CHAPTER 19

Indictments

**SECTION 17‑19‑10.** Offense shall be prosecuted upon grand jury indictment; exceptions.

No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except in the following cases:

(1) when a prosecution by information is expressly authorized by statute;

(2) in proceedings before a police court or magistrate; and

(3) in proceedings before courts martial.

HISTORY: 1962 Code Section 17‑401; 1952 Code Section 17‑401; 1942 Code Section 995; 1932 Code Section 995; Cr. P. ‘22 Section 81; Cr. C. ‘12 Section 75; Cr. C. ‘02 Section 48; G. S. 2448; R. S. 47.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Indictment and Information 3.

Westlaw Topic No. 210.

C.J.S. Indictments and Informations Sections 9 to 11.

RESEARCH REFERENCES

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 15.1(D), Indictment Jurisdictions.

Attorney General’s Opinions

So far as magistrates courts are affected, the offenses that may be punished without indictment are those offenses within the jurisdiction of magistrates to try. 1963‑64 Op Atty Gen, No 1758, p 270 (November 25, 1964) 1964 WL 8376.

NOTES OF DECISIONS

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1. In general

Formal indictment is condition precedent to valid waiver of presentment of charge to grand jury, which is prerequisite to valid guilty plea. State v. Smalls (S.C.App. 2003) 354 S.C. 498, 581 S.E.2d 850, rehearing denied, certiorari granted, reversed 364 S.C. 343, 613 S.E.2d 754. Criminal Law 273(4.1); Indictment And Information 5

The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Guthrie (S.C.App. 2002) 352 S.C. 103, 572 S.E.2d 309. Indictment And Information 71.2(3)

Charges can be joined in the same indictment and tried together where they: (1) arise out of a single chain of circumstances; (2) are proved by the same evidence; (3) are of the same general nature; and (4) no real right of the defendant has been prejudiced. State v. Harris (S.C. 2002) 351 S.C. 643, 572 S.E.2d 267, rehearing denied. Criminal Law 620(1); Indictment And Information 127

A motion to quash indictments was properly denied, even though the indictments were procured with the assistant solicitor as the only witness, where (1) the grand jury was the same grand jury that returned the original indictment against the defendant, (2) the grand jury was very familiar with the facts of the case because it had previously received extensive testimony from the investigating officer when the first indictment was returned, and (3) although there was a period of several months between the officer’s testimony and the return of the 4 indictments, the alleged facts of the case were such that they would probably not be easily forgotten. State v. Dawkins (S.C. 1989) 297 S.C. 386, 377 S.E.2d 298. Indictment And Information 10.1(4); Indictment And Information 10.2(5)

Second arraignment was not necessary at subsequent trial after mistrial where charges contained in second indictment, murder while in the commission of a robbery while armed with a deadly weapon, and willful, deliberate, and premeditated murder, were identical to charges contained in first indictment on which defendant had been arraigned. State v. Davis (S.C. 1976) 267 S.C. 283, 227 S.E.2d 662. Criminal Law 339.8(1)

In accord with original. State v. Randolph (S.C. 1961) 239 S.C. 79, 121 S.E.2d 349.

No indictment is required in proceedings before a magistrate or in a municipal court. State v. Langford (S.C. 1953) 223 S.C. 20, 73 S.E.2d 854.

And it is in conformity with SC Const, (former) Art 1, Section 18, State v. Grant (S.C. 1941) 199 S.C. 412, 19 S.E.2d 638, certiorari denied 62 S.Ct. 942, 316 U.S. 662, 86 L.Ed. 1739.

This section [Code 1962 Section 17‑401] is meant to carry into effect SC Const, (former) Art 1, Section 17. State v. Brock (S.C. 1901) 61 S.C. 141, 39 S.E. 359.

2. Jurisdiction

The Circuit Court does not have subject matter jurisdiction to convict a defendant of an offense unless there is an indictment which sufficiently states the offense, the defendant waives presentment, or the offense is a lesser‑included offense of the crime charged in the indictment. State v. Parker (S.C. 2002) 351 S.C. 567, 571 S.E.2d 288; Joseph v. State (S.C. 2002) 351 S.C. 551, 571 S.E.2d 280.

Two exceptions apply to the general rule that an indictment must sufficiently state the offense to confer jurisdiction on a court to accept a guilty plea: (1) if the defendant waives presentment, and (2) the charge to which the defendant pleads guilty is a lesser‑included offense of the crime charged in the indictment. Hooks v. State (S.C. 2003) 353 S.C. 48, 577 S.E.2d 211. Criminal Law 273(4.1); Indictment And Information 5

Trial court does not have subject matter jurisdiction to convict a defendant of an offense unless: (1) there has been an indictment which sufficiently states the offense; (2) the defendant has waived presentment of the indictment; or (3) the offense is a lesser included offense of the crime charged in the indictment. State v. Guthrie (S.C.App. 2002) 352 S.C. 103, 572 S.E.2d 309. Criminal Law 99

Except for certain minor offenses, the circuit court does not have subject matter jurisdiction to convict a defendant of an offense unless: (1) there has been an indictment which sufficiently states the offense, (2) there has been a waiver of indictment, or (3) the charge is a lesser included charge of the crime charged in the indictment. State v. Owens (S.C. 2001) 346 S.C. 637, 552 S.E.2d 745, rehearing denied, appeal after new sentencing hearing 362 S.C. 175, 607 S.E.2d 78, appeal after new sentencing hearing 378 S.C. 636, 664 S.E.2d 80, certiorari denied, certiorari denied 129 S.Ct. 1004, 173 L.Ed.2d 300, habeas corpus dismissed 2010 WL 146164. Indictment And Information 1

A trial court in a prosecution for first‑degree criminal sexual conduct with a minor lacked subject‑matter jurisdiction to accept a guilty plea to the unindicted charge of committing a lewd act on a child under the age of sixteen; the alleged lewd act was not a lesser‑included offense, and the defendant did not waive presentment to the grand jury. Campbell v. State (S.C. 2000) 342 S.C. 100, 535 S.E.2d 928. Criminal Law 273(3)

Except for certain minor offenses, the circuit court does not have subject matter jurisdiction to hear a guilty plea unless (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lesser included charge of the crime charged in the indictment. Campbell v. State (S.C. 2000) 342 S.C. 100, 535 S.E.2d 928. Criminal Law 273(1)

The Circuit Court lacked jurisdiction to accept the defendant’s guilty plea to possession of counterfeit LSD with intent to distribute where the defendant had originally been indicted for possession with intent to distribute LSD, the indictment was amended at his plea proceedings to charge possession of counterfeit LSD, and the amended indictment was neither presented to the grand jury, nor waived; a counterfeit substance, pursuant to 44‑53‑110, is one which bears the label or trademark of another, and thus possession with intent to distribute a counterfeit substance contains an additional element which possession of the actual drug lacks, and is not a lesser included offense of possession of the actual drug. Murdock v. State (S.C. 1992) 308 S.C. 143, 417 S.E.2d 543. Indictment And Information 5; Indictment And Information 159(2)

SC Code Section 16‑3‑655(3) is not lesser included offense of Section 16‑3‑653, since Section 16‑3‑655(3) includes additional element of age requirement, such that where defendant was indicted under Section 16‑3‑653 and trial judge charged jury only under Section 16‑3‑655(3), defendants conviction under Section 16‑3‑653 must be reversed and remanded, as defendant in criminal case is entitled to be tried only on charges set forth in indictment, even though defendant did not object about this matter at trial, as trial court lacked subject matter jurisdiction to convict defendant for offense when there was no indictment charging him with that offense when jury is sworn. State v. Munn (S.C. 1987) 292 S.C. 497, 357 S.E.2d 461.

Trial court lacked subject matter jurisdiction to convict defendant for kidnapping where there was no indictment for kidnapping at the time the jury was sworn, and an indictment, which was true billed and published by the clerk during a temporary suspension of the trial, did not remedy the subject matter jurisdictional defect. State v. Beachum (S.C. 1986) 288 S.C. 325, 342 S.E.2d 597. Indictment And Information 1

3. Lesser‑included offense

The test for determining when an offense is a lesser‑included offense of another is whether the greater of the two offenses includes all the elements of the lesser offense; if the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense. State v. Parker (S.C. 2002) 351 S.C. 567, 571 S.E.2d 288; Joseph v. State (S.C. 2002) 351 S.C. 551, 571 S.E.2d 280.

Circuit Court lacked subject matter jurisdiction to accept guilty plea to offense of assault and battery of high and aggravated nature (ABHAN), where indictment charged defendant with offense of second‑degree lynching; ABHAN was not lesser‑included offense of second degree lynching and, because no indictment charging defendant with ABHAN was prepared, no valid waiver of presentment of charge to grand jury could occur, which was prerequisite to valid guilty plea. State v. Smalls (S.C.App. 2003) 354 S.C. 498, 581 S.E.2d 850, rehearing denied, certiorari granted, reversed 364 S.C. 343, 613 S.E.2d 754. Criminal Law 273(4.1)

4. Pre‑indictment delay

When the claimed prejudice from pre‑indictment delay is the unavailability of a witness, the defendant is required to identify the witness he would have called; demonstrate, with specificity, the expected content of that witness’ testimony; establish that he made serious attempts to locate the witness; and show that the information the witness would have provided was not available from other sources. State v. Lee (S.C.App. 2004) 360 S.C. 530, 602 S.E.2d 113, rehearing denied, certiorari granted, affirmed 375 S.C. 394, 653 S.E.2d 259. Indictment And Information 7

The determination as to whether a pre‑indictment delay violates due process involves a two‑step analysis: the defendant first has the burden of proving the pre‑indictment delay caused substantial actual prejudice to his right to a fair trial, and second, the court must then consider the State’s reason for the delay and balance the justification for delay with any prejudice to the defendant. State v. Lee (S.C.App. 2004) 360 S.C. 530, 602 S.E.2d 113, rehearing denied, certiorari granted, affirmed 375 S.C. 394, 653 S.E.2d 259. Constitutional Law 4580

Pre‑indictment delay of more than twelve years on charges of criminal sexual conduct with minor and lewd conduct on child violated defendant’s right to due process; defendant was substantially prejudiced from preparing adequate defense, in that all records from initial family court case in which allegations of sexual misconduct were first raised had been destroyed, attorney who represented defendant in family law proceedings could not be located, and investigator for Department of Social Services who had written report indicating possibility of criminal activity and requesting law enforcement to make investigation could recall no specifics about case, and State was unable to offer any explanation for delay. State v. Lee (S.C.App. 2004) 360 S.C. 530, 602 S.E.2d 113, rehearing denied, certiorari granted, affirmed 375 S.C. 394, 653 S.E.2d 259. Constitutional Law 4580; Indictment And Information 7

**SECTION 17‑19‑20.** Allegations sufficient for indictment.

Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

HISTORY: 1962 Code Section 17‑402; 1952 Code Section 17‑402; 1942 Code Section 1003; 1932 Code Section 1003; Cr. P. ‘22 Section 89; Cr. C. ‘12 Section 83; Cr. C. ‘02 Section 56; R. S. 55; 1887 (19) 829.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

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Westlaw Topic No. 210.

