CHAPTER 53

Poisons, Drugs, and Other Controlled Substances

ARTICLE 1

General Provisions

**SECTION 44‑53‑10.** General powers of Department of Health and Environmental Control regarding controlled substances.

 The Department of Health and Environmental Control shall take cognizance of the interest of the public health as it relates to the sale of drugs and the adulteration thereof and shall make all necessary inquiries and investigations relating thereto. For such purpose it may appoint inspectors, analysts and chemists who shall be subject to its supervision and removal. The Department shall adopt such measures as it may deem necessary to facilitate the enforcement of this chapter. It shall prepare rules and regulations with regard to the proper method of collecting and examining drugs.

HISTORY: 1962 Code Section 32‑1451; 1952 Code Section 32‑1451; 1942 Code Section 5124; 1932 Code Section 5124; Civ. C. ‘22 Section 3451; Civ. C. ‘12 Section 2390; Civ. C. ‘02 Section 1578; 1898 (22) 804; 1972 (57) 2687.

CROSS REFERENCES

Alcohol and alcoholic beverages, generally, see Title 61.

Application of this article to stock or poultry preparations, see Section 46‑27‑820.

Controlled substances therapeutic research law, see Sections 44‑53‑610 et seq.

Department of Health and Environmental Control regulations pertaining to controlled substances, see S.C. Code of Regulations R. 61‑4.101 et seq.

Meat imported from foreign countries, see Sections 47‑17‑310, 47‑17‑320.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 2, Definitions.

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs. 25 S.C. L. Rev. 321.

Marijuana ‑ The Right to Truth. 23 S.C. L. Rev. 361.

Uniform drug law. 23 S.C. L. Rev. 540.

NOTES OF DECISIONS

Pleadings 1

1. Pleadings

Where a complaint does not denominate a suit as being one brought under the Pure Food and Drug Act [Code 1962 Section 32‑1451] et seq., but where a reading of the complaint indicates that the action is brought under the terms of the act, as well as under the common law, the complaint is sufficient, since it is not essential to plead the statute as such, but the court is required to take notice of the statutes whether specifically mentioned or not if the allegations of fact bring the case within the provisions thereof. (Decided under a former statute.) Peters v. Double Cola Bottling Co. of Columbia (S.C. 1954) 224 S.C. 437, 79 S.E.2d 710.

**SECTION 44‑53‑20.** “Food” and “drug” defined.

 The term “food” as used in Section 44‑53‑10 shall include every article used for food or drink by man, including all candies, teas, coffees and spirituous, fermented and malt liquors. The term “drug” as used in Section 44‑53‑10 shall include all medicines for internal or external use.

HISTORY: 1962 Code Section 32‑1452; 1952 Code Section 32‑1452; 1942 Code Section 5127; 1932 Code Section 5127; Civ. C. ‘22 Section 3454; Civ. C. ‘12 Section 2393; Civ. C. ‘02 Section 1581; 1898 (22) 804.

CROSS REFERENCES

Adulterated, misbranded or new drugs and devices, see Sections 39‑23‑10 et seq.

**SECTION 44‑53‑30.** Persons selling certain articles to furnish samples for analysis.

 Every person offering or exposing for sale or delivering to a purchaser any drug or article of food or spirituous, fermented or malt liquor included under the provisions of Section 44‑53‑10, shall furnish to any analyst, or other officer or agent appointed hereunder who shall apply to him for the purpose and shall tender to him the value of the same, a sample sufficient for the purpose of analysis of any such drug, article of food or drink which is in his possession.

HISTORY: 1962 Code Section 32‑1453; 1952 Code Section 32‑1453; 1942 Code Section 5126; 1932 Code Section 5126; Civ. C. ‘22 Section 3453; Civ. C. ‘12 Section 2392; Civ. C. ‘02 Section 1580; 1898 (22) 804.

CROSS REFERENCES

Adulterated, misbranded or new drugs and devices, see Sections 39‑23‑10 et seq.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑40.** Obtaining certain drugs, devices, preparations, or compounds by fraud or deceit.

 (A) It is unlawful for a person to obtain or attempt to obtain a drug or device as defined by Section 39‑23‑20, or any pharmaceutical preparation, chemical, or chemical compound that is restricted in regard to its sale at retail by:

 (1) fraud, deceit, misrepresentation, or subterfuge;

 (2) forgery or alteration of a prescription;

 (3) falsification in any manner of any record of sale required by law;

 (4) use of a false name or the giving of a false address;

 (5) concealment of a material fact; or

 (6) falsely assuming the title of or representing himself to be a person authorized by the laws of this State to possess such drugs, pharmaceutical preparations, chemicals, chemical compound, or devices.

 (B) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than two years, or both for a first offense. Conviction for a second or subsequent offense, is a felony and the person must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

 A person must not be convicted of a criminal offense under this section unless it is shown by clear and convincing evidence that the drug, pharmaceutical preparation, chemical, chemical compound, or device would not have been obtained but for the fraud, deceit, misrepresentation, subterfuge, forgery, alteration, falsification, concealment, or other prohibited act allegedly practiced by the accused.

HISTORY: 1962 Code Section 32‑1453.2; 1973 (58) 768; 1976 Act No. 679, Section 1; 1993 Act No. 184, Section 73.

CROSS REFERENCES

Adulterated, misbranded or new drugs and devices, see Sections 39‑23‑10 et seq.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

Attorney General’s Opinions

A defendant who attempted or conspired to obtain a controlled substance by fraudulent means should be charged under Section 44‑53‑420 in conjunction with Section 44‑53‑390(a)(3), not this section. S.C. Op.Atty.Gen. (August 3, 1983) 1983 WL 142724.

NOTES OF DECISIONS

In general 1

1. In general

Giving of false address to a physician in order to obtain a prescription for a controlled drug was a violation of the criminal statute. Hemmerle v. K‑Mart Discount Stores (D.C.S.C. 1974) 383 F.Supp. 303.

Illegal possession of drugs which can be acquired legally with valid prescription is not offense involving moral turpitude. State v. Carriker (S.C. 1977) 269 S.C. 553, 238 S.E.2d 678.

**SECTION 44‑53‑50.** Sale of household and commercial laundry detergent and dishwashing detergent containing phosphorus prohibited.

 (A) Except as otherwise provided in this section, a person may use, sell, manufacture, or distribute for use or sale in this State no cleaning agent that contains more than zero percent phosphorus by weight expressed as elemental phosphorus except for an amount not exceeding five‑tenths of one percent. For the purposes of this section, “cleaning agent” means a household or commercial laundry detergent, dishwashing compound, household cleaner, household or commercial dishwashing detergent, metal cleaner, industrial cleaner, phosphate compound, or other substance that is intended to be used for cleaning purposes.

 (B) A person may use, sell, manufacture, or distribute for use or sale a cleaning agent that contains greater than zero percent phosphorus by weight but does not exceed eight and seven‑tenths percent phosphorus by weight that is a substance excluded from the zero percent phosphorus limitation of this section by regulations adopted by the Department of Health and Environmental Control which are based on a finding that compliance with this section would:

 (1) create a significant hardship on the user; or

 (2) be unreasonable because of the lack of an adequate substitute cleaning agent.

 (C) This section does not apply to a cleaning agent that is:

 (1) used in dairy, beverage, or food processing equipment;

 (2) used in hospitals, veterinary hospitals, clinics, or health care facilities or in agricultural or dairy production or in the manufacture of health care supplies;

 (3) used by industry for metal, fabric, or fiber cleaning or conditioning;

 (4) manufactured, stored, or distributed for use or sale outside of this State;

 (5) used in a laboratory, including a biological laboratory, research facility, chemical laboratory, or engineering laboratory; or

 (6) used as a water softening chemical, antiscale chemical, or corrosion inhibitor intended for use in closed systems such as boilers, air conditioners, cooling towers, or hot water heating systems.

 (D) The Department of Health and Environmental Control shall promulgate regulations to administer and enforce the provisions of this section. A cleaning agent held for sale or distribution in violation of this section may be seized by appropriate administrative or law enforcement personnel. The seized cleaning agents are considered forfeited.

 (E) A person who knowingly sells, manufactures, or distributes any cleaning agent in violation of the provisions of this section shall receive a written warning from the Department of Health and Environmental Control for the first violation. For a subsequent violation, the person is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year. Each unlawful sale constitutes a separate violation.

 (F) The provisions of this section may not restrict sale by a retailer of a household dishwashing detergent product from inventory existing and in stock at the retailer on July 1, 2012.

HISTORY: 1991 Act No. 108, Section 1; 1993 Act No. 63, Section 1; 2012 Act No. 120, Section 1, (subject to multiple effective dates, see editor’s note).

Editor’s Note

2012 Act No. 120, Section 2, provides as follows:

“The provisions of this act relating to household dishwashing detergent take effect July 1, 2012. The provisions of this act relating to commercial dishwashing and laundry detergent and industrial cleaners take effect on July 1, 2013. All other provisions of this act take effect July 1, 2014.”

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

ARTICLE 3

Narcotics and Controlled Substances

CROSS REFERENCES

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

**SECTION 44‑53‑110.** Definitions.

 As used in this article and Sections 44‑49‑10, 44‑49‑40, and 44‑49‑50:

 (1) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

 (a) a practitioner (or, in his presence, by his authorized agent); or

 (b) the patient or research subject at the direction and in the presence of the practitioner.

 (2) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser, except that this term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual or lawful course of the carrier’s or warehouseman’s business.

 (3) “Bureau” means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

 (4) “Commission” means the South Carolina Department of Alcohol and Other Drug Abuse Services.

 (5) “Confidant” means a medical practitioner, a pharmacist, a pharmacologist, a psychologist, a psychiatrist, a full‑time staff member of a college or university counseling bureau, a guidance counselor or a teacher in an elementary school or in a junior or senior high school, a full‑time staff member of a hospital, a duly ordained and licensed member of the clergy, accredited Christian Science practitioner, or any professional or paraprofessional staff member of a drug treatment, education, rehabilitation, or referral center who has received a communication from a holder of the privilege.

 (6) “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through V in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270.

 (7) “Controlled substance analogue” means a substance that is intended for human consumption and that either has a chemical structure substantially similar to that of a controlled substance in Schedules I, II, or III or has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to that of a controlled substance in Schedules I, II, or III. Controlled substance analogue does not include a controlled substance; any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.; any substance for which there is an approved new drug application; or, with respect to a particular person, any substance if an exemption is in effect for investigational use for that person under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 355.

 (8) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who, in fact, manufactured, distributed, or dispensed such substance and which, thereby, falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

 (9) “Cocaine base” means an alkaloidal cocaine or freebase form of cocaine, which is the end product of a chemical alteration whereby the cocaine in salt form is converted to a form suitable for smoking. Cocaine base is commonly referred to as “rock” or “crack cocaine”.

 (10) “Deliver” or “delivery” means the actual, constructive, or attempted transfer of a controlled drug or paraphernalia whether or not there exists an agency relationship.

 (11) “Department” means the State Department of Health and Environmental Control.

 (12) “Depressant or stimulant drug” means:

 (a) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid, or any derivative of barbituric acid which has been designated as habit forming by the appropriate federal agency or by the department;

 (b) a drug which contains any quantity of amphetamine or any of its optical isomers, any salt of amphetamine or any salt of any optical isomer of amphetamine, or any other substance which the appropriate federal agency or the department, after investigation, has found to be capable of being, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

 (c) lysergic acid diethylamide or mescaline, or any other substance which the appropriate federal agency or the department, after investigation, has found to have, and by regulation designates as having a potential for abuse because of its stimulant or depressant effect on the central nervous system or its hallucinogenic effect.

 (13) “Detoxification treatment” means the dispensing, for a period not in excess of twenty‑one days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug‑free state within this period.

 (14) “Director” means the Director of the Department of Narcotics and Dangerous Drugs under the South Carolina Law Enforcement Division.

 (15) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for the delivery.

 (16) “Dispenser” means a practitioner who delivers a controlled substance to the ultimate user or research subject.

 (17) “Distribute” means to deliver (other than by administering or dispensing) a controlled substance.

 (18) “Distributor” means a person who so delivers a controlled substance.

 (19) “Drug” means a substance:

 (a) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

 (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man and animals;

 (c) other than food intended to affect the structure or any function of the body of man and animals; and

 (d) intended for use as a component of any substance specified in subitem (a), (b), or (c) of this paragraph but does not include devices or their components, parts, or accessories.

 (20) “Drug problem” means a mental or physical problem caused by the use or abuse of a controlled substance.

 (21) “Holder of the privilege” means a person with an existing or a potential drug problem who seeks counseling, treatment, or therapy regarding such drug problem.

 (22) “Imitation controlled substance” means a noncontrolled substance which is represented to be a controlled substance and is packaged in a manner normally used for the distribution or delivery of an illegal controlled substance.

 (23) “Immediate precursor” means a substance which the appropriate federal agency or the department has found to be and by regulation has designated as being, or can be proven by expert testimony as being, the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, or is a reagent, solvent, or catalyst used in the manufacture of controlled substances, the control of which is necessary to prevent, curtail, or limit such manufacture.

 (24) “Maintenance treatment” means the dispensing, for a period in excess of twenty‑one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine‑like drugs.

 (25) “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

 (a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

 (b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

 (26) “Manufacturer” means any person who packages, repackages, or labels any container of any controlled substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

 (27)(a) “Marijuana” means:

 (i) all species or variety of the marijuana plant and all parts thereof whether growing or not;

 (ii) the seeds of the marijuana plant;

 (iii) the resin extracted from any part of the marijuana plant; or

 (iv) every compound, manufacture, salt, derivative, mixture, or preparation of the marijuana plant, marijuana seeds, or marijuana resin.

 (b) “Marijuana” does not mean:

 (i) the mature stalks of the marijuana plant or fibers produced from these stalks;

 (ii) oil or cake made from the seeds of the marijuana plant, including cannabidiol derived from the seeds of the marijuana plant;

 (iii) any other compound, manufacture, salt, derivatives, mixture, or preparation of the mature stalks (except the resin extracted therefrom), including cannabidiol derived from mature stalks;

 (iv) the sterilized seed of the marijuana plant which is incapable of germination;

 (v) for persons participating in a clinical trial or in an expanded access program related to administering cannabidiol for the treatment of severe forms of epilepsy pursuant to Article 18, Chapter 53, Title 44, a drug or substance approved for the use of those participants by the federal Food and Drug Administration; or

 (vi) for persons, or the persons’ parents, legal guardians, or other caretakers, who have received a written certification from a physician licensed in this State that the person has been diagnosed by a physician as having Lennox‑Gastaut Syndrome, Dravet Syndrome, also known as “severe myoclonic epilepsy of infancy”, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies, the substance cannabidiol, a nonpsychoactive cannabinoid, or any compound, manufacture, salt, derivative, mixture, or preparation of any plant of the genus cannabis that contains nine‑tenths of one percent or less of tetrahydrocannabinol and more than fifteen percent of cannabidiol.

 (c) For purposes of this item, written certification means a document dated and signed by a physician stating that the patient has been diagnosed with Lennox‑Gastaut Syndrome, Dravet Syndrome, also known as “severe myoclonic epilepsy of infancy”, or any other severe form of epilepsy that is not adequately treated by traditional medical therapies and the physician’s conclusion that the patient might benefit from the medical use of cannabidiol.

 (d) A physician is not subject to detrimental action, including arrest, prosecution, penalty, denial of a right or privilege, civil penalty, or disciplinary action by a professional licensing board for providing written certification for the medical use of cannabidiol to a patient in accordance with this section.

 (28) “Methamphetamine” includes any salt, isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine. Methamphetamine is commonly referred to as “crank”, “ice”, or “crystal meth”.

 (29) “Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

 (a) opium, coca leaves, and opiates;

 (b) a compound, manufacture, salt, derivative or preparation of opium, coca leaves, or opiates;

 (c) a substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subitem (a) or (b). This term does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

 (30) “Noncontrolled substance” means any substance of chemical or natural origin which is not included in the schedules of controlled substances set forth in this article or included in the federal schedules of controlled substances set forth in Title 21, Section 812 of the United States Code or in Title 21, Part 1308 of the Code of Federal Regulations.

 (31) “Opiate” means any substance having an addiction‑forming or addiction‑sustaining liability similar to morphine or being capable of conversion into a drug having addiction‑forming or addiction‑sustaining liability. It does not include, unless specifically designated as controlled under this article, the dextrorotatory isomer of 3‑methoxy‑n‑methylmorphinan and its salts (dextromethorphan). It does include racemic and levorotatory forms.

 (32) “Opium poppy” means the plant of the species Papaver somniferum L., except the seed thereof.

 (33) “Paraphernalia” means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to:

 (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic marijuana or hashish pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

 (b) water pipes designed for use or intended for use with marijuana, hashish, hashish oil, or cocaine;

 (c) carburetion tubes and devices;

 (d) smoking and carburetion masks;

 (e) roach clips;

 (f) separation gins designed for use or intended for use in cleaning marijuana;

 (g) cocaine spoons and vials;

 (h) chamber pipes;

 (i) carburetor pipes;

 (j) electric pipes;

 (k) air‑driven pipes;

 (l) chilams;

 (m) bongs;

 (n) ice pipes or chillers.

 (34) “Peyote” means all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts.

 (35) “Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.

 (36) “Practitioner” means:

 (a) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State;

 (b) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State.

 (37) “Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

 (38) “Ultimate user” means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administration to an animal owned by him or a member of his household.

HISTORY: 1962 Code Section 32‑1510.27; 1971 (57) 800; 1972 (57) 2621; 1973 (58) 289; 1974 (58) 2284, 2855; 1975 (59) 104; 1976 Act No. 672, Section 1; 1980 Act No. 361, Section 1; 1982 Act No. 400, Section 1; 1982 Act No. 427, Section 1; 1987 Act No. 128 Section 2; 1990 Act No. 604, Section 5; 2000 Act No. 355, Section 2; 2005 Act No. 127, Section 2, eff June 7, 2005; 2014 Act No. 221 (S.1035), Section 1, eff June 2, 2014.

CROSS REFERENCES

Application of this article to stock or poultry preparations, see Section 46‑27‑820.

Department of Health and Environmental Control regulations pertaining to controlled substances, see S.C. Code of Regulations, R. 61‑4.101 et seq.

Drug or alcohol‑related overdose medical treatment, “controlled substances” defined, see Section 44‑53‑1910.

Forfeiture of conveyances of narcotic drugs or controlled substances, see Section 44‑53‑520.

Illegal acts involving persons under seventeen years of age as separate offenses; penalties, see Section 44‑53‑577.

Industrial hemp excluded from Section 44‑53‑110, see Section 46‑55‑30.

Marijuana and controlled substances, as defined herein, subject to taxation, see Section 12‑21‑5020.

Penalty for manufacturing, distributing, or possessing ice, crank, or crack cocaine, see Section 44‑53‑375.

Person receiving alcohol and drug addiction services prohibited from possessing controlled substances as defined in this section, see Section 44‑52‑165.

Student’s conviction or delinquency adjudication for distribution or trafficking of unlawful drugs as defined in this article, notification of senior administrator at student’s school, see Section 59‑63‑370.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Agriculture Section 21.50, Industrial Hemp.

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

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs. 25 S.C. L. Rev. 321.

Marijuana ‑ The Right to Truth. 23 S.C. L. Rev. 361.

Uniform Drug Law. 23 S.C. L. Rev. 540.

United States Supreme Court Annotations

Deportation or removal, Alien’s conviction for social sharing of marijuana was not aggravated felony precluding discretionary relief from removal, see Moncrieffe v. Holder, 2013, 133 S.Ct. 1678, 185 L.Ed.2d 727. Aliens, Immigration, and Citizenship 274

Attorney General’s Opinions

The intentional overdose of a prescription medication for the stated purpose of committing suicide is an “unlawful use of a controlled substance.” S.C. Op.Atty.Gen. (Dec. 6, 2010) 2010 WL 5578961.

In determining weight of marijuana in prosecution for trafficking in marijuana, South Carolina courts would probably not allow statutorily excludible portions of marijuana plant to be weighed. S.C. Op.Atty.Gen. (July 8, 1985) 1985 WL 166034.

A “chart order” as prepared for or written by a prescribing practitioner for an in‑patient of a hospital or extended care facility does not constitute a “prescription” within the meaning and intent of the South Carolina Drug Act (Section 39‑23‑10, et seq. of the 1976 Code of Laws of South Carolina, as amended) and the South Carolina Controlled Substances Act (Section 44‑53‑110, et seq. of the 1976 Code, as amended) if the drug or controlled substance is intended to be dispensed from a pharmacy which is not under common ownership with the hospital or extended care facility; a “chart order” and a “prescription” are mutually exclusive terms within the meaning and intent of the South Carolina Drug Act (Section 39‑23‑10, et seq. of the 1976 Code, as amended) and the South Carolina Controlled Substances Act (Section 44‑53‑110, et seq. of the 1976 Code). S.C. Op.Atty.Gen. (June 26, 1980) 1980 WL 81955.

NOTES OF DECISIONS

In general 1

Counterfeit substances 2

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1. In general

In the offense of unlawful possession of marijuana, it was not necessary for trial judge to charge the jury that it must find that the substance was Cannabis sativa L. State v. Durham (S.C. 1976) 266 S.C. 263, 222 S.E.2d 768.

2. Counterfeit substances

The defendant was denied effective assistance by her counsel’s failure to distinguish between counterfeit and imitation narcotics offenses in advising her to plead guilty to possession of a counterfeit substance with intent to distribute where the drugs involved were imitation, rather than counterfeit, and it is not a criminal offense to merely possess imitation drugs. Murdock v. State (S.C. 1992) 311 S.C. 16, 426 S.E.2d 740. Criminal Law 1920

While there may be exceptions, ordinarily there is no offense involving counterfeit LSD or cocaine, as these drugs are typically produced illegally and therefore do not have a trademark or label of manufacturer. Murdock v. State (S.C. 1992) 311 S.C. 16, 426 S.E.2d 740. Controlled Substances 43

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)

3. Manufacture

Evidence sufficient to sustain a conviction for manufacturing marijuana may not always be sufficient to sustain a conviction for cultivating marijuana on the lands of another, even where there is no dispute the property belonged to someone other than the defendant, given that the manufacturing statute, when read in conjunction with the definitional statute, equates the act of “harvesting” with the offense of “manufacturing,” but the does not equate “harvesting” with “cultivating.” State v. Walker (S.C. 2002) 349 S.C. 49, 562 S.E.2d 313. Controlled Substances 22

4. Narcotic drugs

A defendant should not have been sentenced as a second offender under the crack cocaine statute which provides an enhanced sentence for a second offender or one whose first conviction was related to narcotic drugs where his second offender status was based on prior convictions for distributing marijuana, which is not a narcotic drug as defined by Section 44‑53‑110; Section 44‑53‑470, which provides that an offense is a second offense if the defendant had previously been convicted under a statute relating to marijuana, is inapplicable since Section 44‑53‑375 is both more recent and more specific. Rainey v. State (S.C. 1992) 307 S.C. 150, 414 S.E.2d 131.

**SECTION 44‑53‑120.** Duties of State Law Enforcement Division.

 The State Law Enforcement Division shall:

 (1) Cooperate with Federal and other State agencies in discharging its responsibilities concerning traffic in narcotics and controlled substances and in suppressing the abuse of dangerous substances;

 (2) Coordinate and cooperate in training programs on controlled substances law enforcement at the local and State levels;

 (3) Cooperate with the Federal Bureau of Narcotics and Dangerous Drugs by establishing a centralized unit within the South Carolina Law Enforcement Division which shall accept, catalogue, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the State, and make such information available for Federal, State, and local law‑enforcement purposes; and collect and furnish statistics for other appropriate purposes;

 (4) Coordinate and cooperate in programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

 (5) promulgate regulations to provide uniform procedures for the seizure, inventory, reporting, auditing, handling, testing, storage, preservation for evidentiary use, and destruction or other lawful disposition of controlled substances.

HISTORY: 1962 Code Section 32‑1510.23; 1971 (57) 800; 1992 Act No. 387, Section 1.

CROSS REFERENCES

Requirement that controlled substances be inventoried, reported, handled, etc. pursuant to procedures promulgated pursuant to this section, see Section 44‑53‑485.

Rules and regulations pertaining to narcotics and controlled substances, see Rules and Regulations, Department of Health and Environmental Control R. 61‑4.101 et seq.

Uniform procedures for handling of controlled substances, see S.C. Code of Regulations R. 73‑70 et seq.

Library References

Controlled Substances 20.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 263, 315, 332.

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs. 25 S.C. L. Rev. 321.

Marijuana ‑ The Right to Truth. 23 S.C. L. Rev. 361.

Uniform Drug Law. 23 S.C. L. Rev. 540.

**SECTION 44‑53‑130.** Coordination of law enforcement.

 The State Law Enforcement Division shall formulate a plan to coordinate the controlled substance enforcement effort from the local to the State level.

