourage or entice a child enrolled in any public or private elementary or secondary school of this State from attendance in the school or school program or transport or provide transportation in aid to encourage or entice a child from attendance in any public or private elementary or secondary school or school program.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, and 22‑3‑550, a first or second offense must be tried exclusively in magistrate’s court. Third and subsequent offenses must be tried in the court of general sessions.

HISTORY: 1962 Code Section 16‑556.1; 1969 (56) 320; 1993 Act No. 184, Section 185; 1998 Act No. 352, Section 1.

Library References

Infants 1567, 1638.

Westlaw Topic No. 211.

C.J.S. Evidence Section 380.

C.J.S. Infants Sections 198 to 199.

**SECTION 16‑17‑520.** Disturbance of religious worship.

 Any person who shall (a) wilfully and maliciously disturb or interrupt any meeting, society, assembly or congregation convened for the purpose of religious worship, (b) enter such meeting while in a state of intoxication or (c) use or sell spirituous liquors, or use blasphemous, profane or obscene language at or near the place of meeting shall be guilty of a misdemeanor and shall, on conviction, be sentenced to pay a fine of not less than twenty nor more than one hundred dollars, or be imprisoned for a term not exceeding one year or less than thirty days, either or both, at the discretion of the court.

HISTORY: 1962 Code Section 16‑557; 1952 Code Section 16‑557; 1942 Code Section 1736; 1932 Code Section 1736; Cr. C. ‘22 Section 718; Cr. C. ‘12 Section 703; Cr. C. ‘02 Section 505; G. S. 1635; R. S. 390; 1873 (15) 352; 1894 (21) 824; 1897 (22) 409.

CROSS REFERENCES

Religious freedom, see SC Const. Art. I, Section 2.

Library References

Disorderly Conduct 116, 151.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4, 12 to 13.

RESEARCH REFERENCES

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57 Am. Jur. Proof of Facts 3d 1, Hate Crimes and Liability for Bias‑Motivated Acts.

S.C. Jur. Blasphemy Section 2, Definition of Blasphemy.

S.C. Jur. Disorderly Conduct Section 5, Intoxication.

S.C. Jur. Disorderly Conduct Section 6, Boisterous Conduct.

S.C. Jur. Disorderly Conduct Section 7, Obscene, Profane or Abusive Language.

S.C. Jur. Disorderly Conduct Section 10, Particular Places.

NOTES OF DECISIONS

In general 1

Questions for jury 2

1. In general

A riot forty feet from church is punishable under this section [Code 1962 Section 16‑557]. State v. Jones (S.C. 1907) 77 S.C. 385, 58 S.E. 8.

2. Questions for jury

Evidence that after congregation had been dismissed by pastor, and while the congregation or a part of it was in the churchyard, defendants created a disturbance on church grounds by the firing of shots and by loud talking and cursing, frightening and causing congregation to run and scatter in various directions, did not justify direction of verdict for defendant in a prosecution for disturbance of religious worship under this section [Code 1962 Section 16‑557], it being unnecessary that such disturbance take place before congregation was dismissed. State v. Matheny (S.C. 1919) 122 S.C. 459, 101 S.E. 661. Disturbance Of Public Assemblage 14

**SECTION 16‑17‑525.** Wilfully, knowingly or maliciously disturbing funeral service; penalties.

 (A) It is unlawful for a person to wilfully, knowingly, or maliciously disturb or interrupt a funeral service. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned not more than thirty days. This subsection applies to a wilful, knowing, or malicious disturbance or interruption within:

 (1) one thousand feet of the funeral service; and

 (2) a time period of one‑half hour before the funeral service until one‑ half hour after the funeral service.

 (B) It is unlawful for a person to undertake an activity at a public or privately owned cemetery, other than the decorous participation in a funeral service or visitation of a burial space, without the prior written approval of the public or private owner. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

 (C) For purposes of this section, “funeral service” means any ceremony, procession, or memorial held in connection with the memorialization, burial, cremation, or other disposition of a deceased person’s body.

HISTORY: 2006 Act No. 391, Section 1, eff June 14, 2006.

Library References

Disorderly Conduct 116, 151.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4, 12 to 13.

**SECTION 16‑17‑530.** Public disorderly conduct.

 Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 16‑558; 1952 Code Section 16‑558; 1949 (46) 466; 1968 (55) 2842; 1969 (56) 153.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Use of threatening, obscene or profane language addressed to the driver or passengers of a school bus as disorderly conduct punishable under this section, see Section 59‑67‑245.

Library References

Disorderly Conduct 102 to 140, 151.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4, 12 to 13.

C.J.S. Domestic Abuse and Violence Sections 7 to 10, 43 to 44.

RESEARCH REFERENCES

ALR Library

5 ALR 4th 956 , Validity and Construction of Statutes or Ordinances Prohibiting Profanity or Profane Swearing or Cursing.

Encyclopedias

S.C. Jur. Breach of Peace Section 4, Peace Defined.

S.C. Jur. Constitutional Law Section 59, Breach of Peace.

S.C. Jur. Disorderly Conduct Section 5, Intoxication.

S.C. Jur. Disorderly Conduct Section 6, Boisterous Conduct.

S.C. Jur. Disorderly Conduct Section 7, Obscene, Profane or Abusive Language.

S.C. Jur. Disorderly Conduct Section 8, Discharge of Firearm.

S.C. Jur. Disorderly Conduct Section 9, Public Places Generally.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:84, Disorderly Conduct.

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

Attorney General’s Opinions

Discussion of whether weapons may be fired in subdivisions. SC Op.Atty.Gen. (Dec. 22, 2005) 2005 WL 3689158.

The offense of breach of the peace. SC Op.Atty.Gen. (Sept. 23, 2003) 2003 WL 22378707.

Discussion of whether a person can be convicted for violating this section if the location of the offense is inside an establishment that operates as a nonprofit organization, commonly called a private club. SC Op.Atty.Gen. (July 15, 1998) 1998 WL 746087.

The application of this section to a passenger in a vehicle where the driver is arrested for DUI. SC Op.Atty.Gen. (October 10, 1996) 1996 WL 679450.

Failure by a student or other person to leave a school campus or school bus, when requested to do so by a principal, could, under particular circumstances, constitute a criminal offense. 1994 Op.Atty.Gen., No 94‑25, p 62 (1994 WL 199757).

South Carolina Code Section 16‑17‑420 makes it unlawful to interfere with or to disturb in any way the students or teachers of any school. Fighting would be included within the prohibition of Section 16‑17‑420. 1994 Op.Atty.Gen., No 94‑25, p 62 (1994 WL 199757).

Use of foul or offensive language toward a principal, teacher, or police officer can constitute a crime. 1994 Op.Atty.Gen., No 94‑25, p 62 (1994 WL 199757).

Physical presence of individuals other than defendant and law enforcement officer who makes arrest is not necessary for disorderly conduct violation to occur. 1991 Op.Atty.Gen. No 91‑33, p 89 (1991 WL 474763).

Venue in the case of DUI and Public Drunk in more than one county if the crime was committed in both. 1974‑75 Op.Atty.Gen., No 3960, p 31 (1975 WL 22258).

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Probable cause 3

Questions for jury 4

Sufficiency of evidence 5

1. In general

A belief that a person is or is not a police officer is not an element of the charge of public disorderly conduct. State v. Gault (S.C.App. 2007) 375 S.C. 570, 654 S.E.2d 98, rehearing denied. Disorderly Conduct 131

A conviction for public disorderly conduct requires a defendant to have used fighting words when the conduct in question was directed toward a police officer. State v. Bailey (S.C.App. 2006) 368 S.C. 39, 626 S.E.2d 898, rehearing denied, certiorari denied. Disorderly Conduct 133

Arrest of defendant under public disorderly conduct statute was justified, though defendant was a passenger in a motor vehicle, rather than its operator, and defendant’s loud, obscene language was directed solely at police officer, where defendant was grossly intoxicated. State v. Pittman (S.C.App. 2000) 342 S.C. 545, 537 S.E.2d 563. Arrest 63.4(15)

A conviction for public disorderly conduct was improper where the defendants went to a county Sheriff’s office to obtain a copy of an incident report which they needed to obtain a warrant from a magistrate, an employee of the office told the defendants that the report was not ready yet, the defendants became upset and raised their voices but did not use words which would by their very utterance inflict injury or tend to incite an immediate breach of the peace, and the defendants were arrested as they were attempting to leave the Sheriff’s office. State v. Perkins (S.C. 1991) 306 S.C. 353, 412 S.E.2d 385.