C.J.S. Breach of the Peace Sections 10 to 12.

C.J.S. Bribery Section 17.

C.J.S. Conspiracy Sections 169, 172.

C.J.S. Elections Section 575.

C.J.S. Embracery Section 7.

C.J.S. Escape and Related Offenses; Rescue Sections 39 to 40, 43.

C.J.S. Forgery Section 41.

C.J.S. Homicide Sections 214, 217 to 220.

C.J.S. Indictments and Informations Sections 111, 117 to 125, 127 to 171, 177, 180 to 182.

C.J.S. Landlord and Tenant Sections 1399 to 1400.

C.J.S. Mayhem Section 14.

C.J.S. Parent and Child Section 368.

C.J.S. Receiving or Transferring Stolen Goods and Related Offenses Sections 23 to 26.

C.J.S. Robbery Sections 45, 113 to 116.

C.J.S. Threats and Unlawful Communications Section 42.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 77, Pleadings.

S.C. Jur. Criminal Sexual Conduct Section 22, Allegation of Time of Offense.

S.C. Jur. Criminal Sexual Conduct Section 23, Allegation of Place of Offense.

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1. In general

In accord with original. See State v Ham (1972) 259 SC 118, 191 SE2d 13. State v Tabory (1974) 262 SC 136, 202 SE2d 852.

Applied in State v Jaques (1903) 65 SC 178, 43 SE 515. State v Eskew (1945) 206 SC 519, rereported with corrections in 211 SC 565, 34 SE2d 767. Dukes v State (1966) 248 SC 227, 149 SE2d 598.

Cited in State v Sharpe (1925) 132 SC 236, 128 SE 722. State v Rector (1930) 158 SC 212, 155 SE 385.

The validity of an indictment is not affected by the character of the evidence considered by the grand jury and, if valid on its face, the indictment may not be challenged on the ground that the grand jury acted on the basis of incompetent evidence. State v. Williams (S.C. 1990) 301 S.C. 369, 392 S.E.2d 181. Indictment And Information 10.2(2)

The legislature has sought to simplify indictments in criminal cases, and to do away with much of the useless phraseology known to those instruments of pleading under the rules of common law. State v. Rector (S.C. 1930) 158 S.C. 212, 155 S.E. 385.

2. Constitutional issues

Failure to list indictment number for first degree burglary in notice of application of recidivist statute, to inform defendant on which of indicted offenses triggered statute, did not violate constitutional right to be fully informed of nature of charges against defendant, in light of fact that defendant was fully informed of charges against him in indictment and could have determined triggering offense by looking at recidivist statute. State v. Burdette (S.C. 1999) 335 S.C. 34, 515 S.E.2d 525. Sentencing And Punishment 1367

The allegation of a 2‑year time period in a charging indictment is not unconstitutionally overbroad if it sufficiently apprises the defendant of the charges since the sufficiency of an indictment must be judged from a practical standpoint. State v. Wade (S.C. 1991) 306 S.C. 79, 409 S.E.2d 780.

Fairness and due process require that defendant receive notice of charges against him sufficient to enable him to prepare defense, however, this notice does not require that aggravating circumstances be set out in indictment for consideration by grand jury. State v. Butler (S.C. 1982) 277 S.C. 452, 290 S.E.2d 1, certiorari denied 103 S.Ct. 242, 459 U.S. 932, 74 L.Ed.2d 191, habeas corpus granted 302 S.C. 466, 397 S.E.2d 87, certiorari denied 111 S.Ct. 442, 498 U.S. 972, 112 L.Ed.2d 425.

In considering this section [Code 1962 Section 17‑402], the guarantee given to an accused in a criminal prosecution that he is to be fully informed of the nature and cause of the accusation must not be forgotten. State v. Johnston (S.C. 1929) 149 S.C. 195, 146 S.E. 657.

3. Sufficiency

If the offense be statutory, it must be alleged to be contrary to the statute in such case made and provided. State v Strickland (1878) 10 SC 191. State v Freeland (1916) 106 SC 220, 91 SE 3.

An indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime, or so plainly that the nature of the offense charged may be easily understood. State v. Means (S.C. 2006) 367 S.C. 374, 626 S.E.2d 348. Indictment And Information 71.2(2); Indictment And Information 110(3)

In determining whether an indictment meets the sufficiency standard, whether the indictment could be more definite or certain is irrelevant. State v. Gentry (S.C. 2005) 363 S.C. 93, 610 S.E.2d 494. Indictment And Information 71.1

In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. State v. Gentry (S.C. 2005) 363 S.C. 93, 610 S.E.2d 494. Indictment And Information 71.1

Indictment is adequate if offense is stated with sufficient certainty and particularity to enable court to know what judgment to pronounce, defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. Michau (S.C. 2003) 355 S.C. 73, 583 S.E.2d 756, rehearing denied. Indictment And Information 71.2(2); Indictment And Information 71.2(3); Indictment And Information 71.2(4)

An indictment is sufficient if it contains the necessary elements of the offense to be charged and apprises the defendant what he must be prepared to meet. State v. Knuckles (S.C. 2003) 354 S.C. 626, 583 S.E.2d 51. Indictment And Information 60

The better practice is to set forth the elements of the crime in the indictment rather than referring to the statutory section alleged to have been violated. State v. Owens (S.C. 2001) 346 S.C. 637, 552 S.E.2d 745, rehearing denied, appeal after new sentencing hearing 362 S.C. 175, 607 S.E.2d 78, appeal after new sentencing hearing 378 S.C. 636, 664 S.E.2d 80, certiorari denied, certiorari denied 129 S.Ct. 1004, 173 L.Ed.2d 300, habeas corpus dismissed 2010 WL 146164. Indictment And Information 60

The true test of an indictment’s validity is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Smalls (S.C.App. 1999) 336 S.C. 301, 519 S.E.2d 793. Indictment And Information 71.2(3); Indictment And Information 71.3

An indictment survives legal scrutiny if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon. State v. Ervin (S.C.App. 1998) 333 S.C. 351, 510 S.E.2d 220. Indictment And Information 71.2(2); Indictment And Information 71.2(4)

The offense intended to be charged must be described with sufficient particularity that conviction or acquittal thereupon may be pleaded in bar to any subsequent prosecution. State v. Tabory (S.C. 1974) 262 S.C. 136, 202 S.E.2d 852. Indictment And Information 71.2(4)

An indictment phrased substantially in the language of the statute which creates and defines the offense is ordinarily sufficient. State v. Tabory (S.C. 1974) 262 S.C. 136, 202 S.E.2d 852. Indictment And Information 110(3)

The indictment was phrased in substantially the language of Code 1962 Section 64‑2, which created and defined the offense making it unlawful to perform certain work on Sundays, and an indictment so phrased is ordinarily sufficient. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270.

An indictment is ordinarily sufficient if it is in the language of the statute. State v. Jacobs (S.C. 1961) 238 S.C. 234, 119 S.E.2d 735. Indictment And Information 110(3)

The true test of the sufficiency of an indictment is not whether it could have been more definite and certain, but whether it contains the necessary elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet. State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410. Indictment And Information 71.2(2)

The offense must be so described that the accused may know how to answer the charge, the court what judgment to pronounce, and conviction or acquittal thereon may be pleaded in bar to any subsequent prosecution. State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410. Indictment And Information 71.2(4)

The offense should be so plainly stated in the indictment as to enable the court looking alone to the indictment and the verdict to impose the sentence prescribed by law. State v. Perry (S.C. 1911) 87 S.C. 535, 70 S.E. 304.

An indictment must set forth the necessary ingredients of the offense charged. State v. Henderson (S.C. 1845) 1 Rich. 179. Indictment And Information 60

4. Allegations not required

Whether an indictment could be more definite or certain is irrelevant. State v. Knuckles (S.C. 2003) 354 S.C. 626, 583 S.E.2d 51. Indictment And Information 55

Allegations in an indictment that the crime was committed “with force and arms” denotes that the alleged act was done with violence. It appears that at one time, under the common law, the use of the words “with force and arms” was considered necessary in an indictment charging an offense involving the use of physical force, but was never necessary where no physical force was involved. In any case, such allegations would now appear to be unnecessary. State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220.

While the indiscriminate use of obsolete and inappropriate allegations in indictments is not approved, there was no prejudice to defendant in this case from the allegations that the offense was committed “with force and arms.” State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220. Indictment And Information 95

It is not necessary to state name of presiding judge or grand jurors. State v. Bethune (S.C. 1910) 86 S.C. 143, 67 S.E. 466.

It is not necessary to mention and negative in the indictment things not only not forbidden but expressly allowed by the statute, for the defendant could not fail to know these things were not meant. State v. Yoe (S.C. 1907) 76 S.C. 46, 56 S.E. 542.

Defendant’s name once set out in full need not be constantly repeated. State v. Anderson (S.C. 1846) 3 Rich. 172.

5. Gambling and lotteries

As to indictment for setting up lottery and for conspiracy to set up lottery, see State v. McIntire (S.C. 1952) 221 S.C. 504, 71 S.E.2d 410.

As to indictment for keeping a gambling house, see State v. Yoe (S.C. 1907) 76 S.C. 46, 56 S.E. 542.

6. Offenses against the person

Indictment was insufficient to confer subject matter jurisdiction on trial court to convict defendant of second‑degree criminal sexual conduct (CSC) with a minor, even though body of indictment alleged that defendant committed sexual battery on a 13‑year‑old, which constitutes second‑degree CSC with a minor, where caption of indictment and title to indictment’s body stated that alleged crime was first‑degree CSC with a minor, which involves victim younger than 11, and statutory reference in indictment was changed at beginning of trial from statute prohibiting CSC with minors to statute prohibiting first‑degree CSC, which involves aggravated force but has no age element. State v. Ellison (S.C.App. 2003) 356 S.C. 33, 586 S.E.2d 596. Indictment And Information 48

Absence of the element of knowledge from the indictment charging accessory after the fact of murder rendered indictment deficient, and thus, trial court lacked subject matter jurisdiction to accept defendant’s guilty plea; unless the State could have proven that defendant knew he was helping a murderer avoid arrest, he could not be guilty of the offense. Hooks v. State (S.C. 2003) 353 S.C. 48, 577 S.E.2d 211. Criminal Law 273(4.1)

Failure of indictment charging accessory after the fact of murder to inform defendant of the element of presence rendered indictment insufficient, and thus, the trial court lacked subject matter jurisdiction to accept defendant’s guilty plea; pursuant to law in effect at time of defendant’s guilty plea to such offense, the State was required to prove that defendant was not at the scene when the crime occurred in order to be guilty of the offense. Hooks v. State (S.C. 2003) 353 S.C. 48, 577 S.E.2d 211. Criminal Law 273(4.1)

A charging indictment for first degree sexual conduct with a minor was sufficient where (1) it contained allegations of the necessary elements of the crime and alleged that these acts occurred at divers times during 1984 and 1985, and (2) the defendant’s defense of denial and factual impossibility were not prejudiced by the broad time range alleged. State v. Wade (S.C. 1991) 306 S.C. 79, 409 S.E.2d 780.