HISTORY: 1962 Code Section 32‑1510.24; 1971 (57) 800.

Library References

Controlled Substances 20.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 263, 315, 332.

**SECTION 44‑53‑140.** Certain communications and observations privileged.

 Whenever a holder of the privilege shall seek counselling, treatment, or therapy for any drug problem from a confidant, no statement made by such holder and no observation or conclusion derived from such confidant shall be admissible against such holder in any proceeding. The results of any examination to determine the existence of illegal or prohibited drugs in a holder’s body shall not be admissible in any proceeding against such holder.

 The privilege belongs to the holder and if he waives the right to claim the privilege the communication between the holder of the privilege and the confidant shall be admissible in evidence in any proceeding.

 There is no privilege if the services of a confidant are sought to enable the holder of the privilege to commit or plan to commit a crime or a tort.

HISTORY: 1962 Code Section 32‑1510.25; 1971 (57) 800; 1973 (58) 289.

Library References

Privileged Communications and Confidentiality 242.

Westlaw Topic No. 311H.

**SECTION 44‑53‑160.** Manner in which changes in schedule of controlled substances made.

 (A)(1) Annually, within thirty days after the convening of each regular session of the General Assembly, the department shall recommend to the General Assembly any additions, deletions, or revisions in the schedules of controlled substances enumerated in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270 which the department deems necessary. Except as otherwise provided in this section, the department shall not make any additions, deletions, or revisions in the schedules until after notice and an opportunity for a hearing is afforded to all interested parties. In making a recommendation to the General Assembly regarding a substance, the department shall consider the following:

 (a) the actual or relative potential for abuse;

 (b) the scientific evidence of the substance’s pharmacological effect, if known;

 (c) the state of current scientific knowledge regarding the substance;

 (d) the history and current pattern of abuse;

 (e) the scope, duration, and significance of abuse;

 (f) the risk to public health;

 (g) the potential of the substance to produce psychic or physiological dependence liability;

 (h) whether the substance is an immediate precursor of a substance already controlled pursuant to this chapter; and

 (i) whether the substance has an accepted or recognized medical use.

 (2) After considering the factors listed in subsection (A)(1), the department shall make a recommendation to the General Assembly specifying to what schedule the substance should be added, deleted, or rescheduled, if the department finds that the substance has a potential for abuse.

 (B) Except as otherwise provided in this section, during the time the General Assembly is not in session, the department may add, delete, or reschedule a substance as a controlled substance after providing notice and a hearing to all interested parties. The addition, deletion, or rescheduling of a substance pursuant to this subsection has the full force of law unless overturned by the General Assembly. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Medical, Military, Public and Municipal Affairs Committee, and the Judiciary Committee of the House of Representatives, and to the Clerks of the Senate and House, and shall post the schedules on the department’s website indicating the change and specifying the effective date of the change.

 (C) If a substance is added, deleted, or rescheduled as a controlled substance pursuant to federal law or regulation, the department shall, at the first regular or special meeting of the South Carolina Board of Health and Environmental Control within thirty days after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, add, delete, or reschedule the substance in the appropriate schedule. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection must be in substance identical with the order published in the federal register effecting the change in federal status of the substance. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Medical, Military, Public and Municipal Affairs Committee, and the Judiciary Committee of the House of Representatives, and to the Clerks of the Senate and House, and shall post the schedules on the department’s website indicating the change and specifying the effective date of the change.

 (D) The department shall exclude any nonnarcotic substance from a schedule if the substance may, under the federal Food, Drug, and Cosmetic Act and the laws of this State, be lawfully sold over the counter without a prescription.

 (E) The department’s addition, deletion, or rescheduling of a substance as a controlled substance is governed by this section and is not subject to the promulgation requirements of Title 1, Chapter 23.

HISTORY: 1962 Code Section 32‑1510.28; 1971 (57) 800; 1974 (58) 2228; 2010 Act No. 273, Section 36, eff June 2, 2010; 2012 Act No. 140, Section 1, eff April 2, 2012.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to controlled substances, see S.C. Code of Regulations R. 61‑4.101 et seq.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

Attorney General’s Opinions

Pursuant to the federal action temporarily adding mephedrone, methylone, and MDPV to the federal drug abuse controlled substance schedules as Schedule I controlled substances, Department of Health and Environmental Control is authorized and directed pursuant to the specific procedures of Section 44‑53‑160 (4) to designate these substances in Section 44‑53‑190 as Schedule I controlled substances at the Department’s first or special Board meeting after publication in the federal register of the final order of the federal designation. Once these substances become Schedule I controlled substances under state law, then the legislatively‑prescribed criminal penalties may be imposed for their misuse. S.C. Op.Atty.Gen. (Sept. 28, 2011) 2011 WL 4592373.

**SECTION 44‑53‑170.** Nomenclature of controlled substances in schedules.

 The controlled substances listed, or to be listed, in the schedules in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250 and 44‑53‑270 are included by whatever official, chemical or trade name designated as well as the common or usual name designated.

HISTORY: 1962 Code Section 32‑1510.29; 1971 (57) 800.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑180.** Tests for inclusion of substance in Schedule I.

 The Department shall place a substance in Schedule I if it finds that the substance has:

 (a) A high potential for abuse;

 (b) No accepted medical use in treatment in the United States; and

 (c) A lack of accepted safety for use in treatment under medical supervision.

HISTORY: 1962 Code Section 32‑1510.30; 1971 (57) 800.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑190.** Schedule I.

 (A) The controlled substances listed in this section are included in Schedule I.

 (B) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

 1. Acetylmethadol

 2. Allylprodine

 3. Alphacetylmethadol

 4. Alphameprodine

 5. Alphamethadol

 6. Benzethidine

 7. Betacetylmethadol

 8. Betameprodine

 9. Betamethadol

 10. Betaprodine

 11. Clonitazene

 12. Dextromoramide

 13. [Deleted]

 14. Diampromide

 15. Diethylthiambutene

 16. Dimenoxadol

 17. Dimepheptanol

 18. Dimethylthiambutene

 19. Dioxaphetyl butyrate

 20. Dipipanone

 21. Ethylmethylthiambutene

 22. Etonitazene

 23. Etoxeridine

 24. Furethidine

 25. Hydroxypethidine

 26. Ketobemidone

 27. Levomoramide

 28. Levophenacylmorphan

 29. Morpheridine

 30. Noracymethadol

 31. Norlevorphanol

 32. Normethadone

 33. Norpipanone

 34. Phenadoxone

 35. Phenampromide

 36. Phenomorphan

 37. Phenoperidine

 38. Piritramide

 39. Proheptazine

 40. Properidine

 41. Racemoramide

 42. Trimeperidine

 43. Propiram

 44. Difenoxin

 45. Alfentanyl

 46. Tilidine

 47. Alphamethylfentanyl (N‑[1‑(alpha‑methyl‑beta‑phenyl) ethyl‑4‑piperidyl] propionanilide; 1‑(1‑methyl‑2‑phenylethyl‑4‑(N‑pro‑panilido) piperidine).

 (C) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

 1. Acetorphine

 2. Acetyldihydrocodeine

 3. Benzylmorphine

 4. Codeine methylbromide

 5. Codeine‑N‑Oxide

 6. Cyprenorphine

 7. Desomorphine

 8. Dihydromorphine

 9. Etorphine

 10. Heroin

 11. Hydromorphinol

 12. Methyldesorphine

 13. Methylhydromorphine

 14. Morphine methylbromide

 15. Morphine methylsulfonate

 16. Morphine‑N‑Oxide

 17. Myrophine

 18. Nicocodeine

 19. Nicomorphine

 20. Normorphine

 21. Pholcodine

 22. Thebacon

 23. Drotebanol

 (D) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

 1. 3,4‑methylenedioxy amphetamine

 2. 5‑methoxy‑3,4‑methylenedioxy amphetamine

 3. 3,4‑methylenedioxymethamphetamine (MDMA)

 4. 3,4,5‑trimethoxy amphetamine

 5. Bufotenine

 6. Diethyltryptamine (DET)

 7. Dimethyltryptamine (DMT)

 8. 4‑methyl‑2,5‑dimethoxyamphetamine (STP)

 9. Ibogaine

 10. Lysergic acid diethylamide (LSD)

 11. Marijuana

 12. Mescaline

 13. Peyote

 14. N‑ethyl‑3‑piperidyl benzilate

 15. N‑methyl‑3‑piperidyl benzilate

 16. Psilocybin

 17. Psilocyn

 18. Tetrahydrocannabinol (THC)

 19. 2,5‑dimethoxyamphetamine

 20. 4‑bromo‑2,5‑dimethoxyamphetamine

 21. 4‑Methoxyamphetamine

 22. Thiophene analog of phencyclidine

 23. Parahexyl

 24. Synthetic cannabinoids.—Any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedule I through V, is not an FDA‑approved drug, and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation:

 a. Naphthoylindoles. Any compound containing a 3‑(1‑naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Including, but not limited to, JWH‑015, JWH‑018, JWH‑019, JWH‑073, JWH‑081, JWH‑122, JWH‑200, JWH‑210, JWH‑398, AM‑2201, WIN 55‑212, AM‑2201 (C1 analog), AM‑1220.

 b. Naphthylmethylindoles. Any compound containing a 1H‑indol‑3‑yl‑(1‑naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

 c. Naphthoylpyrroles. Any compound containing a 3‑(1‑naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Including, but not limited to, JWH‑307, JWH‑370, JWH‑176.

 d. Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3‑position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

 e. Phenylacetylindoles. Any compound containing a 3‑phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Including, but not limited to, SR‑18, RCS‑8, JWH‑203, JWH‑250, JWH‑251.

 f. Cyclohexylphenols. Any compound containing a 2‑(3‑hydroxycyclohexyl)phenol structure with substitution at the 5‑position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. Including, but not limited to, CP 47,497 (and homologues), cannabicyclohexanol, CP‑55, 940.

 g. Benzoylindoles. Any compound containing a 3‑(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl, or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Including, but not limited to, AM‑694, Pravadoline (WIN 48,098), RCS‑4, AM‑630, AM‑1241, AM‑2233.

 h. 2,3‑Dihydro‑5‑methyl‑3‑(4‑morpholinylmethyl)pyrrolo [1,2,3‑de]‑1, 4‑benzoxazin‑6‑yl]‑1‑napthalenylmethanone (WIN 55,212‑2).

 i. 9‑(hydroxymethyl)‑6,6‑dimethy l‑3‑(2‑methyloctan‑2‑yl)‑6a,7,10,10a‑tetrahydrobenzo[c]chromen‑1‑ol 7370 (HU‑210, HU‑211).

 j. Adamantoylindoles. Any compound containing a 3‑(1‑adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1‑(N‑methyl‑2‑piperidinyl)methyl or 2‑(4‑morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring system to any extent.

 (E) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers if possible within the specific chemical designation:

 (1) Mecloqualone;

 (2) Methaqualone; or

 (3) Gamma Hydroxybutyric Acid.

 (F) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

 (1) Fenethylline;

 (2) N‑ethylamphetamine;

 (3) Cathinone; or

 (4) Substituted Cathinones.

Any compound (not being bupropion) structurally derived from 2‑amino‑1‑phenyl‑1‑propanone by modification in any of the following ways:

 (a) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

 (b) by substitution at the 3‑position with an alkyl substituent;

 (c) by substitution at the nitrogen atom with alkyl or dialkyl groups, benzyl or methoxybenzyl groups; or

 (d) by inclusion of the nitrogen atom in a cyclic structure.

Including, but not limited to: Methylone, Mephedrone, 3,4‑Methylenedioxypyrovalerone (MDPV), Butylone, Methedrone, 4‑Methylethcathinone, Flephedrone, Pentylone, Pentedrone, Buphedrone.

HISTORY: 1962 Code Section 32‑1510.31; 1971 (57) 800; 1974 (58) 2228; 1976 Act No. 672 Sections 2‑4; 1978 Act No. 452 Section 1; 1981 Act No. 72, Section 1; 1982 Act No. 423 Sections 1, 2; 1985 Act No. 59 Sections 1‑3; 2000 Act No. 355, Section 3; 2002 Act No. 267, Section 1, eff May 20, 2002; 2012 Act No. 140, Section 2, eff April 2, 2012.

CROSS REFERENCES

Altering, tampering with or bypassing electric, gas or water meters, penalties, see Section 16‑13‑385.

Department of Health and Environmental Control regulations pertaining to controlled substances, see S.C. Code of Regulations R. 61‑4.101 et seq.

Manner in which changes in schedule of controlled substances shall be made, see Section 44‑53‑160.

Penalties for offense of “trafficking in illegal drugs”, see Section 44‑53‑370.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs. 25 S.C. L. Rev. 321.

Marijuana ‑ The Right to Truth. 23 S.C. L. Rev. 361.

Uniform Drug Law. 23 S.C. L. Rev. 540.

Attorney General’s Opinions

Pursuant to the federal action temporarily adding mephedrone, methylone, and MDPV to the federal drug abuse controlled substance schedules as Schedule I controlled substances, Department of Health and Environmental Control is authorized and directed pursuant to the specific procedures of Section 44‑53‑160 (4) to designate these substances in Section 44‑53‑190 as Schedule I controlled substances at the Department’s first or special Board meeting after publication in the federal register of the final order of the federal designation. Once these substances become Schedule I controlled substances under state law, then the legislatively‑prescribed criminal penalties may be imposed for their misuse. S.C. Op.Atty.Gen. (Sept. 28, 2011) 2011 WL 4592373.

NOTES OF DECISIONS

Admissibility of evidence 2

Probable cause 1

1. Probable cause

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

2. Admissibility of evidence

Evidence of an accommodation sale of a controlled substance is considered only in mitigation of sentence and does not affect the nature of the underlying conviction for impeachment purposes. Porter v. State (S.C. 1986) 290 S.C. 38, 348 S.E.2d 172. Witnesses 345(2)

Possession of a controlled substance with intent to distribute is a crime of moral turpitude, so upon the subsequent trial, a defendant who had pled guilty to an accommodation sale of a controlled substance could be impeached as a witness. Porter v. State (S.C. 1986) 290 S.C. 38, 348 S.E.2d 172.

**SECTION 44‑53‑200.** Tests for inclusion of substance in Schedule II.

 The Department shall place a substance in Schedule II if it finds that:

 (a) It has a high potential for abuse;

 (b) It has a currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

 (c) Abuse may lead to severe psychic or physical dependence.

HISTORY: 1962 Code Section 32‑1510.32; 1971 (57) 800.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑210.** Schedule II.

 (a) The controlled substances listed in this section are included in Schedule II.

 (b) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

 (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding Apomorphine, Nalbuphine, Naloxone, and Naltrexone, and their respective salts;

 (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;

 (3) Opium poppy and poppy straw;

 (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

 (c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

 1. Alphaprodine

 2. Anileridine

 3. Bezitramide

 4. Dihydrocodeine

 5. Diphenoxylate

 6. Fentanyl

 7. Isomethadone

 8. Levomethorphan

 9. Levorphanol

 10. Metazocine

 11. Methadone

 12. Methadone ‑ Intermediate, 4‑cyano‑2‑dimethylamino‑4, 4‑diphenyl butane

 13. Moramide ‑ Intermediate, 2‑methyl‑3‑morpholino‑1, 1‑diphenylpropane‑carboxylic acid

 14. Pentazocine (to be administered by injection only)

 15. Pethidine (meperidine).

 16. Pethidine ‑ Intermediate‑A, 4‑cyano‑1‑methyl‑4‑phenyl‑piperidine

 17. Pethidine ‑ Intermediate‑B, ethyl‑4‑phenylpiperidine‑4‑carboxylate

 18. Pethidine ‑ Intermediate‑C, 1‑methyl‑4‑phenylpiperidine‑4‑carboxylic acid

 19. Phenazocine

 20. Piminodine

 21. Racemethorphan

 22. Racemorphan

 23. Dextropropoxyphene [alpha‑(+)‑4‑dimethylamino‑1, 2‑diphenyl‑3‑methyl‑2‑propionoxybutane], in bulk form.

 24. Sufentanil

 (d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

 1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

 2. Methamphetamine, its salts, and salts of isomers.

 3. Phenmetrazine and its salts.

 4. Methylphenidate.

 (e) [Deleted]

 (f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

 1. Amobarbital

 2. Secobarbital

 3. Pentobarbital

 4. Phencyclidine

 5. Phencyclidine immediate precursors:

 (a) 1‑phenylcyclohexylamine

 (b) 1‑piperidinocyclohexanecarbonitrile (PCC).

 (g) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance:

 (1) Immediate precursor to amphetamine and methamphetamine:

 (i) Phenylacetone, also known as phenyl‑2‑propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

HISTORY: 1962 Code Section 32‑1510.33; 1971 (57) 800; 1973 (58) 349; 1974 (58) 2228, 2284; 1976 Act No. 672 Section 5; 1978 Act No. 452 Section 2; 1979 Act No. 118 Section 1; 1980 Act No. 388, Section 1; 1981 Act No. 72, Section 2; 1982 Act No. 423, Section 3; 1985 Act No. 59 Sections 4, 5; 1994 Act No. 456, Section 1.

CROSS REFERENCES

Altering, tampering with or bypassing electric, gas or water meters, penalties, see Section 16‑13‑385.

Continuing education for dentists on the prescription of Schedule II, III, and IV controlled substances, see Section 40‑15‑145.

Manner in which changes in schedule of controlled substances shall be made, see Section 44‑53‑160.

Optometrists, licensure requirements, display, renewal, and reinstatement of license, see Section 40‑37‑240.

Penalties for offenses of “trafficking in cocaine” and “trafficking in illegal drugs”, see Section 44‑53‑370.

Penalty for manufacturing, distributing, or possessing ice, crank, or crack cocaine, see Section 44‑53‑375.

Pharmacists, continuing education, see Section 40‑43‑130.

Physician assistants, requirements for writing prescriptions for drugs, controlled substances, and medical devices, see Section 40‑47‑965.

Physicians and Miscellaneous Health Care Professionals, continuing professional education, see Section 40‑47‑40.

Podiatrists, annual renewal of licenses, continuing education requirements, see Section 40‑51‑140.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑220.** Tests for inclusion of substance in Schedule III.

 The Department shall place a substance in Schedule III if it finds that:

 (a) It has a potential for abuse less than the substances listed in Schedules I and II;

 (b) It has a currently accepted medical use in treatment in the United States; and

 (c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

HISTORY: 1962 Code Section 32‑1510.34; 1971 (57) 800.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑230.** Schedule III.

 (a) The controlled substances listed in this section are included in Schedule III.

 (b) Any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

 1. Benzphetamine

 2. Chlorphentermine

 3. Clortermine

 4. (Deleted)

 5. Phendimetrazine

 (c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

 1. any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active ingredients which are not listed in any schedule;

 2. any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the United States Food and Drug Administration for marketing only as a suppository;

 3. any substance which contains any quantity of a derivative or barbituric acid or any salt thereof;

 4. Chlorhexadol;

 5. Gamma Hydroxybutyric Acid, and its salts, isomers, and salts of isomers contained in a drug product for which an application has been approved under Section 505 of the Federal Food, Drug and Cosmetic Act;

 6. Glutehimide;

 7. Lysergic Acid;

 8. Lysergic Acid Amide;

 9. Methyprylon;

 10. Sulfondiethylmethane;

 11. Sulfonethylmethane;

 12. Sulfonmethane.

 (d) Nalorphene

 (e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

 1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

 2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non‑narcotic ingredients in recognized therapeutic amounts.

 3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a four‑fold or greater quantity of an isoquinoline alkaloid of opium.

 4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non‑narcotic ingredients in recognized therapeutic amounts.

 5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non‑narcotic ingredients in recognized therapeutic amounts.

 6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non‑narcotic ingredients in recognized therapeutic amounts.

 7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non‑narcotic ingredients in recognized therapeutic amounts.

 8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non‑narcotic ingredients in recognized therapeutic amounts.

HISTORY: 1962 Code Section 32‑1510.35; 1971 (57) 800; 1974 (58) 2228, 2284; 1975 (59) 104; 1979 Act No. 118, Section 2; 1982 Act No. 423, Section 4; 2000 Act No. 355, Section 4.

CROSS REFERENCES

Altering, tampering with or bypassing electric, gas or water meters, penalties, see Section 16‑13‑385.

Continuing education for dentists on the prescription of Schedule II, III, and IV controlled substances, see Section 40‑15‑145.

Manner in which changes in schedule of controlled substances shall be made, see Section 44‑53‑160.

Optometrists, licensure requirements, display, renewal, and reinstatement of license, see Section 40‑37‑240.

Pharmacists, continuing education, see Section 40‑43‑130.

Physician assistants, requirements for writing prescriptions for drugs, controlled substances, and medical devices, see Section 40‑47‑965.

Physicians and Miscellaneous Health Care Professionals, continuing professional education, see Section 40‑47‑40.

Podiatrists, annual renewal of licenses, continuing education requirements, see Section 40‑51‑140.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑240.** Tests for inclusion of substance in Schedule IV.

 The Department shall place a substance in Schedule IV if it finds that:

 (a) It has a low potential for abuse relative to the substances in Schedule III;

 (b) It has a currently accepted medical use in treatment in the United States; and

 (c) Abuse of the substance may lead to limited physical or psychological dependence relative to substances in Schedule III.

HISTORY: 1962 Code Section 32‑1510.36; 1971 (57) 800.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑250.** Schedule IV.

 The controlled substances in this section are included in Schedule IV.

 (a) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers (whether position, geometric, or optical), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

 (1) Alprazolam

 (2) Barbital

 (3) Bromazepam

 (4) Camazepam

 (5) Chloral Betaine

 (6) Chloral Hydrate

 (7) Chlordiazepoxide

 (8) Clobazam

 (9) Clonazepam

 (10) Clorazepate

 (11) Clotiazepam

 (12) Cloxazolam

 (13) Delorazepam

 (14) Diazepam

 (15) Estazolam

 (16) Ethchlorvynol

 (17) Ethinamate

 (18) Ethyl Loflazepate

 (19) Fludiazepam

 (20) Flunitrazepam

 (21) Flurazepam

 (22) Halazepam

 (23) Haloxazolam

 (24) Ketazolam

 (25) Loprazolam

 (26) Lorazepam

 (27) Lormetazepam

 (28) Mebutamate

 (29) Medazepam

 (30) Meprobamate

 (31) Methohexital

 (32) Methylphenobarbital

 (33) Nimetazepam

 (34) Nitrazepam

 (35) Nordiazepam

 (36) Oxazepam

 (37) Oxazolam

 (38) Paraldehyde

 (39) Petrichloral

 (40) Phenobarbital

 (41) Pinazepam

 (42) Prazepam

 (43) Temazepam

 (44) Tetrazepam

 (45) Triazolam.

 (b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether position, geometric, or optical), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

 (1) Diethylpropion

 (2) Mazindol

 (3) Phentermine

 (4) Pemoline, including organometallic complexes and chelates thereof

 (5) Pipradol

 (6) SPA [(‑)‑1‑Dimethylamino‑1, 2‑diphenylethane].

 (c) Any material, compound, mixture or preparation containing any quantity of the following substance, including its salts, isomers (whether position, geometric, or optical) and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

 (1) Fenfluramine.

 (d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts;

 (1) [Blank]

 (e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

 (1) Not more than one milligram of difenoxin and not less than twenty‑five micrograms of atropine sulfate per dosage unit.

 (2) Dosage forms of Dextropropoxyphene [Alpha‑(+)‑4‑dimethylamino‑1, 2‑diphenyl‑3‑methyl‑2‑propionoxybutane].

 (f) Pentazocine hydrochloride and acetaminophen, pentazocine hydrochloride and aspirin, and pentazocine and naloxone hydrochloride (all for oral administration only).

 (g) Butorphanol

HISTORY: 1962 Code Section 32‑1510.37; 1971 (57) 800; 1974 (58) 2228; 1976 Act No. 672 Section 6; 1978 Act No. 452 Sections 3, 4; 1979 Act No. 118 Section 3; 1981 Act No. 72, Section 3; 1982 Act No. 423 Section 5; 1985 Act No. 59 Sections 6, 7; 1994 Act No. 456, Section 2; 2000 Act No. 355, Section 9.

CROSS REFERENCES

Altering, tampering with or bypassing electric, gas or water meters, penalties, see Section 16‑13‑385.

Continuing education for dentists on the prescription of Schedule II, III, and IV controlled substances, see Section 40‑15‑145.

Manner in which changes in schedule of controlled substances shall be made, see Section 44‑53‑160.

Optometrists, licensure requirements, display, renewal, and reinstatement of license, see Section 40‑37‑240.

Pharmacists, continuing education, see Section 40‑43‑130.

Physician assistants, requirements for writing prescriptions for drugs, controlled substances, and medical devices, see Section 40‑47‑965.