The use of abusive, obscene, vulgar or profane language to a woman or woman child over the telephone is not encompassed within the provisions of this section [Code 1962 Section 16‑558]. State v. Gist (S.C. 1960) 237 S.C. 262, 116 S.E.2d 856. Disorderly Conduct 109; Telecommunications 1013

2. Constitutional issues

Defendant’s yelling of profanities at another person and his mother while they were leaving courthouse and walking across municipal parking lot, accompanied with loud manner in which profanities were spoken, constituted fighting words which were not afforded freedom of speech protection under the First Amendment and, thus, constituted a violation of public disorderly conduct statute; defendant called other person a “crack head” and called his mother a “bitch,” and mother testified defendant called her names and used the “f” word. City of Landrum v. Sarratt (S.C.App. 2002) 352 S.C. 139, 572 S.E.2d 476. Constitutional Law 1562; Constitutional Law 1759; Disorderly Conduct 110; Disorderly Conduct 127

Section of South Carolina’s public disorderly conduct statute prohibiting the use of obscene or profane language in hearing distance of any schoolhouse or church reached only speech unprotected by the First Amendment, and was therefore not unconstitutionally overbroad; state court precedent authoritatively construed the statute to require fighting words for a conviction. Johnson v. Quattlebaum (C.A.4 (S.C.) 2016) 664 Fed.Appx. 290, 2016 WL 6471732. Constitutional Law 1812; Disorderly Conduct 101; Disorderly Conduct 109

Section of South Carolina’s public disorderly conduct statute prohibiting the use of obscene or “profane” language in “hearing distance” of any schoolhouse or church was not impermissibly vague under the due process clause; state court precedent authoritatively construed the statute to require fighting words for a conviction, the phrase “hearing distance” necessarily encompassed only a relatively short distance from the speech, and both the fighting‑words requirement and the proximity limitation circumscribed police officers’ discretion in deciding what conduct to punish under the statute. Johnson v. Quattlebaum (C.A.4 (S.C.) 2016) 664 Fed.Appx. 290, 2016 WL 6471732. Constitutional Law 4509(8); Disorderly Conduct 101; Disorderly Conduct 109

3. Probable cause

Probable cause to arrest for violation of this section existed where, having been stopped by police on suspicion of another crime, defendants immediately jumped from car and shouted profanities. State v. Roper (S.C. 1979) 274 S.C. 14, 260 S.E.2d 705. Arrest 63.4(15)

4. Questions for jury

In prosecution for resisting arrest with a deadly weapon, a jury question was presented as to whether underlying arrest for disorderly conduct was lawful on ground defendant was conducting himself in a grossly intoxicated and disorderly manner in a public place, in light of evidence that defendant was acting in a loud and boisterous manner and cursing at police, that his language was loud enough to disturb the neighborhood, and that at some point during the incident, there was a car load of teenagers on the cul‑de‑sac across the street. State v. McGowan (S.C. 2001) 347 S.C. 618, 557 S.E.2d 657, habeas corpus dismissed 2007 WL 914295. Obstructing Justice 173

Evidence was sufficient to support submission of the disorderly conduct charge to the jury, in prosecution for resisting arrest, disorderly conduct, and assault; police officer testified that when he attempted to arrest defendant the defendant threw his arms up in the air, yelled obscenities, and refused to comply with the officers demands, and defendant taunted two police officers regarding their lack of success in bringing him under control. 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. Disorderly Conduct 149

5. Sufficiency of evidence

Evidence existed to support a charge against defendant for public disorderly conduct, and thus, magistrate court judge did not err in refusing to direct a verdict; undercover officer testified that after defendant pulled into his place of business, defendant jumped out of his car and screamed, “I don’t know you. Somebody is going to kill you for this,” and an officer who arrived at the scene shortly thereafter also testified to defendant’s continued belligerent, threatening, and disorderly behavior. State v. Gault (S.C.App. 2007) 375 S.C. 570, 654 S.E.2d 98, rehearing denied. Disorderly Conduct 141

Evidence was insufficient to support conviction for public disorderly conduct based on defendant’s conduct toward deputies outside of store, even though one deputy testified that defendant was loud and boisterous with them, and other deputy testified that defendant was very loud and became belligerent with him; nothing indicated that anything said by defendant to deputies amounted to fighting words. State v. Bailey (S.C.App. 2006) 368 S.C. 39, 626 S.E.2d 898, rehearing denied, certiorari denied. Disorderly Conduct 133; Disorderly Conduct 134

**SECTION 16‑17‑540.** Bribery with respect to agents, servants or employees.

 Any:

 (1) Person who corruptly gives, offers or promises to an agent, employee or servant any gift or gratuity whatever, with intent to influence his action in relation to his principal’s, employer’s or master’s business;

 (2) Agent, employee or servant who corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself under an agreement or with an understanding that he shall act in any particular manner in relation to his principal’s, employer’s or master’s business;

 (3) Agent, employee or servant who, being authorized to procure materials, supplies or other articles, either by purchase or contract for his principal, employer or master, receives, directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract or furnishes such materials, supplies or other articles or from a person who renders such service or labor; and

 (4) Person who gives or offers such an agent, employee or servant such commission, discount or bonus;

 Shall be punished by a fine of not more than five hundred dollars or by such fine and by imprisonment for not more than one year.

HISTORY: 1962 Code Section 16‑570; 1952 Code Section 16‑570; 1942 Code Section 1236; 1932 Code Section 1236; Cr. C. ‘22 Section 132; Cr. C. ‘12 Section 277; 1905 (24) 942.

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 11, Agents, Servants and Employees.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:27, Bribery of Employee Representatives or Labor Officials.

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

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 16‑570] obviously contemplates a transaction by a corrupt agent receiving a secret gift or gratuity to the injury of such agent’s employer, and in order to convict under such statute, it would be necessary to establish criminal intent, since such legislative purpose is obvious in the statute. Fiambolis v. U.S., 1957, 152 F.Supp. 10.

Where there was a receipt of a gift or gratuity by a ship captain which the ship’s owners not only knew about but actually consented to, there was no crime or violation of public policy of the State. Fiambolis v. U.S., 1957, 152 F.Supp. 10.

Payments to an employee of a corporation for the purpose of obtaining, increasing or retaining its business constitutes the crime of bribery. Jackson v. Bi‑Lo Stores, Inc. (S.C.App. 1993) 313 S.C. 272, 437 S.E.2d 168. Bribery 1(1)

**SECTION 16‑17‑550.** Bribery of athletes and athletic officials.

 (1) Unlawful to bribe athletes or athletic officials or to accept such bribes. —It shall be unlawful to bribe or offer to bribe any player, manager, coach, referee, umpire or any other participant or official of any athletic contest with intent to influence the play, action, conduct, or decision of any such person or for any such person to accept or agree to accept such bribe or offer for the purpose of losing, trying to lose or trying to limit the margin of victory or defeat in any athletic contest or to aid or abet or assist in any manner whatsoever in any such bribe.

 (2) Section to be cumulative to other laws. —This section shall not be construed as repealing or modifying any other provisions of law but shall be cumulative to such other provisions of law.

 (3) Penalties. —Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be fined not more than ten thousand dollars or be imprisoned for not more than ten years or both in the discretion of the court.

HISTORY: 1962 Code Section 16‑570.1; 1962 (52) 1732.

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. Bribery Section 10, Athletes and Athletic Officials.

S.C. Jur. Sports Law Section 43, South Carolina Legislation.

**SECTION 16‑17‑560.** Assault or intimidation on account of political opinions or exercise of civil rights.

 It is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both.

HISTORY: 1962 Code Section 16‑559; 1952 Code Section 16‑559; 1950 (46) 2059; 1993 Act No. 184, Section 186.

CROSS REFERENCES

Threatening or abusing voters, see Section 7‑25‑80.

Library References

Civil Rights 1808.

Election Law 696.

Westlaw Topic Nos. 78, 142T.

C.J.S. Elections Sections 575 to 577.

RESEARCH REFERENCES

ALR Library

66 ALR 6th 493 , Propriety of Prohibition of Display or Wearing of Confederate Flag.

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 19, Definition.

S.C. Jur. Extortion, Blackmail, and Threats Section 21, Threats to Compel.

S.C. Jur. Master and Servant Section 30, Development in South Carolina.

S.C. Jur. Master and Servant Section 34, Protection for Political Activities.

Attorney General’s Opinions

Discussion of fact scenario where a person was told to move their truck from a public high school parking lot during a football game, and the truck bed contained a large sign supporting a political candidate. SC Op.Atty.Gen. (Oct. 2, 2006) 2006 WL 3199984.

NOTES OF DECISIONS

Federal courts 2

Private cause of action 1

1. Private cause of action

County’s alleged conditioning of county administrator’s continued employment on his agreement to engage in acts that would violate statute prohibiting discharge of a citizen from employment because of political opinions or the exercise of political rights and privileges invoked the public policy exception to the at‑will employment doctrine. Cunningham v. Anderson County (S.C.App. 2013) 402 S.C. 434, 741 S.E.2d 545, rehearing denied, affirmed in part, reversed in part 414 S.C. 298, 778 S.E.2d 884. Counties 67; Public Employment 258(3)

An at‑will employee, allegedly discharged for refusing to contribute to a political action fund benefiting his employer’s business, would have a cause of action for wrongful discharge since Section 16‑17‑560 makes it a “crime against public policy” to fire any person because of his political beliefs, and the prohibition against retaliatory discharge extends to legislatively defined “crimes against public policy.” Culler v. Blue Ridge Elec. Co‑op., Inc. (S.C. 1992) 309 S.C. 243, 422 S.E.2d 91.