The exception contained in Section 16‑3‑658, which provides that a person cannot be guilty of criminal sexual conduct if the victim is his legal spouse unless the couple is living apart by reason of a court order, is not a part of the description of the offense of criminal sexual conduct, but is a matter of defense, and therefore it need not be negatived in the indictment. State v. Bermudez (S.C. 1989) 297 S.C. 230, 376 S.E.2d 258.

7. Offenses against property

Single count indictment charging armed robbery was insufficient to apprise defendants that they could be convicted of grand larceny. State v. Parker (S.C.App. 2001) 344 S.C. 250, 543 S.E.2d 255, rehearing denied, certiorari granted, affirmed on other grounds 351 S.C. 567, 571 S.E.2d 288. Indictment And Information 71.4(8)

In McCall v Alexander (1908) 81 SC 131, 61 SE 1106, where a warrant charged a party with disposing of a bale of cotton on which deponent had a statutory lien for rent without paying the money to the clerk of court within ten days and the demurrer to the complaint was that the warrant did not allege that the property was sold without the written consent of the lienee, the Supreme Court held that the words “or so plainly that the nature of the offense may be easily understood” show that, even if the defendant had been tried in the court of general sessions on a formal indictment, setting forth the facts alleged to have been stated in the warrant, it would have been deemed sufficient. Duffie v. Edwards (S.C. 1937) 185 S.C. 91, 193 S.E. 211.

An indictment alleging that accused wilfully, unlawfully, and maliciously injured the automobile of another of a specified value, the injury amounting to a specified sum, is substantially in the language of the statute, and sufficiently indicates the cause and nature of the accusation within this section [Code 1962 Section 17‑402]. State v. Davis (S.C. 1911) 88 S.C. 229, 70 S.E. 811. Indictment And Information 110(44)

A defect in an indictment charging an entry of a house without breaking with intent to steal, arising from the failure to allege that the entry was without breaking, is not fatal, and is apparent on the face thereof, and is not available to defendant, unless raised by demurrer or motion to quash. State v. Ross (S.C. 1909) 83 S.C. 434, 65 S.E. 443, rehearing denied 67 S.E. 477. Indictment And Information 143; Indictment And Information 154

8. Offenses against the peace

Under this section [Code 1962 Section 17‑402] an indictment for slander which did not state the exact words or to whom spoken was sufficient. State v. Hughey (S.C. 1922) 120 S.C. 156, 112 S.E. 823.

9. Larceny

Under this section [Code 1962 Section 17‑402] an indictment charging grand larceny of goods from named partnership was sufficient without specifying the names of the individual members of the partnership. State v. Franklin (S.C. 1921) 115 S.C. 342, 105 S.E. 740.

An indictment for larceny is not substantially in the language of the statute if it contains no allegation of the material matter of value prescribed in the statute, and the nature of the offense, which is dependent upon the value of the property alleged to have been disposed of, is not made so plain as to be easily understood. A different construction of the statute would require the court to dispense with allegations of value in an indictment for larceny. State v. Perry (S.C. 1911) 87 S.C. 535, 70 S.E. 304.

10. Embezzlement

It was held that, deleted of surplusage, the indictment conformed to the statute relating to embezzlement and met the requirements of this section [Code 1962 Section 17‑402], in State v. Alexander (S.C. 1927) 140 S.C. 325, 138 S.E. 835.

Indictment for embezzling the proceeds of notes entrusted to accused for collection was not insufficient for failing to describe the notes. State v. Ashe (S.C. 1911) 89 S.C. 160, 71 S.E. 827. Embezzlement 28

11. Controlled substance violations

Indictment that stated that defendant was charged with trafficking more than 10 grams of cocaine was sufficient to put defendant on notice of the possible range of sentencing for that charge, and did not limit sentence to range for trafficking in 10 to 28 grams, where defendant trafficked 58.44 grams of cocaine and 15 year sentence was within range for that amount. Granger v. State (S.C. 1998) 333 S.C. 2, 507 S.E.2d 322. Controlled Substances 65

An indictment charging a defendant with trafficking in cocaine, which stated that the quantity of cocaine was “in excess of 100 grams but less than 200 grams,” was sufficient even though it failed to specify the quantity of cocaine in the defendant’s possession. State v. Towery (S.C. 1989) 300 S.C. 86, 386 S.E.2d 462.

Defendant convicted under controlled substance statute was not denied constitutional right to know the nature of the charges against him, where he was charged with possession of hashish whereas under the applicable statutory section marijuana, but not hashish, is listed as a controlled substance, since expert testimony was in evidence that hashish is made from the marijuana plant by an extraction process. State v. Sachs (S.C. 1975) 264 S.C. 541, 216 S.E.2d 501.

12. Driving under the influence

Statutory amendment, to include level or standard of proof required for driving under the influence (DUI), did not change crime’s corpus delicti, and thus indictment, stating that defendant drove under influence of intoxicating liquors and/or narcotic drugs, was sufficient to confer jurisdiction on Circuit Court. State v. Knuckles (S.C. 2003) 354 S.C. 626, 583 S.E.2d 51. Automobiles 332; Automobiles 351.1

In a prosecution for driving under the influence, the trial court did not improperly charge Section 56‑5‑1810, which requires vehicles to be driven on the right side of the roadway under most circumstances, where direct testimony from 3 witnesses placed the defendant driving outside the right lane numerous times. Additionally, it was not error for the trial court to charge an “act forbidden by law” which was not alleged in the indictment, where the indictment alleged that the defendant “veered from the highway”; the indictment was sufficient for the defendant to answer the charge, the trial court knew what judgment to pronounce, and the defendant’s conviction could be pleaded as a bar to any subsequent prosecution. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597.

13. Forgery

One of the established meanings of “counterfeit” is to forge; and in this sense the words “forge” and “counterfeit,” as used in Code 1962 Section 16‑351, are synonymous. It was evident from the indictment that the term “counterfeit” was used in describing the act of the defendant in forging the check in question and did not charge a separate offense. State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220.

The crime of forgery involves no element of physical violence. Therefore, allegations that it was committed “with force and arms” were unnecessary to allege the offense and should have been stricken from the indictment. State v. Sanders (S.C. 1968) 251 S.C. 431, 163 S.E.2d 220.

An indictment for forgery fully complies with the law by describing the instrument of writing by the name or designation by which it is usually known, by giving the purport thereof, and fully identifying it. Under these circumstances, it is not necessary to set out any copy of the instrument alleged to have been forged. State v. Simmons (S.C. 1947) 209 S.C. 531, 41 S.E.2d 217. Forgery 28(2); Forgery 29(5)

Under this section [Code 1962 Section 17‑402] an indictment for forgery, which follows the language of the statute defining forgery and concludes against “the statute in such case made and provided,” is sufficient, though the word “feloniously” does not appear therein. State v. Allen (S.C. 1900) 56 S.C. 495, 35 S.E. 204.

14. Fraud

In a prosecution alleging that the defendant committed a breach of trust with fraudulent intent while serving as corporate president and trustee of the charitable foundation that created the corporation, the court did not err in allowing the indictments to be amended under Section 17‑19‑20 since the nature of the crime charged (larceny) was not changed by the substitution of the corporation for the foundation as the victim, neither the defendant nor the codefendant was surprised by the amendments and they did not request a continuance based on the amendments, and counsel for one defendant admitted having actual notice of the change. State v. Johnson (S.C.App. 1994) 314 S.C. 161, 442 S.E.2d 191, rehearing denied, certiorari denied.

If the indictment charges an intent to defraud a partnership, it is not necessary to state the names of the individuals who are partners. State v. Simmons (S.C. 1947) 209 S.C. 531, 41 S.E.2d 217. Indictment And Information 101

An indictment alleging that accused, being in possession of fifty dollars of prosecutor, the fifty dollars being the proceeds of the sale of an animal of prosecutor of the value of fifty dollars, unlawfully appropriated to his own use the fifty dollars with intent to defraud, whereby accused committed a breach of trust with fraudulent intent and by force of the statute committed larceny, against the form of the statute, charges a violation of the section declaring that any person committing a breach of trust with a fraudulent intention shall be guilty of larceny. State v. Beasley (S.C. 1912) 91 S.C. 159, 74 S.E. 371.

Under the part of this section [Code 1962 Section 17‑402] providing that an indictment shall be sufficient which charges the crime so plainly that the nature of the offense charged may be easily understood, an indictment charging breach of trust in fraudulently converting money alleged to have been held in trust by accused, describing the money as “the proper goods and chattels” of the owner, was sufficient, though, strictly speaking, money is not goods and chattels. State v. Pentacost (S.C. 1911) 87 S.C. 405, 69 S.E. 880. Embezzlement 28

On the indictment for fraud the facts constituting the fraud must be alleged in the pleadings, and a mere statement of the illegality of the act charged is insufficient. State v. Jaques (S.C. 1903) 65 S.C. 178, 43 S.E. 515. Fraud 69(2)

15. Contributing to the delinquency of a minor

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)

16. Conspiracy

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)

Indictment charging a conspiracy to violate a criminal statute, in the words and terms of Code 1962 Section 16‑550, and containing a sufficient description of the object of the conspiracy, was held sufficient in State v. Jacobs (S.C. 1961) 238 S.C. 234, 119 S.E.2d 735.

As to indictment for conspiracy, see State v. Ameker (S.C. 1906) 73 S.C. 330, 53 S.E. 484.

17. Resisting arrest

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

18. Exceptions

An exception to a criminal offense must be negatived in the indictment only if the language of the exception must be regarded as descriptive of the offense. If not, the exception is a matter of defense and need not be negatived in the indictment. State v. Bermudez (S.C. 1989) 297 S.C. 230, 376 S.E.2d 258. Indictment And Information 111(1)

Where a criminal statute contains an exception to that part of the statute creating the offense, such exception must be negatived in the indictment in order to charge the crime substantially in the language of the statute. State v. Freeland (S.C. 1916) 106 S.C. 220, 91 S.E. 3.

19. Caption

The plain language of an indictment is not to be ignored merely because its caption does not precisely conform with the wording on its face. Crady v State (1966) 248 SC 522, 151 SE2d 670. State v Tabory (1974) 262 SC 136, 202 SE2d 852.

The State may not support a conviction for an offense intended to be charged by relying upon a caption to the exclusion of the language contained in the body of the indictment. State v. Tabory (S.C. 1974) 262 S.C. 136, 202 S.E.2d 852.