Physicians and Miscellaneous Health Care Professionals, continuing professional education, see Section 40‑47‑40.

Podiatrists, annual renewal of licenses, continuing education requirements, see Section 40‑51‑140.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑260.** Tests for inclusion of substance in Schedule V.

 The Department shall place a substance in Schedule V if it finds that:

 (a) It has a low potential for abuse relative to the substances listed in Schedule IV;

 (b) It has a currently accepted medical use in treatment in the United States; and

 (c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances listed in Schedule IV.

HISTORY: 1962 Code Section 32‑1510.38; 1971 (57) 800.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑270.** Schedule V.

 (a) The controlled substances listed in this section are included in Schedule V.

 (b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more non‑narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

 (1) Not more than 200 milligrams of codeine per 100 milliliter or per 100 grams;

 (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

 (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

 (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

 (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

 (6) Not more than one‑half milligram of difenoxin and not less than twenty‑five micrograms of atropine sulfate per dosage unit.

HISTORY: 1962 Code Section 32‑1510.39; 1971 (57) 800; 1978 Act No. 452 Section 5; 1979 Act No. 118 Section 4; 1985 Act No. 59 Section 8.

CROSS REFERENCES

Altering, tampering with or bypassing electric, gas or water meters, penalties, see Section 16‑13‑385.

Manner in which changes in schedule of controlled substances shall be made, see Section 44‑53‑160.

Physicians and Miscellaneous Health Care Professionals, continuing professional education, see Section 40‑47‑40.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

**SECTION 44‑53‑280.** Promulgation of rules and regulations; requirement of professional license; expiration of registration; failure to renew registration; reinstatement; fees and penalties.

 (A) The department may promulgate regulations and may charge reasonable fees relating to the license and control of the manufacture, distribution, and dispensing of controlled substances.

 (B) No person engaged in a profession or occupation for which a license is required by law may be registered under this article unless the person holds a valid license of that profession or occupation.

 (C) A class 20‑28 registration, as provided for by the board in regulation, expires October first of each year. A registrant who fails to renew by October thirty‑first must be penalized twenty‑five dollars. If failure to renew continues beyond October thirty‑first, the registrant must be notified, by certified mail return receipt requested, sent to the registrant’s last known address, that continued failure to renew will result in the cancellation of the registration. The registration of a registrant who fails to renew by December thirty‑first is canceled. However, registration may be reinstated upon payment of the renewal fees due and a penalty of one hundred dollars if the registrant is otherwise in good standing and presents a satisfactory explanation for failure to renew.

 (D) All registrations other than class 20‑28, as provided for by the board in regulation, expire on April first of each year. A registrant who fails to renew by April thirtieth must be penalized twenty‑five dollars. If failure to renew continues beyond April thirtieth, the registrant must be notified, by certified mail return receipt requested, sent to the registrant’s last known address, that continued failure to renew will result in cancellation of the registration. The registration of a registrant who fails to renew by June thirtieth is canceled. However, registration may be reinstated upon payment of the renewal fees due and a penalty of one hundred dollars if the registrant is otherwise in good standing and presents a satisfactory explanation for failure to renew.

 (E) Refusal by the department to reinstate a canceled registration after payment of the renewal fee and penalty and presentation of an explanation constitutes a refusal to renew and the procedures under Section 44‑53‑320 apply.

 (F) For class 20‑28 registrants, initial registrations issued before July first expire October first of that same year, and initial registrations issued on or after July first expire October first of the following year. For classes other than class 20‑28, initial registrations issued before January first expire April first of the following year, and initial registrations issued on or after January first expire April first of the following year.

HISTORY: 1962 Code Section 32‑1510.40; 1971 (57) 800; 1974 (58) 2228; 1977 Act No. 73, Section 1; 1981 Act No. 79, Section 1; 1994 Act No. 457, Section 1.

CROSS REFERENCES

Pharmacists, see Sections 40‑43‑10 et seq.

Department of Health and Environmental Control regulations pertaining to controlled substances, see S.C. Code of Regulations R. 61‑4.101 et seq.

Library References

Health 113.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 12 to 14.

**SECTION 44‑53‑290.** Requirement of and authority granted by registration; individuals exempt from registration; registration for maintenance and detoxification treatment.

 (a) Every person who manufactures, distributes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance, shall obtain a registration issued by the Department in accordance with its rules and regulations.

 (b) Persons registered by the Department under this article to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

 (c) The following persons need not register and may lawfully possess controlled substances under this article:

 (1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

 (2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

 (3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

 (d) The Department may, by regulation, waive the requirement for registration of certain manufacturers, distributors or dispensers if it finds it consistent with the public health and safety.

 (e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

 (f) The Department is authorized to inspect the establishment of a registrant or an applicant for a registration in accordance with the rules and regulations promulgated by it.

 (g) The Department may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

 (h) The Department may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from State prosecution for possession and distribution of controlled substances to the extent of the authorization.

 (i) Practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate registration for that purpose. The Board shall register an applicant to dispense but not prescribe narcotic drugs to individuals for maintenance treatment or detoxification treatment, or both,

 (1) if the applicant is a practitioner who is otherwise qualified to be registered under the provisions of this article to engage in the treatment with respect to which registration has been sought;

 (2) if the Board determines that the applicant will comply with standards established by the Board respecting security of stocks of narcotic drugs for such treatment, and the maintenance of records in accordance with Section 44‑53‑340 and the rules issued by the Board on such drugs; and

 (3) if the Board determines that the applicant will comply with standards established by the Board after consultation with the South Carolina Methadone Council respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.

 (j) Pursuant to the procedures set forth in Section 44‑53‑300, the department may issue a registration in Schedule V to a nurse practitioner certified to prescribe Schedule V controlled substances by the State Board of Nursing for South Carolina and to a physician’s assistant certified to prescribe Schedule V controlled substances by the State Board of Medical Examiners. A nurse practitioner or a physicians’ assistant registered by the department pursuant to this subsection may not acquire, possess, or dispense, other than by prescription, a controlled substance except as provided by law.

HISTORY: 1962 Code Section 32‑1510.41; 1971 (57) 800; 1975 (59) 104; 1993 Act No. 124, Section 3.

Library References

Health 113.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 12 to 14.

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs, 25 S.C. L. Rev. 321.

**SECTION 44‑53‑300.** Granting of registration.

 (a) The Department shall register an applicant to manufacture, distribute, or dispense controlled substances included in Sections 44‑53‑190, 44‑53‑210, 44‑53‑230, 44‑53‑250 and 44‑53‑270 if it determines that the issuance of such registration is consistent with the public interest. In determining the public interest, the following factors shall be considered:

 (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

 (2) Compliance with applicable state or federal law;

 (3) Promotion and technical advances in the art of manufacturing these substances and the development of new substances;

 (4) Prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution or dispensing of such substances;

 (5) Past experience in the manufacture, distribution, and dispensing of controlled substances and the existence in the establishment of effective controls against diversion;

 (6) Such other factors as may be relevant to and consistent with the public health and safety; and

 (7) Licensing by a federal agency.

 (b) A registration granted under subsection (a) of this section shall not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

 (c) Within the discretion of the Department, practitioners may be registered to dispense one or more controlled substances in Schedules II through V if they are authorized to dispense drugs under the law of this State. Such practitioners, properly registered with the Department to dispense controlled substances, may also conduct research with non‑narcotic controlled substances in Schedules II through V without additional registration as a researcher, provided that prior to engaging in such research, the practitioner shall notify the Department in writing of the scope of such research and the name of the controlled substances to be utilized. Practitioners desiring to conduct research with Schedule I controlled substances or with narcotic controlled substances in Schedules II through V shall first obtain a separate researcher registration from the Department.

 (d) The Department shall permit persons to apply for registration within sixty days after June 17, 1971 who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substances prior to June 17, 1971 and who are registered by the State.

 (e) Compliance by manufacturers and distributors with the provisions of the Federal law respecting registration (excluding fees) entitles them to be registered under this article.

HISTORY: 1962 Code Section 32‑1510.42; 1971 (57) 800; 1981 Act No. 79, Sections 2, 3.

CROSS REFERENCES

Research protocols, see S.C. Code of Regulations R. 61‑4.203.

Library References

Health 113.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 12 to 14.

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs. 25 S.C. L. Rev. 321.

NOTES OF DECISIONS

In general 1

1. In general

Regardless of the nature of the medical practitioner, he is entitled to a permit to dispense controlled drugs only if the Board determines that such is in the public interest. Suber v. South Carolina State Bd. of Health (S.C. 1972) 259 S.C. 558, 193 S.E.2d 520.

**SECTION 44‑53‑310.** Grounds for denial, revocation, or suspension of registration; civil fine.

 (a) An application for a registration or a registration granted pursuant to Section 44‑53‑300 to manufacture, distribute, or dispense a controlled substance, may be denied, suspended, or revoked by the Board upon a finding that the registrant:

 (1) Has materially falsified any application filed pursuant to this article;

 (2) Has been convicted of a felony or misdemeanor under any State or Federal law relating to any controlled substance;

 (3) Has had his Federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

 (4) Has failed to comply with any standard referred to in Section 44‑53‑290(i).

 (b) The department may place a registrant who violates this article on probation or levy a civil fine of not more than two thousand five hundred dollars, or both. Fines generated pursuant to this section must be remitted to the State Treasurer for deposit to the benefit of the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department’s addiction center facilities.

 (c) The Department may suspend, deny, or revoke the registration of any registrant or applicant for the conviction of any felony or misdemeanor involving moral turpitude.

 (d) The Department may suspend, deny, or revoke the registration of any registrant or applicant for violation of any of the rules and regulations issued by the Department relating to controlled substances.

 (e) The Department may suspend, deny, or revoke the registration of any registrant or applicant if it finds that the security provided for the storage of controlled substances is inadequate to the extent that repeated diversions by theft have occurred.

 (f) The Department may suspend, deny, or revoke the registration of any registrant or applicant upon a finding by the Department that the registrant or applicant has violated any statutory provision of this article.

HISTORY: 1962 Code Section 32‑1510.43; 1971 (57) 800; 1974 (58) 2228; 1975 (59) 104; 1981 Act No. 79, Sections 4, 5; 1994 Act No. 497, Part II, Section 36L.

Library References

Health 201.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 87 to 88, 197.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 52 to 59.

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs. 25 S.C. L. Rev. 321.

**SECTION 44‑53‑320.** Procedure for denial, revocation, or suspension of registration; administrative consent order.

 (a) Order to show cause.—Before denying, suspending or revoking a registration, or refusing a renewal of registration, the Department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the Department at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

 (b) The Department, without an order to show cause, may suspend any registration simultaneously with the institution of proceedings under Section 44‑53‑310, or where renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants this action. A failure to comply with a standard referred to in Section 44‑53‑290(i) may be treated under this subsection as grounds for immediate suspension of a registration granted under such section. The suspension shall continue in effect until withdrawn by the Board or dissolved by a court of competent jurisdiction.

 (c) In the event the Department suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the suspension or revocation is withdrawn by the Department or dissolved by a court of competent jurisdiction, unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances shall be forfeited to the State.

 (d) After proper hearing of either a formal or informal nature, the Department, upon its own motion or otherwise, may tender to any respondent in an action brought under subsection (a) of this section, an offer of an administrative consent order if it is found that such administrative consent order properly serves the interests of justice. Such order may contain total or partial revocation of a portion or all of the registration to be affected; assessment of a civil fine and a probationary registration period as provided in Section 44‑53‑310; terms of any probationary registration; and any other terms affecting such registration as may be agreed upon and consented to by the parties to the order. Such order shall become effective on the date signed by the administrative hearing officer designated by the department unless another date is specified within the order. Violation of such order by the respondent thereto at any time subsequent to the effective date of the order and prior to the expiration of the order or the probationary registration period set forth therein shall cause the registration affected by such order to be revoked, after notice of such revocation is mailed to the respondent at his last known address.

HISTORY: 1962 Code Section 32‑1510.44; 1971 (57) 800; 1975 (59) 104; 1978 Act No. 546 Section 1.

Library References

Health 201.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 87 to 88, 197.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 52 to 59.

LAW REVIEW AND JOURNAL COMMENTARIES

License to Dispense Controlled Drugs. 25 S.C. L. Rev. 321.

**SECTION 44‑53‑330.** Copy of judgment sent to licensing board upon conviction.

 Upon the conviction of any person of the violation of any provision of this article, a certified copy of the judgment of conviction shall be sent by the clerk of the court to the licensing board by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. Upon final order of the Department suspending, denying, modifying, or revoking the controlled substances registration of any registrant or applicant under this article, or upon the execution and approval of an administrative consent order provided for by Section 44‑53‑320, the Department shall forward a copy thereof to the licensing board by whom the affected registrant or applicant has been licensed or registered to practice his profession or carry on his business, if such licensing board be in existence.

HISTORY: 1962 Code Section 32‑1510.45; 1971 (57) 800; 1981 Act No. 79, Section 6.

Library References

Health 201.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 87 to 88, 197.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 52 to 59.

**SECTION 44‑53‑340.** Records and inventories of registrants.

 Persons registered to manufacture, distribute, or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record‑keeping and inventory requirements of Federal law and with any additional rules the Department issues.

HISTORY: 1962 Code Section 32‑1510.46; 1971 (57) 800.

Library References

Controlled Substances 10.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 15, 65, 75 to 77, 99 to 100, 103 to 111, 135, 225 to 227, 311, 331.

**SECTION 44‑53‑350.** Order forms for distribution of controlled substances.

 (a) Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form prescribed by the Department. Compliance with the provisions of Federal law respecting order forms shall be deemed compliance with this section.

 (b) Nothing contained in subsection (a) shall apply:

 (1) To the administering or dispensing of such substances to a patient by a practitioner in the course of his professional practice, however, such practitioner shall comply with the requirements of Section 44‑53‑340;

 (2) To the distribution or dispensing of such substances by a pharmacist to an ultimate user pursuant to a written prescription issued by a practitioner authorized to issue such prescription, however, such pharmacist shall comply with the requirements of Section 44‑53‑340.

HISTORY: 1962 Code Section 32‑1510.47; 1971 (57) 800.

Library References

Controlled Substances 10.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 15, 65, 75 to 77, 99 to 100, 103 to 111, 135, 225 to 227, 311, 331.

**SECTION 44‑53‑360.** Prescriptions.

 (a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, or in emergency situations as prescribed by the Department by regulation, no controlled substance included in Schedule II may be dispensed without the written prescription of a practitioner. Prescriptions shall be retained in conformity with the requirements of Section 44‑53‑340. No prescription for a controlled substance in Schedule II may be refilled.

 (b) A pharmacist may dispense a controlled substance included in Schedule III, IV, or V pursuant to either a written prescription signed by a practitioner, or a facsimile of a written, signed prescription, transmitted by the practitioner or the practitioner’s agent to the pharmacy, or pursuant to an oral prescription, reduced promptly to writing and filed by the pharmacist. A prescription transmitted by facsimile must be received at the pharmacy as it was originally transmitted by facsimile and must include the name and address of the practitioner, the phone number for verbal confirmation, the time and date of transmission, and the name of the pharmacy intended to receive the transmission, as well as any other information required by federal or state law. Such prescription, when authorized, may not be refilled more than five times or later than six months after the date of the prescription unless renewed by the practitioner.

 (c) No controlled substances included in any schedule may be distributed or dispensed for other than a medical purpose. No practitioner may dispense a Schedule II narcotic controlled substance for the purpose of maintaining the addiction of a narcotic dependent person outside of a facility or program approved by the Department of Health and Environmental Control. No practitioner may dispense a controlled substance outside of a bona fide practitioner‑patient relationship.

 (d) Unless specifically indicated in writing on the face of the prescription that it is to be refilled, and the number of times specifically indicated, no prescription may be refilled. The indication of “PRN” or “ad lib” or phrases, abbreviations, or symbols of like meaning shall not be construed as to exceed five refills or six months, whichever shall first occur. Preprinted refill instructions on the face of a prescription shall be disregarded by the dispenser unless an affirmative marking or other indication is made by the prescriber.

 (e) Prescriptions for controlled substances in Schedule II with the exception of transdermal patches, must not exceed a thirty‑one day supply. Prescriptions for Schedule II substances must be dispensed within ninety days of the date of issue, after which time they are void. Prescriptions for controlled substances in Schedules III through V, inclusive, must not exceed a ninety‑day supply.

 (f) Preprinted prescriptions for controlled substances in any schedule are prohibited.

 (g) The Board shall, by rules and regulations, specify the manner by which prescriptions are filed.

 (h) A prescription, in order to be effective in legalizing the possession of a controlled substance and eliminating the need for registration of the recipient, must be issued for legitimate medical purposes. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding liability rests with the pharmacist who fills and ultimately dispenses the prescription. An order purporting to be a prescription issued to a drug dependent person, not in the course of generally accepted medical treatment, but for the purpose of providing the user with controlled substances sufficient to maintain his dependence upon the substance, or to provide him with quantities of controlled substances in great excess of normal dosage ranges as recommended by the manufacturer of the substance, is not a prescription within the meaning and intent of this article; and the person filling or dispensing such an order, as well as the person issuing it, shall be deemed in violation of this section.

 (i) Excepting a mail order prescription dispensed in compliance with Chapter 43 of Title 40 for which the dispenser requires proper identification of the recipient, a prescription for a controlled substance in Schedules II through V may not be filled unless the dispenser knows the recipient or requires the recipient to produce a government issued photo identification, and the dispenser notes the identification source and number on the prescription, or in a readily retrievable log including:

 (1) prescription number;

 (2) date prescription filled;

 (3) number and type of identification;

 (4) initials of person obtaining and recording information.

HISTORY: 1962 Code Section 32‑1510.48; 1971 (57) 800; 1974 (58) 2228; 1975 (59) 104; 1981 Act No. 79, Section 7; 2000 Act No. 355, Section 10; 2002 Act No. 365, Sections 2, 3, eff September 26, 2002; 2006 Act No. 396, Section 2, eff June 14, 2006; 2007 Act No. 71, Sections 1 to 3, eff June 13, 2007.

CROSS REFERENCES

Drug Product Selection Act, see Chapter 24 of Title 39.

Library References

Controlled Substances 10.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 15, 65, 75 to 77, 99 to 100, 103 to 111, 135, 225 to 227, 311, 331.

**SECTION 44‑53‑362.** Controlled substance take‑back events and mail‑back programs; collectors.

 (A) A controlled substance manufacturer, distributer, or reverse distributer; a narcotic treatment program; a hospital or clinic with an onsite pharmacy; or a retail pharmacy operating in the State may apply to be registered as a collector by the federal Drug Enforcement Administration, pursuant to 21 C.F.R. 1317.40, to receive Schedule II, III, IV, and V controlled substances from an ultimate user, or a person entitled to dispose of an ultimate user decedent’s property, as part of law enforcement take‑back events or collector mail‑back programs. A collector must comply with any state and federal requirements to ensure the safe disposal of controlled substances and to prevent diversion of collected controlled substances, including as provided in 21 C.F.R. Part 1317.

 (B) The Department of Health and Environmental Control shall develop guidance for pharmacies and other entities qualified to register as a collector to encourage participation. The department shall coordinate with law enforcement, health care providers, and the U.S. Drug Enforcement Administration to encourage registration as a collector and to promote public awareness of controlled substance take‑back events and mail‑back programs.

HISTORY: 2017 Act No. 76 (H.3817), Section 1, eff May 19, 2017.

**SECTION 44‑53‑365.** Theft of controlled substance; penalty.

 (A) It is unlawful for a person to take or exercise control over a controlled substance, the immediate precursor of a controlled substance, or ephedrine, pseudoephedrine, or phenylpropanolamine belonging to another person or entity with the intent to deprive the person or entity of the controlled substance, the immediate precursor, or ephedrine, pseudoephedrine, or phenylpropanolamine.

 (B) A person who knowingly and intentionally violates subsection (A):

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

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

HISTORY: 2002 Act No. 365, Section 1, eff September 26, 2002; 2005 Act No. 127, Section 3, eff June 7, 2005.

Library References

Controlled Substances 21.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 270, 273, 319 to 320, 322, 326 to 327, 329 to 331.

**SECTION 44‑53‑370.** Prohibited acts A; penalties.

 (a) Except as authorized by this article it shall be unlawful for any person:

 (1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;

 (2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

 (b) A person who violates subsection (a) with respect to:

 (1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty‑five thousand dollars, or both. For a second offense, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, the offender must be imprisoned not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

 (2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

 (3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

 (4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, the sentence must be twice the first offense. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

 (c) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.

 (d) A person who violates subsection (c) with respect to:

 (1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

 (2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than two thousand dollars, or both, except as provided in subsection (d)(4). Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

 (3) cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense, the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

 (4) possession of more than: one gram of cocaine, one hundred milligrams of alpha‑ or beta‑eucaine, four grains of opium, four grains of morphine, two grains of heroin, one hundred milligrams of isonipecaine, twenty‑eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4‑methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to twenty‑eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44‑53‑450 upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections 17‑22‑10 through 17‑22‑160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

 When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14‑1‑205. The assessment portion of the bail must be distributed as provided in Section 14‑1‑206, 14‑1‑207, or 14‑1‑208, whichever is applicable.

 (e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

 (1) ten pounds or more of marijuana is guilty of a felony which is known as “trafficking in marijuana” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) ten pounds or more, but less than one hundred pounds:

 1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

 2. for a second offense, a term of imprisonment of not less than five years nor more than twenty years, no part of which may be suspended nor probation granted, and a fine of fifteen thousand dollars;

 3. for a third or subsequent offense, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (b) one hundred pounds or more, but less than two thousand pounds, or one hundred to one thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (c) two thousand pounds or more, but less than ten thousand pounds, or more than one thousand marijuana plants, but less than ten thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (d) ten thousand pounds or more, or ten thousand marijuana plants, or more than ten thousand marijuana plants regardless of weight, a term of imprisonment of not less than twenty‑five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

 (2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44‑53‑210(b)(4), is guilty of a felony which is known as “trafficking in cocaine” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) ten grams or more, but less than twenty‑eight grams:

 1. for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (b) twenty‑eight grams or more, but less than one hundred grams:

 1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

 (e) four hundred grams or more, a term of imprisonment of not less than twenty‑five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

 (3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44‑53‑190 or 44‑53‑210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as “trafficking in illegal drugs” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) four grams or more, but less than fourteen grams:

 1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 2. for a second or subsequent offense, a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

 (b) fourteen grams or more but less than twenty‑eight grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

 (c) twenty‑eight grams or more, a mandatory term of imprisonment of not less than twenty‑five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

 (4) fifteen grams or more of methaqualone is guilty of a felony which is known as “trafficking in methaqualone” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) fifteen grams but less than one hundred fifty grams:

 1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

 2. for a second or subsequent offense, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (b) one hundred fifty grams but less than fifteen hundred grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (c) fifteen hundred grams but less than fifteen kilograms, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (d) fifteen kilograms or more, a term of imprisonment of not less than twenty‑five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

 (5) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of lysergic acid diethylamide (LSD) is guilty of a felony which is known as “trafficking in LSD” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

 1. for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty thousand dollars;

 2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended or probation granted, and a fine of forty thousand dollars;

 3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

 1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (c) one thousand dosage units or the equivalent quantity, or more, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

 (6) one gram or more of flunitrazepam is guilty of a felony which is known as “trafficking in flunitrazepam” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) one gram but less than one hundred grams:

 1. for a first offense a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

 2. for a second or subsequent offense, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (b) one hundred grams but less than one thousand grams, a mandatory term of imprisonment of twenty years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (c) one thousand grams but less than five kilograms, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (d) five kilograms or more, a term of imprisonment of not less than twenty‑five years, nor more than thirty years, with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

 (7) fifty milliliters or milligrams or more of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid is guilty of a felony which is known as “trafficking in gamma hydroxybutyric acid” and, upon conviction, must be punished as follows:

 (a) for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

 (b) for a second or subsequent offense, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars.

 A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty‑five years, a mandatory minimum term of imprisonment of twenty‑five years, or a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years is not eligible for parole, extended work release, as provided in Section 24‑13‑610, or supervised furlough, as provided in Section 24‑13‑710. Notwithstanding Section 44‑53‑420, a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this section with a full sentence or punishment and not one‑half of the sentence or punishment prescribed for the offense.

 The weight of any controlled substance in this subsection includes the substance in pure form or any compound or mixture of the substance.

 The offense of possession with intent to distribute described in Section 44‑53‑370(a) is a lesser included offense to the offenses of trafficking based upon possession described in this subsection.

 (8) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of 3, 4‑methalenedioxymethamphetamine (MDMA) is guilty of a felony which is known as “trafficking in MDMA or ecstasy” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

 (i) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty thousand dollars;

 (ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of forty thousand dollars;

 (iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

 (i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (c) one thousand dosage units or the equivalent quantity, or more, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars.