2. Federal courts

Former employee’s claim that employer terminated him in violation of South Carolina statute that prohibited discharges because of employee’s political opinions or exercise of political rights guaranteed by federal or South Carolina constitutions, did not necessarily depend on question of federal law, and thus removal of claim based on federal question jurisdiction was improper. Dixon v. Coburg Dairy, Inc. (C.A.4 (S.C.) 2004) 369 F.3d 811. Removal Of Cases 25(1)

**SECTION 16‑17‑570.** Interference with fire and police alarm boxes; giving false alarms.

 Any person who shall wilfully, maliciously or mischievously interfere with, cut or injure any pole, wire, insulator or alarm box, give a false alarm from such box or by use of a telephone or break the glass in such box of any fire or police alarm system in this State or any of the appliances or apparatus connected therewith shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to hard labor in the State Penitentiary or on the chain gang in a county having a chain gang for a term of not less than sixty days or the payment of a fine of not more than two hundred dollars.

HISTORY: 1962 Code Section 16‑560; 1952 Code Section 16‑560; 1942 Code Section 1164; 1932 Code Section 1164; Cr. C. ‘22 Section 57; Cr. C. ‘12 Section 194; Cr. C. ‘02 Section 156; R. S. 152; 1888 (20) 8; 1904 (24) 382; 1931 (37) 37; 1980 Act No. 468.

Library References

Obscenity 176.

Obstructing Justice 120.

Westlaw Topic Nos. 281, 282.

C.J.S. Obstructing Justice or Governmental Administration Sections 74, 80.

**SECTION 16‑17‑580.** Removing State line marks.

 Any person who shall deface, disturb or remove any granite post or marking, whether wood, stone or metal, duly placed by competent authority on the State line of this State shall be deemed guilty of a misdemeanor and, on conviction, shall be fined not less than one hundred dollars or imprisoned not less than six months.

HISTORY: 1962 Code Section 16‑561; 1952 Code Section 16‑561; 1942 Code Section 1251; 1932 Code Section 1251; Cr. C. ‘22 Section 145; Cr. C. ‘12 Section 291; 1906 (25) 63.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Boundaries and Land Surveying Section 36, Criminal Acts.

**SECTION 16‑17‑600.** Destruction or desecration of human remains or repositories; liability of crematory operators; penalties.

 (A) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:

 (1) destroy or damage the remains of a deceased human being;

 (2) remove a portion of the remains of a deceased human being from a burial ground where human skeletal remains are buried, a grave, crypt, vault, mausoleum, Native American burial ground or burial mound, or other repository; or

 (3) desecrate human remains.

 A person violating the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not less than one year nor more than ten years, or both.

 A crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate. This immunity does not apply to a crematory operator who knew or should have known that the body was incorrectly identified.

 (B) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:

 (1) obliterate, vandalize, or desecrate a burial ground where human skeletal remains are buried, a grave, graveyard, tomb, mausoleum, Native American burial ground or burial mound, or other repository of human remains;

 (2) deface, vandalize, injure, or remove a gravestone or other memorial monument or marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, Native American burial ground or burial mound, memorial park, or battlefield; or

 (3) obliterate, vandalize, or desecrate a park, Native American burial ground or burial mound, or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons.

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

 (C)(1) It is unlawful for a person wilfully and knowingly to steal anything of value located upon or around a repository for human remains or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park, or for a person wilfully, knowingly, and without proper legal authority to destroy, tear down, or injure any fencing, plants, trees, shrubs, or flowers located upon or around a repository for human remains, or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park.

 (2) A person violating the provisions of item (1) is guilty of:

 (a) a felony and, upon conviction, if the theft of, destruction to, injury to, or loss of property is valued at four hundred dollars or more, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and must be required to perform not more than five hundred hours of community service;

 (b) a misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the theft of, destruction to, injury to, or loss of property is valued at less than four hundred dollars. Upon conviction, a person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both, and must be required to perform not more than two hundred fifty hours of community service.

 (D) A person who owns or has an interest in caring for the property, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover damages, and the cost of restoration and repair of the property, plus attorney’s fees and court costs.

HISTORY: 1962 Code Section 16‑563; 1952 Code Section 16‑563; 1942 Code Section 1266; 1932 Code Section 1266; Cr. C. ‘22 Section 161; Cr. C. ‘12 Section 246; Cr. C. ‘02 Section 230; 1899 (23) 98; 1938 (40) 1576; 1989 Act No. 74, Section 1; 1993 Act No. 184, Section 37; 1998 Act No. 307, Section 1; 2004 Act No. 229, Section 1, eff May 11, 2004; 2010 Act No. 273, Section 16.W, eff June 2, 2010; 2010 Act No. 255, Section 2, eff June 11, 2010.

CROSS REFERENCES

Removal of abandoned cemeteries, see Section 27‑43‑10 et seq.

Library References

Dead Bodies 7 to 9.

Westlaw Topic No. 116.

C.J.S. Dead Bodies Sections 30, 34 to 74.

RESEARCH REFERENCES

Encyclopedias

57 Am. Jur. Proof of Facts 3d 1, Hate Crimes and Liability for Bias‑Motivated Acts.

S.C. Jur. Cemeteries Section 21, Criminal Offenses.

NOTES OF DECISIONS

In general 1

Private cause of action 2

1. In general

Digging up and removal of shrubbery from above a grave is a wilful destruction of it within the plain terms of this section [Code 1962 Section 16‑563], and a grave is thereby desecrated without actual entrance of it. State v. Johnson (S.C. 1941) 196 S.C. 497, 14 S.E.2d 24. Cemeteries 22

2. Private cause of action

Criminal statute making it unlawful for a person willfully and knowingly, and without proper legal authority, to destroy or damage the remains of a deceased human being did not create an actionable duty on part of crematory operator to parents of 20‑year‑old driver who was killed in accident after consuming alcohol and whose remains were cremated without an autopsy or toxicology tests; essential purpose of statute was not to preserve a body as evidence for a civil action, and alleged harm to parents was that their settlement with gas station operator who sold beer to driver was less than it could have been with definitive toxicology results. Trask v. Beaufort County (S.C.App. 2011) 392 S.C. 560, 709 S.E.2d 536, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 405 S.C. 619, 748 S.E.2d 794. Action 5; Dead Bodies 9

**SECTION 16‑17‑610.** Soliciting emigrants without licenses.

 No person other than the South Carolina Department of Employment and Workforce shall carry on the business of emigrant agent in this State without having first obtained a license therefor from the State Treasurer and the county treasurer of each county in which he solicits emigrants. The term “emigrant agent,” as used in this section, shall be construed to mean any person engaged in hiring laborers or soliciting emigrants in this State to be employed beyond the limits of the State. Any person shall be entitled to State and county licenses, which shall be good for one year, upon payment into the State Treasury for the use of the State of five hundred dollars for each county in which he operates or solicits emigrants for each year so engaged and upon payment into the county treasury of each county in which he operates or solicits emigrants, for the use of each such county, of two thousand dollars for each year so engaged. Any person other than the South Carolina Department of Employment and Workforce doing business as an emigrant agent without having first obtained each such license shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars in case of failure to obtain a State license and one thousand dollars in case of failure to obtain a county license and not more than five thousand dollars in either such case or may be imprisoned in the county jail or, in case of failure to obtain a county license, upon the public works not less than four months or confined in the State Prison, at hard labor, not exceeding two years for each and every offense, within the discretion of the court.

HISTORY: 1962 Code Section 16‑564; 1952 Code Section 16‑564; 1942 Code Sections 1377, 1378; 1932 Code Sections 1377, 1378; Cr. C. ‘22 Sections 308, 309; Cr. C. ‘12 Sections 895, 896; Cr. C. ‘02 Section 608; R. S. 488; 1891 (20) 1084; 1893 (21) 429; 1898 (22) 812; 1907 (25) 543; 1949 (46) 415, 417; 1954 (48) 1415.

Library References

Labor and Employment 3269.

Westlaw Topic No. 231H.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 3

Constitutional issues 2

1. In general

One who hires employees for work outside of the State is an “emigrant agent”, within the meaning of this section [Code 1962 Section 16‑564], though in so doing he is, as an agent of a corporation, employing men to work for such corporation. State v. Bates (S.C. 1919) 113 S.C. 129, 101 S.E. 651.

This section [Code 1962 Section 16‑564] was enacted in the exercise of the State’s police power to protect the State’s laborers and its agricultural and manufacturing interests. State v. Reeves (S.C. 1919) 112 S.C. 383, 99 S.E. 841.

In a prosecution for carrying on the business of emigrant agent without a license, each hiring or solicitation is to be considered as a separate transaction by the jury in determining whether defendant was engaged in the occupation of hiring or soliciting laborers to be employed beyond State limits, though the laborers so solicited were all to have left on the same day. State v. Reeves (S.C. 1919) 112 S.C. 383, 99 S.E. 841. Labor And Employment 3284

2. Constitutional issues

The constitutionality of this section [Code 1962 Section 16‑564] has been sustained. State v. Napier (S.C. 1902) 63 S.C. 60, 41 S.E. 13.