20. Time and place of offense

The twofold purpose of this section [Code 1962 Section 17‑402] in requiring the indictment to allege the place of the commission of the crime is to lay jurisdiction of the court and inform the accused of the county in which he is charged with the violation of the law. State v Fisher (1945) 206 SC 220, 33 SE2d 495; State v McIntire (1952) 221 SC 504, 71 SE2d 410.

An indictment must not allege the date of commission of the crime posterior to the finding of the indictment. State v. Ray (S.C. 1838) 33 Am.Dec. 90. Indictment And Information 87(2)

Indictment need only allege place where crime was committed sufficiently to lay the jurisdiction of the court and inform the accused of county in which he is charged with violation of law; state is not required to plead evidence showing location of crime in the indictment. Jones v. State (S.C. 1998) 333 S.C. 6, 507 S.E.2d 324. Indictment And Information 65; Indictment And Information 86(2)

An indictment sufficiently alleged both the time and place of the alleged offense of first degree criminal sexual conduct where, although it did not state the exact location the offense occurred, it did contain the name of the county in which the offense was committed and stated that the offense occurred on several occasions, but that the occurrence which was the subject of the charge occurred “on or about December 9, 1988.” State v. Thompson (S.C.App. 1991) 305 S.C. 496, 409 S.E.2d 420.

To be sufficient, an indictment must lay the jurisdiction of the court and inform the accused of the county in which he is charged with a violation, describe a time before the date of the indictment and within the statute of limitations, and apprise the defendant of what he must be prepared to meet at trial. State v. Thompson (S.C.App. 1991) 305 S.C. 496, 409 S.E.2d 420. Indictment And Information 86(3)

Where time is not of the essence or gist of the offense, the precise time at which the offense is charged to have been committed is not material; and an indictment which does specifically charge that the offense was committed on a specified date is sufficient. State v. Ham (S.C. 1972) 259 S.C. 118, 191 S.E.2d 13.

It is correct to charge in the indictment that the offense was committed at the courthouse. State v. Colclough (S.C. 1889) 31 S.C. 156, 9 S.E. 811.

In State v Moore (1886) 24 SC 150, where the county in which the crime was committed was alleged, but the usual formula of the courthouse was left out, the court held that although it was the custom and the better practice, perhaps, to allege the courthouse as well as the county, yet as the allegation was a matter of jurisdiction, the allegation of the county was sufficient. State v. Colclough (S.C. 1889) 31 S.C. 156, 9 S.E. 811.

21. Clerical errors

Mere clerical errors or matters of form in indictment may be amended, with the consent of the grand jury, at any time before accused pleads thereto. State v. Means (S.C. 1908) 80 S.C. 401, 61 S.E. 898. Indictment And Information 159(1)

22. Objections

If an objection to an indictment is timely made, circuit court should judge the sufficiency of the indictment by determining whether: (1) offense is stated with sufficient certainty and particularity to enable court to know what judgment to pronounce, and defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon, and (2) whether it apprises defendant of elements of offense that is intended to be charged. State v. Gentry (S.C. 2005) 363 S.C. 93, 610 S.E.2d 494. Indictment And Information 71.2(2); Indictment And Information 71.2(3)

23. Notice

An indictment is a notice document; the primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, that is, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. Edwards v. State (S.C. 2007) 372 S.C. 493, 642 S.E.2d 738. Indictment And Information 71.2(2)

The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the trial court to know what judgment to pronounce if the defendant is convicted. Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. Indictment And Information 71.2(1); Indictment And Information 71.2(2)

Defendant was given adequate notice of all charges pending against him, even though he did not receive copy listing four additional charges until after first trial; trial court read all five charges, counsel had informed defendant of charges, first trial ended in mistrial, and charges were read aloud again at retrial. Magazine v. State (S.C. 2004) 361 S.C. 610, 606 S.E.2d 761. Criminal Law 633.34; Indictment And Information 15(1)

24. Jurisdiction

Fact that indictment listed statutory provision for first offenses did not deprive trial court of jurisdiction to accept guilty plea and sentence defendant for second offense trafficking in crack cocaine and third offense possession with intent to distribute (PWID) crack cocaine, but rather raised an issue related to the sufficiency of the indictment. Edwards v. State (S.C. 2007) 372 S.C. 493, 642 S.E.2d 738. Criminal Law 93

An indictment is sufficient to confer jurisdiction if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon. 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. Indictment And Information 71.2(2); Indictment And Information 71.2(3)

Indictment charging that defendant did “wilfully and unlawfully assault with intent to commit criminal sexual conduct in attempting to accomplish sexual battery upon” the victim constituted charge of assault with intent to commit criminal sexual conduct in the third degree, in absence of any allegation of an aggravating circumstance, and thus trial court lack subject matter jurisdiction to amend indictment to try defendant for assault with intent to commit first‑degree criminal sexual conduct. State v. Ervin (S.C.App. 1998) 333 S.C. 351, 510 S.E.2d 220. Sex Offenses 147

25. Witnesses

The defendant was not entitled to have his indictment quashed on the ground that the assistant solicitor was the sole witness before the grand jury since, while strongly disproved of, the practice of using a solicitor to provide a summary of evidence has not been outright barred by the Supreme Court. State v. Anderson (S.C.App. 1992) 309 S.C. 360, 422 S.E.2d 161, rehearing denied, certiorari granted, reversed 312 S.C. 185, 439 S.E.2d 835.

**SECTION 17‑19‑30.** Allegations sufficient for indictment for murder.

Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement, divested of all useless phraseology, of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased.

HISTORY: 1962 Code Section 17‑403; 1952 Code Section 17‑403; 1942 Code Section 1007; 1932 Code Section 1007; Cr. P. ‘22 Section 93; Cr. C. ‘12 Section 87; Cr. C. ‘02 Section 60; R. S. 59; 1887 (19) 829.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Homicide 830 to 881.

Westlaw Topic No. 203.

C.J.S. Homicide Sections 213 to 269.

NOTES OF DECISIONS

In general 1

Aggravating circumstances 4

Jurisdiction 5

Sufficiency of indictment 2

Time and place 3

1. In general

Cited in State v Means (1908) 80 SC 401, 61 SE 898. State v Platt (1930) 154 SC 1, 151 SE 206.

The court must look at a murder indictment with a practical eye in view of the surrounding circumstances when determining whether it is sufficient and good in law. Winns v. State (S.C. 2005) 363 S.C. 414, 611 S.E.2d 901, rehearing denied. Homicide 830

An indictment for murder is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution. Joseph v. State (S.C. 2002) 351 S.C. 551, 571 S.E.2d 280. Homicide 832

2. Sufficiency of indictment

An indictment for murder is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution. State v. Owens (S.C. 2001) 346 S.C. 637, 552 S.E.2d 745, rehearing denied, appeal after new sentencing hearing 362 S.C. 175, 607 S.E.2d 78, appeal after new sentencing hearing 378 S.C. 636, 664 S.E.2d 80, certiorari denied, certiorari denied 129 S.Ct. 1004, 173 L.Ed.2d 300, habeas corpus dismissed 2010 WL 146164. Homicide 832

Indictment was sufficient to inform capital murder defendant of the elements of murder, including malice aforethought, although indictment did not specifically state defendant killed victim with malice aforethought, where indictment referred to murder statute which defendant allegedly violated, and statute defined murder as “the killing of any person with malice aforethought.” State v. Owens (S.C. 2001) 346 S.C. 637, 552 S.E.2d 745, rehearing denied, appeal after new sentencing hearing 362 S.C. 175, 607 S.E.2d 78, appeal after new sentencing hearing 378 S.C. 636, 664 S.E.2d 80, certiorari denied, certiorari denied 129 S.Ct. 1004, 173 L.Ed.2d 300, habeas corpus dismissed 2010 WL 146164. Homicide 835

Murder indictment in case where victim’s body was never located is sufficient where indictment alleged that defendant murdered victim by means of forcibly sedating him and or roughing him up by violently manhandling and beating him and or depriving him of his life sustaining medication and or mortally injuring him by means or instruments unknown, as indictment is sufficient if offense is stated with sufficient certainty and particularity to enable court to know what judgment to pronounce, defendant to know what he is called upon to answer, and if acquittal or conviction thereon may be pleaded as bar to any subsequent prosecution, and allegations may state an alternative manner and instrumentality of death, or may state that death was caused by means or instrumentality unknown. State v. Owens (S.C. 1987) 293 S.C. 161, 359 S.E.2d 275, certiorari denied 108 S.Ct. 496, 484 U.S. 982, 98 L.Ed.2d 495.

Indictment charging that defendant “feloniously, willfully and of his malice aforethought” choked, suffocated, and strangled deceased “with his hands and arms, and with cords, wires, ropes and belts” placed around the neck, of which strangling deceased died, is sufficient under this section [Code 1962 Section 17‑403]. State v. King (S.C. 1930) 158 S.C. 251, 155 S.E. 409. Homicide 832; Homicide 844

An indictment for murder by striking deceased with plaintiff’s automobile, although reciting that accused “did make an assault” with his automobile and did “run against, strike, throw to the ground, run over, crush, bruise and wound” deceased, was held not objectionable as charging three or more distinct offenses, under this section [Code 1962 Section 17‑403]. State v. Portee (S.C. 1922) 122 S.C. 298, 115 S.E. 238. Indictment And Information 125(4.1)

An indictment charging defendant with committing a homicide by striking in the head “with a stone or iron hammer” is not defective because charging the crime disjunctively. State v. Lark (S.C. 1902) 64 S.C. 350, 42 S.E. 175. Indictment And Information 72

An indictment charging that defendant “feloniously,” etc., “with switches and sticks, did strike and beat and wound, giving to the said M. . . . one mortal wound, of which mortal wound the said M. . . . died,” etc., is sufficient, though the evidence showed that defendant, in beating the deceased, inflicted many wounds. State v. Chiles (S.C. 1895) 44 S.C. 338, 22 S.E. 339.

3. Time and place

Murder indictment was not defective for failure to state the time and place of the victim’s death; indictment stated that, on certain date and at certain location, defendant struck victim several times in the head with a metal object, which was the proximate cause of victim’s death, and victim was found dead on that date and in that location. Winns v. State (S.C. 2005) 363 S.C. 414, 611 S.E.2d 901, rehearing denied. Homicide 848

An indictment stating county where shooting occurred, and alleging that defendants “then and there . . . did kill and murder,” sufficiently showed place of deceased’s death under this section [Code 1962 Section 17‑403]. State v. Rector (S.C. 1930) 158 S.C. 212, 155 S.E. 385. Homicide 848

The crime of murder is a composite one and the State must prove not only the assault and death occurring from it, but the time of the assault and the time of death, as well as the place of assault and place of death. These necessary elements of the crime of murder must not only be proved before the accused may be convicted, but they must be alleged in the indictment returned against accused by the grand jury. State v. Rector (S.C. 1930) 158 S.C. 212, 155 S.E. 385.