 (f) It shall be unlawful for a person to administer, distribute, dispense, deliver, or aid, abet, attempt, or conspire to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit one of the following crimes against that individual:

 (1) kidnapping, Section 16‑3‑910;

 (2) trafficking in persons, Section 16‑3‑2020;

 (3) criminal sexual conduct in the first, second, or third degree, Sections 16‑3‑652, 16‑3‑653, and 16‑3‑654;

 (4) criminal sexual conduct with a minor in the first, second, or third degree, Section 16‑3‑655;

 (5) criminal sexual conduct where victim is legal spouse (separated), Section 16‑3‑658;

 (6) spousal sexual battery, Section 16‑3‑615;

 (7) engaging a child for a sexual performance, Section 16‑3‑810;

 (8) petit larceny, Section 16‑13‑30 (A); or

 (9) grand larceny, Section 16‑13‑30 (B).

 (g) A person who violates subsection (f) with respect to:

 (1) a controlled substance classified in Schedule I (b) or (c) which is a narcotic drug or lysergic acid diethylamide (LSD), or in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, must be:

 (a) for a first offense, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

 (b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

 (c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than fifteen years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

 Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted;

 (2) any other controlled substance or gamma hydroxybutyrate is guilty of a felony and, upon conviction, must be:

 (a) for a first offense, imprisoned not more than fifteen years or fined not more than twenty‑five thousand dollars, or both;

 (b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

 (c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than twenty‑five years, or fined not more than forty thousand dollars, or both.

 Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted.

HISTORY: 1962 Code Section 32‑1510.49; 1971 (57) 800, 2056; 1974 (58) 2284; 1979 Act No. 118 Section 5; 1981 Act No. 33 Sections 1, 2; 1984 Act No. 482, Section 1; 1988 Act No. 565, Section 1; 1990 Act No. 604, Sections 6, 7; 1993 Act No. 58, Section 1; 1993 Act No. 184, Sections 236‑238; 1994 Act No. 497, Part II, Sections 36M, 36N; 1995 Act No. 7, Part I, Section 17; 1998 Act No. 372, Sections 1, 2, 5; 2000 Act No. 355, Sections 5 to 8; 2002 Act No. 267, Sections 2, 3, eff May 20, 2002; 2005 Act No. 127, Section 4, eff June 7, 2005; 2010 Act No. 273, Section 37, eff June 2, 2010; 2010 Act No. 289, Section 12, eff June 11, 2010; 2012 Act No. 255, Section 12, eff June 18, 2012; 2015 Act No. 7 (S.196), Section 6.G, eff April 2, 2015; 2016 Act No. 154 (H.3545), Section 8, eff April 21, 2016.

CROSS REFERENCES

Applicability of presumptions set out in subsection (3) of Section 44‑53‑370 to prosecutions for distribution in proximity of school, see Section 44‑53‑445.

Application of penalty provided for in this section to person guilty of possessing controlled substance while receiving alcohol and drug addiction services, see Section 44‑52‑165.

Forfeiture of conveyances of narcotic drugs or controlled substances, see Section 44‑53‑520.

Illegal acts involving persons under seventeen years of age as separate offenses, penalties, see Section 44‑53‑577.

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

Murder committed while drug trafficking as aggravating circumstance, see Section 16‑3‑20.

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Provision that drug trafficking as defined in this section constitutes a violent crime, see Section 16‑1‑60.

Required response, under the Drug‑Free Workplace Act, of an employer upon receiving notice that an employee has been convicted of an offense under this section, see Section 44‑107‑50.

Library References

Controlled Substances 22, 32.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 265 to 268, 270 to 271, 289 to 295, 304, 310 to 313.

RESEARCH REFERENCES

ALR Library

1 ALR 6th 549 , Propriety of Lesser‑Included‑Offense Charge in State Prosecution of Narcotics Defendant‑Marijuana Cases.

2 ALR 6th 551 , Propriety of Lesser‑Included‑Offense Charge in State Prosecution of Narcotics Defendant‑Cocaine Cases.

Encyclopedias

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

S.C. Jur. Burglary Section 9, Punishment.

S.C. Jur. Criminal Domestic Violence Section 6, Sexual.

S.C. Jur. Criminal Sexual Conduct Section 10.5, Administration of Controlled Substance With Intent to Commit Criminal Sexual Conduct.

S.C. Jur. Homicide Section 27, Aggravating Circumstances.

S.C. Jur. Probation, Parole, and Pardon Section 16, Statutory Disqualifications from Parole Eligibility.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law: Possession of Drugs, the Elements of Possession. 27 S.C. L. Rev. 431.

United States Supreme Court Annotations

Drug offenses, use of telephone to make misdemeanor drug purchase, use of communication facility, felony drug distribution, see Abuelhawa v. U.S., 2009, 129 S.Ct. 2102, 556 U.S. 816, 173 L.Ed.2d 982.

Attorney General’s Opinions

To be sufficient for a conviction of possession of a controlled substance, there must be some corroborating evidence indicating that there was a knowing possession of the substance prior to or simultaneous with ingestion. S.C. Op.Atty.Gen. (December 30, 2002) 2002 WL 31958837.

1994 Act No. 497 repealed Section 44‑53‑470(d)(3)(i) and (ii). S.C. Op.Atty.Gen. (August 18, 1995) 1995 WL 803728.

Sentence imposed on individuals guilty of distribution of crack cocaine or possession with intent to distribute crack cocaine pursuant to Section 44‑53‑375 may not be suspended nor probation granted. However, provision does not specifically deny parole eligibility. S.C. Op.Atty.Gen. (April 14, 1993) 1993 WL 720101.

Sections 44‑53‑370(d)(i) and (ii) of the Code control as to the distribution of drug fines in light of the provisions of Section 44‑53‑580 of the Code; as a result, local law enforcement officers would be entitled to receive the specified amounts of the fines for drug cases in the circumstance provided by Sections 44‑53‑370(d)(i) and (ii). S.C. Op.Atty.Gen. (August 17, 1989) 1989 WL 406172.

The state has preempted municipal criminal sanctions regarding the control of drugs. S.C. Op.Atty.Gen. (September 1, 1988) 1988 WL 383550.

In determining weight of marijuana in prosecution for trafficking in marijuana, South Carolina courts would probably not allow statutorily excludible portions of marijuana plant to be weighed. S.C. Op.Atty.Gen. (July 8, 1985) 1985 WL 166034.

Section 44‑53‑445 creating a separate criminal offense of unlawful distribution, etc. of drugs within a half‑mile radius of a school is entitled to strong presumption of constitutionality accorded legislation. S.C. Op.Atty.Gen. (April 13, 1984) 1984 WL 159850.

First offense possession of marijuana with intent to distribute is a misdemeanor under Section 32‑1510.49 [1976 Code Section 44‑53‑370]. S.C. Op.Atty.Gen. (June 15, 1977) 1977 WL 24528.

NOTES OF DECISIONS

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1. In general

Court of Appeals would not apply rule of lenity to drug trafficking statute in defendant’s case; statute did not require proof of knowledge of the specific identity of the controlled substance, trial judge’s instructions, including his initial charge that criminal intent consisted of “conscious wrongdoing,” conveyed the pertinent legal standards to the jury, and trial judge further correctly charged that the State still bore the burden of proving the drug quantity and identity. State v. Miles (S.C.App. 2017) 421 S.C. 154, 805 S.E.2d 204. Controlled Substances 7

The defendant is permitted to review, and to reproduce, the transcript of the testimony of a witness who appeared before the grand jury. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383.

2. Constitutional issues

Sentencing provisions for marijuana trafficking contained in South Carolina’s Controlled Substances Act, mandating a term of imprisonment of 25 years “for a third or subsequent offense,” were not ambiguous and did not require that the prior offenses also be for trafficking ten pounds or more of marijuana, but applied generally to previous convictions under any state or federal statute “relating to” a broad range of controlled substances, and in any event, South Carolina Supreme Court’s implicit conclusion that statutes were not ambiguous so as to deprive petitioner of fair notice, in violation of due process, was not an objectively unreasonable application of established legal principles to the facts of the case, so as to warrant federal habeas relief. Thomas v. Davis (C.A.4 (S.C.) 1999) 192 F.3d 445. Habeas Corpus 509(1); Sentencing And Punishment 1210; Sentencing And Punishment 1257

Imposition of five year maximum sentence for distributing marijuana in violation of Code 1962 Section 32‑1510.49 did not constitute cruel and unusual punishment. Queen v. Leeke (D.C.S.C. 1978) 457 F.Supp. 476, dismissed 584 F.2d 977, certiorari denied 99 S.Ct. 2037, 441 U.S. 925, 60 L.Ed.2d 400.

Section 44‑53‑370(e)(2)(e) did not violate the defendant’s right to equal protection by “placing arbitrary and capricious values on acceptable conduct through the use of constitutionally impermissible presumptions which ignore the evolutionary and biological properties of the individual,” i.e. the existence of persons who are genetically or physiologically predisposed to drug use or abuse, where (1) the defendant presented no evidence to establish he was a member of the class, (2) the challenged legislation did not draw a class distinction on its face, (3) because the statute was facially neutral, the defendant failed to establish that it had a disproportionately adverse impact upon a certain minority, (4) the defendant presented nothing in the way of creditable evidence that by enacting Section 44‑53‑370(e), the legislature intended to affect an adverse impact on a select group, and (5) the defendant did not explain why the legislature may not criminalize the trafficking or sale of large quantities of drugs, even where the person selling or trafficking the drugs is predisposed to drug usage. State v. Barroso (S.C.App. 1995) 320 S.C. 1, 462 S.E.2d 862, rehearing denied, certiorari granted in part, reversed 328 S.C. 268, 493 S.E.2d 854, denial of post‑conviction relief reversed 350 S.C. 272, 565 S.E.2d 766.

Failure to disclose Brady material is reversible error only when the omission deprives the defendant of a fair trial. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383. Criminal Law 1166(10.10)

A conviction for conspiracy to traffic in marijuana under Section 44‑53‑370, which commenced prior to and without cessation continued beyond the effective date of new statutes enhancing the punishment for such an offense, does not violate the ex post facto prohibitions. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

A city law which imposed a mandatory 30‑day sentence on those convicted of simple possession of marijuana was unconstitutional since its penalty exceeded the penalty parameters for the same conduct established under a state law which afforded offenders the opportunity to pay a fine and avoid a jail sentence. City of North Charleston v. Harper (S.C. 1991) 306 S.C. 153, 410 S.E.2d 569.

Section 44‑53‑370(e)(2)(c), which concerns trafficking in more than 100 but less than 200 grams of cocaine and provides for “a mandatory term of imprisonment of 25 years, no part of which may be suspended, nor probation granted, and a fine of $50,000,” does not violate the separation of powers doctrine set forth in Art I, Section 8 of the South Carolina Constitution. The mandatory sentence set forth by the legislature does not impermissibly intrude on inherent judicial powers on the basis that all judicial discretion in sentencing is removed; the legislature has the ability to limit judicial discretion. The penalty assessed for a particular offense is, except in the rarest of cases, “purely a matter of legislative prerogative.” Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive is subject to statutory restrictions, and the legislature, in turn, is restricted by the state and federal constitutions. Similarly, the ability to obtain parole is a matter of legislative grace; if the legislature so chooses, parole may not be made available to those who commit certain offenses. Additionally, Section 44‑53‑370(e)(2)(c) is not violative of substantive due process, equal protection, or the prohibition against cruel and unusual punishment. State v. De La Cruz (S.C. 1990) 302 S.C. 13, 393 S.E.2d 184.

Section 44‑53‑370(e)(1)(b) is constitutional, since, because the mandatory minimum sentence of 25 years in prison and $25,000 fine for trafficking in marijuana with possession of 100 pounds or more, as provided therein, rationally relates to the state’s interest in protecting its citizens from the grave public health threat of large scale marijuana trafficking, the statute neither violates a defendant’s due process rights nor does it deprive him of equal protection of the law, and, since the punishment provided is not disproportionate to the crime, it does not constitute cruel and unusual punishment. State v. Kiser (S.C. 1986) 288 S.C. 441, 343 S.E.2d 292, certiorari denied 107 S.Ct. 94, 479 U.S. 823, 93 L.Ed.2d 46.

Statute providing mandatory minimum sentence for trafficking in marijuana, SC Code Section 44‑53‑370(e)(1)(b), did not violate defendant’s substantive due process and equal protection rights because State had vital interest in protecting citizens from public health threat of large scale marijuana trafficking and because decision to single out marijuana traffickers for especially harsh penalties had rational basis of protecting public health by attacking most pressing danger with stiffest penalties. State v. Kiser (S.C. 1986) 288 S.C. 441, 343 S.E.2d 292, certiorari denied 107 S.Ct. 94, 479 U.S. 823, 93 L.Ed.2d 46.

Trial court’s refusal to hold Code 1962 Section 32‑1510.49 [Code 1976 Section 44‑53‑370] unconstitutional was not erroneous. State v. Byrd (S.C. 1976) 267 S.C. 87, 226 S.E.2d 244.

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.

3. Double jeopardy

Joinder of offenses of manufacturing marijuana and manufacturing marijuana on the land of another in same indictment was not double jeopardy violation; offense of manufacturing or attempting to manufacture marijuana on the land of another required proof of an element that was not present in charge of manufacturing marijuana, and based on plain language of statute governing entry on another’s land for purpose of cultivating marijuana, it was intended for offense to be cumulative to other provisions of law. U.S.C.A. Const.Amend. 5; S.C. Const. art. 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. Double Jeopardy 146

Double jeopardy would not operate to bar a 1990 indictment for trafficking in marijuana, even though the defendants had previously been acquitted of trafficking in cocaine, since neither of the statutory offenses charged (trafficking in cocaine and trafficking in marijuana) is a lesser included offense of the other, and the entirety of the conduct sought to be proved in the first case did not establish any single element of the offense prosecuted in the subsequent case. State v. Wilson (S.C. 1993) 311 S.C. 382, 429 S.E.2d 453, rehearing denied.

The Double Jeopardy clause did not bar the prosecution of a defendant for trafficking in cocaine based on his travel to another state on a number of occasions, bringing back cocaine, and selling it to others for personal use and resale even though, prior to the trial for trafficking, the defendant had pled guilty to a separate charge of possession with intent to distribute cocaine, this charge occurring 6 weeks after the trafficking; although the defendant alleged that the drugs involved were the same ones involved in the trafficking charge, that cocaine had already been accounted for, and no evidence of the prior plea was used to prove the trafficking charge. State v. Dowey (S.C.App. 1992) 307 S.C. 69, 413 S.E.2d 848.

Cumulative punishment for possession of marijuana with intent to distribute and trafficking in marijuana based upon possession of 10 or more pounds under Section 44‑53‑370 violates principles of double jeopardy. Under Section 44‑53‑370(a)(1), possession of any amount of marijuana, coupled with sufficient indicia of intent to distribute, will support a conviction for possession with intent to distribute. On the other hand, under Section 44‑53‑370(e)(1), trafficking in marijuana, based solely on possession, is committed when a person knowingly possesses 10 pounds or more of marijuana. Where possession of an identical amount of marijuana would sustain convictions for both possession with intent to distribute and trafficking based upon possession, punishment under both statutory provisions is not permitted. Under the statute, the legislature intended possession with the intent to distribute to be a lesser‑included offense of trafficking based upon possession. Thus, when there is conflicting evidence as to whether the amount of marijuana involved is sufficient to invoke the trafficking statute, both charges should be submitted to the jury. However, where the undisputed evidence is that the amount involved exceeds the minimum trafficking amount, then only the trafficking charge should be submitted to the jury. Matthews v. State (S.C. 1990) 300 S.C. 238, 387 S.E.2d 258.

4. Search and seizure

Search warrant affidavit that contained false statements about a confidential informant personally observing drug purchases from home did not support a finding of probable cause once the false statements were removed, where informant stayed in a car down the road from home, and therefore her knowledge hinged on the reliability of a third party whose credibility had not been established. State v. Robinson (S.C. 2016) 415 S.C. 600, 785 S.E.2d 355, rehearing denied. Controlled Substances 147; Controlled Substances 148(4)

Search warrant affidavit for a residential search contained false statements that were made knowingly and intentionally in violation of Franks, where affidavit stated that a confidential informant personally made drug purchases out of home, but informant did not make or witness drug purchases from home. State v. Robinson (S.C. 2016) 415 S.C. 600, 785 S.E.2d 355, rehearing denied. Controlled Substances 147

Search warrant affidavit, on its face, had sufficient information to establish reliability of confidential informant, where affidavit stated that informant was a reliable informant who worked for police department, that informant purchased a quantity of off white powder substance represented as being cocaine and field‑testing positive for cocaine attributed from the occupants of house identified as the “home” in search warrant application, and that informant’s ability to make recent continuous purchases of illegal drugs from home led to affiant’s belief that there was the possibility there could be more illegal drugs located at home. State v. Robinson (S.C. 2016) 415 S.C. 600, 785 S.E.2d 355, rehearing denied. Controlled Substances 148(4)

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

The search of the defendant’s briefcase was proper, even though the officers could not have reasonably suspected it to contain the “large” quantity of marijuana for which they had probable cause to search, where the briefcase was found during a valid search of the defendant’s vehicle, and it was not unreasonable for them to believe that a portion of the marijuana, or even a sample, would be concealed therein. State v. Perez (S.C. 1993) 311 S.C. 542, 430 S.E.2d 503.

5. Effective assistance of counsel

Counsel’s performance was not deficient, as required to support claim of ineffective assistance, in failing to call three inmates as witnesses at trial for cocaine distribution to rebut prosecution witness’s testimony that he and defendant had previously trafficked in marijuana, which district court relied on to enhance defendant’s sentence; given defendant’s rejection of plea agreement that would have excluded marijuana evidence from calculation of his sentence, counsel could reasonably have concluded that defendant desired acquittal even at risk of higher sentence, and jury could have decided that inmates’ testimony weakened defense’s case against conviction. U.S. v. Terry (C.A.4 (S.C.) 2004) 366 F.3d 312, certiorari denied 125 S.Ct. 489, 543 U.S. 983, 160 L.Ed.2d 364. Criminal Law 1924

Defendant was not prejudiced by counsel’s alleged deficient performance in advising defendant not to testify at trial for cocaine distribution, as required to support claim of ineffective assistance, even though no other defense witness was able to rebut prosecution witness’s testimony that he and defendant had previously trafficked in marijuana, which district court relied on to enhance defendant’s sentence; defendant provided no concrete evidence of what he would have testified to in exculpation, and district court observed during sentencing that it found prosecution witness’s testimony extremely credible. U.S. v. Terry (C.A.4 (S.C.) 2004) 366 F.3d 312, certiorari denied 125 S.Ct. 489, 543 U.S. 983, 160 L.Ed.2d 364. Criminal Law 1936

Trial counsel was ineffective in failing to object to imposition of 25‑year sentence for trafficking 200‑400 grams of cocaine, since jury was instructed that conviction was conditioned on finding that defendant trafficked 10 or more grams of cocaine, and maximum sentence for possession of 10 grams of cocaine was 10 years; Apprendi decision, which required any fact other than prior conviction which increased penalty for a crime be submitted to jury and proven beyond a reasonable doubt, required drug amount to be submitted to jury and proven beyond a reasonable doubt, and there was no indication in verdict that jury found that defendant possessed more than 10 grams of cocaine. Dervin v. State (S.C. 2009) 386 S.C. 164, 687 S.E.2d 712. Criminal Law 1956

Defense counsel’s failure to ask trial court to rule on competency of witness, who had been sole witness to testify as to amount of methamphetamine in question, did not prejudice defendant, and thus could not amount to ineffective assistance, in prosecution for trafficking in crystal methamphetamine; at trial, defense counsel attacked credibility of witness on several grounds, including mental illness, he cross‑examined witness at length about his mental illness, and, thus jury was fully aware of fact that witness was a schizophrenic. Sellers v. State (S.C. 2005) 362 S.C. 182, 607 S.E.2d 82, rehearing denied. Criminal Law 1926

Counsel had no affirmative obligation to advise defendant of collateral consequences regarding parole eligibility if convicted of cocaine offenses, and thus, failure to advise defendant of parole eligibility did not constitute ineffective assistance. Randall v. State (S.C. 2004) 356 S.C. 639, 591 S.E.2d 608. Criminal Law 1920

6. Construction with other laws

Holding that prescription obtained by subterfuge or deception was not valid prescription for purposes of possession under South Carolina Code Section 32‑1510.49(c) (1962) [Section 44‑53‑370(c) (1976)] did not render as superfluous South Carolina Code Section 32‑1510.51(a)(3) (1962) [Section 44‑53‑390(a)(3) (1976)], since latter statutory provision is not concerned solely with element of possession. State v. Tolbert (S.C. 1977) 269 S.C. 210, 237 S.E.2d 55.

7. Knowledge or intent

At trial for trafficking in illegal drugs, State was not required to prove that defendant, who was in possession of package containing oxycodone, knew the precise identity of drugs inside the package; State proved that defendant knew package contained illegal drugs, and that the illegal drugs in the package were more than four grams of oxycodone. State v. Miles (S.C.App. 2017) 421 S.C. 154, 805 S.E.2d 204. Controlled Substances 34

By using “knowingly” in statute criminalizing trafficking in illegal drugs, the state legislature did not intend to require the State to prove a defendant knew the specific type of illegal drug he was trafficking. State v. Miles (S.C.App. 2017) 421 S.C. 154, 805 S.E.2d 204. Controlled Substances 35

Possession of an illicit drug gives rise to an inference of the possessor’s knowledge of the character of the substance. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied. Controlled Substances 68

A defendant’s knowledge may be equated with or substituted for the intent element of the crime of possessing illicit drugs. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied. Controlled Substances 27

In order to prove a violation of Section 44‑53‑370(a),the State is required to show that the defendant was at least criminally negligent when he or she manufactured, distributed, or dispensed a controlled substance. Thus, a trial court erred in ruling, in effect, that there is no mental state required for the offense of distribution of cocaine. State v. Ferguson (S.C. 1990) 302 S.C. 269, 395 S.E.2d 182.

While possession of more than 10 grams of cocaine or 28 grams of marijuana establishes a prima facie case of possession with intent to distribute, possession of these threshold amounts is not a required element of the offense of possession with intent to distribute. Possession of any amount of a controlled substance when coupled with sufficient indicium of intent to distribute will support a conviction for possession with intent to distribute. Proof of possession of drug paraphernalia is sufficient indicia of intent to distribute to support submission of such a charge to the jury where the amount of the controlled substance possessed is less than that specified in Section 44‑53‑370(d)(3). Furthermore, possession may be inferred from the circumstances and is imputed to one who has the power and intent to control the disposition or use of contraband; actual knowledge of the presence of contraband is strong evidence of intent to control its disposition or use. State v. Goldsmith (S.C. 1990) 301 S.C. 463, 392 S.E.2d 787, habeas corpus granted 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709.

It could be inferred from evidence that defendant had both power and intent to control cocaine during time her husband and undercover agent were outside mobile home, where state had produced evidence that defendant had actual knowledge of presence of cocaine, which is strong evidence of intent to control its disposition or use; knowledge may be equated with or substituted for intent element. State v. Kimbrell (S.C. 1987) 294 S.C. 51, 362 S.E.2d 630.

While actual knowledge of the presence of marijuana is such strong evidence of intent to control disposition or use that “knowledge” can often be equated with and substituted for the intent element, actual knowledge of physical presence is not the only circumstance from which the intent to control the disposition or use of an illegal substance can be inferred. State v. Lane (S.C. 1978) 271 S.C. 68, 245 S.E.2d 114. Controlled Substances 73

Accused’s offer to aid police in obtaining more marijuana so as to apprehend the distributor was an acknowledgment of the marijuana, from which it was inferable that the accused had ordered or expected the shipment and intended to control its use or disposition. State v. Lane (S.C. 1978) 271 S.C. 68, 245 S.E.2d 114.

Presence of marijuana in truck in defendant’s driveway was logically related to crime for which defendant, charged with possession of cocaine, was being tried, and was admissible to show motive or intent to distribute drugs. State v. Hammond (S.C. 1978) 270 S.C. 347, 242 S.E.2d 411.

Statute which forbids “knowingly or intentionally possessing certain substances” evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense. State v. Attardo (S.C. 1975) 263 S.C. 546, 211 S.E.2d 868. Controlled Substances 27

In proceeding where offense of knowingly and intentionally possessing controlled substances is alleged, knowledge, the element in question, must be established by the state before the accused has to put forth any defenses. State v. Attardo (S.C. 1975) 263 S.C. 546, 211 S.E.2d 868. Controlled Substances 68

8. Possession

Where the state presented only an evidentiary picture of an accused sitting at a table laden with narcotics and narcotic paraphernalia in an apartment where other drugs and paraphernalia were later discovered, and where the state did not identify the lesser or the lessee of the apartment, nor did it identify a small child who was in the apartment, the relationship between the child and any of the defendants, and where the state failed to establish any connection among the accused and his 2 co‑defendants, or between the co‑defendants, the state’s evidence showed only the accused’s presence in an unknown person’s apartment and his knowledge of drugs and paraphernalia in the apartment; proof of dominion and control may include evidence that the accused controlled the premises where the drugs were found or that he had a special relationship with the owner or lessor of the premises. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709.