3. Admissibility of evidence

In a prosecution for carrying on the business of emigrant agent without securing a license, papers and documents, found on defendant after arrest and taken from him by police officers, are admissible. State v. Reeves (S.C. 1919) 112 S.C. 383, 99 S.E. 841. Criminal Law 393(2)

**SECTION 16‑17‑620.** Exemption of solicitors of farm laborers to work in adjacent states.

 The provisions of Section 16‑17‑610 shall not be applicable to any person soliciting or hiring laborers in this State to be employed in agricultural work in any state bordering on this State when such adjacent state places no limitation on the solicitation or employment of farm labor by South Carolina employers.

HISTORY: 1962 Code Section 16‑564.1; 1954 (48) 1415.

Library References

Labor and Employment 3269.

Westlaw Topic No. 231H.

**SECTION 16‑17‑630.** Exemption of solicitors of household or domestic employees.

 Notwithstanding the provisions of Section 16‑17‑610 it shall be lawful for any person to solicit without a license household or domestic employees for out‑of‑State employment.

HISTORY: 1962 Code Section 16‑564.2; 1958 (50) 1928.

Library References

Labor and Employment 3269.

Westlaw Topic No. 231H.

**SECTION 16‑17‑640.** Blackmail.

 Any person who verbally or by printing or writing or by electronic communications:

 (1) accuses another of a crime or offense;

 (2) exposes or publishes any of another’s personal or business acts, infirmities, or failings; or

 (3) compels any person to do any act, or to refrain from doing any lawful act, against his will;

with intent to extort money or any other thing of value from any person, or attempts or threatens to do any of such acts, with the intent to extort money or any other thing of value, shall be guilty of blackmail and, upon conviction, shall be fined not more than five thousand dollars or imprisoned for not more than ten years, or both, in the discretion of the court.

HISTORY: 1962 Code Section 16‑566.1; 1957 (50) 191; 2001 Act No. 81, Section 15.

Library References

Extortion 7, 44.

Westlaw Topic No. 164T.

C.J.S. Extortion Sections 1 to 2, 4, 6 to 10, 12, 20.

C.J.S. Threats and Unlawful Communications Sections 1 to 39.

RESEARCH REFERENCES

Encyclopedias

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

S.C. Jur. Extortion, Blackmail, and Threats Section 13, Statutory Definition.

S.C. Jur. Extortion, Blackmail, and Threats Section 14, Elements.

S.C. Jur. Extortion, Blackmail, and Threats Section 17, Evidence.

S.C. Jur. Extortion, Blackmail, and Threats Section 18, Sentence and Punishment.

Attorney General’s Opinions

South Carolina courts will probably follow majority rule that one convicted of felony under federal law, which offense would have been misdemeanor under state law, will be disenfranchised under Section 7‑5‑120(b). 1984 Op.Atty.Gen., No 84‑94, p 222 (1984 WL 159901).

NOTES OF DECISIONS

Admissibility of evidence 2

Constitutional issues 1

1. Constitutional issues

Once it appeared during course of prosecution for extortion that defense counsel was a witness to execution of a material document which victim testified he had been forced to sign at gunpoint, action of trial court in requiring counsel for defense to withdraw as counsel so that he might appear as a witness did not operate to deny defendant’s right to a fair trial, notwithstanding claim that court failed to adequately explain to jury reason for counsel’s withdrawal from case, where court’s statement to jury concerning matter was entirely adequate, and defendants’ concern that jury may have received impression that they were being abandoned by counsel was without reasonable foundation. State v. Cutter (S.C. 1973) 261 S.C. 140, 199 S.E.2d 61.

It was no reflection on the ability or zeal of defense counsel that he failed to object to testimony of a switchboard operator concerning a telephone conversation she overheard between one of defendants and victim of alleged extortion on ground that interception was in violation of federal antiwiretap law, since if conduct of operator under circumstances was in violation of federal law, it was open to question whether there were many members of the trial bar or bench of the State to whom point would have occurred. State v. Cutter (S.C. 1973) 261 S.C. 140, 199 S.E.2d 61.

2. Admissibility of evidence

Once a switchboard operator, who was examined and cross‑examined at some length about a telephone conversation which she overheard between victim of alleged extortion and one of defendants, testified that particular defendant’s speech was vulgar and profane, and that he threatened victim in a highly menacing fashion, question of court to witness at conclusion of redirect examination as to whether defendant had asked victim for money, to which witness replied in affirmative, did not operate to prejudice defendants in their right to a fair trial. State v. Cutter (S.C. 1973) 261 S.C. 140, 199 S.E.2d 61.

Remark “Are you afraid?” made by solicitor to a female witness did not require a declaration of a mistrial nor an admonishment to jury, notwithstanding claim that solicitor had suggested by an inflammatory and prejudicial question that witness was afraid of defendants, where, when read in context, it was immediately apparent that inquiry was as to whether witness was nervous in her first appearance on the stand, and jury could not have understood otherwise. State v. Cutter (S.C. 1973) 261 S.C. 140, 199 S.E.2d 61.

**SECTION 16‑17‑650.** Cockfighting.

 (A) A person who engages in or is present at cockfighting or game fowl fighting or illegal game fowl testing is guilty of a:

 (1) misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year for a first offense; or

 (2) misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned not more than three years for a second or subsequent offense.

 (B) For purposes of this section, “illegal game fowl testing” means allowing game fowl to engage in physical combat:

 (1) with or without spurs or other artificial items while in the presence of more than five spectators;

 (2) under any circumstances while employing spurs or other artificial items or with the injection or application of a stimulant substance; or

 (3) for purposes of or in the presence of wagering or gambling.

 (C) A person who violates the provisions of subsection (A)(1) must be tried exclusively in summary court.

 (D) A person who violates the provisions of subsection (A)(2) is subject to the forfeiture of monies, negotiable instruments, and securities specifically gained or used to engage in or further a violation of this section pursuant to Section 16‑27‑55.

 (E) All game fowl breeders and game fowl breeder testing facilities must comply with the Department of Health and Environmental Control and the State Veterinarian’s regulations, policies, and procedures regarding avian influenza preparedness and testing. In the event of an avian influenza outbreak in South Carolina, all game fowl breeders and game fowl breeder testing facilities must allow the Department of Health and Environmental Control and the State Veterinarian to conduct avian influenza testing of all game fowl.

HISTORY: 1962 Code Section 16‑567; 1952 Code Section 16‑567; 1942 Code Section 1445; 1932 Code Section 1445; Cr. C. ‘22 Section 386; Cr. C. ‘12 Section 393; Cr. C. ‘02 Section 298; R. S. 257; 1887 (19) 801; 1917 (30) 47; 2006 Act No. 345, Section 1, eff June 12, 2006.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Library References

Animals 3.5(7).

Westlaw Topic No. 28.

C.J.S. Animals Sections 210 to 214.

Attorney General’s Opinions

The Farm Animals and Research Facilities Protection Act and the Animal Fighting and Baiting Act as they apply to local cock fighters claiming they may test their birds against each other. SC Op.Atty.Gen. (April 10, 2001) 2001 WL 564588.

**SECTION 16‑17‑660.** Using dry wells for sewerage in towns of 500 or over.

 It shall be a misdemeanor for any person to keep, maintain or use a dry well or other wells or privy vaults into which sewerage matter is discharged or received in any city, town or village having a population of not less than five hundred, whether incorporated or unincorporated, when such city, town or village has no public general supply of water for personal and domestic uses. Any person who now has or maintains any such well for the discharge or reception of sewerage matter shall, upon fifteen days’ notice from any magistrate that complaint thereof has been made, close up such well and discontinue its use entirely. Any person found guilty of violating this section shall be fined not exceeding one hundred dollars or imprisoned for not exceeding thirty days.

HISTORY: 1962 Code Section 16‑568; 1952 Code Section 16‑568; 1942 Code Section 1488; 1932 Code Section 1488; Cr. C. ‘22 Section 432; Cr. C. ‘12 Section 442; 1908 (25) 1117; 1910 (26) 630.

**SECTION 16‑17‑670.** Record kept by dealers in crossties.

 Any person within this State dealing in crossties shall keep a book of record which shall be open to the public and in which shall be legibly written the name of the party or parties from whom crossties are purchased, the number of crossties purchased and the lands or premises from which such crossties are cut or harvested. Any person violating the terms of this section shall be subject to a fine of twenty‑five dollars for each offense.

HISTORY: 1962 Code Section 16‑571; 1952 Code Section 16‑571; 1942 Code Section 1350; 1932 Code Section 1350; Cr. C. ‘22 Section 238; 1918 (30) 701.

Library References

Disorderly Conduct 140.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4.

**SECTION 16‑17‑680.** Secondary metals recycler permit to purchase nonferrous metals; permit to transport and sell nonferrous metals; violations; penalties; records; notice; preemption.