The provisions of this section [Code 1962 Section 17‑403] recognize that indictments for murder shall comply with constitutional requirements, for in this section [Code 1962 Section 17‑403] it is stated that an indictment for such crime shall set forth “the time and place” of the murder alleged to have been committed. State v. Rector (S.C. 1930) 158 S.C. 212, 155 S.E. 385.

It is sufficient if the offense was committed in county where indictment is found. State v. Blakeney (S.C. 1890) 33 S.C. 111, 11 S.E. 637.

While under this section [Code 1962 Section 17‑403] much useless phraseology which characterized indictments formerly may be dispensed with and omissions of mere form may be cured by amendment, this section [Code 1962 Section 17‑403] has neither dispensed with essential allegations, such as the allegation as to the place of death of the deceased, nor has it attempted to cure their omission by allowing amendments to that end. State v. Blakeney (S.C. 1890) 33 S.C. 111, 11 S.E. 637.

It is absolutely essential in an indictment for murder that the place of the death of the party killed should be alleged therein, and in the absence of such allegation such indictment is fatally defective and should be quashed on motion made. Furthermore, such a defective indictment is beyond the reach of amendment as to such essential allegation. State v. Blakeney (S.C. 1890) 33 S.C. 111, 11 S.E. 637.

If an indictment for murder is defective in failing to state the place of the death of the party killed, on appeal the judgment of conviction below would demand reversal. State v. Blakeney (S.C. 1890) 33 S.C. 111, 11 S.E. 637.

4. Aggravating circumstances

State was not required to allege aggravating circumstances in indictment for murder, and thus, State’s failure to allege such circumstances in indictment did not deprive trial court of subject matter jurisdiction to sentence defendant to death. State v. Downs (S.C. 2004) 361 S.C. 141, 604 S.E.2d 377, rehearing denied. Indictment And Information 113

5. Jurisdiction

Trial court had subject matter jurisdiction to sentence defendant convicted of murder to death; although defendant argued court lacked subject matter jurisdiction to sentence him to death since indictments for murder did not allege any aggravating circumstance which exposed him to death penalty, aggravating circumstances were sentencing factors and were not elements of murder, and state, as required by statute, timely notified defendant of its intention to seek death penalty and identified aggravating circumstances and related evidence state intended to use at trial. State v. Laney (S.C. 2006) 367 S.C. 639, 627 S.E.2d 726, rehearing denied. Indictment And Information 113; Sentencing And Punishment 1742; Sentencing And Punishment 1744

**SECTION 17‑19‑40.** Special count for carrying concealed weapons in case of murder and certain other crimes; jurisdiction.

In every indictment for murder, manslaughter, assault and assault and battery of a high and aggravated nature and assault and assault and battery with intent to kill and in every case when the crime is charged to have been committed with a deadly weapon of the character specified in Section 16‑23‑460, there shall be a special count in the indictment for carrying concealed weapons and the jury shall be required to find a verdict on such special count. All cases embraced in this section, including the carrying of the weapons, shall be in the exclusive jurisdiction of the court of general sessions, except in cases where other courts have been given concurrent jurisdiction.

HISTORY: 1962 Code Section 17‑404; 1952 Code Section 17‑404; 1942 Code Section 1008; 1932 Code Section 1008; Cr. P. ‘22 Section 94; Cr. C. ‘12 Section 159; Cr. C. ‘02 Section 131, 1897 (22) 427; 1972 (57) 2235.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Library References

Indictment and Information 113.

Weapons 230.

Westlaw Topic Nos. 210, 406.

C.J.S. Indictments and Informations Sections 172 to 176.

Attorney General’s Opinions

The second count of “carrying concealed weapon” should not be included in every indictment charging a crime set out in this section [Code 1962 Section 17‑404], but should be included only when there is evidence, either direct or circumstantial, that such weapon was concealed on or about the person of the defendant. 1971‑72 Op Atty Gen, No 3347, p 186 (July 20, 1972) 1972 WL 20484.

NOTES OF DECISIONS

In general 1

Jurisdiction 2

1. In general

Applied in State v. Griggs (S.C. 1937) 184 S.C. 304, 192 S.E. 360.

It is not ground for quashing an indictment charging murder with a pistol that the solicitor omitted a count charging carrying concealed weapons, as provided by this section [Code 1962 Section 17‑404]. State v. Hasty (S.C. 1907) 76 S.C. 105, 56 S.E. 669. Indictment And Information 127

This section [Code 1962 Section 17‑404] must be construed with Code 1962 Section 16‑93. State v. Johnson (S.C. 1905) 70 S.C. 384, 50 S.E. 8.

An indictment for an assault with intent to kill and for carrying such weapon must charge in a special count the carrying of the weapon concealed about the person, and the jury must find a special verdict on this count before defendant can be sentenced therefor. State v. Johnson (S.C. 1905) 70 S.C. 384, 50 S.E. 8.

Where indictment charges in one count murder and in another count carrying concealed weapons, the solicitor may nolle prosequi the latter without affecting the count as to murder. State v. Norton (S.C. 1904) 69 S.C. 454, 48 S.E. 464. Criminal Law 303.25

Cited in State v. Edwards (S.C. 1904) 68 S.C. 318, 47 S.E. 395.

2. Jurisdiction

Under this section [Code 1962 Section 17‑404], the jurisdiction of the court of general sessions in a case of carrying a concealed weapon is exclusive only when the indictment found by the grand jury charges murder, manslaughter or other criminal assault committed with a deadly weapon of the character specified in Code 1962 Section 16‑145, and in all such cases the indictment should contain a special count for carrying concealed weapons, and the petit jury in the court of general sessions must find a verdict on such special count. State v. McClenton (S.C. 1901) 59 S.C. 226, 37 S.E. 819.

Where the indictment found by the grand jury charged no crime which was committed with a deadly weapon, the grand jury having found “no bill” as to such charges, the indictment stood as if it originally contained only the count for carrying a concealed weapon, and such a case is not in the exclusive jurisdiction of the court of general sessions. State v. McClenton (S.C. 1901) 59 S.C. 226, 37 S.E. 819.

**SECTION 17‑19‑50.** Averments of instrument of writing, print or figures in indictment.

In all cases whatsoever in which it shall be necessary to make any averment in any indictment as to any instrument, whether the instrument consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which it may be usually known or by the purport thereof and in such manner as to sufficiently identify such instrument without setting out any copy or facsimile of the whole or any part thereof.

HISTORY: 1962 Code Section 17‑405; 1952 Code Section 17‑405; 1942 Code Section 1009; 1932 Code Section 1009; Cr. P. ‘22 Section 95; Cr. C. ‘12 Section 88; Cr. C. ‘02 Sections 61, 62; R. S. 60, 61; 1887 (19) 829.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Indictment and Information 106.

Westlaw Topic No. 210.

C.J.S. Indictments and Informations Sections 158 to 159.

NOTES OF DECISIONS

In general 1

1. In general

An indictment for forgery fully complies with the law by describing the instrument of writing by the name or designation by which it is usually known, by giving the purport thereof, and fully identifying it. Under these circumstances, it is not necessary to set out any copy of the instrument alleged to have been forged. State v. Simmons (S.C. 1947) 209 S.C. 531, 41 S.E.2d 217. Forgery 28(2); Forgery 29(5)

**SECTION 17‑19‑60.** Indictments for perjury.

In any indictment for perjury it shall not be necessary to set forth more than the substance of the oath and the fact concerning which the perjury is alleged to have been committed.

HISTORY: 1962 Code Section 17‑406; 1952 Code Section 17‑406; 1942 Code Section 1009; 1932 Code Section 1009; Cr. P. ‘22 Section 95; Cr. C. ‘12 Section 88; Cr. C. ‘02 Sections 61, 62; R. S. 60, 61; 1887 (19) 829.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Perjury 19 to 28.

Westlaw Topic No. 297.

C.J.S. Perjury Sections 53 to 55.

**SECTION 17‑19‑70.** Indictments against corporations.

Whenever any corporation doing business in this State, whether incorporated under the laws of this State or not, shall be charged with any offense cognizable by the courts of general sessions the solicitor shall hand out a bill of indictment to the grand jury of the county in which such offense, or some part thereof, has been committed and if the grand jury shall return a true bill the solicitor shall cause a copy of such indictment to be served on such corporation offending in the manner indicated in Section 17‑13‑80 and upon service of such indictment and the notice required by such section the court of general sessions shall obtain and have jurisdiction of such corporation.

HISTORY: 1962 Code Section 17‑407; 1952 Code Section 17‑407; 1942 Code Section 991; 1932 Code Section 991; Civ. C. ‘22 Section 4299; Civ. C. ‘12 Section 2832; 1911 (27) 41.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Corporations and Business Organizations 2621.

Westlaw Topic No. 101.

**SECTION 17‑19‑80.** Person indicted for capital offense shall have copy of indictment.

Whoever shall be accused and indicted for any capital offense whatsoever shall have a true copy of the whole indictment, but not the names of the witnesses, delivered to him, three days at least before he shall be tried for such offense, whereby to enable him to advise with counsel thereupon, his attorney, agent or any of them requiring the copy, paying the officer his usual fees for the copy of every such indictment.

HISTORY: 1962 Code Section 17‑408; 1952 Code Section 17‑408; 1942 Code Section 978; 1932 Code Section 978; Cr. P. ‘22 Section 69; Cr. C. ‘12 Section 66; Cr. C. ‘02 Section 40; G. S. 2632; R. S. 40; 1731 (3) 286.

CROSS REFERENCES

Computation of time in general, see Rules of Appellate Practice, Rule 234.

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Criminal Law 627.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 582.

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1. In general

Cited in State v Rasor (1933) 168 SC 221, 167 SE 396, 86 ALR 1237. State v Moorer (1963) 241 SC 487, 129 SE2d 330.

Names of witnesses for prosecution need not be furnished to defendant. State v Robison (1901) 61 SC 106, 39 SE 247. Spartanburg v Parris (1910) 85 SC 227, 67 SE 246.

Applied in Moorer v. State of S. C., 1965, 244 F.Supp. 531.

A defendant indicated for murder was not entitled to a copy of the indictment at least three days prior to her trial as provided in Section 17‑19‑80 for capital cases where the prosecution had not given the defense 30 days notice of its intention to seek the death penalty as required by Section 16‑3‑26, thus foregoing the right to seek that penalty under Section 16‑3‑20 and rendering Section 17‑19‑80 inapplicable. State v. Rackley (S.C. 1980) 275 S.C. 402, 272 S.E.2d 33. Criminal Law 627(2)

Where defendant, charged with murder, when arraigned on Monday demanded three days’ sight of indictment, trial was properly held on Thursday. State v. Platt (S.C. 1930) 154 S.C. 1, 151 S.E. 206. Time 9(11)

Under this section [Code 1962 Section 17‑408] the defendant, in order to be entitled to a copy of the indictment, must tender the usual fees for such copy. State v. Wright (S.C. 1927) 140 S.C. 363, 138 S.E. 828.