Actual possession of illicit drugs occurs when the drugs are found to be in the actual physical custody of the person. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied.

Accused’s control over the premises from which marijuana was seized was inferable from his ownership of the business conducted on those premises, and the evidence was sufficient to present a jury question on the issue of accused’s dominion and control over the substance. State v. Lane (S.C. 1978) 271 S.C. 68, 245 S.E.2d 114.

Jury could have reasonably inferred defendant was guilty of possession of cocaine with intent to distribute where police officer testified that he found quantity of cocaine in chest of drawers in master bedroom of defendant’s house, that handguns belonging to defendant were found in same chest, and that there was picture of defendant on dresser in room. State v. Hammond (S.C. 1978) 270 S.C. 347, 242 S.E.2d 411. Controlled Substances 81

Proof of possession of a narcotic drug or controlled substance requires more than proof of mere presence, and that the State must show defendant had dominion and control over the thing allegedly possessed or had the right to exercise dominion and control over it. State v Tabory (1973) 260 SC 355, 196 SE2d 111. State v. Ellis (S.C. 1974) 263 S.C. 12, 207 S.E.2d 408.

9. Constructive possession

A person has “constructive possession” of drugs if he has knowledge of presence of drugs, and dominion and control, or right to exercise dominion and control, over the drugs; and such possession may be established by circumstantial evidence; thus, although jury could properly infer knowledge of drugs and from defendant’s presence in a apartment containing drugs and from defendant’s proximity to drugs and drug paraphernalia, which defendant could plainly see, constructive possession was not established since jury could not infer from such evidence that defendant had dominion and control over the drugs. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709.

A conviction for crime of possession with intent to distribute under Section 44‑53‑370, requires proof of possession of drugs, and either actual or constructive possession is sufficient to sustain conviction under this section. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709. Controlled Substances 31

Constructive possession of illicit drugs occurs when the person charged with possession had dominion and control over either the drugs or the premises upon which the drugs were found. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied. Controlled Substances 26; Controlled Substances 28

An accused has such possession as is necessary for conviction of possession of marijuana when he has both the power (actual or constructive control) and intent to control its disposition or use. State v. Lane (S.C. 1978) 271 S.C. 68, 245 S.E.2d 114.

When articles are in a dwelling house they must be deemed to be in the constructive possession of the person controlling the house in the absence of evidence to the contrary. State v. Ellis (S.C. 1974) 263 S.C. 12, 207 S.E.2d 408. Controlled Substances 28

Where testimony showed that defendant resided in upstairs apartment where heroin sales were made, but no evidence was presented that she participated therein or at any time had any actual or constructive possession of heroin, motion for directed verdict of not guilty should have been granted. State v. Ellis (S.C. 1974) 263 S.C. 12, 207 S.E.2d 408. Controlled Substances 81

10. Manufacture

The plain language of the statute governing manufacturing of marijuana does not require the manufacturing of marijuana to be on one’s own property. 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. Controlled Substances 22

Evidence sufficient to sustain a conviction for manufacturing marijuana may not always be sufficient to sustain a conviction for cultivating marijuana on the lands of another, even where there is no dispute the property belonged to someone other than the defendant, given that the manufacturing statute, when read in conjunction with the definitional statute, equates the act of “harvesting” with the offense of “manufacturing,” but the does not equate “harvesting” with “cultivating.” State v. Walker (S.C. 2002) 349 S.C. 49, 562 S.E.2d 313. Controlled Substances 22

11. Counterfeit substances

While there may be exceptions, ordinarily there is no offense involving counterfeit LSD or cocaine, as these drugs are typically produced illegally and therefore do not have a trademark or label of manufacturer. Murdock v. State (S.C. 1992) 311 S.C. 16, 426 S.E.2d 740. Controlled Substances 43

12. Imitation controlled substances

Use of imitation cocaine by undercover police officers in reverse‑buy was not outside scope of trafficking in cocaine statute; rather, evidence that defendant conspired with others and attempted to purchase real cocaine was sufficient to support conviction. State v. McCluney (S.C. 2004) 361 S.C. 607, 606 S.E.2d 485, rehearing denied. Controlled Substances 43

13. Quantity of drugs

Jury verdict of guilty on charge for trafficking in cocaine was ambiguous and confusing as to quantity involved, thus warranting new trial; grand jury returned true bill charging defendant with trafficking in amount between 200‑400 grams, there was surreptitious alteration of indictment in which “2” was scratched out and replaced with “1,” State never sought to formally amend indictment, jury recorded guilty verdicts on verdict form on back of both original true bill and altered indictment, clerk first read guilty verdict to be for greater amount and then inexplicably announced guilty verdict on lesser amount, ambiguity was not clarified by trial court when defendant brought discrepancy to trial court’s attention, and jurors were not told which drug‑amount conviction they were asked to affirm in final polling. Roberts v. State (S.C.App. 2014) 408 S.C. 123, 757 S.E.2d 744. Criminal Law 881(3)

It is the amount of cocaine, rather than the criminal act, which distinguishes the charge of trafficking of cocaine from distribution and simple possession; thus, if the amount of cocaine, or any mixture containing cocaine, is ten grams or more, the trafficking statute is applied. State v. Peay (S.C.App. 1996) 321 S.C. 405, 468 S.E.2d 669, rehearing denied.

Section 44‑53‑370 created statutory offenses for conspiring to sell, manufacture, cultivate, deliver, purchase, or bring into the state 10 pounds or more of marijuana and 10 grams or more of cocaine; the precise quantity of drugs involved over and above the 10 pounds of marijuana or 10 grams of cocaine is pertinent, not to the classification of trafficking, but to the minimum penalty prescribed. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

The trial court did not err in allowing the state to add the quantity of drugs involved in various separate substantive offenses to determine the amount necessary to meet the statutory definition of conspiring to traffic, and in setting the appropriate penalty. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160. Conspiracy 51

A conviction for knowing or intentional possession of cocaine requires that there be some measurable amount in order for the drug to be capable of disposition or use; however, illegal possession may be demonstrated if the facts and circumstances of the case can be seen to demonstrate that the quantity of drug actually seized was a remnant of a larger measurable amount the defendant possessed at some time reasonably contemporaneous in the past. State v. Robinson (S.C.App. 1991) 306 S.C. 323, 411 S.E.2d 678, certiorari granted, affirmed as modified 310 S.C. 535, 426 S.E.2d 317. Controlled Substances 29

The provision in Section 44‑53‑370 for punishment for trafficking in cocaine if the quantity involved is more than 100 grams but less than 200 grams applies to the aggregate weight of any mixture containing cocaine, not merely the weight of cocaine in its pure form. Thus, a defendant was properly convicted and sentenced under Section 44‑53‑370(e) where the gross weight of the substance possessed by the defendant was 111.48 grams of which 74 percent was pure cocaine, even though the net weight of pure cocaine was only 82.4952 grams. State v. Kerr (S.C. 1989) 299 S.C. 108, 382 S.E.2d 895.

Defendant was not entitled to a directed verdict of acquittal on the charges of possession with intent to distribute merely because the amounts of cocaine and marijuana seized were less than the statutory amounts that trigger the presumption of intent to distribute. State v. Adams (S.C. 1987) 291 S.C. 132, 352 S.E.2d 483. Controlled Substances 93

Where there was tampering with cocaine seized from the defendant, but the tampering merely reduced the amount, the remainder could be introduced in evidence to show that there was still present far more than the amount necessary under Code 1976 Section 44‑53‑370(d)(3) to create a presumption of intent to distribute. State v. Hayden (S.C. 1977) 268 S.C. 214, 232 S.E.2d 889.

14. Conspiracy

Those guilty of conspiring to traffic drugs are subject to the full sentence for trafficking, notwithstanding statute limiting conspiracy sentences to one‑half of the planned offense. State v. Harris (S.C. 2002) 351 S.C. 643, 572 S.E.2d 267, rehearing denied. Conspiracy 51

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

Only the convictions of those defendants involved in the conspiracy alleged in the indictment were valid where the state presented evidence of several conspiracies among many defendants, but only alleged a single conspiracy in the indictment. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383.

It is not enough that a group of people separately intended to distribute drugs in a single area, nor that their activities occasionally or sporadically placed them in contact with each other; what is needed is proof they intended to act together for their shared mutual benefit within the scope of the conspiracy. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383. Conspiracy 24(1)

Proof of a buyer‑seller relationship, without more, is inadequate to tie the buyer to a larger conspiracy, as is mere association with members of the conspiracy. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383. Conspiracy 23.1

An agreement to distribute drugs can sometimes rationally be inferred from frequent contacts among the defendants and from their joint appearances at transactions and negotiations. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383. Conspiracy 44.2

In a prosecution for conspiring to purchase and bring into the state marijuana, the defendants did not waive their claim that double jeopardy barred the prosecution because they had previously been acquitted on charges of a separate conspiracy which was found to constitute a continuing conspiracy with the current charges, by failing to seek consolidation of the indictments, since the defendants took no affirmative action to create the former jeopardy issue. State v. Amerson (S.C. 1993) 311 S.C. 316, 428 S.E.2d 871.

The trial court properly dismissed an indictment alleging that the defendants conspired to purchase and bring into the state more than 100 pounds of marijuana from 1986 through December 1989 where the defendants had been acquitted of a conspiracy which was alleged to have run from February 1990 to September 1990, and the finding that the 2 alleged conspiracies were in reality one single continuing conspiracy was supported by the fact that the methods of transport and distribution did not vary substantially during the course of the conspiracy; neither the break in activity during the winter months, nor the arrest of one co‑conspirator, indicated the termination of the first conspiracy. State v. Amerson (S.C. 1993) 311 S.C. 316, 428 S.E.2d 871.

15. Crime of moral turpitude

A defendant’s conviction for conspiring to import 27,000 to 32,000 pounds of marijuana into the country was a crime of moral turpitude such that it should have been allowed into evidence in a subsequent, unrelated personal injury action for the purpose of impeaching the defendant’s credibility, since such a crime contributes to the destruction of an ordered society. Green v. Hewett (S.C. 1991) 305 S.C. 238, 407 S.E.2d 651.

Trafficking in cocaine is a crime of moral turpitude. Thus, an attorney was guilty of engaging in illegal conduct involving moral turpitude in violation of DR 1‑102(A)(3) and Paragraph 5(C) of the Rule on Disciplinary Procedure, warranting disbarment, where he was convicted of trafficking in cocaine in violation of Section 44‑53‑370(e). Matter of Moseley (S.C. 1990) 302 S.C. 429, 396 S.E.2d 830.

Possession of cocaine and possession of heroin are crimes of moral turpitude. Thus, an attorney’s convictions for possession of cocaine and heroin constituted misconduct under DR 1‑102 (A)(3), Supreme Court Rule 32 and Section 5(C), Rules on Disciplinary Procedure, warranting disbarment. Matter of Gibson (S.C. 1990) 302 S.C. 12, 393 S.E.2d 184.

Mere possession of cocaine is a crime of moral turpitude because of the present “war on drugs,” and because any involvement with cocaine contributes to the destruction of ordered society. Thus, a prior conviction for simple possession of cocaine may be used to impeach an accused who takes the stand. State v. Major (S.C. 1990) 301 S.C. 181, 391 S.E.2d 235. Witnesses 337(21)

Manufacturing of marijuana involves a duty which a person owes to other people and to society in general and is, therefore, a crime of moral turpitude. State v. Drakeford (S.C. 1986) 290 S.C. 338, 350 S.E.2d 391. Witnesses 345(2)

Simple possession of marijuana does not constitute a crime of moral turpitude. State v. Drakeford (S.C. 1986) 290 S.C. 338, 350 S.E.2d 391. Witnesses 345(2)

16. Collateral consequences

Under categorical approach, alien’s Georgia conviction for possession of marijuana with intent to distribute did not necessarily involve facts that corresponded to a felony offense under Controlled Substances Act (CSA), and, thus, it was not for an aggravated felony rendering alien deportable under Immigration and Nationality Act (INA); fact of alien’s conviction standing alone did not reveal either whether remuneration or more than a small amount of marijuana was involved, conviction could have corresponded to either felony or misdemeanor offense under CSA, and possession with intent to distribute marijuana was not presumptively a felony under CSA; abrogating Garcia v. Holder, 638 F.3d 511, Julce v. Mukasey, 530 F.3d 30. Immigration and Nationality Act, Section 237(a)(2)(A)(iii), 8 U.S.C.A. Moncrieffe v. Holder, 2013, 133 S.Ct. 1678, 569 U.S. 184, 185 L.Ed.2d 727. Aliens, Immigration, And Citizenship 274

A conviction under either state or federal law may qualify as an aggravated felony under the Immigration and Nationality Act (INA), but a state offense constitutes a felony punishable under the Controlled Substances Act (CSA), and, thus, an aggravated felony under the INA, only if it proscribes conduct punishable as a felony under that federal law. Moncrieffe v. Holder, 2013, 133 S.Ct. 1678. Aliens, Immigration, and Citizenship 274

Although offense specified under subsection (b)(2) is classified under state law as misdemeanor, because maximum penalty is 5 years, offense is considered felony under federal Sentencing Guidelines for purposes of being used as predicate for career offender. U.S. v. Pinckney (C.A.4 (S.C.) 1991) 938 F.2d 519.

Defendant’s prior conviction for possession with intent to distribute cocaine, in violation of South Carolina law, qualified as a predicate “felony drug offense,” for purpose of sentencing under the Comprehensive Drug Abuse Prevention and Control Act, where the offense was punishable by a term of imprisonment exceeding one year, notwithstanding fact that the state sentencing court exercised its discretion by suspending the defendant’s prison term and allowing her to serve a year of probation for the conviction is of no legal significance. U.S. v. Oneil (C.A.4 (S.C.) 2013) 542 Fed.Appx. 225, 2013 WL 5567911, certiorari denied 134 S.Ct. 1911, 188 L.Ed.2d 938. Sentencing and Punishment 1273

Defendant’s prior convictions under South Carolina law for possession of controlled substance constituted felony drug offenses for purposes of statutory enhancement of defendant’s sentence for possession with intent to distribute crack cocaine, since the offenses were classified under South Carolina law as felonies punishable by up to five years’ imprisonment. U.S. v. Memminger (C.A.4 (S.C.) 2005) 145 Fed.Appx. 813, 2005 WL 2033301, Unreported, certiorari denied 126 S.Ct. 1104, 546 U.S. 1124, 163 L.Ed.2d 916, post‑conviction relief denied 2012 WL 2370421, appeal dismissed 487 Fed.Appx. 86, 2012 WL 5395350. Sentencing And Punishment 793

17. Jurisdiction

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

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

18. Venue

Venue for drug trafficking prosecution was proper in Richland County; defendant was charged with trafficking in marijuana, and one manner in which the State could establish the substantive offense of trafficking was to prove that defendant conspired to sell ten or more pounds of marijuana, State presented evidence that the agreement between defendant and another was formed in Dillon County, meeting in Richland County occurred as a result of the agreement to traffic in marijuana made the previous day in Dillon County, and numerous phone calls were made in Richland County to determine location for the transfer of the marijuana. State v. Crocker (S.C.App. 2005) 366 S.C. 394, 621 S.E.2d 890. Criminal Law 112(3)

In a prosecution for trafficking in marijuana, the defendant was properly tried in the county where he was arrested, even though the marijuana was found in a different county, where the defendant had constructive possession of it in the county of his arrest, and possession was an act material to trafficking in marijuana. State v. Perez (S.C. 1993) 311 S.C. 542, 430 S.E.2d 503. Criminal Law 112(1)

19. Lesser included offenses

Evidence did not support a charge of simple possession, and thus, defendant, who was charged with trafficking cocaine, was not entitled to instruction on lesser‑included offense of simple possession; record showed that defendant lived at residence where drugs were found, defendant’s girlfriend maintained her own residence in North Carolina at all pertinent times, and master bedroom, where the larger amount of cocaine was hidden, contained all men’s clothing as well as several framed pictures of defendant. State v. Gore (S.C.App. 2014) 408 S.C. 237, 758 S.E.2d 717, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 577, 780 S.E.2d 261. Criminal Law 795(2.70)

Possession of cocaine was lesser included offense of possession of crack cocaine, and thus defendant could be convicted upon guilty plea to possession of cocaine, even though indictment alleged possession of crack cocaine, given that for conviction of possession of crack cocaine, state had to prove that defendant: (1) knowingly or intentionally, (2) possessed, (3) form of cocaine, (4) in smokable, alkaloidal state, whereas conviction for possession of cocaine only required that state prove first three elements, and state agreed to allow plea to possession of cocaine due to small amount of drugs found. State v. Timmons (S.C. 2002) 349 S.C. 389, 563 S.E.2d 657, rehearing denied. Indictment And Information 191(.5)

Conspiracy to traffic in cocaine in the amount of 400 grams or more can include conspiracy to traffic in lesser amounts. State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453. Indictment And Information 191(.5)

Defendant indicted for conspiracy to traffic in 400 or more grams of cocaine could not be convicted of conspiracy to traffic in cocaine in the amount of at least 200 grams, but less than 400 grams, as lesser‑included offense, though individual amount that defendant allegedly handled was 252 grams, where evidence clearly established that amount trafficked by the conspiracy far exceeded 400 grams. State v. Gosnell (S.C.App. 2000) 341 S.C. 627, 535 S.E.2d 453. Indictment And Information 191(.5)

Possession of cocaine was lesser included offense of possession of crack cocaine, as elements of statutes governing former and latter offenses were exactly same, and crack cocaine statute merely defined enhanced punishment; thus, trial court had jurisdiction to accept defendant’s guilty plea to possession of cocaine, even though indictment charged him with possession of crack cocaine, and even though he did not waive presentment of indictment for possession of cocaine. State v. Timmons (S.C.App. 1999) 338 S.C. 287, 525 S.E.2d 906, rehearing denied, certiorari granted, affirmed 349 S.C. 389, 563 S.E.2d 657. Indictment And Information 191(.5)

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)

20. Indictment

Failure of indictments for distribution of crack cocaine and distribution of crack cocaine within proximity of a school to allege that defendant “knowingly” committed those offenses did not deprive trial court of subject matter jurisdiction over those charges; respective statutes defining those offenses did not include “knowingly” as an element of the offense, both indictments listed statutory elements of offenses, and indictments sufficiently informed defendant of charges he faced and what he must defend against. State v. Gill (S.C.App. 2003) 355 S.C. 234, 584 S.E.2d 432, rehearing denied, certiorari denied, habeas corpus dismissed 2010 WL 4365540. Controlled Substances 64

Indictment that cited in its caption only general statute prohibiting manufacture of controlled substances was sufficient for purposes of circuit court’s subject matter jurisdiction to sentence defendant following guilty plea under stricter statute specifically addressing the manufacture of methamphetamine; plain language in body of indictment clearly notified defendant that he was charged with manufacturing methamphetamine, counsel informed defendant of potential sentence if convicted, and defendant waived presentment of indictment to grand jury. Carter v. State (S.C. 1998) 329 S.C. 355, 495 S.E.2d 773. Controlled Substances 67

The trial court did not err in refusing defendant’s motion for a directed verdict on the ground that the State failed to prove “multi‑county impact” where such was not an element of the offense of trafficking; the fact that an indictment is handed down by a State Grand Jury rather than a county grand jury does not change the elements of an offense. State v. Evans (S.C. 1996) 322 S.C. 78, 470 S.E.2d 97, rehearing denied, denial of post‑conviction relief affirmed in part, reversed in part 363 S.C. 495, 611 S.E.2d 510.

The trial court did not err in refusing defendant’s motion for a directed on the ground that the allegation of multi‑county significance found in the indictment was at variance with the State’s proof of trafficking in cocaine in a single county where the charge of trafficking cocaine a in a single county was included in the indictment and the allegation of multi‑county significance was simply a jurisdictional statement for purposes of the State Grand Jury. State v. Evans (S.C. 1996) 322 S.C. 78, 470 S.E.2d 97, rehearing denied, denial of post‑conviction relief affirmed in part, reversed in part 363 S.C. 495, 611 S.E.2d 510.

Although an indictment charging the trafficking in cocaine pursuant to Section 44‑53‑370 contained an allegation of multi‑county significance, the charge failed to convey jurisdiction to the State Grand Jury based on multi‑county criminal activity where there was absolutely no evidence that the offense did in fact, have multi‑county significance; to require only that the indictment allege multi‑county significance to convey jurisdiction to the State Grand Jury would subvert the clear intent of Section 14‑7‑1630(A)(1). State v. Evans (S.C.App. 1995) 319 S.C. 320, 460 S.E.2d 578, certiorari denied, reversed 322 S.C. 78, 470 S.E.2d 97, rehearing denied, denial of post‑conviction relief affirmed in part, reversed in part 363 S.C. 495, 611 S.E.2d 510.

An indictment for conspiracy that gave no indication of the state’s theory or any specifics involved in the conspiracy but instead simply incorporated the language of the trafficking statute was not vague and overbroad since, under the specialized procedure for the return of the indictment by the state grand jury, a defendant is permitted to review, and to reproduce, the transcript of the testimony of a witness who appeared before the grand jury. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383.

The appellant’s convictions for trafficking offenses would be overturned where the counts of the state grand jury’s indictment alleging the crimes did not contain any allegation that the crimes either transpired in more than one county or had impact in more than one county; without such allegations, the counts did not sufficiently allege jurisdiction. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383. Indictment And Information 86(3)

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.

21 Joinder of offenses

Joinder of offenses of manufacturing marijuana and manufacturing marijuana on the land of another in same indictment was not abuse of discretion; charged offenses arose out of single transaction, could be proven by same evidence, were of same general nature, and no right of defendant was jeopardized. 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. Indictment And Information 125(4.1)

22. Questions of fact

Whether defendant was participant in conspiracy to traffic in 400 or more grams of cocaine presented question for jury, in light of evidence that defendant accompanied co‑conspirator to an arranged, undercover payoff to co‑conspirator for cocaine and that an admitted co‑conspirator testifying for prosecution stated that he first met defendant several years earlier when he was introduced to defendant by co‑conspirator and that defendant delivered cocaine for co‑conspirator and picked up money for him from cocaine transactions. State v. Vasquez (S.C.App. 2000) 341 S.C. 648, 535 S.E.2d 465, rehearing denied, certiorari denied, habeas corpus dismissed 2007 WL 2822430, appeal dismissed 267 Fed.Appx. 262, 2008 WL 539532, certiorari denied 129 S.Ct. 207, 172 L.Ed.2d 165, rehearing denied 129 S.Ct. 676, 172 L.Ed.2d 645. Conspiracy 48.1(4)

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

23. Presumptions and burden of proof

Trial court’s instruction that possession of more than 28 grams or one ounce of marijuana was prima facie evidence of guilt on charge of possession with intent to distribute marijuana impermissibly shifted burden of proof from state to defendant; there was some evidence presented at trial tending to rebut presumption of intent to distribute. Thompson v. State (S.C. 1997) 325 S.C. 58, 479 S.E.2d 808.