 (A) For purposes of this section:

 (1) “Coil” means a copper, aluminum, or aluminum‑copper condensing coil or evaporation coil. The term includes, but is not limited to, coil from a commercial or residential heating or air‑conditioning system. The term does not include coil from a window air‑conditioning system, if the coil is contained within the system, or coil from an automobile condenser.

 (2) “Fixed site” means a site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by a secondary metals recycler for a total duration of not less than three hundred sixty‑four days.

 (3) “Nonferrous metals” means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead‑acid batteries, steel propane gas tanks, and stainless steel beer kegs or containers.

 (4) “Secondary metals recycler” means a person or entity who is engaged, from a fixed site or otherwise, in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

 (B)(1) A secondary metals recycler shall obtain a permit to purchase nonferrous metals. A secondary metals recycler’s employee is not required to obtain a separate permit to purchase nonferrous metals provided that the employee is acting within the scope and duties of their employment with the secondary metals recycler. A secondary metals recycler’s employee who intends to purchase nonferrous metals on behalf of the secondary metals recycler at a location other than a fixed site shall have a copy of the secondary metals recycler’s permit readily available for inspection.

 (2) If a secondary metals recycler intends to purchase nonferrous metals at a fixed site or fixed sites, the secondary metals recycler shall obtain a permit from the sheriff of the county in which each of the secondary metals recycler’s fixed sites are located. The sheriff may issue the permit to the secondary metals recycler, if the secondary metals recycler:

 (a) has a fixed site or fixed sites located in the sheriff’s county;

 (b) has not been convicted of a violation of Section 16‑11‑523 or this section; and

 (c) declares on an application provided by the sheriff that the secondary metals recycler is informed of and will comply with the provisions of this section.

 (3) If a secondary metals recycler intends to purchase nonferrous metals at a location other than a fixed site, the secondary metals recycler shall obtain a permit from the sheriff of each county in which the secondary metals recycler intends to purchase nonferrous metals. The sheriff may issue the permit to the secondary metals recycler if the secondary metals recycler:

 (a) can sufficiently demonstrate to the sheriff the secondary metals recycler’s ability to comply with the provisions of this section;

 (b) has not been convicted of a violation of Section 16‑11‑523 or this section; and

 (c) declares on an application provided by the sheriff that the secondary metals recycler is informed of and will comply with the provisions of this section.

 (4) The South Carolina Law Enforcement Division shall develop the application and permit in consultation with the state’s sheriffs and representatives from the secondary metals recyclers’ industry.

 (5) A sheriff may investigate a secondary metals recycler’s background prior to issuing a permit for purposes of determining if the secondary metals recycler qualifies to be issued a permit.

 (6) A sheriff may charge and retain a two hundred dollar fee for each permit.

 (7) A sheriff shall keep a record of all permits issued containing, at a minimum, the date of issuance, and the name and address of the secondary metals recycler.

 (8) A permit is valid for twenty‑four months.

 (9) A permit may be denied, suspended, or revoked at any time if a sheriff discovers that the information on an application is inaccurate, a secondary metals recycler does not comply with the requirements of this section, or a secondary metals recycler is convicted of a violation of Section 16‑11‑523 or this section.

 (10) A sheriff shall issue permits during regular business hours.

 (C)(1) A person or entity who wants to transport or sell nonferrous metals to a secondary metals recycler shall obtain a permit to transport and sell the nonferrous metals. An entity’s employee is not required to obtain a separate permit to transport or sell nonferrous metals provided that the employee is acting within the scope and duties of their employment with the entity. An entity’s employee who intends to transport and sell nonferrous metals on behalf of an entity shall have a copy of the entity’s permit readily available for inspection.

 (2) If a person is a resident of South Carolina or an entity is located in South Carolina, the person or entity shall obtain a permit from the sheriff of the county in which the person resides or has a secondary residence or in which the entity is located or has a secondary business. The sheriff may issue the permit to the person or entity if the:

 (a) person resides or has a secondary residence or the entity is located or has a secondary business in the sheriff’s county;

 (b) person or entity has not been convicted of a violation of Section 16‑11‑523 or this section; and

 (c) person or entity declares on an application provided by the sheriff that the person or entity is informed of and will comply with the provisions of this section.

 (3) If a person is not a resident of South Carolina or an entity is not located in South Carolina, the person or entity shall obtain a permit from any sheriff of any county. The sheriff may issue the permit to the person or entity if the:

 (a) person is not a resident of South Carolina or the entity is not located in South Carolina;

 (b) person or entity has not been convicted of a violation of Section 16‑11‑523 or this section; and

 (c) person or entity declares on an application provided by the sheriff that the person or entity is informed of and will comply with the provisions of this section.

 (4) The South Carolina Law Enforcement Division shall develop the application and permit in consultation with the state’s sheriffs and representatives of the secondary metals recyclers’ industry.

 (5) A sheriff may investigate a person or entity’s background prior to issuing a permit for purposes of determining if the person or entity qualifies to be issued a permit.

 (6) A sheriff may not charge a fee for a permit. A sheriff may charge a ten dollar fee to replace a permit that has been lost or destroyed. If the original permit is later found by the person or entity, the person or entity must turn the original permit into the sheriff or destroy the original permit.

 (7) A sheriff shall keep a record of all permits issued containing, at a minimum, the date of issuance, the name and address of the person or entity, a photocopy of the person’s identification or of the employee’s identification, and the person’s photograph or the entity’s employee’s photograph.

 (8) A permit is valid statewide and expires on the person’s birth date on the second calendar year after the calendar year in which the permit is issued, or, if the permittee is an entity, the permit expires on the date of issuance on the second calendar year after the calendar year in which the permit is issued.

 (9) A permit may be denied, suspended, or revoked at any time if a sheriff discovers that the information on an application is inaccurate, a person or entity does not comply with the requirements of this section, or a person or entity is convicted of a violation of Section 16‑11‑523 or this section.

 (10)(a) It is unlawful for a person or entity to obtain a permit to transport and sell nonferrous metals for the purpose of transporting or selling stolen nonferrous metals.

 (b) A person who violates a provision of this subitem is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The person or entity’s permit must be revoked.

 (11) A sheriff shall issue permits during regular business hours.

 (D)(1) It is unlawful to purchase nonferrous metals in any amount for the purpose of recycling the nonferrous metals from a seller unless the purchaser is a secondary metals recycler who has a valid permit to purchase nonferrous metals issued pursuant to subsection (B) and the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C). A secondary metals recycler may hold a seller’s nonferrous metals while the seller obtains a permit to transport and sell nonferrous metals pursuant to subsection (C).

 (2) A secondary metals recycler shall maintain a record containing, at a minimum, the date of purchase, the name and address of the seller, a photocopy of the seller’s identification, a photocopy of the seller’s permit to transport and sell nonferrous metals, if applicable, the license plate number of the seller’s motor vehicle, if available, the seller’s photograph, the weight and size or other description of the nonferrous metals purchased, the amount paid for the nonferrous metals, and a signed statement from the seller stating that the seller is the rightful owner or is entitled to sell the nonferrous metals being sold. If the secondary metals recycler has the seller’s photograph on file, the secondary metals recycler may reference the photograph on file without making a photograph for each transaction; however, the secondary metals recycler shall update the seller’s photograph on an annual basis. A secondary metals recycler may use a video of the seller in lieu of a photograph provided the secondary metals recycler maintains the video for at least one hundred twenty days. A secondary metals recycler may maintain a record in an electronic database provided that the information is legible and can be accessed by law enforcement upon request.

 (3) All nonferrous metals that are purchased by and are in the possession of a secondary metals recycler and all records required to be kept by this section must be maintained and kept open for inspection by law enforcement officials or local and state governmental agencies during regular business hours. The records must be maintained for one year from the date of purchase.

 (4) A secondary metals recycler shall not enter into a cash transaction in payment for the purchase of copper, catalytic converters, or beer kegs, which totals twenty‑five dollars or more. Payment for the purchase of copper, catalytic converters, or beer kegs, which totals twenty‑five dollars or more must be made by check alone issued and made payable to the seller. A secondary metals recycler shall neither cash a check issued pursuant to this item nor use an automated teller machine (ATM) or other cash card system in lieu of a check. A secondary metals recycler shall not enter into more than one cash transaction per day per seller in payment for the purchase of copper, catalytic converters, or beer kegs.

 (5) A secondary metals recycler shall prominently display a twenty‑inch by thirty‑inch sign in the secondary metals recycler’s fixed site that states: “NO NONFERROUS METALS, INCLUDING COPPER, MAY BE PURCHASED BY A SECONDARY METALS RECYCLER FROM A SELLER UNLESS THE SELLER IS A HOLDER OF A RETAIL LICENSE, AN AUTHORIZED WHOLESALER, A CONTRACTOR LICENSED PURSUANT TO ARTICLE 1, CHAPTER 11, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, A GAS, ELECTRIC, COMMUNICATIONS, WATER, PLUMBING, ELECTRICAL, OR CLIMATE CONDITIONING SERVICE PROVIDER, OR THE SELLER PRESENTS THE SELLER’S VALID PERMIT TO TRANSPORT AND SELL NONFERROUS METALS ISSUED PURSUANT TO SECTION 16‑17‑680, CODE OF LAWS OF SOUTH CAROLINA, 1976.”