Failure to allow defendant three days’ inspection of indictment before arraignment is not error under this section [Code 1962 Section 17‑408]. State v. Poston (S.C. 1922) 118 S.C. 232, 110 S.E. 399. Criminal Law 627(4)

The deprivation of the right allowed by this section [Code 1962 Section 17‑408] is a defect entitling the defendant to a new trial. State v. Weldon (S.C. 1912) 91 S.C. 29, 74 S.E. 43, Am.Ann.Cas. 1913E,801.

Demand for the copy of the indictment should be made, at the latest, at the arraignment. State v. Winningham (S.C. 1857) 10 Rich. 257.

To move for a continuance at arraignment, on the ground that the prisoner was entitled to a copy of the indictment three days before trial, was considered a demand for the copy. State v. Winningham (S.C. 1857) 10 Rich. 257.

The three days are inclusive of day on which motion is made for copy. State v. Briggs (S.C. 1794).

2. Waiver

Although the death penalty is not now imposed and the present charge is not a capital offense, the right granted to the three days’ sight of the indictment must be demanded by a defendant at the time of arraignment and, if no such demand is made, the right is waived. State v. Saxon (S.C. 1973) 261 S.C. 523, 201 S.E.2d 114. Criminal Law 627(7)

On Monday the prisoner was arraigned and his counsel demanded a copy of the indictment, which was furnished the same day. The counsel then said he thought they would be ready for trial on Wednesday, but on that day they were not ready, and declined to move for delay. It was held that the defendant had waived the right to have copy of indictment three days before trial. State v. Colclough (S.C. 1889) 31 S.C. 156, 9 S.E. 811.

If demand is made after trial commences and more than three days after arraignment, it is properly refused. State v. Briggs (S.C. 1887) 27 S.C. 80, 2 S.E. 854.

Arraignment without demand for a copy of the indictment amounts to a waiver. State v. Winningham (S.C. 1857) 10 Rich. 257.

**SECTION 17‑19‑90.** Objections to defects in indictments.

Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.

HISTORY: 1962 Code Section 17‑409; 1952 Code Section 17‑409; 1942 Code Section 1004; 1932 Code Section 1004; Cr. P. ‘22 Section 90; Cr. C. ‘12 Section 84; Cr. C. ‘02 Section 57; R. S. 56; 1887 (19) 829.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Indictment and Information 133, 137, 139, 144 to 144.2.

Westlaw Topic No. 210.

C.J.S. Indictments and Informations Sections 225 to 249.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 77, Pleadings.

S.C. Jur. Criminal Sexual Conduct Section 24, Attacking Sufficiency of Indictment.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 19.3(G), Late Objections.

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1. In general

Applied in State v Morrow (1893) 40 SC 221, 18 SE 853. State v Means (1908) 80 SC 401, 61 SE 898. State v Rodman (1910) 86 SC 154, 68 SE 343. State v Eskew (1945) 206 SC 519, rereported with corrections in 211 SC 565, 34 SE2d 767. State v Hooper (1949) 215 SC 74, 54 SE2d 517. State v Smith (1949) 215 SC 387, 55 SE2d 343. State v McAbee (1951) 220 SC 272, 67 SE2d 417. Dukes v State (1966) 248 SC 227, 149 SE2d 598. State v Hutto (1968) 252 SC 36, 165 SE2d 72. State v Burgin (1970) 255 SC 237, 178 SE2d 325, revd without opinion 404 US 806, 30 L Ed 2d 39, 92 S Ct 46.

Cited in State v Platt (1930) 154 SC 1, 151 SE 206. State v Mayfield (1959) 235 SC 11, 109 SE2d 716, cert den 363 US 846, 4 L Ed 2d 1728, 80 S Ct 1616 and reh den 364 US 857, 5 L Ed 2d 81, 81 S Ct 36.

Under appropriate circumstances, amendments may be made to indictments subsequent to the swearing of the jury. Roberts v. State (S.C.App. 2014) 408 S.C. 123, 757 S.E.2d 744. Indictment and Information 159(1)

If an objection to an indictment is timely made, circuit court should judge the sufficiency of the indictment by determining whether: (1) offense is stated with sufficient certainty and particularity to enable court to know what judgment to pronounce, and defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon, and (2) whether it apprises defendant of elements of offense that is intended to be charged. State v. Gentry (S.C. 2005) 363 S.C. 93, 610 S.E.2d 494. Indictment And Information 71.2(2); Indictment And Information 71.2(3)

This section [Code 1962 Section 17‑409] is no less applicable because the appellant waived a jury trial by his guilty plea. His position with respect to the statute is as if the jury had returned a verdict of guilty, had he gone, to trial, before he questioned the form of the indictment. State v. Phillips (S.C. 1949) 215 S.C. 314, 54 S.E.2d 901.

This section does not apply to objections that jury commissioners were disqualified when drawing grand jury. State v. Richardson (S.C. 1928) 149 S.C. 121, 146 S.E. 676.

Section applies only where the defect appears on the face of the indictment. State v. Richardson (S.C. 1928) 149 S.C. 121, 146 S.E. 676.

This section [Code 1962 Section 17‑409] does not apply to magistrates’ courts. State v. Williams (S.C. 1914) 97 S.C. 449, 81 S.E. 154.

The purpose and effect of this section [Code 1962 Section 17‑409] is to prevent motions to arrest judgment on grounds based upon an indictment apparent on the face thereof. State v. Lark (S.C. 1902) 64 S.C. 350, 42 S.E. 175.

Since the disqualification of an individual grand juror does not appear on the face of an indictment, this section [Code 1962 Section 17‑409] does not apply and a motion to quash comes too late after pleading not guilty. State v. Boyd (S.C. 1900) 56 S.C. 382, 34 S.E. 661. Indictment And Information 137(2)

2. Specific defects

Indictment procedure found proper and sufficient to show indictment for both armed robbery and assault and battery where two separate one‑page printed forms each charging one offense were stapled together, with grand jury endorsement on last page containing indictment for assault and battery. State v. Scott (S.C. 1977) 269 S.C. 438, 237 S.E.2d 886.

Failure to state time of the finding by the grand jury and the day of the designated month on which the offense was committed relate merely to the form. An objection must, as required by this section [Code 1962 Section 17‑409], be taken by demurrer or motion to quash before the jury is sworn. State v. Davis (S.C. 1910) 86 S.C. 208, 68 S.E. 532. Indictment And Information 133(6)

This section [Code 1962 Section 17‑409] has no application when there are allegations appropriate to two offenses, one of which is defectively set out, while the statement as to the other is sufficient in form. State v. Banks (S.C. 1910) 84 S.C. 543, 66 S.E. 999.

Defect in indictment charging entry of house without breaking with intent to steal, arising from the failure to allege that the entry was without breaking, is not fatal and is apparent on the face thereof. It is not available, unless raised by demurrer or motion to quash as required by this section [Code 1962 Section 17‑409]. State v. Ross (S.C. 1909) 83 S.C. 434, 65 S.E. 443, rehearing denied 67 S.E. 477. Indictment And Information 143; Indictment And Information 154

Whether the language in an indictment was mere surplusage should be raised by demurrer or motion to quash under this section [Code 1962 Section 17‑409] and not by motion for new trial. State v. Philips (S.C. 1906) 73 S.C. 236, 53 S.E. 370.

If the striking out of a special count relating to carrying concealed weapons renders the indictment defective as not in accordance with Code 1962 Section 17‑404, it is a defect apparent on the face of the indictment and cannot be raised for the first time on motion in arrest of judgment. State v. Edwards (S.C. 1904) 68 S.C. 318, 47 S.E. 395.

Objection that there are several blank counts numbered but not filled out must be taken by demurrer or motion to quash. State v. Norris (S.C. 1903) 65 S.C. 287, 43 S.E. 791. Indictment And Information 133(6)

If an indictment contains unnecessary allegations, and no objection is raised pursuant to this section [Code 1962 Section 17‑409], they will be regarded as merely surplusage. State v. Gilchrist (S.C. 1899) 54 S.C. 159, 31 S.E. 866.

3. Timeliness of objection

Objections held too late in State v Blakeney (1890) 33 SC 111, 11 SE 637. State v Norris (1903) 65 SC 287, 43 SE 791. State v Weaver (1906) 74 SC 417, 54 SE 615 State v Maddox (1908) 80 SC 452, 61 SE 964. State v Bethune (1910) 86 SC 143, 67 SE 466, later app 93 SC 195, 75 SE 281. State v Jacobs (1961) 238 SC 234, 119 SE2d 735.

An objection to the sufficiency of an indictment must be made before the jury is sworn; an objection to the sufficiency of the indictment made after the jury is sworn is untimely. State v. Fonseca (S.C.App. 2009) 383 S.C. 640, 681 S.E.2d 1, rehearing denied, certiorari granted, affirmed 393 S.C. 229, 711 S.E.2d 906. Indictment And Information 196(1)

If an indictment is challenged as insufficient or defective, a defendant must raise that issue before the jury is sworn and not afterwards. State v. Gentry (S.C. 2005) 363 S.C. 93, 610 S.E.2d 494. Indictment And Information 196(1)

An objection, properly made after arraignment and before the jury is sworn, would be in time under this section [Code 1962 Section 17‑409]. State v. Poston (S.C. 1922) 118 S.C. 232, 110 S.E. 399.

4. Waiver

Failure to identify victim and co‑conspirator in indictments for criminal conspiracy was not jurisdictional defect, and thus, failure to timely raise claim by demurrer or motion to quash resulted in waiver. Thompson v. State (S.C. 2004) 357 S.C. 192, 593 S.E.2d 139, rehearing denied. Indictment And Information 196(6)

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

A defect appearing on the face of the indictment is waived where the defendant fails to make an appropriate motion before the jury is sworn. State v. Mitchum (S.C. 1972) 258 S.C. 52, 187 S.E.2d 240.

Where defendant did not demur or move to quash an indictment, he was precluded from raising the question for the first time upon appeal. Tyler v. State (S.C. 1965) 247 S.C. 34, 145 S.E.2d 434.

Where defects or irregularities were nonjurisdictional and apparent on the face of the indictment, objection to the sufficiency of the indictment was waived by the failure of the appellant to demur thereto or to make a motion to quash the same before the jury was sworn, as required by this section [Code 1962 Section 17‑409]. State v. Young (S.C. 1963) 243 S.C. 187, 133 S.E.2d 210, certiorari denied 85 S.Ct. 85, 379 U.S. 868, 13 L.Ed.2d 71, rehearing denied 85 S.Ct. 334, 379 U.S. 940, 13 L.Ed.2d 351. Indictment And Information 196(1)

Defendant not raising objection to indictment as containing two separate and distinct offenses, by appropriate motion to have them separately stated, must be held to have waived objection under this section [Code 1962 Section 17‑409]. State v. Redmond (S.C. 1929) 150 S.C. 452, 148 S.E. 474.