In a trial for possession of a controlled substance with intent to distribute, a jury charge under Section 44‑53‑370(d)(3) impermissibly shifted the burden of proof from the state to the defendant where it indicated that an inference of guilt, which could be drawn from the possession of a certain quantity of a controlled substance, became a presumption which the defendant was required to rebut. Taylor v. State (S.C. 1993) 312 S.C. 179, 439 S.E.2d 820. Criminal Law 778(5)

24. Admissibility of evidence

Photographs depicting drug trafficking defendant squatting down and displaying large sums of United States currency in his hands and on the ground in front of him invited the jury to infer criminal disposition and, thus, should not have been admitted; these photos were unnecessary to link defendant to the residence, particularly when other photographs in evidence accomplished this purpose and several other witnesses testified that defendant lived at the residence. State v. Gore (S.C.App. 2014) 408 S.C. 237, 758 S.E.2d 717, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 577, 780 S.E.2d 261. Criminal Law 438(7)

Where there is evidence to establish the identity of those who have handled the evidence and the manner in which it was handled, a weakness in the chain merely raises a question of credibility, not admissibility. State v. Taylor (S.C.App. 2004) 360 S.C. 18, 598 S.E.2d 735. Criminal Law 404.30

Chain of custody of crack cocaine seized during arrest was sufficient; although police evidence custodian did not testify as to chain of custody, but rather successor custodian testified, identity of each person and manner of handling cocaine in chain of possession was established, arresting officer placed cocaine in special bag designed to prevent tampering that contained seal that was stronger than bag, bag could not be opened without tearing it, officer then gave bag to another officer to transport to evidence custodian, custodian delivered bag to chemist’s evidence drop box, and chemist testified that bag was intact when it was received for testing. State v. Taylor (S.C.App. 2004) 360 S.C. 18, 598 S.E.2d 735. Criminal Law 404.60

When considering a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Cherry (S.C.App. 2001) 348 S.C. 281, 559 S.E.2d 297, rehearing denied, certiorari granted, affirmed but criticized 361 S.C. 588, 606 S.E.2d 475. Criminal Law 753.2(3.1)

The admission of evidence is within the sound discretion of the trial judge, whose ruling will not be disturbed on appeal absent an abuse of discretion. State v. Brannon (S.C.App. 2001) 347 S.C. 85, 552 S.E.2d 773, habeas corpus dismissed 2007 WL 4292489. Criminal Law 661; Criminal Law 1153.1

Finding that defendant participated in single conspiracy among at least 26 individuals to traffic in more than 400 grams of cocaine was supported by testimony of one admitted member of conspiracy that he sold a total of approximately one‑half kilogram of cocaine to defendant on separate occasions over one‑year period and had fronted cocaine to defendant, and by testimony of another admitted member of conspiracy that defendant had fronted him an ounce of cocaine on two separate occasions, that he had sold defendant two ounces he had received from another member of conspiracy, that defendant worked for another member of conspiracy, and that defendant had shown him how to cut the mixture of cocaine in order to make a larger quantity of cocaine mixture and derive a bigger profit. State v. Hammitt (S.C.App. 2000) 341 S.C. 638, 535 S.E.2d 459, rehearing denied, certiorari granted, affirmed 351 S.C. 634, 572 S.E.2d 263. Conspiracy 47(12)

Evidence that weapons were in possession of appellants was relevant in an action alleging the trafficking of drugs pursuant to Section 44‑53‑370 because such evidence may be relevant to show intent in a drug prosecution. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

The trial court did not err in allowing the state to use evidence of the amount of drugs involved in various transactions as proof of the scope of conspiracy for the purpose of establishing an element of the crime of conspiring to traffic under Section 44‑53‑370 because the substantive crimes committed in furtherance of the conspiracy constitute circumstantial evidence of the existence of the conspiracy, its object, and scope. State v. Wilson (S.C. 1993) 315 S.C. 289, 433 S.E.2d 864, rehearing denied, habeas corpus denied 999 F.Supp. 783, affirmed 178 F.3d 266, certiorari denied 120 S.Ct. 191, 528 U.S. 880, 145 L.Ed.2d 160.

The prosecution in a trial for distribution of crack cocaine was not required to produce the handwritten notes of the undercover agent who purchased the cocaine, which were written after the purchase, given to a typist to transcribe, and the transcription used to refresh the agent’s memory prior to testimony, even though there were several inconsistencies between the typed notes and the handwritten notes; the handwritten notes were internal prosecution documents not covered by Rule 5(a)(2), SCRCrimP and were not used to refresh the witness’ memory, and the prosecution’s failure to produce them did not deprive the defendant of a fair trial. State v. Bryant (S.C.App. 1991) 304 S.C. 488, 405 S.E.2d 423, reversed 307 S.C. 458, 415 S.E.2d 806, rehearing denied.

In a prosecution for trafficking in cocaine, plastic bags with their corners cut off, which are used in the sale of cocaine, and marijuana seeds, both of which were seized during a search of the defendant’s home, were properly admitted in evidence since they tended to prove that the defendant knowingly possessed cocaine that the arresting officers testified they found in the defendant’s hand at the time they arrested him on an outstanding warrant for distribution of cocaine. State v. Scott (S.C.App. 1991) 303 S.C. 360, 400 S.E.2d 784, certiorari denied, grant of post‑conviction relief affirmed 334 S.C. 248, 513 S.E.2d 100.

In a prosecution for trafficking in cocaine, the defendant was unfairly prejudiced by the trial court’s limitation of the defendant’s cross‑examination of one of the State’s chief witnesses regarding the witness’ plea agreement with the State, where the witness testified that she was originally charged with trafficking in cocaine and that the charge was “dropped” as part of the agreement but the defendant was not permitted to elicit from the witness the punishment for trafficking in cocaine, the witness was permitted to avoid a mandatory prison term of more than 3 times the duration she would face as a result of the plea agreement, and the witness’ testimony was a crucial part of the State’s case since she provided the only evidence of the defendant’s knowing involvement in the drug transaction. State v. Brown (S.C. 1991) 303 S.C. 169, 399 S.E.2d 593.

Even if aerial photographs taken of defendant’s farmland during 1981‑1983 were admissible in evidence to show the appearance and disappearance of bare patches in a wooded area, permitting solicitor to question defendant, over objections, with regard to the photographs and to use them in closing argument to hypothesize that marijuana had been growing in the patches shown in the photographs from 1981‑1983, constituted reversible error in defendant’s trial for manufacturing and trafficking marijuana in 1984, where there was a total absence of proof that defendant grew marijuana during 1981‑1983 in the fields shown in the photograph. State v. DuBose (S.C. 1986) 288 S.C. 226, 341 S.E.2d 785.

Where, in a trial for manufacturing and trafficking in marijuana in 1984, defendant, on cross‑examination, had denied making statement to a former neighbor some 11 years prior to the trial about defendant’s growing of marijuana, producing former neighbor as a reply witness and questioning him, over defendant’s objections, as to the alleged statement, constituted reversible error, since the inquiry went to a matter collateral to the state’s case in chief, and the former neighbor’s testimony was not admissible to impeach defendant’s credibility as to testimony that he didn’t know what marijuana was and looked like, when defendant did not specifically so testify. State v. DuBose (S.C. 1986) 288 S.C. 226, 341 S.E.2d 785.

In a prosecution for possession with intent to distribute cocaine, the possibly erroneous admission into evidence of cocaine seized from a fishing tackle box which was located in the trunk of the defendant’s vehicle did not require a reversal of the conviction where the amount of cocaine discovered during the lawful search of the defendant’s person and the interior of his automobile was more than enough to establish a prima facie case of possession with intent to distribute. State v. Bernotas (S.C. 1981) 277 S.C. 106, 283 S.E.2d 580, certiorari denied 102 S.Ct. 1711, 455 U.S. 1017, 72 L.Ed.2d 134. Criminal Law 1169.2(5)

In a prosecution for possession of marijuana, where police searched an apartment when no one was at home, letters and photographs identifying the defendant and envelopes addressed to the defendant found in the apartment were admissible to prove that the defendant lived at the address where the seizure occurred. State v. McGuinn (S.C. 1977) 268 S.C. 112, 232 S.E.2d 229.

Where defendant sought to attack constitutionality of rebuttable statutory presumption of intent to sell by reason of possession of more than 28 grams of marijuana, trial court’s refusal to allow narcotic officers’ testimony that it does not follow that one who possesses over 28 grams of marijuana intends to distribute it was not erroneous. State v. Byrd (S.C. 1976) 267 S.C. 87, 226 S.E.2d 244.

A refusal to disclose the identity of an informer prior to presenting her as a witness resulted in no legal prejudice to a defendant convicted of distributing marijuana, where it was apparent that defendant knew the identity of the informer at the time of the offense, and she was later presented by the state as a witness in the proof of its case, and was cross‑examined by defendant. State v. Riggins (S.C. 1974) 262 S.C. 466, 205 S.E.2d 376. Criminal Law 1166(10.10)

Prohibiting defendant from eliciting, on cross‑examination of his co‑conspirators, who were government’s cooperating witnesses, the specific sentences that the witnesses faced, was not an abuse of discretion or a violation of the Confrontation Clause, in prosecution for conspiracy to possess with intent to distribute 1,000 kilograms or more of marijuana; jury had before it sufficient evidence upon which to assess witness bias and incentive to lie, since jury learned that the witnesses had entered into plea agreements with United States and that they hoped to receive more lenient sentences in return for testifying at defendant’s trial. U.S. v. Lipscombe (C.A.4 (S.C.) 2014) 571 Fed.Appx. 198, 2014 WL 1876562, certiorari denied 135 S.Ct. 945, 190 L.Ed.2d 841, post‑conviction relief dismissed 2016 WL 4719999, appeal dismissed 670 Fed.Appx. 95, 2016 WL 6247119, certiorari denied 137 S.Ct. 1352, 197 L.Ed.2d 536. Criminal Law 662.7

25. Arguments of counsel

Prosecutor’s comments during closing argument in which he likened defendant and co‑defendant charged with trafficking in cocaine and possession with intent to distribute cocaine within proximity of school to “cockroaches” did not so prejudice defendant as to affect verdict; defendant was found in possession of nearly one‑half pound crack cocaine, razor blades, and almost $900 in cash on his person and hundreds more in his motel room, and analogy was only brief portion of argument. Randall v. State (S.C. 2004) 356 S.C. 639, 591 S.E.2d 608. Criminal Law 2152

26. Instructions

Defendant was not prejudiced by jury instruction to the effect that actual knowledge of presence of a drug was strong evidence of intent to control its disposition or use in prosecution for possession with intent to distribute crack cocaine within one‑half mile of a school, trafficking in crack cocaine of more than 400 grams, and trafficking in crack cocaine of more than 100 grams, where there was no evidence that defendant was merely present, as defendant provided financial assistance to the drug operation, aided and abetted the operation, and was in actual possession of the drugs. State v. Cheeks (S.C. 2014) 408 S.C. 198, 758 S.E.2d 715. Criminal Law 1172.1(3)

Defendant was not entitled to instruction on possession with intent to distribute, as lesser‑included offense of trafficking in crystal methamphetamine; defendant did not present evidence that he possessed less than minimum amount required for trafficking, and state presented evidence that defendant had possessed enough methamphetamine to warrant trafficking charge. Sellers v. State (S.C. 2005) 362 S.C. 182, 607 S.E.2d 82, rehearing denied. Criminal Law 795(2.70)

Good reputation and character evidence instruction was warranted, where defendant, who was charged with simple possession of cocaine, testified that he counseled adolescents, and his church pastor detailed defendant’s volunteer church at the church and described how defendant “opened up his home” to single homeless mothers. State v. Harrison (S.C.App. 2000) 343 S.C. 165, 539 S.E.2d 71.

Trial court’s failure to give good reputation and character evidence instruction was not harmless, where defendant was charged with simple possession of cocaine, given defendant’s insistence that cocaine purchase was not completed, drugs were never in his possession or under his control, and officer’s testimony that defendant dropped the drugs was disputed. State v. Harrison (S.C.App. 2000) 343 S.C. 165, 539 S.E.2d 71.

For edification of bench and bar, court suggested jury charge for possession with intent to distribute marijuana cases which would avoid shifting burden of proof from state to defendant where defendant possessed more than 28 grams or one ounce of marijuana. Thompson v. State (S.C. 1997) 325 S.C. 58, 479 S.E.2d 808.

In the prosecution of a matter for trafficking cocaine, the trial court correctly refused to give the defendant’s requested jury charge for possession of cocaine with intent to distribute as a lesser included offense where it was undisputed that the officers recovered 515 grams of cocaine when the defendant was arrested. State v. Peay (S.C.App. 1996) 321 S.C. 405, 468 S.E.2d 669, rehearing denied.

The trial court did not commit reversible error in refusing to charge the jury that, under a conspiracy count, it must find beyond a reasonable doubt the conspiracy in fact occurred in both counties as alleged in the indictment before it could find the defendants guilty of the charge. State v. Gunn (S.C. 1993) 313 S.C. 124, 437 S.E.2d 75, certiorari denied 114 S.Ct. 1063, 510 U.S. 1115, 127 L.Ed.2d 383. Criminal Law 1173.2(2)

The trial court did not err in refusing to charge the lesser‑included offense of possession with intent to distribute cocaine where, in a trial for trafficking in cocaine, there was no conflict with the evidence that the amount of cocaine in the defendant’s possession exceeded the quantity required to invoke the greater offense. State v. Grandy (S.C. 1991) 306 S.C. 224, 411 S.E.2d 207.

Trial judge erred in refusing defendant’s requested charge that mere presence where drugs are present, without more, would not be sufficient for conviction. State v. Kimbrell (S.C. 1987) 294 S.C. 51, 362 S.E.2d 630. Criminal Law 792(1); Criminal Law 1173.2(1)

The proper charge on constructive possession of controlled substances is to instruct the jury that the defendant’s knowledge and possession may be inferred if the substances were found on the premises under his control, but the trial judge should also explain to the jury that it is free to accept or reject such permissive inference of knowledge and possession depending on its view of the evidence. State v. Adams (S.C. 1987) 291 S.C. 132, 352 S.E.2d 483. Controlled Substances 97

Defendant was entitled to a charge on simple possession where the amounts of marijuana and cocaine in evidence were less than the statutory amounts that establish a presumption of possession with intent to distribute. State v. Adams (S.C. 1987) 291 S.C. 132, 352 S.E.2d 483. Criminal Law 795(2.70)

In a prosecution for possession of marijuana with intent to distribute under Section 44‑53‑370, the issuance of a jury instruction that could have been taken by the jury as requiring the defendant to personally rebut or explain his possession of more than one ounce of marijuana constituted reversible error. State v. Key (S.C. 1984) 282 S.C. 413, 319 S.E.2d 338.

Judge’s instruction correctly stated law where, in charge laid against appellant under South Carolina Code Section 32‑15110.49(c) (1962) [Section 44‑53‑370(c) (1976)] for unlawful possession of controlled substance, effect of also reading to jury language from South Carolina Code Section 32‑15110.51(a)(3) (1962) [Section 44‑53‑390(a)(3) (1976)] was to charge that prescription obtained by misrepresentation, fraud, forgery, deception, or subterfuge would not be valid prescription of practitioner. State v. Tolbert (S.C. 1977) 269 S.C. 210, 237 S.E.2d 55.

27. Sufficiency of evidence

Evidence was constitutionally insufficient to support finding that defendant had dominion and control over marijuana or cocaine found in apartment which was not defendant’s residence as required for finding that defendant had possession of either drug and, thus, evidence was insufficient to support convictions under South Carolina law for possession with intent to distribute cocaine and marijuana, despite fact that defendant was alone in apartment except for small child at time of officers’ entry; State presented only evidence of accused sitting at table laden with narcotics and narcotic paraphernalia in apartment where other drugs and paraphernalia were later discovered which, at best, showed defendant’s presence in unknown person’s apartment and his knowledge of drugs and drug paraphernalia in apartment. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709. Controlled Substances 81

Evidence was sufficient to support conviction for trafficking in illegal drugs; police became suspicious of package while scanning parcels for illegal drugs at courier company office, police observed defendant retrieve package after delivery, package contained oxycodone, and defendant admitted he knew box contained drugs. State v. Miles (S.C.App. 2017) 421 S.C. 154, 805 S.E.2d 204. Controlled Substances 82

Evidence was sufficient to establish that defendant had actual or constructive possession of 100 to 1000 marijuana plants as required to support conviction for trafficking in marijuana; police officer testified that 456 marijuana plants were seized from property that was adjacent to defendant’s residence, water hoses on plots originated from pump house behind defendant’s residence, officer testified he recognized plants as marijuana based on appearance and smell of plants, and officer who was expert in marijuana analysis testified that all plants appeared to be same type and that sample of 34 plants all tested positive for marijuana. 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. Controlled Substances 82

Evidence supported conviction of conspiring to traffic in 100 pounds or more of marijuana; admitted coconspirator testified that defendant regularly received portion of marijuana shipments that were brought into state by another coconspirator and that defendant helped divide and package drugs into amounts suitable for distribution, and there was evidence that defendant attempted to pick up another coconspirator when that coconspirator returned to state with approximately 50 pounds of marijuana. State v. Horne (S.C.App. 1996) 324 S.C. 372, 478 S.E.2d 289, rehearing denied, certiorari denied. Conspiracy 47(12)

The evidence failed to establish that the defendant trafficked in 400 or more grams of cocaine or that he participated in a conspiracy to do so where the State showed that, over a one‑month period, the defendant sold a total of 56.37 grams of cocaine to a confidential informant working with the Sheriff’s Department, and this informant was in no way connected with the conspiracy at hand or any of the admitted co‑conspirators; while the evidence regarding the sale of some 55 plus grams of cocaine to the confidential informant is sufficient to convict the defendant of trafficking in 28 grams or more, but less than 100 grams of cocaine, it is insufficient to prove trafficking in 400 or more grams of cocaine or of participating in the alleged conspiracy to traffic in 400 or more grams. State v. Barroso (S.C.App. 1995) 320 S.C. 1, 462 S.E.2d 862, rehearing denied, certiorari granted in part, reversed 328 S.C. 268, 493 S.E.2d 854, denial of post‑conviction relief reversed 350 S.C. 272, 565 S.E.2d 766. Conspiracy 47(12); Controlled Substances 82

There was sufficient evidence to convict the defendant of conspiracy to traffic in cocaine where (1) the defendant made a series of cocaine purchases from an admitted co‑conspirator, (2) at the first meeting between the defendant and the co‑conspirator, the defendant purchased 5 ounces of cocaine, (3) 1 to 2 weeks later, he purchased 5 more ounces, (4) approximately 2 weeks later, he purchased 4 more ounces, (5) these purchases occurred over a 6‑week period in October and November 1989, and (6) in December, 1989, he purchased about 4 or 5 more ounces; the jury could infer an agreement to distribute drugs from the frequent transactions between the defendant and the admitted co‑conspirator. State v. Barroso (S.C.App. 1995) 320 S.C. 1, 462 S.E.2d 862, rehearing denied, certiorari granted in part, reversed 328 S.C. 268, 493 S.E.2d 854, denial of post‑conviction relief reversed 350 S.C. 272, 565 S.E.2d 766.

The State presented substantial evidence that the defendants had the knowledge or intent to possess illicit drugs where (1) in registering for the motel rooms, in one of which the drugs were found, the defendants consistently gave false addresses, (2) false addresses were given to the police upon arrest, (3) a housekeeper testified that she cleaned the room around the area where the drugs were found just prior to the defendants taking possession of the room and she saw no drugs, (4) $360 cash was found in the room, (5) a .38 caliber pistol was found in the trunk of a car belonging to one of the defendants, and (6) the defendants exercised dominion and control over the motel room in which the drugs were found. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied.

The State presented substantial evidence of constructive possession of illicit drugs where (1) the motel room in which the drugs were found was registered in the name of one of the defendants, (2) the room was observed by police from 8:00 p.m. to 11:20 p.m. and no one came in or out of the room during that time, (3) defendants stayed in the motel on several prior occasions, under either of their names, and (3) the motel owner stated that the two defendants arrived in the same car. State v. Mollison (S.C.App. 1995) 319 S.C. 41, 459 S.E.2d 88, rehearing denied, certiorari denied.

Circumstantial evidence supported a defendant’s conviction for possession of cocaine where the defendant was in a bar known for drug activity, he attempted to alert other patrons when an officer entered, he was standing next to an individual who possessed both marijuana and cocaine, and he was seen throwing a smoking pipe and a vial containing an immeasurable residue of cocaine into a trash can. State v. Robinson (S.C.App. 1991) 306 S.C. 323, 411 S.E.2d 678, certiorari granted, affirmed as modified 310 S.C. 535, 426 S.E.2d 317.

Possession of quaalude in prescription bottle for controlled substance Placidyl, together with testimony that appellant obtained five or six prescriptions for quaalude during 2 month period from several doctors located in different counties, supports finding either that appellant came into possession of quaalude other than through lawful prescription or that visits to several different doctors and procurement of prescription from each was result of misrepresentation and deception. State v. Tolbert (S.C. 1977) 269 S.C. 210, 237 S.E.2d 55. Controlled Substances 80

Conviction of possessing heroin with intent to distribute was supported by undisputed evidence that police found over 100 grains of heroin in defendant’s bedroom. State v. Cude (S.C. 1975) 265 S.C. 313, 218 S.E.2d 240.

Where evidence showed that heroin was kept in guest room of house occupied by owner, who admitted being in the room at least twice a week and placing clothing on the bed where the heroin was found, there was constructive possession sufficient to support a verdict of guilty. State v. Ellis (S.C. 1974) 263 S.C. 12, 207 S.E.2d 408. Controlled Substances 81

28. Sentence and punishment

Statute imposing a 20‑year mandatory minimum sentence for a drug offense committed after a prior felony drug conviction was correctly applied at sentencing for conspiracy to possess with intent to distribute and to distribute cocaine base, even though defendant’s predicate South Carolina conviction for cocaine possession was classified under state law as a misdemeanor; state conviction met statutory definition of a federal felony drug offense. U.S. v. Burgess (C.A.4 (S.C.) 2007) 478 F.3d 658, certiorari granted 128 S.Ct. 740, 552 U.S. 1074, 169 L.Ed.2d 578, affirmed 128 S.Ct. 1572, 553 U.S. 124, 170 L.Ed.2d 478. Sentencing And Punishment 1280

Crack cocaine conspiracy defendant’s guilty plea was knowing and voluntary. U.S. v. Feurtado (C.A.4 (S.C.) 2002) 39 Fed.Appx. 812, 2002 WL 340637, Unreported, certiorari denied 123 S.Ct. 42, 537 U.S. 940, 154 L.Ed.2d 246, certiorari denied 123 S.Ct. 462, 537 U.S. 986, 154 L.Ed.2d 352, appeal from denial of post‑conviction relief dismissed 232 Fed.Appx. 355, 2007 WL 2012788, certiorari denied 128 S.Ct. 2070, 553 U.S. 1012, 170 L.Ed.2d 807, on subsequent appeal 306 Fed.Appx. 809, 2008 WL 3977037, certiorari denied 130 S.Ct. 51, 175 L.Ed.2d 43. Criminal Law 273.1(1)

That suspects occupying rented moving truck which arrived at place designated for a controlled drug exchange, closely behind car driven by others implicated in transaction, knew occupants of car and thus had guilty knowledge of drugs in tractor trailer being driven by undercover agents was pure speculation, and insufficient to support suspects’ conviction of drug trafficking offense; while suspects’ conduct, in arriving at scene in rented moving truck behind car and in forming part of three‑vehicle caravan with car and tractor trailer that drove down dirt road until truck and tractor trailer became stuck in mud and agents aborted the exchange and made arrests, may have been suspicious, mere suspicion was insufficient to support guilty verdict. State v. Hernandez (S.C. 2009) 382 S.C. 620, 677 S.E.2d 603. Controlled Substances 82

Those guilty of conspiring to traffic drugs are subject to the full sentence for trafficking, notwithstanding statute limiting conspiracy sentences to one‑half of the planned offense. State v. Harris (S.C. 2002) 351 S.C. 643, 572 S.E.2d 267, rehearing denied. Conspiracy 51

Postconviction relief petitioner was eligible for parole under cocaine trafficking statute in effect in 1985; petitioner was not sentenced to mandatory minimum term of 25 years, which would make him ineligible for parole under statute, but rather was sentenced to a mandatory term of 25 years. Kerr v. State (S.C. 2001) 345 S.C. 183, 547 S.E.2d 494. Criminal Law 1557(4)

Defendant convicted of conspiracy to traffic in 400 or more grams of cocaine was properly sentenced under drug trafficking statute, as opposed to conspiracy statute, as drug trafficking statute included conspiracy within the substantive framework of offense of trafficking. State v. Castineira (S.C.App. 2000) 341 S.C. 619, 535 S.E.2d 449, rehearing denied, certiorari granted, affirmed 351 S.C. 635, 572 S.E.2d 263. Sentencing And Punishment 20

Record showed that trial court, in sentencing defendant for distribution of crack cocaine, improperly considered defendant’s decision to proceed with jury trial; when defense counsel argued to trial court that similarly situated defendants had received lower sentences than defendant, trial judge unequivocally stated that those other defendants had, in fact, pled guilty, and trial judge further expressed his preference for guilty pleas by explaining that such admissions of responsibility were first steps toward rehabilitation. Davis v. State (S.C. 1999) 336 S.C. 329, 520 S.E.2d 801. Sentencing And Punishment 115(3)

Specific mandate of trafficking statute that three‑year minimum sentence for first offense of trafficking in cocaine in an amount less than 28 grams could not be suspended nor could probation be granted prevailed over general statutory authority of court to suspend a portion of a criminal sentence and grant probation as part of sentencing. State v. Taub (S.C.App. 1999) 336 S.C. 310, 519 S.E.2d 797, rehearing denied, certiorari denied. Sentencing And Punishment 1871

Fine of $25,000 for first offense of trafficking in cocaine in an amount less than 28 grams was not mandatory and, thus, trial court was authorized to suspend the imposition or execution of fine. State v. Taub (S.C.App. 1999) 336 S.C. 310, 519 S.E.2d 797, rehearing denied, certiorari denied. Controlled Substances 100(2)

Disposition of previous marijuana charge was a bond forfeiture, not a conviction, for purposes of enhanced sentencing statute, and thus defendant’s attorney erred in failing to challenge trial judge’s decision to treat marijuana bond forfeiture as a first offense when sentencing defendant for convicted of trafficking in and transportation of cocaine. Scott v. State (S.C. 1999) 334 S.C. 248, 513 S.E.2d 100. Criminal Law 1957

Guilty pleas to manufacturing methamphetamine and money laundering in exchange concurrent sentences of 25 years and 20 years, respectively, were entered knowingly and voluntarily; although guilty plea judge and solicitor expressed some confusion over whether fine on manufacturing charge was mandatory and over sentencing range, judge correctly informed defendant that maximum penalty for conviction on manufacturing charge was 30 years, record revealed that defendant understood consequences of his pleas and charges against him, and defendant’s counsel correctly informed him of sentencing possibilities. Carter v. State (S.C. 1998) 329 S.C. 355, 495 S.E.2d 773. Criminal Law 273.1(4)

Counsel correctly advised defendant that maximum penalty for manufacturing methamphetamine was 30‑year sentence for second offense, for purposes of determining validity of guilty pleas on that charge in exchange for 25‑year sentence and on money laundering charge in exchange for 20‑year sentence to run concurrently; maximum penalty on manufacturing charge was not 10 years based on general statute addressing Schedule II drugs under which defendant was indicted, but was governed by stricter statute specifically addressing methamphetamine. Carter v. State (S.C. 1998) 329 S.C. 355, 495 S.E.2d 773. Criminal Law 273.1(1)

Recognizing the fairness and logic exemplified by the provisions of Sections 17‑25‑50 and 56‑1‑1020, the Court of Appeals has ruled that where a defendant has been convicted on 2 or more counts for the violation of the Controlled Substance Act arising out of simultaneous acts committed in the course of a single incident, the conviction will be considered as only one for the purpose of sentencing upon a subsequent conviction for a violation of the Controlled Substance Act. State v. Boyd (S.C.App. 1986) 288 S.C. 206, 341 S.E.2d 144.