 (6) A purchaser who violates a provision of this subsection:

 (a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days;

 (b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than one year, or both; and

 (c) for a third offense or subsequent offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that occurred within a period of ten years, including and immediately preceding the date of the last offense, shall constitute a prior offense within the meaning of this subsection.

 If the purchaser obtained a permit to purchase nonferrous metals pursuant to subsection (B), the permit must be revoked.

 (E)(1)(a) It is unlawful to sell nonferrous metals in any amount to a secondary metals recycler unless the secondary metals recycler has a valid permit to purchase nonferrous metals issued pursuant to subsection (B) and the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C).

 (b) A seller who violates a provision of this subitem:

 (i) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both;

 (ii) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than five hundred dollars or imprisoned not more than three years, or both; and

 (iii) for a third or subsequent offense, is guilty of a felony, and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than five years, or both.

 If the seller obtained a permit to transport and sell nonferrous metals pursuant to subsection (C), the permit must be revoked.

 (2)(a) It is unlawful to purchase or otherwise acquire nonferrous metals in any amount from a seller who does not have a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C) with the intent to resell the nonferrous metals in any amount to a secondary metals recycler using the purchaser’s valid permit to transport and sell nonferrous metals issued pursuant to subsection (C).

 (b) A purchaser who violates a provision of this subitem is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. The purchaser’s permit must be revoked.

 (F)(1) When a law enforcement officer has reasonable cause to believe that any item of nonferrous metal in the possession of a secondary metals recycler has been stolen, the law enforcement officer may issue a hold notice to the secondary metals recycler. The hold notice must be in writing, be delivered to the secondary metals recycler, specifically identify those items of nonferrous metal that are believed to have been stolen and that are subject to the notice, and inform the secondary metals recycler of the information contained in this subsection. Upon receipt of the notice, the secondary metals recycler must not process or remove the items of nonferrous metal identified in the notice, or any portion thereof, from the secondary metal recycler’s fixed site for fifteen calendar days after receipt of the notice unless released prior to the fifteen‑day period by the law enforcement officer.

 (2) No later than the expiration of the fifteen‑day period, a law enforcement officer may issue a second hold notice to the secondary metals recycler, which shall be an extended hold notice. The extended hold notice must be in writing, be delivered to the secondary metals recycler, specifically identify those items of nonferrous metal that are believed to have been stolen and that are subject to the extended hold notice, and inform the secondary metals recycler of the information contained in this subsection. Upon receipt of the extended hold notice, the secondary metals recycler must not process or remove the items of nonferrous metal identified in the notice, or any portion thereof, from the secondary metals recycler’s fixed site for thirty calendar days after receipt of the extended hold notice unless released prior to the thirty‑day period by the law enforcement officer.

 (3) At the expiration of the hold period or, if extended, at the expiration of the extended hold period, the hold is automatically released and the secondary metals recycler may dispose of the nonferrous metals unless other disposition has been ordered by a court of competent jurisdiction.

 (4) A secondary metals recycler who violates a provision of this subsection:

 (a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than two hundred dollars nor more than three hundred dollars or imprisoned not more than thirty days;

 (b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not less than four hundred dollars nor more than five hundred dollars or imprisoned not more than one year, or both; and

 (c) for a third or subsequent offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that occurred within a period of ten years, including and immediately preceding the date of the last offense shall constitute a prior offense within the meaning of this subsection.

 The secondary metals recycler’s permit to purchase nonferrous metals issued pursuant to subsection (B) must be revoked.

 (G)(1) It is unlawful to transport nonferrous metals in a vehicle or have nonferrous metals in a person’s possession in a vehicle on the highways of this State.

 (2) Subsection (G)(1) does not apply if:

 (a) the person can present a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C); or

 (b) the person can present a valid bill of sale for the nonferrous metals.

 (3) If a law enforcement officer determines that one or more of the exceptions listed in subsection (G)(2) applies, or the law enforcement officer determines that the nonferrous metals are not stolen goods and are in the rightful possession of the person, the law enforcement officer shall not issue a citation for a violation of this subsection.

 (4) A person who violates a provision of subsection (G)(1):

 (a) for a first offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days;

 (b) for a second offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both; and

 (c) for a third or subsequent offense, is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. For an offense to be considered a third or subsequent offense, only those offenses that occurred within a period of ten years, including and immediately preceding the date of the last offense, shall constitute a prior offense within the meaning of this subsection.

 (5) If a person transports nonferrous metals that the person knows are stolen in a vehicle or has in the person’s possession in a vehicle on the highways of this State nonferrous metals that the person knows are stolen, is operating a vehicle used in the ordinary course of business to transport nonferrous metals that the person knows are stolen, presents a valid or falsified permit to transport and sell nonferrous metals that the person knows are stolen, or presents a valid or falsified bill of sale for nonferrous metals that the person knows to be stolen, the person is guilty of a felony, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. If the person obtained a permit to transport and sell nonferrous metals pursuant to subsection (C), the permit must be revoked.

 (H) For purposes of this section, the only acceptable identification is a valid:

 (1) South Carolina driver’s license issued by the Department of Motor Vehicles;

 (2) South Carolina identification card issued by the Department of Motor Vehicles;

 (3) driver’s license from another state that contains the licensee’s picture on the face of the license; or

 (4) military identification card.

 (I) A secondary metals recycler shall not purchase or otherwise acquire:

 (1) an iron or steel manhole cover;

 (2) an iron or steel drainage grate; or

 (3) a coil, unless the seller is an exempted entity pursuant to subsection (J)(1)(e) or the seller presents a bill of sale from a company licensed pursuant to Chapter 11, Title 40 indicating that the seller acquired the coil as the result of a unit replacement or repair. The bill of sale is sufficient proof of ownership and serves the same purpose as a permit to transport and sell nonferrous metals. A person who presents a falsified bill of sale is guilty of a misdemeanor, and, upon conviction, must be fined in the discretion of the court or imprisoned not more three years, or both.

 (J)(1) Except as provided in item (2), the provisions of this section do not apply to:

 (a) the purchase or sale of aluminum cans;

 (b) a transaction between a secondary metals recycler and another secondary metals recycler;

 (c) a governmental entity;

 (d) a manufacturing or industrial vendor that generates or sells regulated metals in the ordinary course of its business;

 (e) a seller who is a holder of a retail license, an authorized wholesaler, an automobile demolisher as defined in Section 56‑5‑5810(d), a contractor licensed pursuant to Chapter 11, Title 40, a real estate broker or property manager licensed pursuant to Chapter 57, Title 40, a residential home builder licensed pursuant to Chapter 59, Title 40, a demolition contractor, a provider of gas service, electric service, communications service, water service, plumbing service, electrical service, climate conditioning service, core recycling service, appliance repair service, automotive repair service, or electronics repair service; or

 (f) a seller that is an organization, a corporation, or an association registered with the State as a charitable organization or a nonprofit corporation.

 (2) An exempted entity listed in item (1) is subject to the provisions of subsection (C)(10) and subsection (G)(5).

 A secondary metals recycler shall maintain a record of transactions involving exempted entities listed in item (1) pursuant to subsection (D) and is subject to the penalty provisions of subsection (D)(6). Any item of nonferrous metals acquired from an exempted entity listed in item (1) is subject to a hold notice pursuant to subsection (F).

 (K) This section preempts local ordinances and regulations governing the purchase, sale, or transportation of nonferrous metals in any amount, except to the extent that such ordinances pertain to zoning or business license fees. Political subdivisions of the State may not enact ordinances or regulations more restrictive than those contained in this section.

HISTORY: 1962 Code Section 16‑571.1; 1967 (55) 371; 1974 (58) 2627; 1975 (59) 207; 1993 Act No. 105, Section 1; 1996 Act No. 459, Section 29; 2007 Act No. 97, Section 1, eff June 14, 2007; 2008 Act No. 260, Section 1, eff June 4, 2008; 2009 Act No. 26, Section 2, eff June 2, 2009; 2011 Act No. 68, Section 2, eff August 17, 2011; 2012 Act No. 242, Section 2, eff December 15, 2012; 2014 Act No. 190 (S.561), Section 1, 2, 3, 4, eff June 2, 2014.

Editor’s Note

2012 Act No. 242, Section 13, provides as follows:

“Subsection (H) of Section 56‑5‑5670 of the 1976 Code as contained in SECTION 8 and subsection (H) of Section 56‑5‑5945 of the 1976 Code as contained in SECTION 9 take effect upon approval by the Governor. All other provisions of this act take effect one hundred eighty days after approval by the Governor.”

CROSS REFERENCES

Driver’s license, see Section 56‑1‑10 et seq.

Duties of demolishers, disposal of vehicle, title requirements, records, penalties, see Section 56‑5‑5945.

Duties of demolishers, surrender of receipts and certificates, records, penalties, see Section 56‑5‑5670.