Defendant does not waive his right to raise the question on motion in arrest that the indictment was found by a grand jury illegally drawn under an unconstitutional statute by pleading to the indictment and going to trial. State v. Edwards (S.C. 1904) 68 S.C. 318, 47 S.E. 395. Criminal Law 970(3)

5. Local court rules

A local rule of practice in the Thirteenth Judicial Circuit which was apparently more restrictive than Section 17‑19‑90 was void. State v. Shoemaker (S.C. 1981) 276 S.C. 86, 275 S.E.2d 878.

6. Jurisdiction

Issue of whether indictments’ failure to allege element “absence from the scene of the crime” deprived trial court of subject matter jurisdiction to hear accessory before the fact charges was not preserved for review on appeal, where defendant, who was convicted of accessory before the fact of armed robbery and accessory before the fact of assault and battery with intent to kill (ABIK), did not raise issue of sufficiency of the indictments before jury was sworn; overruling Koon v. State, 358 S.C. 359, 595 S.E.2d 456; Mathis v. State, 355 S.C. 87, 584 S.E.2d 366; Joseph v. State, 351 S.C. 551, 571 S.E.2d 280; State v. Owens, 346 S.C. 637, 552 S.E.2d 745; State v. McFadden, 342 S.C. 629, 539 S.E.2d 387; State v. Lazarus, 83 S.C. 215, 65 S.E. 270. State v. Gentry (S.C. 2005) 363 S.C. 93, 610 S.E.2d 494. Criminal Law 1032(5)

While the failure to allege certain circumstances of the crime may be ground to quash an indictment for insufficient notice, such a defect does not necessarily implicate the court’s subject matter jurisdiction which is satisfied so long as the elements of the offense are sufficiently stated. Thompson v. State (S.C. 2004) 357 S.C. 192, 593 S.E.2d 139, rehearing denied. Indictment And Information 137(6)

Lack of subject matter jurisdiction, on basis that indictment failed to contain necessary elements of charged offense, was a jurisdictional defect not covered by the statute which required that objections to indictments be made prior to swearing in of jury. Hooks v. State (S.C. 2003) 353 S.C. 48, 577 S.E.2d 211. Indictment And Information 196(5)

Subject matter jurisdiction may be raised at any time, and thus, the Supreme Court was able to review defendant’s claim that trial court lacked subject matter jurisdiction on grounds that indictment was insufficient, even though he failed to raise the issue until his petition for certiorari. Hooks v. State (S.C. 2003) 353 S.C. 48, 577 S.E.2d 211. Criminal Law 105; Criminal Law 1033.1

7. Review

Defendant did not fail to preserve for appellate review claim that guilty verdict on indictment charging defendant with trafficking in cocaine more than 200 grams but less than 400 grams, which was surreptitiously altered to reflect that amount of cocaine exceeded 100 grams, resulted in unclear and confusing verdict, by failing to object to indictment before jury was sworn, where neither defendant nor State knew when, where, or by whom alteration was made to original true‑billed indictment, there was no indication that any defect was apparent on face of indictment when jury was sworn, and in any case, defendant was not challenging sufficiency of indictment but rather, he was challenging denial of post‑verdict motion based upon confusing jury verdicts of guilty under original indictment and guilty under surreptitiously altered indictment that scratched out number “2” and replaced with handwritten number “1.” Roberts v. State (S.C.App. 2014) 408 S.C. 123, 757 S.E.2d 744. Criminal Law 1040

Defendant preserved for appellate review claim that trial court erred in allowing State to proceed under amended indictment; defendant first argued to trial court original indictment should be severed, court agreed and instructed State to elect which incident to prosecute, indictment was amended once State chose to proceed on later incident, accordingly, next question was whether earlier incident was admissible as prior bad act, court heard victim’s proffered testimony and arguments from counsel, and ultimately admitted earlier incident as evidence, and immediately following court’s ruling, and prior to jury being sworn, defendant objected to this. State v. Fonseca (S.C.App. 2009) 383 S.C. 640, 681 S.E.2d 1, rehearing denied, certiorari granted, affirmed 393 S.C. 229, 711 S.E.2d 906. Criminal Law 1032(1)

**SECTION 17‑19‑100.** Amendments of indictments; proceedings after amendment.

If (a) there be any defect in form in any indictments or (b) on the trial of any case there shall appear to be any variance between the allegations of the indictment and the evidence offered in proof thereof, the court before which the trial shall be had may amend the indictment (according to the proof, if the amendment be because of a variance) if such amendment does not change the nature of the offense charged. After such amendment the trial shall proceed in all respects and with the same consequences as if the indictment had originally been returned as so amended, unless such amendment shall operate as a surprise to the defendant, in which case the defendant shall be entitled, upon demand, to a continuance of the cause.

HISTORY: 1962 Code Section 17‑410; 1952 Code Section 17‑410; 1942 Code Section 1005; 1932 Code Section 1005; Cr. P. ‘22 Section 91; Cr. C. ‘12 Section 85; Cr. C. ‘02 Section 58; R. S. 57; 1887 (19) 829.

CROSS REFERENCES

Constitutional provision regarding indictment, see SC Const, Art I, Section 11.

Library References

Indictment and Information 158.

Westlaw Topic No. 210.

C.J.S. Indictments and Informations Sections 259 to 264.

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1. In general

An indictment may be amended at trial only if the amendment does not change the nature of the offense charged. Granger v. State (S.C. 1998) 333 S.C. 2, 507 S.E.2d 322. Indictment And Information 159(1)

Statutory provisions permitting amendments to indictments have been given a liberal construction so as to carry out the purpose of simplifying procedure and furthering the ends of justice by eliminating technicalities. State v. Quarles (S.C. 1973) 261 S.C. 413, 200 S.E.2d 384. Indictment And Information 159(1)

Cited in State v. Platt (S.C. 1930) 154 S.C. 1, 151 S.E. 206.

An amendment is properly allowed where it is merely a detailed description of the offense. State v. Rodman (S.C. 1910) 86 S.C. 154, 68 S.E. 343.

The court said: “No doubt under this section [Code 1962 Section 17‑410] the court could have allowed the indictment to be amended to conform to the proof, as the amendment would not have changed the nature of the offense charged. But no such amendment was asked for, and the cause cannot be considered as if the indictment had been amended.” State v. Hamilton (S.C. 1907) 77 S.C. 383, 57 S.E. 1098.

While a material change in the body of the indictment cannot be made by amendment by order of court, such amendment may be made with the defendant’s consent in open court. State v. Faile (S.C. 1895) 43 S.C. 52, 20 S.E. 798.

2. Constitutional issues

Double jeopardy would not preclude retrial on first degree burglary charge if defendant were reindicted or waived presentment, as reversal of his conviction was based not on insufficiency of evidence, but on ground that amendment to indictment deprived trial court of subject matter jurisdiction. State v. Lynch (S.C. 2001) 344 S.C. 635, 545 S.E.2d 511, habeas corpus denied 2007 WL 134130. Double Jeopardy 108

3. Nature of offense

Generally, amendments to indictments are permitted for the purposes of correcting an error of form, such as a scrivener’s error, otherwise, if the defendant objects to an amendment on grounds that the amended indictment would change the nature of the offense, the trial judge is obligated to inform the parties of the necessity of reindictment or obtain a waiver of presentment from the defendant. Cutner v. State (S.C. 2003) 354 S.C. 151, 580 S.E.2d 120. Indictment And Information 159(1)

Trial court erred in allowing the state to amend defendant’s burglary indictment at trial by adding the additional aggravating factor of two or more prior burglary convictions; amendment was a material change in the nature of the offense charged because the proof required for amended indictment was different from proof required for original indictment. State v. Guthrie (S.C.App. 2002) 352 S.C. 103, 572 S.E.2d 309. Indictment And Information 159(2)

In a prosecution alleging that the defendant committed a breach of trust with fraudulent intent while serving as corporate president and trustee of the charitable foundation that created the corporation, the court did not err in allowing the indictments to be amended under Section 17‑19‑20 since the nature of the crime charged (larceny) was not changed by the substitution of the corporation for the foundation as the victim, neither the defendant nor the codefendant was surprised by the amendments and they did not request a continuance based on the amendments, and counsel for one defendant admitted having actual notice of the change. State v. Johnson (S.C.App. 1994) 314 S.C. 161, 442 S.E.2d 191, rehearing denied, certiorari denied.

The court erred in granting a defense motion under Section 17‑19‑100 to amend an indictment for second degree arson to charge arson of personal property, since the defendant did not plead guilty, arson of personal property is not a lesser included offense of second degree arson, and the offenses involved 2 different types of property and thus the amendment changed the nature of the offense. State v. Myers (S.C. 1993) 313 S.C. 391, 438 S.E.2d 236. Indictment And Information 159(2)

In a prosecution for driving under the influence, the trial court properly denied the defendant’s motion to strike from the indictment any reference to the use of alcohol, even though the defendant’s breathalyzer reading of .04 percent created a presumption that the defendant was not under the influence of alcohol, since the breathalyzer reading did not preclude the jury from finding that he was under the influence of a combination of alcohol and some other drug. State v. Nathari (S.C.App. 1990) 303 S.C. 188, 399 S.E.2d 597.

An amendment of an indictment at the close of evidence at trial, which increased the lesser charge of assault with intent to commit third degree criminal sexual conduct to the greater charge of assault with intent to commit first degree criminal sexual conduct, was improper as it exceeded the terms of Section 17‑19‑100, which permits amendment of an indictment provided that the nature of the offense charged is not changed. State v. Riddle (S.C. 1990) 301 S.C. 211, 391 S.E.2d 253, post‑conviction relief granted 308 S.C. 361, 418 S.E.2d 308, rehearing denied. Indictment And Information 159(2)

Granting of a solicitor’s motion to amend an indictment for perjury in testifying in a criminal trial by deleting the word “sworn” with reference to a prior written statement of defendant in nowise changed the nature of the offense charged and was entirely permissible. State v. Campbell (S.C. 1957) 230 S.C. 432, 96 S.E.2d 476, certiorari denied 77 S.Ct. 1295, 354 U.S. 914, 1 L.Ed.2d 1427.

An indictment charging the defendant with statutory rape under Code 1962 Section 16‑80 of the Code, which in addition thereto charged common‑law rape under Code 1962 Section 16‑71 of the Code, was properly corrected by striking out the additional charge as mere surplusage, for nothing was added to the indictment, nor was the nature of the offense changed. State v. Horton (S.C. 1946) 209 S.C. 151, 39 S.E.2d 222.

Breaking and entering in the day and in the nighttime are distinct offenses, so that where accused was charged with breaking and entering in the daytime, and the evidence showed that the breaking and entering was in the nighttime, the indictment could not be amended to conform to the proof, and the variance was fatal. State v. Sowell (S.C. 1910) 85 S.C. 278, 67 S.E. 316.