The trial court erred in sentencing a defendant to a term of 9 years for a conviction of conspiracy to distribute marijuana, second offense, where the maximum sentence for distribution of marijuana, second offense, is 10 years; the case would be remanded for resentencing to a term not to exceed 5 years. State v. Fowler (S.C. 1982) 277 S.C. 472, 289 S.E.2d 412.

Defendant entitled to reduction of sentence where indictment charging that he did willfully and unlawfully have in his possession LSD only charged offense of simple possession, and trial judge erred in sentencing defendant as though he were guilty of possession of LSD with intent to distribute. Fewell v. State (S.C. 1976) 267 S.C. 17, 225 S.E.2d 853. Controlled Substances 63

Sentencing schedules for simple possession under Controlled Substances Act are mutually exclusive, thus three consecutive sentences would be upheld and counts of indictment would not be consolidated. State v. McTier (S.C. 1975) 264 S.C. 475, 215 S.E.2d 908.

Armed career criminal enhancement to sentence for possession of firearm by convicted felon was supported by evidence that defendant had three prior state drug convictions punishable by more than ten years’ imprisonment. U.S. v. Brown (C.A.4 (S.C.) 2012) 494 Fed.Appx. 374, 2012 WL 4377814, Unreported. Sentencing and Punishment 1381(1)

29. Harmless error

Trial court’s error in admitting prejudicial photographs, depicting drug defendant squatting down and displaying large sums of United States currency in his hands and on the ground in front of him, was harmless in light of the overwhelming evidence of defendant’s guilt. State v. Gore (S.C.App. 2014) 408 S.C. 237, 758 S.E.2d 717, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 577, 780 S.E.2d 261. Criminal Law 1169.1(10)

Error in trial court’s denial of post‑verdict motion to dismiss indictment for trafficking in cocaine that had been surreptitiously altered as to quantity of cocaine involved, without seeking clarification as to whether guilty verdict was for trafficking in amount between 200‑400 grams under original true bill or surreptitiously altered indictment which had scratched out number “2” and replaced with handwritten “1,” based on trial court’s belief that trafficking in amount exceeding 100 grams was lesser included offense, was not harmless, thus warranting new trial; defendant had Sixth Amendment right to determination of guilt by jury, which prohibited speculation about verdict that jury rendered. Roberts v. State (S.C.App. 2014) 408 S.C. 123, 757 S.E.2d 744. Criminal Law 1167(1); Jury 34(1)

Trial court’s failure to give good reputation and character evidence instruction was not harmless, where defendant was charged with simple possession of cocaine, given defendant’s insistence that cocaine purchase was not completed, drugs were never in his possession or under his control, and officer’s testimony that defendant dropped the drugs was disputed. State v. Harrison (S.C.App. 2000) 343 S.C. 165, 539 S.E.2d 71.

The prejudicial effect outweighed the probative value of a taped conversation between the defendant, officers, and others regarding negotiations for a future sale of a kilo of cocaine where this evidence indicated that the defendant was dealing in large amounts of cocaine, rather than the one‑ounce sale for which he was being tried, and the identity of the seller was the only contested issue; however, this error was harmless where, at trial, 3 eyewitnesses positively identified the defendant as the seller. State v. Garner (S.C. 1991) 304 S.C. 220, 403 S.E.2d 631.

In prosecution for possession of marijuana and for possession with intent to distribute, it was reversible error to deny defendant’s motion for directed verdict where state’s evidence that defendant was a passenger in a car on a deserted rural road at 1:00 a.m., that driver of car had a large roll of cash in his pocket, that defendant was nervous and had no identification, that there was a smell of marijuana in the car, and that there was an 8 pound bag of marijuana in the back seat merely raised a suspicion of guilt, permitting the jury to speculate as to defendant’s guilt; state introduced no evidence that defendant was a seller or user of marijuana, that he recognized the odor of marijuana, that he was a close friend of the driver, or that had spent a substantial part of the night with driver. State v. Brown (S.C. 1976) 267 S.C. 311, 227 S.E.2d 674. Controlled Substances 80; Controlled Substances 81

30. Habeas corpus

Habeas petitioners were barred from asserting that their sentences for narcotics offenses violated Apprendi because they were imposed in part based upon trial courts’ drug quantity determinations, without findings by jury, and sentences exceeded statutory maximums sentences imposed for narcotics offenses without specified drug quantities; Apprendi was decided long after petitioners were convicted, claims were raised for first time in habeas petitions, and Apprendi could not be applied retroactively on collateral review. San‑Miguel v. Dove (C.A.4 (S.C.) 2002) 291 F.3d 257, certiorari denied 123 S.Ct. 46, 537 U.S. 938, 154 L.Ed.2d 242. Courts 100(1); Habeas Corpus 275.1; Habeas Corpus 278

Where defendant convicted under Section 44‑53‑370 for possession with intent to distribute drugs, and for conspiracy to distribute drugs, filed federal habeas corpus petition challenging sufficiency of evidence to support state convictions, appellate court reviewed evidence produced at trial in light most favorable to prosecution. Goldsmith v. Witkowski (C.A.4 (S.C.) 1992) 981 F.2d 697, certiorari denied 113 S.Ct. 3020, 509 U.S. 913, 125 L.Ed.2d 709. Habeas Corpus 702

31. Review

Defendant failed to preserve for review that trial court should have directed verdict on charge for trafficking in cocaine in amount of at least 200 grams but less than 400 grams, based on undisputed evidence presented at trial that amount of cocaine was 196 grams, where, after State rested case, counsel made only general motion for directed verdict and did not bring to trial court’s attention discrepancy between amount alleged in indictment and evidence presented. Roberts v. State (S.C.App. 2014) 408 S.C. 123, 757 S.E.2d 744. Criminal Law 1044.2(1)

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

Whether the trial court erred in refusing to suppress the crack cocaine and statements made by defendant and codefendant was not preserved for review in regard to codefendant since codefendant neither raised the issue at trial nor joined in defendant’s motion to suppress. State v. Brannon (S.C.App. 2001) 347 S.C. 85, 552 S.E.2d 773, habeas corpus dismissed 2007 WL 4292489. Criminal Law 1036.1(4); Criminal Law 1044.2(1)

**SECTION 44‑53‑375.** Possession, manufacture, and trafficking of methamphetamine and cocaine base and other controlled substances; penalties.

 (A) A person possessing less than one gram of methamphetamine or cocaine base, as defined in Section 44‑53‑110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

 (B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44‑53‑370, is guilty of a felony and, upon conviction:

 (1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty‑five thousand dollars, or both;

 (2) for a second offense, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

 (3) for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

 Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.

 (C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44‑53‑110, 44‑53‑210(d)(1), or 44‑53‑210(d)(2), is guilty of a felony which is known as “trafficking in methamphetamine or cocaine base” and, upon conviction, must be punished as follows if the quantity involved is:

 (1) ten grams or more, but less than twenty‑eight grams:

 (a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (2) twenty‑eight grams or more, but less than one hundred grams:

 (a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (3) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (4) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

 (5) four hundred grams or more, a term of imprisonment of not less than twenty‑five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

 (D) Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.

 (E)(1) It is unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains nine grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. A person who violates this subsection is guilty of a felony known as “trafficking in ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances” and, upon conviction, must be punished as follows if the quantity involved is:

 (a) nine grams or more, but less than twenty‑eight grams:

 (i) for a first offense, a term of imprisonment of not more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty‑five thousand dollars;

 (ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (b) twenty‑eight grams or more, but less than one hundred grams:

 (i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty‑five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

 (d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

 (e) four hundred grams or more, a term of imprisonment of not less than twenty‑five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

 (2) This subsection does not apply to:

 (a) a consumer who possesses products:

 (i) containing ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with typical medicinal or household use, as indicated by storage location, and possession of the products in a variety of strengths, brands, types, purposes, and expiration dates; or

 (ii) for agricultural use containing anhydrous ammonia if the consumer has reformulated the anhydrous ammonia by means of additive so as effectively to prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors’ salts, isomers, or salts of isomers, or a combination of any of these substances; or

 (b) products labeled for pediatric use pursuant to federal regulations and according to label instructions primarily intended for administration to children under twelve years of age; or

 (c) products that the Drug Enforcement Administration and the Department of Health and Environmental Control, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors’ salts, isomers, or salts of isomers, or a combination of any of these substances.

 (3) This subsection preempts all local ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

 (F) Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty‑five years, a mandatory minimum term of imprisonment of twenty‑five years, or a mandatory minimum term of imprisonment of not less than twenty‑five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24‑13‑610, or supervised furlough as provided in Section 24‑13‑710.

 (G) A person eighteen years of age or older may be charged with unlawful conduct toward a child pursuant to Section 63‑5‑70, if a child was present at any time during the unlawful manufacturing of methamphetamine.

HISTORY: 1987 Act No. 128 Section 1; 1990 Act No. 604, Section 8; 1993 Act No. 58, Section 2; 1993 Act No. 184, Section 74; 1995 Act No. 7, Part I, Section 18; 2005 Act No. 127, Section 5, eff June 7, 2005; 2010 Act No. 273, Section 38, eff June 2, 2010; 2016 Act No. 154 (H.3545), Section 9, eff April 21, 2016.

CROSS REFERENCES

Applicability of the presumptions as to intent to distribute created in this section to crime of distribution of a controlled substance within proximity of a school, see Section 44‑53‑445.

Crime specified in this section defined as violent crime, see Section 16‑1‑60.

Definition of “cocaine base”, see Section 44‑53‑110.

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

Murder committed while drug trafficking as aggravating circumstance, see Section 16‑3‑20.

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Required response, under the Drug‑Free Workplace Act, of an employer upon receiving notice that an employee has been convicted of an offense under this section, see Section 44‑107‑50.

Library References

Controlled Substances 22, 24, 32.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 265 to 268, 270 to 271, 274 to 287, 289 to 295, 304, 306, 308 to 314.

RESEARCH REFERENCES

ALR Library

2 ALR 6th 551 , Propriety of Lesser‑Included‑Offense Charge in State Prosecution of Narcotics Defendant‑Cocaine Cases.

27 ALR 5th 593 , Validity, Construction, and Application of State Statutes Prohibiting Sale or Possession of Controlled Substances Within Specified Distance of Schools.

8 ALR 2nd 285 , Former Jeopardy as Ground for Habeas Corpus.

Encyclopedias

S.C. Jur. Assault and Battery Section 13, Use of a Deadly Weapon.

S.C. Jur. Burglary Section 9, Punishment.

S.C. Jur. Burglary Section 17, of Another.

S.C. Jur. Homicide Section 27, Aggravating Circumstances.

S.C. Jur. Probation, Parole, and Pardon Section 16, Statutory Disqualifications from Parole Eligibility.

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

LAW REVIEW AND JOURNAL COMMENTARIES

Granger v State: Examining What Constitutes “Notice” for Purposes of the Sufficiency of an Indictment and the Standard of Proof on Issues of Fact at Sentencing. S.C. L. Rev. 931 (Summer 1999).

Attorney General’s Opinions

Sentence imposed on individuals guilty of distribution of crack cocaine or possession with intent to distribute crack cocaine pursuant to Section 44‑53‑375 may not be suspended nor probation granted. However, provision does not specifically deny parole eligibility. S.C. Op.Atty.Gen. (April 14, 1993) 1993 WL 720101.

NOTES OF DECISIONS

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1. In general

Conviction of possession requires proof of possession, either actual or constructive, coupled with knowledge of its presence. State v. Muhammed (S.C.App. 1999) 338 S.C. 22, 524 S.E.2d 637, rehearing denied, certiorari denied. Controlled Substances 27; Controlled Substances 28

2. Constitutional issues

Two offenses for which defendant was convicted under South Carolina law, purchasing crack cocaine and purchasing crack cocaine in proximity of school, were same offense, for double jeopardy purposes, inasmuch as all elements of former offense were necessary for conviction for latter offense. Riley v. South Carolina, 2000, 82 F.Supp.2d 474, appeal from denial of habeas corpus 225 F.3d 655. Double Jeopardy 146

South Carolina courts’ determination that convictions and sentences for both purchasing crack cocaine and purchasing crack cocaine in proximity of school did not violate Double Jeopardy, on grounds that state legislature clearly intended for underlying statutes to impose cumulative punishment, was not contrary to, nor unreasonable application of, established federal law, and thus did not warrant federal habeas relief. Riley v. South Carolina, 2000, 82 F.Supp.2d 474, appeal from denial of habeas corpus 225 F.3d 655. Habeas Corpus 466

Defendant who was convicted of possession with intent to distribute methamphetamine and trafficking in methamphetamine, and who sought postconviction relief (PCR) based on ineffective assistance of counsel, did not waive any potential conflict of interest arising out of counsel’s simultaneous representation of defendant’s girlfriend in an unrelated matter; there was no evidence counsel informed defendant or the trial court of his dual representation, or that defendant knowingly, voluntarily, and intelligently waived any potential conflict of interest. Jordan v. State (S.C. 2013) 406 S.C. 443, 752 S.E.2d 538. Criminal Law 1791

Defense counsel’s simultaneous representation of defendant in a prosecution for possession of and trafficking in methamphetamine and of defendant’s girlfriend in an unrelated matter constituted an actual conflict of interest and, thus, constituted ineffective assistance of counsel, even though girlfriend was not charged in the methamphetamine prosecution; girlfriend was the initial focus of the methamphetamine investigation, evidence of her guilt was so strong that trial court invited defendant to proceed on a theory of third‑party guilt, and counsel never pursued such defense on defendant’s behalf. Jordan v. State (S.C. 2013) 406 S.C. 443, 752 S.E.2d 538. Criminal Law 1787

Prior conviction for trafficking in crack cocaine was not part of a continuing transaction of conspiracy to traffic, and thus, double jeopardy did not bar later conviction for trafficking in crack cocaine, as prior trial, in which defendant was not indicted for conspiracy and jury was not instructed on law of conspiracy, involved events, details, and persons completely separate from event proven in later trial, and it did not result in a conspiracy conviction, but, rather, a conviction for substantive offense of trafficking. State v. Gordon (S.C. 2003) 356 S.C. 143, 588 S.E.2d 105, rehearing denied, habeas corpus denied 2013 WL 195517. Double Jeopardy 146

3. Search and seizure

Search warrant application provided probable cause to issue warrant to search defendant’s parents’ home for evidence of drug trafficking, even though affidavit failed to set forth information as to the veracity, reliability or basis of knowledge of several of the informants referenced; individuals previously supplied cocaine by defendant were named, drug transaction involving another nonconfidential informant had occurred within two days preceding issuance of warrant, transactions indicated a habit of defendant’s delivering cocaine to his buyers’ homes, some part of information supplied by informant was witnessed by authorities, yet another named informant stated that defendant was being supplied large quantities of cocaine at his parents’ address, defendant was observed at that address just prior to his deliveries of cocaine, and defendant had been observed engaging in a monetary exchange pursuant to a drug transaction within a day of issuance of the warrant. State v. Thompson (S.C.App. 2015) 413 S.C. 590, 776 S.E.2d 413, rehearing denied, reversed 419 S.C. 250, 797 S.E.2d 716. Controlled Substances 148(3)

Record supported a conclusion that law enforcement officer had probable cause to conduct a warrantless search of the entirety of a vehicle, including the trunk, for drug evidence, even though a drug‑detection dog did not alert to the vehicle following at traffic stop; officer detected an odor of marijuana and observed other indicators of drug possession or trafficking, including the use of a rental vehicle, different stories given by defendant and passenger about their purpose for traveling, and the presence of hollowed‑out cigars in the center console, which suggested a future intent of marijuana use. State v. Morris (S.C. 2015) 411 S.C. 571, 769 S.E.2d 854, rehearing denied. Automobiles 349.5(7)

Traffic stop of approximately 13 minutes was not unduly prolonged or burdensome under the Fourth Amendment; at no point did law enforcement officers leave defendant and passenger detained without purpose or instruction, frequent requests by defendant and passenger to use the restroom contributed to the duration of the stop, and reasonable suspicion to extend the stop existed at the outset. State v. Morris (S.C. 2015) 411 S.C. 571, 769 S.E.2d 854, rehearing denied. Automobiles 349(17)

Record supported a conclusion that law enforcement officers who conducted a traffic stop had a reasonable suspicion that defendant and passenger were engaged in criminal activity, so as to justify continued detention of defendant and passenger; one officer testified to the presence of several facts that, from his experience and training, indicated drug trafficking, including an odor of marijuana, the presence several hollowed‑out cigars in the vehicle’s center console, and different stories given by defendant and passenger about their purpose for traveling. State v. Morris (S.C. 2015) 411 S.C. 571, 769 S.E.2d 854, rehearing denied. Automobiles 349(17)

Defendant did not have reasonable expectation of privacy in porch of apartment, as required to show that police officers’ warrantless entry onto porch violated his rights against unreasonable search and seizure, even assuming that police officers committed trespass, absent any evidence that defendant was renter or overnight guest at apartment, or any evidence demonstrating that he had any connection to apartment, other than his presence with consent of owner/renter. Per Toal, C.J., with three justices concurring in result. State v. Robinson (S.C. 2014) 410 S.C. 519, 765 S.E.2d 564. Searches and Seizures 164

Police officers had reasonable suspicion justifying investigatory stop of vehicle following tip from non‑confidential informant about drug transaction, where an officer was with informant when he made several phone calls to defendant arranging to purchase 14 grams of crack cocaine, and informant’s description of vehicle, the highway and direction vehicle would be traveling, location of vehicle at a specific time, and the existence of more than one person in vehicle was corroborated by officers before they made the stop. State v. Pope (S.C.App. 2014) 410 S.C. 214, 763 S.E.2d 814, rehearing denied. Arrest 60.3(2)

Police officers had probable cause to conduct a warrantless search for drugs in vehicle that was subjected to a valid investigatory stop following tip from non‑confidential informant who arranged to purchase 14 grams of crack cocaine from defendant, where police corroborated information from tip, including description of vehicle, the highway and direction vehicle would be traveling, the vehicle’s location at a specific time, and the existence of more than one occupant in vehicle, and officer observed one occupant turn around, look back at him, bend down, and sit back up. State v. Pope (S.C.App. 2014) 410 S.C. 214, 763 S.E.2d 814, rehearing denied. Searches and Seizures 62

Defendant’s traffic violations were not intervening criminal acts sufficient to dissipate the taint from the underlying Fourth Amendment violation when police, acting without a warrant, placed a Global Positioning System (GPS) device on a vehicle driven by defendant; traffic stop was entirely predicated on the information obtained from the GPS device and law enforcement’s desire to search defendant and his vehicle for drugs based on tip from confidential informant, and officer was instructed to find a basis to stop defendant’s vehicle so that a search for drugs could be conducted. State v. Adams (S.C. 2014) 409 S.C. 641, 763 S.E.2d 341. Criminal Law 392.39(10)

Because the only binding law in the case was a statute that forbade law enforcement officers from installing a Global Positioning System (GPS) device on defendant’s car without court authorization, the good‑faith reliance exception to the exclusionary rule, following underlying Fourth Amendment violation, was not applicable. State v. Adams (S.C. 2014) 409 S.C. 641, 763 S.E.2d 341. Criminal Law 392.38(4)

Officer did not have reasonable suspicion that criminal activity was afoot sufficient to create objective basis for extending scope of traffic stop to conduct pat‑down search of defendant, continue questioning, and deploy drug‑detection dog, such that continued detention of defendant was illegal; officer’s continued detention of defendant was based only on information that he had seen defendant drive in known drug area, that defendant remained nervous despite being given warning citation rather than traffic ticket, and that when questioned, defendant quickly responded that he did not have any drugs. State v. Hewins (S.C. 2014) 409 S.C. 93, 760 S.E.2d 814, rehearing denied. Automobiles 349.5(10); Automobiles 349(17); Automobiles 349(18)

Conviction for possession of crack cocaine with intent to distribute was valid, despite the invalidity of multi‑jurisdictional Narcotics Enforcement Team (NET) agreement under which town police officer acted outside of his territorial jurisdiction at time of defendant’s initial arrest; defendant’s immediate flight upon seeing police officer and agent of county sheriff’s department approach indicated consciousness of guilt, that agent then assisted police officer in apprehending and placing defendant under arrest, another sheriff’s agent then searched area from which defendant had fled and discovered 5.67 grams of crack cocaine, and no evidence used in defendant’s trial was acquired as a result of the arrest. State v. Burgess (S.C. 2014) 408 S.C. 421, 759 S.E.2d 407. Criminal Law 36.6

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

4. Knowledge or intent

Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury. State v. Muhammed (S.C.App. 1999) 338 S.C. 22, 524 S.E.2d 637, rehearing denied, certiorari denied. Controlled Substances 68; Controlled Substances 93

Statute providing that possession of one or more grams of ice, crank, or crack cocaine is prima facie evidence of possession with intent to distribute (PWID) creates permissible inference which jury may accept or reject, as PWID conviction does not hinge upon amount involved. Brightman v. State (S.C. 1999) 336 S.C. 348, 520 S.E.2d 614. Controlled Substances 68

Defendant could not be convicted of trafficking in crank if she was criminally negligent; statute specifically required that defendant act “knowingly.” State v. Taylor (S.C.App. 1996) 323 S.C. 162, 473 S.E.2d 817, rehearing denied, certiorari denied. Controlled Substances 27

5. Quantity of drugs

Evidence of defendant’s possession of components of a methamphetamine laboratory, coupled with forensic chemist’s testimony regarding theoretical yield of methamphetamine that defendant could have produced with pseudoephedrine originally contained in empty blister packs found at scene, was sufficient for circuit court to allow jury to decide whether defendant intended to manufacture in excess of ten grams of methamphetamine, as required to obtain trafficking conviction. State v. Cain (S.C.App. 2015) 413 S.C. 508, 776 S.E.2d 374, rehearing denied, reversed 419 S.C. 24, 795 S.E.2d 846. Controlled Substances 94

Statute providing for punishment for trafficking in methamphetamine, based on amount of methamphetamine involved, applied to weight of all of the mixture that contained methamphetamine, not merely weight of methamphetamine in its pure form; controlled substances statute defined weight of controlled substance as weight of the substance in pure form or any compound or mixture thereof, and methamphetamine trafficking statute defined weight of methamphetamine as the weight of the mixture of liquid and methamphetamine. State v. Johnson (S.C.App. 2014) 410 S.C. 10, 763 S.E.2d 36, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 539, 779 S.E.2d 554. Controlled Substances 100(2)

A conviction of possession with intent to distribute does not hinge upon the amount involved. State v. James (S.C.App. 2004) 362 S.C. 557, 608 S.E.2d 455, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 375 S.C. 489, 654 S.E.2d 270. Controlled Substances 31

Statute creating a permissive inference that possession of more than one gram of crack cocaine constitutes possession with intent to distribute does not mandate a reverse inference or presumption for amounts less than one gram. State v. Robinson (S.C.App. 2001) 344 S.C. 220, 543 S.E.2d 249, rehearing denied, habeas corpus dismissed 2008 WL 5158223, appeal dismissed 323 Fed.Appx. 267, 2009 WL 1114102. Controlled Substances 68

Defendant could be convicted of trafficking in crank, even if she did not know that amount involved in transaction was over ten grams, which was amount required for conviction under trafficking statute. State v. Taylor (S.C.App. 1996) 323 S.C. 162, 473 S.E.2d 817, rehearing denied, certiorari denied. Controlled Substances 27

6. Possession

To prove “constructive possession,” the state must show a defendant had dominion and control, or the right to exercise dominion and control. State v. Muhammed (S.C.App. 1999) 338 S.C. 22, 524 S.E.2d 637, rehearing denied, certiorari denied. Controlled Substances 28

In the prosecution of a crime for possession of narcotics, possession may be actual or constructive; actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found. State v. Ballenger (S.C. 1996) 322 S.C. 196, 470 S.E.2d 851.