Junk required to be kept open for inspection, see Section 40‑27‑20.

Record of purchases, nonferrous metals, see Section 40‑27‑10.

Library References

Disorderly Conduct 140.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4.

Attorney General’s Opinions

Discussion of the requirements related to obtaining a signature and photo ID for purchases of nonferrous metals, disposed vehicles, and junk that consists of nonferrous metals or vehicles. S.C. Op.Atty.Gen. (May 17, 2016) 2016 WL 3097465.

Discussion of auto parts stores such as Auto Zone, NAPA, and others that are issuing store credits in lieu of cash or checks for old batteries which are covered under the nonferrous law. S.C. Op.Atty.Gen. (July 11, 2013) 2013 WL 3858685.

A secondary metals recycler may only enter into a cash transaction for the purchase of copper, catalytic converters, or beer kegs if the other party to the transaction is also a secondary metals recycler. S.C. Op.Atty.Gen. (January 04, 2013) 2013 WL 204788.

A scrap metal company would not be authorized to buy a large amount of scrap metal from an individual whose only identification is a picture license issued by a foreign country. SC Op.Atty.Gen. (August 15, 2005) 2005 WL 2250216.

**SECTION 16‑17‑690.** Fortunetelling for purpose of promoting another business.

 It shall be unlawful to engage in the business, trade or profession of fortunetelling, palmistry, phrenology, clairvoyance or the prediction of future events by cards or other means or to offer to tell fortunes or predict future events by palmistry, astrology, clairvoyance, cards or other means as an inducement to promote some other business, trade or profession. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than twenty‑five dollars nor more than one hundred dollars or imprisonment for not less than fifteen nor more than thirty days.

HISTORY: 1962 Code Section 16‑572; 1952 Code Section 16‑572; 1945 (44) 60.

Library References

Public Amusement and Entertainment 12.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 11 to 20, 22 to 25, 29, 33 to 42, 47 to 48, 51.

**SECTION 16‑17‑700.** Tattooing.

 It is unlawful for a person to tattoo any part of the body of another person unless the tattoo artist meets the requirements of Chapter 34 of Title 44. However, it is not unlawful for a licensed physician or surgeon to tattoo part of the body of a person of any age if in the physician’s or surgeon’s medical opinion it is necessary or appropriate; and it is not unlawful for a physician to delegate tattooing procedures to an employee in accordance with Section 40‑47‑60, subject to the regulations of the State Board of Medical Examiners.

 A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined up to two thousand five hundred dollars or imprisoned not more than one year, or both.

HISTORY: 1962 Code Section 16‑574; 1966 (54) 2331; 1986 Act No. 395; 1993 Act No. 184, Section 187; 2004 Act No. 250, Section 2, eff June 17, 2004.

Library References

Health 975.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Section 85.

RESEARCH REFERENCES

ALR Library

67 ALR 6th 395 , Regulation of Business of Tattooing.

NOTES OF DECISIONS

Validity 1

1. Validity

Statute prohibiting the tattooing of another person except by a licensed physician for cosmetic or reconstructive purposes was valid as against claim that it impermissibly restricted defendant’s freedom of speech in violation of the First Amendment; process of injecting dye to create a tattoo was not sufficiently communicative to warrant constitutional protections and did not outweigh the risks to public safety. State v. White (S.C. 2002) 348 S.C. 532, 560 S.E.2d 420, rehearing denied, certiorari denied, certiorari denied 123 S.Ct. 114, 537 U.S. 825, 154 L.Ed.2d 37. Constitutional Law 1885; Health 105

Statute prohibiting the tattooing of another person except by a licensed physician for cosmetic or reconstructive purposes was valid exercise of legislature’s police power to legislate for the protection of public health and general welfare; defendant effectively conceded that a rational relationship existed between tattooing and public health when he testified that tattooing could endanger public health in the absence of affirmative regulation by the state. State v. White (S.C. 2002) 348 S.C. 532, 560 S.E.2d 420, rehearing denied, certiorari denied, certiorari denied 123 S.Ct. 114, 537 U.S. 825, 154 L.Ed.2d 37. Health 105

**SECTION 16‑17‑710.** Resale of ticket to event; price restriction; exceptions; penalties.

 (A) A person or entity who offers for resale or resells a ticket for admission to an event must request or receive no more than one dollar above the price charged by the original ticket seller.

 (B) This section does not apply to an open market event ticket offered for resale through an internet website or at a permitted physical location when the person or entity reselling the ticket guarantees to the ticket buyer a full refund of the amount paid for the ticket if:

 (1) the event is cancelled, except that ticket delivery and processing charges are not required to be refunded if disclosed in the guarantee;

 (2) the buyer is denied admission to the event, unless the denial is due to the act or omission of the buyer; or

 (3) the ticket is not delivered to the buyer and the failure results in the buyer’s inability to use the ticket to attend the event.

 (C) For purposes of this section, the term “open market event ticket” means a ticket to an event other than an event sponsored by or taking place at a venue owned by an institution of higher education. An institution of higher education may designate a ticket as an open market event ticket if the institution approves the resale of the ticket prior to the initial sale or delivery of the ticket and issues a public statement or notice authorizing the resale of the ticket.

 (D) For purposes of this section, the term “permitted physical location” is a physical geographic location that is either:

 (1) on property not owned by the owner of the venue of the ticketed event or on public property even if the property is the venue of the ticketed event subject to reasonable restrictions or conditions imposed by the owner to protect the safety and welfare of attendees of the ticketed event; or

 (2) on private property owned by the owner of the venue of the ticketed event if the owner expressly authorizes in writing such resales to occur on the property. The owner may provide specific locations on the property for resales to occur and provide for any conditions for resales on the property.

 (E) A person or entity who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

 (F) The resale or offer for resale of each ticket constitutes a separate offense.

HISTORY: 1962 Code Section 16‑575; 1968 (55) 2692; 1977 Act No. 64; 2006 Act No. 367, Section 2, eff June 9, 2006.

CROSS REFERENCES

Applicability of provisions pertaining to use of uniform traffic ticket, see Section 56‑7‑10.

Person or firm violating the provisions of this section as subject to the provisions, penalties, and damages of the South Carolina Unfair Trade Practices Act, see Section 39‑5‑36.

Library References

Public Amusement and Entertainment 176.

Westlaw Topic No. 315T.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Sports Law Section 43, South Carolina Legislation.

S.C. Jur. Unfair Trade Practices Act Section 13.1, Resale of Tickets.

**SECTION 16‑17‑720.** Impersonating law enforcement officer.

 It shall be unlawful for any person other than a duly authorized law enforcement officer to represent to any person that he is a law enforcement officer and, acting upon such representation, to arrest or detain any person, search any building or automobile or in any way impersonate a law enforcement officer or act in accordance with the authority commonly given to such officers. Nothing in this section shall be construed to prohibit a private citizen from making a citizen’s arrest in accordance with the laws of this State.

 Any person violating the provisions of this section 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 one year.

HISTORY: 1962 Code Section 16‑576; 1969 (56) 157.

CROSS REFERENCES

Termination of powers and duties granted to special law enforcement officer, penalty, see Section 25‑9‑570.

Library References

False Personation 2.

Westlaw Topic No. 169.

C.J.S. False Personation Sections 1, 4.

Attorney General’s Opinions

Impersonation of a law enforcement officer is a crime of moral turpitude contrary to the customary rule of right and duty between man and man. S.C. Op.Atty.Gen. (April 24, 2015) 2015 WL 2148106.

Upon successful completion of a pretrial intervention program following an arrest for the offenses of carrying a concealed weapon, carrying a weapon on school property, and impersonating a law enforcement officer, there would not be a conviction which would prevent the weapon involved in these violations from being returned to the individual. Consideration may be given to requiring a defendant entering a PTI program to agree to have any weapon involved in an offense confiscated as a condition to the defendant entering a program. 1988 Op.Atty.Gen., No 88‑78, p 223 (1988 WL 383561).

NOTES OF DECISIONS

In general 1

1. In general

Defendant was guilty of impersonating law‑enforcement officer where defendant, former police officer who had resigned, displayed badge and identification card to deputy sheriff and stated that he was police officer, for obvious purpose of avoiding or diminishing consequences of investigation, and influencing deputy into abandoning investigation. State v. Fischer (S.C. 1978) 270 S.C. 402, 242 S.E.2d 437. False Personation 1

**SECTION 16‑17‑722.** Filing of false police reports; knowledge; offense; penalties.

 (A) It is unlawful for a person to knowingly file a false police report.

 (B) A person who violates subsection (A) by falsely reporting a felony is guilty of a felony and upon conviction must be imprisoned for not more than five years or fined not more than one thousand dollars, or both.

 (C) A person who violates subsection (A) by falsely reporting a misdemeanor is guilty of a misdemeanor and must be imprisoned not more than thirty days or fined not more than five hundred dollars, or both.

 (D) In imposing a sentence under this section, the judge may require the offender to pay restitution to the investigating agency to offset costs incurred in investigating the false police report.