4. Jurisdiction

Because circuit court lacked subject matter jurisdiction to try defendant on the amended indictment for assaulting officer while resisting arrest, court lacked jurisdiction to convict him for lesser‑included offense of resisting arrest. State v. Bryson (S.C.App. 2003) 357 S.C. 106, 591 S.E.2d 637, rehearing denied. Criminal Law 102

An amendment to a legally sufficient indictment does not divest the trial court of subject matter jurisdiction so long as the amendment does not change the nature of the offense charged. State v. Bryson (S.C.App. 2003) 357 S.C. 106, 591 S.E.2d 637, rehearing denied. Indictment And Information 159(1)

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

Amendment to indictment for pointing firearm at police officer, which replaced charge regarding original police officer with another officer, substituted different charge from charge presented to grand jury and divested circuit court of subject matter jurisdiction to try defendant for pointing firearm; statute indicated crime involved pointing firearm against one person, and although defendant originally could have been charged with two counts of crime, he was not. State v. Bryson (S.C.App. 2003) 357 S.C. 106, 591 S.E.2d 637, rehearing denied. Criminal Law 102

Indictment was insufficient to confer subject matter jurisdiction on trial court to convict defendant of second‑degree criminal sexual conduct (CSC) with a minor, even though body of indictment alleged that defendant committed sexual battery on a 13‑year‑old, which constitutes second‑degree CSC with a minor, where caption of indictment and title to indictment’s body stated that alleged crime was first‑degree CSC with a minor, which involves victim younger than 11, and statutory reference in indictment was changed at beginning of trial from statute prohibiting CSC with minors to statute prohibiting first‑degree CSC, which involves aggravated force but has no age element. State v. Ellison (S.C.App. 2003) 356 S.C. 33, 586 S.E.2d 596. Indictment And Information 48

State’s amendment to defendant’s indictment for possession within intent to distribute (PWID) marijuana within proximity of a school changed nature of such offense, and thus, circuit court had no subject matter jurisdiction over offense; indictment stated that drugs were possessed in proximity of church, and change in amendment that stated defendant possessed drugs in proximity of school rather than church, allowed defendant to be subject to penalties that did not exist from possessing drugs in proximity to church. Cutner v. State (S.C. 2003) 354 S.C. 151, 580 S.E.2d 120. Indictment And Information 159(1)

Trial court lost subject matter jurisdiction over first degree burglary charge when it permitted state, at outset of trial, to amend indictment to replace words “in the hours during darkness” with “caused physical injury”; aggravating circumstance was required element of first degree burglary, aggravating circumstance upon which conviction was based was never presented to grand jury, and proof required for each aggravating circumstance was materially different from one another. State v. Lynch (S.C. 2001) 344 S.C. 635, 545 S.E.2d 511, habeas corpus denied 2007 WL 134130. Indictment And Information 159(1)

Where an amendment to an indictment changes an offense to one with increased punishment, the circuit court is deprived of subject matter jurisdiction. State v. Lynch (S.C. 2001) 344 S.C. 635, 545 S.E.2d 511, habeas corpus denied 2007 WL 134130. Indictment And Information 159(1)

An amendment to an indictment may deprive the circuit court of jurisdiction even if it does not change the penalty. State v. Lynch (S.C. 2001) 344 S.C. 635, 545 S.E.2d 511, habeas corpus denied 2007 WL 134130. Indictment And Information 159(1)

The appropriate analysis for determining whether an amendment to an indictment deprives the trial court of subject matter jurisdiction is whether the amendment changed the nature of the offense charged, not whether the amendment in any way surprised or prejudiced the defendant. State v. Lynch (S.C. 2001) 344 S.C. 635, 545 S.E.2d 511, habeas corpus denied 2007 WL 134130. Indictment And Information 159(1)

Permitting state at trial to amend indictment for assault with intent to commit third‑degree criminal sexual conduct so as to charge assault with intent to commit first‑degree criminal sexual conduct was reversible error entitling defendant to new trial on assault charge; amendment changed nature of offense charged and deprived trial court of subject matter jurisdiction. Hope v. State (S.C. 1997) 328 S.C. 78, 492 S.E.2d 76. Criminal Law 1167(4); Indictment And Information 159(2)

Amendment to indictment, charging defendant with trafficking in cocaine weighing more than 100 and less than 200 grams, by charging defendant with trafficking in cocaine weighing more than 200 and less than 400 grams changed nature of offense and, therefore, amendment to indictment without presentment by grand jury deprived court of subject matter jurisdiction; amendment changed penalty involved by increasing applicable fine from $50,000 to $100,000. Clair v. State (S.C. 1996) 324 S.C. 144, 478 S.E.2d 54. Indictment And Information 159(2)

5. Defective names

Where an indictment charged the defendant with having sold tablets of LSD to an “Undercover SLED Agent,” without naming him and after the jury was drawn but immediately before it was sworn, counsel for appellant moved to quash the indictment because the SLED agent had not been named therein, allowing the solicitor to amend the indictment by inserting the name of the SLED agent was clearly permissible under this section [Code 1962 Section 17‑410], State v. Batson (S.C. 1973) 261 S.C. 128, 198 S.E.2d 517.

An indictment for larceny, which alleged that tobacco was stolen from the possession of warehousemen, was properly amended to conform to the proof by adding, following the allegation that the tobacco had been stolen from the possession of the warehousemen, the words, “the true owner being C. W. Walters Tobacco Co., a Corp.” State v. Sweat (S.C. 1952) 221 S.C. 270, 70 S.E.2d 234.

Where there was a misnomer of the person assaulted in the indictment, an amendment was authorized because the defect was merely formal and did not change the nature or grade of the offense charged. State v. Jones (S.C. 1947) 211 S.C. 319, 45 S.E.2d 29.

Where error was assigned because the lower court permitted an indictment to be amended with reference to a misnomer affecting the defendant and refused to quash the indictment on this ground, the action of the lower court did not constitute error as the amendment did not change the nature of the offense and was within the provisions of this section [Code 1962 Section 17‑410]. State v. O’Neal (S.C. 1947) 210 S.C. 305, 42 S.E.2d 523.

An amendment to an indictment may properly be allowed for correction of misnomer as to name of the deceased as the amendment does not change the nature of the offense charged, the error being merely a matter of form and not one of substance, and the amendment is clearly proper under this section [Code 1962 Section 17‑410]. State v. McGill (S.C. 1939) 191 S.C. 1, 3 S.E.2d 257.

Accused’s real name may be substituted in an indictment charging violation of the prohibition law, without resubmitting the indictment to the grand jury, in view of this section [Code 1962 Section 17‑410]. State v. Blackstone (S.C. 1920) 113 S.C. 528, 101 S.E. 845. Indictment And Information 159(4)

6. Defective time and place

Amended indictment provided defendant with sufficient notice; substance and nature of crime charged was not affected by amending indictment, defendant conceded language in amended indictment was same as original, only change made to indictment concerned year of alleged act, and thus, amendment did not prejudice defendant. State v. Fonseca (S.C.App. 2009) 383 S.C. 640, 681 S.E.2d 1, rehearing denied, certiorari granted, affirmed 393 S.C. 229, 711 S.E.2d 906. Indictment And Information 159(2)

Prosecutor’s amendment of indictment charging defendant with second degree burglary to state that burglary occurred at nighttime changed the classification of the offense from nonviolent to violent, and thus trial court lacked subject matter jurisdiction to convict and sentence defendant under amended indictment that had not been presented to grand jury. Weinhauer v. State (S.C. 1999) 334 S.C. 327, 513 S.E.2d 840, rehearing denied. Criminal Law 93; Indictment And Information 159(3)

A court, when confronted with the issue of amending the date alleged in an indictment, must always determine whether the amendment alters the nature of the offense charged and surprises the accused, preventing a fair trail. State v. Quarles (S.C. 1973) 261 S.C. 413, 200 S.E.2d 384. Indictment And Information 159(3)

Where time is not of the essence of the crime, an erroneous or defective allegation as to the time of the commission of the offense is a matter of form which may be corrected. State v. Quarles (S.C. 1973) 261 S.C. 413, 200 S.E.2d 384. Indictment And Information 159(3)

The correction by amendment of a clearly inadvertent reference to the date as the seventh day of the week instead of as the first day of the week did not change the nature of the offense charged under Code 1962 Section 64‑2 and was properly granted. State v. Solomon (S.C. 1965) 245 S.C. 550, 141 S.E.2d 818, 14 A.L.R.3d 1277, appeal dismissed 86 S.Ct. 396, 382 U.S. 204, 15 L.Ed.2d 270. Criminal Law 1167(4)

An indictment for maintaining a common nuisance and for unlawfully selling alcoholic liquors was properly amended by changing the alleged date of the offense from May 15 to April 15 to conform to the proof, since the amendment did not change the nature of the offense, and there was nothing in the record to substantiate defendant’s contention that he was taken by surprise. State v. McCrae (S.C. 1952) 222 S.C. 194, 72 S.E.2d 451. Indictment And Information 160

After all the evidence was in, the court under this section [Code 1962 Section 17‑410] could allow the State to strike out the words, “divers other days,” from an indictment charging defendant with manufacturing whisky on August 23, 1923, and “divers other days,” and insert in lieu thereof “between the 20th day of August and 23d day of August, 1923, inclusive,” and such amendment was not prejudicial error. State v. Rush (S.C. 1924) 129 S.C. 43, 123 S.E. 765. Indictment And Information 159(3)

An indictment in a prosecution for statutory rape, which alleged that the offense was committed on “ ‑ day of December, 1907,” could be amended by inserting the 1st day of the month without resubmitting it to the grand jury. State v. Richey (S.C. 1911) 88 S.C. 239, 70 S.E. 729. Indictment And Information 159(3)

Under this section [Code 1962 Section 17‑410] an indictment, stating the year of the offense as “one thousand eight hundred and ninety ‑ ,” may be amended by filling in the proper year. State v. May (S.C. 1896) 45 S.C. 509, 23 S.E. 513.

Failure to allege place of death of deceased in indictment for murder is a fatal defect which cannot be cured by amendment, under this section [Code 1962 Section 17‑410], and is ground for quashing the indictment or arresting judgment on motion. State v. Blakeney (S.C. 1890) 33 S.C. 111, 11 S.E. 637. Homicide 848; Indictment And Information 159(3)

7. Continuance

Continuance provision of statute governing amendment of indictments, providing that, after amendment, trial shall proceed in all respects and with same consequences as if indictment had originally been returned as so amended, unless such amendment operated as a surprise to defendant, in which case defendant shall be entitled, upon demand, to a continuance, applies only to permissible amendments, i.e., those which do not change nature of offense charged; thus, this provision will not be applied to deprive defendant of the right to presentment when the court determines an existing indictment fails to give the required notice to the defendant or is otherwise insufficient. State v. Means (S.C. 2006) 367 S.C. 374, 626 S.E.2d 348. Indictment And Information 71.1; Indictment And Information 159(1)