HISTORY: 1998 Act No. 349, Section 1.

Library References

Obstructing Justice 120, 178.

Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental Administration Sections 74, 80.

Attorney General’s Opinions

An individual who makes what he or she knows to be a false report to law enforcement officials falls within the ambit of Section 6‑17‑722. S.C. Op.Atty.Gen. (June 28, 2011) 2011 WL 2648713.

**SECTION 16‑17‑725.** Making false complaint to law enforcement officer; giving false information to rescue squad or fire department; misrepresenting identity to law enforcement officer during traffic stop or to avoid arrest or criminal charge.

 (A) It is unlawful for a person to knowingly make a false complaint to a law enforcement officer concerning the alleged commission of a crime by another, or for a person to knowingly give false information to a rescue squad or fire department concerning the alleged occurrence of a health emergency or fire.

 (B) It is unlawful for a person to misrepresent his identification to a law enforcement officer during a traffic stop or for the purpose of avoiding arrest or criminal charges.

 (C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1985 Act No. 87; 2008 Act No. 191, Section 1, eff April 2, 2008.

Library References

Obstructing Justice 120, 178.

Westlaw Topic No. 282.

C.J.S. Obstructing Justice or Governmental Administration Sections 74, 80.

Attorney General’s Opinions

This section is inapplicable to where an individual misrepresents his/her identity to a law enforcement officer. SC Op.Atty.Gen. (Feb. 26, 1996) 1996 WL 94030.

Provisions of Section 16‑17‑725, which make it unlawful for any person to knowingly give false information to any law enforcement officer concerning alleged commission of any crime, are constitutional. 1985 Op.Atty.Gen., No 85‑21, p 70 (1985 WL 165991).

**SECTION 16‑17‑730.** Charges for political advertisements in newspapers.

 No newspaper in this State shall charge more for a political advertisement than the local prevailing rate for a commercial advertisement and payment for such advertisement shall be under the same terms and conditions as payment for a commercial advertisement. Any newspaper violating the provisions of this section shall, upon conviction, be fined not more than one hundred dollars for each violation.

HISTORY: 1977 Act No. 146 Section 4.

Library References

Newspapers 6.5.

Westlaw Topic No. 274.

C.J.S. Newspapers Sections 32 to 34.

**SECTION 16‑17‑735.** Persons impersonating officials or law enforcement officers; persons falsely asserting authority of law; offenses; punishment.

 (A) It is unlawful for a person to impersonate a state or local official or employee or a law enforcement officer in connection with a sham legal process. A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his conduct is illegal, he:

 (1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or

 (2) denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

 A person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than one year, or both.

 (B) It is unlawful for a person falsely to assert authority of state law in connection with a sham legal process. A person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than one year, or both.

 (C) It is unlawful for a person to act without authority under state law as a Supreme Court Justice, a court of appeals judge, a circuit court judge, a master‑in‑equity, a family court judge, a probate court judge, a magistrate, a clerk of court or register of deeds, a commissioned notary public, or other authorized official in determining a controversy, adjudicating the rights or interests of others, or signing a document as though authorized by state law. A person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than one year, or both.

 (D) It is unlawful for a person falsely to assert authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of a sham legal process. A person violating this subsection is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not less than one year and not more than three years, or both.

 (E) For purposes of this section:

 (1) “Law enforcement officer” is as defined in Section 16‑9‑310.

 (2) “State or local official or employee” means an appointed or elected official or an employee of a state agency, board, commission, department, in a branch of state government, institution of higher education, other school district, political subdivision, or other unit of government of this State.

 (3) “Sham legal process” means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, which purports to:

 (a) be a summons, subpoena, judgment, lien, arrest warrant, search warrant, or other order of a court of this State, a law enforcement officer, or a legislative, executive, or administrative agency established by state law;

 (b) assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property; or

 (c) require or authorize the search, seizure, indictment, arrest, trial, or sentencing of a person or property.

 (4) “Lawfully issued” means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, an agency, or a political subdivision of a state.

HISTORY: 1998 Act No. 385, Section 1.

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Remedies for injuries by sham legal processes involving violations of this section, see Section 15‑75‑60.

Library References

False Personation 2.

Westlaw Topic No. 169.

C.J.S. False Personation Sections 1, 4.

**SECTION 16‑17‑740.** Sale or possession of “cigarette load”; penalty.

 It is unlawful for any person to sell or possess a novelty device commonly known as a “cigarette load” which may cause a cigarette or cigar to blow up or explode after being lit.

 Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two hundred dollars or by a term of imprisonment not to exceed thirty days.

HISTORY: 1983 Act No. 19.

Library References

Disorderly Conduct 140, 151.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4, 12 to 13.

**SECTION 16‑17‑750.** Failure to carry certificate of alien registration or alien registration receipt care; penalty.

 (A) It is unlawful for a person eighteen years of age or older to fail to carry in the person’s personal possession any certificate of alien registration or alien registration receipt card issued to the person pursuant to 8 U.S.C. Section 1304 while the person is in this State.

 (B) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both.

HISTORY: 2011 Act No. 69, Section 5, 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).

Federal Aspects

Forms for registration and fingerprinting, registration of aliens, see 8 U.S.C.A. Section 1304.

Library References

Aliens, Immigration, and Citizenship 779.

Westlaw Topic No. 24.

RESEARCH REFERENCES

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.

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

Injunctive relief 3

Justiciability 2

Validity 1

1. Validity

South Carolina’s statutory provisions, making it a state misdemeanor for a person eighteen years or older not to carry an alien registration card and making it unlawful for any person to possess “false, fictitious, fraudulent or counterfeit identification” for purposes of offering proof of one’s lawful presence in the United States were preempted by federal law; area of alien registration was field preempted from state regulation. U.S. v. South Carolina, 2012, 906 F.Supp.2d 463, affirmed 720 F.3d 518. Aliens, Immigration, and Citizenship 779; Injunction 1496; States 18.43

Immigration and Nationality Act (INA) provisions and federal regulations preempted provisions of newly‑adopted South Carolina immigration law related to alien registration documents and making, selling, and possession of counterfeit identification materials by persons unlawfully present in United States, where federal regulation of immigration was pervasive and comprehensive, alien registration and counterfeit identification materials were not areas traditionally regulated by states, South Carolina’s registration provision subjected persons lawfully present in United States to potential arrest, prosecution, and incarceration, and such arrests and prosecutions had potential to generate tensions with foreign nations. 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. 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

3. Injunctive relief

Having found that federal immigration regulations preempted South Carolina’s newly‑adopted immigration law provisions creating state crime for failure of any adult to fail to carry in his or her possession certificate of alien registration or alien registration receipt card, preliminary injunction was warranted to enjoin enforcement of state’s law, where, unlike federal regulations, state law contained no safe harbor provision and thus created potential to disrupt federal enforcement efforts and that individuals could be prosecuted under state law for acts that would not expose them to federal prosecution, balance of equities tipped decidedly in federal government’s and subject groups’ and individuals’ 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

**SECTION 16‑17‑760.** Knowing and false representation with intent of securing tangible benefit; penalty.

 (A) This act may be cited as the “South Carolina Military Service Integrity and Preservation Act”.

 (B) A person who, with the intent of securing a tangible benefit, knowingly and falsely represents himself through a written or oral communication, including a resume, to have:

 (1) served in the Armed Forces of the United States, is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both; or

 (2) been awarded a Congressional Medal of Honor, a Distinguished‑Service Cross, a Navy Cross, an Air Force Cross, a Silver Star, a Purple Heart, a Combat Infantryman’s Badge, a Combat Action Badge, a Combat Medical Badge, a Combat Action Ribbon, or a Combat Action Medal as authorized by Congress or pursuant to federal law for the Armed Forces of the United States, is guilty of a misdemeanor, and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

 (C) For purposes of this section, “tangible benefit” includes:

 (1) a benefit relating to military service provided by the federal government or a state or local government;

 (2) employment or personal advancement;

 (3) financial remuneration;

 (4) an effect on the outcome of a criminal or civil court proceeding; or

 (5) an effect on an election which is presumed if the representation is made by a candidate for public office.

HISTORY: 2014 Act No. 175 (H.4259), Section 1, eff May 16, 2014.

Library References

False Personation 1.

Westlaw Topic No. 169.

C.J.S. False Personation Sections 2 to 4.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Fraud Section 21, Persons Liable.

**SECTION 16‑17‑770.** Impersonating a lawyer; penalties.

 (A) It is unlawful for a person other than a lawyer, who is licensed to practice law in this State or in another state or jurisdiction in the United States and not disbarred or suspended from the practice of law in any state or jurisdiction, to represent to any person that he is a lawyer for the purpose of soliciting business, obtaining anything of value, or providing legal advice or assistance. A person who violates the provisions of this section:

 (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

 (2) for a second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned for not more than three years, or both; and

 (3) for a third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

 (B) The provisions of this section do not alter the provisions of Chapter 5, Title 40, regulating the practice of law.

HISTORY: 2017 Act No. 64 (H.3215), Section 1, eff May 19, 2017.