7. Conspiracy

Evidence was insufficient to show that defendant engaged in a conspiracy to distribute crack cocaine with area drug dealers arising out of drug dealers’ practice of throwing objects at vehicles of purchasers trying to get away when drug deal went bad; prosecution showed at best similar or parallel objectives between area drug dealers but failed to offer evidence that parties involved intended to act together for their shared mutual benefit within scope of conspiracy charged based on their throwing objects at vehicles. State v. Mouzon (S.C. 1997) 326 S.C. 199, 485 S.E.2d 918. Conspiracy 47(12)

State presented sufficient evidence to establish conspiracy in New York County between defendant and another and evidence was thus sufficient to submit prosecution for conspiracy to traffick in crack cocaine to jury; one witness testified that she made several purchases of crack cocaine from defendant in that county through second person who introduced her to defendant, witness indicated defendant was other person’s supplier, another witness testified that he bought drugs from that other person who told him that defendant was his supplier, and motel owner testified that defendant often rented more one room and that other person sometimes accompanied defendant. State v. James (S.C.App. 1996) 321 S.C. 75, 472 S.E.2d 38, rehearing denied, certiorari denied. Conspiracy 48.1(4)

8. Crimes of moral turpitude

Mere possession of cocaine is a crime of moral turpitude because of the present “war on drugs,” and because any involvement with cocaine contributes to the destruction of ordered society. Thus, a prior conviction for simple possession of cocaine may be used to impeach an accused who takes the stand. State v. Major (S.C. 1990) 301 S.C. 181, 391 S.E.2d 235. Witnesses 337(21)

9. Defenses

The defense of entrapment is not available to a defendant with a predisposition, independent of government inducement and influence, to commit the crime with which the defendant is charged. Thus, in a prosecution for criminal conspiracy and distribution of crack cocaine arising out of the defendant’s delivery to an undercover agent of crack cocaine purchased by the defendant from a dealer with money supplied by the undercover agent, the defendant was not entitled to a jury instruction on the defense of entrapment where she was an admitted purchaser and regular user of crack cocaine, her own testimony showed that she participated in the drug buy expecting to share in the purchase, and she testified that the undercover agent gave her a portion of the crack cocaine. State v. Cooper (S.C.App. 1990) 302 S.C. 184, 394 S.E.2d 717.

10. Estoppel

Even if defendant had pled guilty to open container violation in municipal court, his plea would not have had preclusive effect on defendant’s ability to litigate his motion to suppress in circuit court on charge of possession of crack cocaine resulting from same search that led to open container violation; plea would have constituted waiver of any challenge defendant may have had to open container offense, but that waiver would not have extended to any challenge to charge of possession of crack cocaine. State v. Hewins (S.C. 2014) 409 S.C. 93, 760 S.E.2d 814, rehearing denied. Criminal Law 273.4(1); Judgment 751

Doctrine of collateral estoppel did not preclude defendant from pursuing motion to suppress evidence obtained from search of his vehicle in circuit court on possession of crack cocaine charge, even though defendant was convicted in municipal court of open container violation resulting from same search; there was no evidence in record that issue regarding constitutionality of search was actually litigated or directly determined in municipal court, suppression issue in drug case was not necessary to support conviction in open container case, and defendant had little incentive to pursue suppression motion in municipal court given minimal penalty for open container violation. State v. Hewins (S.C. 2014) 409 S.C. 93, 760 S.E.2d 814, rehearing denied. Judgment 751

11. Collateral considerations

To trigger removal under federal statute authorizing removal for violating a law relating to a controlled substance, the Government must connect an element of the alien’s conviction to a drug defined in the federal statute incorporating the controlled substance schedules. Mellouli v. Lynch, 2015, 135 S.Ct. 1980, 192 L.Ed.2d 60, on remand 2015 WL 4079087. Aliens, Immigration, And Citizenship 274

Defendant, who was convicted for unlawfully possessing a firearm, qualified as an armed career criminal under the Armed Career Criminal Act (ACCA) based on his three prior South Carolina convictions for possession with intent to distribute crack cocaine, even though defendant’s status as a youthful offender under South Carolina’s Youthful Offender Act (YOA) capped defendant’s prior state sentences at six years in custody, where youthful offender status was discretionary, and South Carolina law provided that defendant could have been sentenced to a maximum term of 15 years of imprisonment for a first offense, and enhanced maximum sentences for the subsequent offenses. U.S. v. Sellers (C.A.4 (S.C.) 2015) 806 F.3d 770. Sentencing and Punishment 1291

Defendant’s prior conviction for possession with intent to distribute crack cocaine, in violation of South Carolina law, was a “serious drug offense” punishable by possible term of imprisonment of 10 years or more, under the Armed Career Criminal Act (ACCA), notwithstanding that defendant was sentenced under the South Carolina’s Youthful Offender Act (YOA); although the YOA contained provision permitting sentencing court to commit youthful offenders to an indefinite period of treatment not to exceed six years, it also stated that the court could sentence the offender under any other applicable penalty provision, the YOA gave the sentencing court discretion to employ one of many sentencing alternatives, and defendant could have received a 15‑year prison sentence for his prior offense. U.S. v. Williams (C.A.4 (S.C.) 2007) 508 F.3d 724, certiorari denied 128 S.Ct. 2501, 553 U.S. 1067, 171 L.Ed.2d 791, post‑conviction relief denied 2009 WL 2762502, vacated and remanded 396 Fed.Appx. 951, 2010 WL 3760015. Sentencing And Punishment 1292

District court had jurisdiction to sentence crack cocaine conspiracy defendant to term of less than twenty years, even though indictment did not charge drug quantity, where defendant was sentenced below the statutory maximum term of imprisonment. U.S. v. Feurtado (C.A.4 (S.C.) 2002) 39 Fed.Appx. 812, 2002 WL 340637, Unreported, certiorari denied 123 S.Ct. 42, 537 U.S. 940, 154 L.Ed.2d 246, certiorari denied 123 S.Ct. 462, 537 U.S. 986, 154 L.Ed.2d 352, appeal from denial of post‑conviction relief dismissed 232 Fed.Appx. 355, 2007 WL 2012788, certiorari denied 128 S.Ct. 2070, 553 U.S. 1012, 170 L.Ed.2d 807, on subsequent appeal 306 Fed.Appx. 809, 2008 WL 3977037, certiorari denied 130 S.Ct. 51, 175 L.Ed.2d 43. Indictment And Information 113

12. Lesser included offenses

Possession of cocaine was lesser included offense of possession of crack cocaine, as elements of statutes governing former and latter offenses were exactly same, and crack cocaine statute merely defined enhanced punishment; thus, trial court had jurisdiction to accept defendant’s guilty plea to possession of cocaine, even though indictment charged him with possession of crack cocaine, and even though he did not waive presentment of indictment for possession of cocaine. State v. Timmons (S.C.App. 1999) 338 S.C. 287, 525 S.E.2d 906, rehearing denied, certiorari granted, affirmed 349 S.C. 389, 563 S.E.2d 657. Indictment And Information 191(.5)

13. Indictment

The State Grand jury does not have jurisdiction to indict a defendant for trafficking in crack cocaine pursuant to Section 44‑53‑375 where, although the indictment alleged multi‑county significance, the State failed to prove the offense actually had multi‑county significance. State v James (1995, SC App) 467 SE2d 748, withdrawn by publisher, reported at (1995, SC App) (ovrld in part by State v Evans (1996, SC) 470 SE2d 97) and reh gr, op withdrawn, substituted op (1996, SC App) and op withdrawn, substituted op, on reh (1996, SC App).

Indictment for trafficking in methamphetamine was sufficient to apprise defendant of charges against him, and thus, conveyed subject matter jurisdiction; although statute referenced in indictment did not include specific term “methamphetamine” in its text, it did list term’s commonly accepted synonyms of “crank” and “ice,” it clearly guided defendant to definitional statute where “crank” and “ice” wear defined as “methamphetamine,” and with exception of transposition of synonyms, indictment was phrased in almost exact language of statute. State v. Gonzales (S.C.App. 2004) 360 S.C. 263, 600 S.E.2d 122, rehearing denied, certiorari denied. Controlled Substances 64

Failure of indictments for distribution of crack cocaine and distribution of crack cocaine within proximity of a school to allege that defendant “knowingly” committed those offenses did not deprive trial court of subject matter jurisdiction over those charges; respective statutes defining those offenses did not include “knowingly” as an element of the offense, both indictments listed statutory elements of offenses, and indictments sufficiently informed defendant of charges he faced and what he must defend against. State v. Gill (S.C.App. 2003) 355 S.C. 234, 584 S.E.2d 432, rehearing denied, certiorari denied, habeas corpus dismissed 2010 WL 4365540. Controlled Substances 64

Indictment that cited in its caption only general statute prohibiting manufacture of controlled substances was sufficient for purposes of circuit court’s subject matter jurisdiction to sentence defendant following guilty plea under stricter statute specifically addressing the manufacture of methamphetamine; plain language in body of indictment clearly notified defendant that he was charged with manufacturing methamphetamine, counsel informed defendant of potential sentence if convicted, and defendant waived presentment of indictment to grand jury. Carter v. State (S.C. 1998) 329 S.C. 355, 495 S.E.2d 773. Controlled Substances 67

Indictment charging conspiracy to traffic in 100 grams or more of crack cocaine was valid on its face, where it contained all necessary elements of offenses intended to be charged, stated date of offenses, and stated name of accused. State v. James (S.C.App. 1996) 321 S.C. 75, 472 S.E.2d 38, rehearing denied, certiorari denied. Conspiracy 43(6); Indictment And Information 81(1); Indictment And Information 87(1)

Variance between indictment charging drug trafficking conspiracy in three counties and proof showing conspiracy in only one county was not a material variance, where multi‑county impact was not a necessary element of conspiracy to traffic in cocaine. State v. James (S.C.App. 1996) 321 S.C. 75, 472 S.E.2d 38, rehearing denied, certiorari denied. Conspiracy 43(12)

14. Jury selection

Juror’s failure during voir dire to disclose alleged social relationship with State witness, who was confidential informant who purchased crack from defendant, was not intentional; juror’s knowledge of who confidential informant was and rare exchange of greetings with him in her community did not constitute social relationship, juror answered questions posed to her honestly, her failure to reveal her knowledge of confidential informant was reasonable response to question posed. State v. Guillebeaux (S.C.App. 2004) 362 S.C. 270, 607 S.E.2d 99, rehearing denied, certiorari denied. Jury 131(18)

15. Admissibility of evidence

Expert witness’s conclusions regarding amount of methamphetamine defendant could have produced under various yield percentages had sufficient evidentiary support to be admissible in prosecution for trafficking methamphetamine, although empty blister packets of pseudoephedrine found at scene were used to calculate the hypothetical yield amounts and expert offered no testimony regarding amounts of other ingredients found at the scene, where expert explained the equation used to calculate the theoretical yield based upon the amount of pseudoephedrine previously contained in each empty blister packet, and provided the ratio between pseudoephedrine and methamphetamine from equations of how to make methamphetamine. State v. Cain (S.C.App. 2015) 413 S.C. 508, 776 S.E.2d 374, rehearing denied, reversed 419 S.C. 24, 795 S.E.2d 846. Criminal Law 486(2)

Expert scientific testimony of forensic chemist, regarding the theoretical yield of methamphetamine defendant could have produced with evidence found at defendant’s home, was reliable and properly admitted in prosecution for trafficking methamphetamine; science behind the theoretical yield methodology was consistent with recognized scientific laws and procedures, expert testified that calculating theoretical yield involved basic chemistry equations and that determining yield based on multiple ingredients was a core standard of chemistry, expert adequately explained quality control procedures used to ensure reliability, and courts approved of experts giving theoretical yield testimony in similar situations in cases from other jurisdictions. State v. Cain (S.C.App. 2015) 413 S.C. 508, 776 S.E.2d 374, rehearing denied, reversed 419 S.C. 24, 795 S.E.2d 846. Criminal Law 486(2)

Sufficient chain of custody existed to admit digital scale that police officer found during valid search of vehicle following drug tip and investigatory stop, even though scale was not secured in evidence bag and one of the batteries was missing; scale was a non‑fungible item, and officer found scale in vehicle, put case number on it, secured it in locked vault, and bag had broken open when officer retrieved it from vault the prior day. State v. Pope (S.C.App. 2014) 410 S.C. 214, 763 S.E.2d 814, rehearing denied. Criminal Law 404.60

Sufficient chain of custody existed to admit crack cocaine found in police patrol vehicle used to transport defendant to jail following his arrest, even though affidavit stated officer seized the crack when a different officer actually seized it, where officer took crack that a different officer found in patrol vehicle to his office, secured crack in evidence bag to be sent for chemical analysis, marked bag with his name and date, secured bag in a vault, and analyst testified that bag was sealed when he received it, analyst re‑sealed bag after testing, and bag was in same condition when he re‑sealed it. State v. Pope (S.C.App. 2014) 410 S.C. 214, 763 S.E.2d 814, rehearing denied. Criminal Law 404.60

Law of the case doctrine did not preclude defendant from challenging admission of drug evidence in circuit court proceeding for possession of cocaine, even though defendant had been convicted for open container violation in prior municipal court proceeding resulting from same search in which drug evidence was discovered; doctrine was discretionary appellate doctrine with no preclusive effect on successive trial proceedings. State v. Hewins (S.C. 2014) 409 S.C. 93, 760 S.E.2d 814, rehearing denied. Courts 99(7)

Trial court did not abuse its discretion in drug prosecution in prohibiting defendant from cross‑examining arresting officer, the only law enforcement officer who testified to seeing defendant in actual possession of crack cocaine that was discovered lying on the ground, about that officer’s personnel records in order to impeach his credibility and demonstrate bias; officer’s disciplinary incidents and removal from Narcotics Enforcement Team occurred after defendant’s arrest and did not involve defendant, and officer’s hostile actions were directed at co‑workers rather than at subjects of criminal investigations. State v. Burgess (S.C. 2014) 408 S.C. 421, 759 S.E.2d 407. Witnesses 370(1)

Prosecution in drug trafficking and possession case did not exceed limitation placed on it by trial court prohibiting prosecution from submitting evidence as to how co‑defendant’s attorney was retained, even though prosecutor’s closing argument alleged an ongoing conspiracy of coordinated defenses between defendant and co‑conspirator; defense had objected to initial testimony regarding payment of money by defendant to co‑conspirator before he retained counsel, but did not move to strike the statement, and trial court’s ruling was not that the alleged payments were not evidence of an ongoing conspiracy, but rather, the ruling was only that evidence of how co‑conspirator obtained counsel was not admissible. State v. McEachern (S.C.App. 2012) 399 S.C. 125, 731 S.E.2d 604, rehearing denied, certiorari denied. Criminal Law 2049

Evidence that defendant drove a co‑conspirator who was also her cousin, and his mother, to an attorney’s office so the mother could seek representation for her son, and gave money to co‑conspirator’s mother so she could aid her son financially, was relevant in drug possession and drug trafficking prosecution to show co‑conspirator’s potential bias toward defendant. State v. McEachern (S.C.App. 2012) 399 S.C. 125, 731 S.E.2d 604, rehearing denied, certiorari denied. Witnesses 367(1)

State failed to prove a sufficient chain of custody, and thus, the crack cocaine should not have been admitted into evidence; although State presented the testimony of the first and last links in the chain of custody, the State did not provide testimony from either of the intervening links in the chain, and State did not submit the testimony of each individual who handled the evidence nor did the State comply with rule which allows for the admission of sworn statements in lieu of the appearance of chain of custody witnesses. State v. Chisolm (S.C.App. 2003) 355 S.C. 175, 584 S.E.2d 401, rehearing denied, certiorari denied. Criminal Law 404.60

Potential prejudice from testimony of defendant’s girlfriend, that she saw defendant give woman plastic bag with white rock substance in it in exchange for $20, in trial for possession with intent to distribute crack cocaine, did not outweigh probative value, where amount of crack seized was less than one gram, and thus, element of intent was not subject to statutory prima facie showing, state argued number of plastic bags found in motel room, amount of cash, and evidence of flushing indicated larger amount was present before officers entered room, and state relied on testimony that defendant himself did not smoke crack to argue crack in defendant’s possession was not for personal use but for distribution. State v. Wilson (S.C. 2001) 345 S.C. 1, 545 S.E.2d 827, rehearing denied. Criminal Law 371.33; Criminal Law 373.9

Uncorroborated testimony of accomplice regarding alleged prior sale of drugs by defendant to unidentified third person was not clear and convincing evidence of prior crime and, thus, was improperly admitted to show intent to distribute, in prosecution for possession of crack cocaine with intent to distribute, where accomplice testified against defendant pursuant to plea agreement, and accomplice testified that she saw defendant hand a bag containing white substance she “guessed” contained drugs to third person, who she recognized as someone “who smoke” but who she was unable to identify. State v. Wilson (S.C.App. 1999) 337 S.C. 629, 524 S.E.2d 411, rehearing denied, certiorari granted, reversed 345 S.C. 1, 545 S.E.2d 827. Criminal Law 374.20(3)

The defendant was entitled to an in camera hearing regarding the admissibility of an undercover narcotics agent’s identification testimony where the defendant, who was 6 months pregnant at the time of the crack cocaine sale charged, claimed that it was her sister who took part in the drug sale, and the agent, who had failed to include pregnancy in his description of the seller given after the “buy,” was in the courtroom during the defendant’s bond hearing when her name was called. State v. Simmons (S.C. 1992) 308 S.C. 80, 417 S.E.2d 92, rehearing denied.

The trial court erred in overruling a defendant’s motion for a mistrial, or in the alternative for a curative instruction, where a witness in the defendant’s trial for distribution of crack cocaine commented that the defendant, who was accused of having sold drugs in a certain store, had made previous sales from that store; the defendant was prejudiced by the comment since it would tend to influence the jury on the issue of whether he sold drugs at the time being charged. State v. Bostick (S.C.App. 1992) 307 S.C. 226, 414 S.E.2d 175.

A defendant charged with conspiracy and distribution of crack cocaine was entitled to a new trial where the evidence showed that on July 7, the defendant had agreed to take an undercover officer to a third person for the purchase of crack cocaine, and that she spoke to the third person and returned to the officer’s car with the cocaine, and the trial judge admitted into evidence the third person’s guilty plea to the charge of distribution of crack cocaine on July 7; evidence of the guilty plea was both irrelevant and highly prejudicial to the defendant’s case. State v. Brown (S.C.App. 1991) 306 S.C. 448, 412 S.E.2d 440.

16. Questions of fact

Issue of whether defendant was in constructive possession of pistol found in his parents’ home was for the jury in drug trafficking prosecution; defendant admitted that he stayed at his parents’ home “every now and then,” defendant had a key to the house and could come and go whether his parents were there or not, defendant’s friend’s car was in home’s garage because defendant was working on it, defendant helped build a fence around the house and helped set up the home’s security system, and defendant had bought the pistol and it was registered to him. State v. Thompson (S.C.App. 2015) 413 S.C. 590, 776 S.E.2d 413, rehearing denied, reversed 419 S.C. 250, 797 S.E.2d 716. Controlled Substances 94

Issue as to whether defendant was guilty of trafficking in crack cocaine was for jury; arresting officer found a large bag containing more than ten grams of crack cocaine on the ground beneath defendant, officer discovered $4,220 in cash in defendant’s pockets and plastic bags and scales on the passenger’s side floorboard of vehicle, defendant had been sitting in passenger seat, witness’ statement to police that he was driving defendant to sell somebody something showed intent to distribute, witness testified that neither drugs nor money belonged to him, and witness declared that bags and scales were defendant’s. State v. Stanley (S.C.App. 2005) 365 S.C. 24, 615 S.E.2d 455, habeas corpus dismissed 2011 WL 1261376. Controlled Substances 94

Evidence was sufficient to submit defendant’s case of possession of crack cocaine with intent to distribute to the jury, and thus defendant was not entitled to a directed verdict on the charge; defendant was arrested in a high crime area that was known for drug activity, defendant had a bag containing eight rocks of crack cocaine on his person, defendant did not have a drug pipe or paraphernalia that indicated that the crack cocaine was for defendant’s personal use, defendant had $322.00 in cash on his person, mainly in 20 dollar bills, and police officer testified that a single rock of crack cocaine typically sold for 20 dollars. State v. Cherry (S.C. 2004) 361 S.C. 588, 606 S.E.2d 475, rehearing denied. Controlled Substances 93

The trial judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Cherry (S.C.App. 2001) 348 S.C. 281, 559 S.E.2d 297, rehearing denied, certiorari granted, affirmed but criticized 361 S.C. 588, 606 S.E.2d 475. Criminal Law 753.2(6)

Jury question was presented in cocaine trafficking prosecution as to whether defendant had constructive possession of those drugs; informant testified that defendant was with codefendant when he presented drug deal and that codefendant had sealed plastic bag filled to top with individual rocks of crack, defendant carried key to bedroom in which police found crack cocaine, he had unlimited access to house, and homeowner testified that defendant and codefendant had been visiting her for two days prior to incident, that crack did not belong to her, and that key to bedroom did not belong to her brother. State v. Muhammed (S.C.App. 1999) 338 S.C. 22, 524 S.E.2d 637, rehearing denied, certiorari denied. Controlled Substances 94

Question of whether defendant possessed 2.64 grams of crack cocaine with intent to distribute was for jury, where statute permitted inference that possession of more than one gram of crack constituted possession with intent to distribute. Johnson v. State (S.C. 1997) 325 S.C. 182, 480 S.E.2d 733. Controlled Substances 93

Viewed in light most favorable to state, evidence reasonably tended to prove defendant was guilty of distribution of crack cocaine and distribution of crack cocaine within one‑half mile radius of playground, or was such that his guilt for these offenses could be fairly and logically deduced and, therefore, trial judge properly denied defendant’s motion for directed verdict and submitted case to jury; there was no dispute concerning actual sale of crack cocaine and that it occurred within one‑half mile radius of playground, police officers positively identified defendant as individual who sold crack cocaine, and any question concerning identity of seller involved weight of evidence. State v. Wakefield (S.C.App. 1996) 323 S.C. 189, 473 S.E.2d 831, rehearing denied, certiorari denied. Controlled Substances 94

17. Instructions

Defendant’s decision not to testify or call witnesses in distribution of cocaine prosecution did not preclude him from receiving requested charge on entrapment; there was sufficient evidence from prosecution’s witnesses to support defense. State v. Brown (S.C.App. 2004) 362 S.C. 258, 607 S.E.2d 93, rehearing denied, certiorari denied. Criminal Law 772(6)

Jury charge on circumstantial evidence was legally sufficient, in prosecution for possession of crack cocaine with intent to distribute; court was not required to charge the jury on the distinctions between direct and circumstantial evidence. State v. Cherry (S.C.App. 2001) 348 S.C. 281, 559 S.E.2d 297, rehearing denied, certiorari granted, affirmed but criticized 361 S.C. 588, 606 S.E.2d 475. Criminal Law 784(4)

In light of modern general reasonable doubt charge which instructs jury to resolve doubts in favor of defendant, it is no longer necessary to give King instruction, which provides that if jury has reasonable doubt between lesser and greater offenses, it must resolve that doubt in defendant’s favor; overruling State v. King, 158 S.C. 251, 155 S.E. 409; Bell v. State, 321 S.C. 238, 467 S.E.2d 926; State v. Gorum, 311 S.C. 332, 428 S.E.2d 884; Chalk v. State, 313 S.C. 25, 437 S.E.2d 19; State v. Davis, 309 S.C. 326, 422 S.E.2d 133; State v. Robinson, 307 S.C. 169, 414 S.E.2d 142; Carter v. State, 301 S.C. 396, 392 S.E.2d 184; State v. Jackson, 301 S.C. 41, 389 S.E.2d 650; State v. Patrick, 289 S.C. 301, 345 S.E.2d 481; State v. McLaughlin, 208 S.C. 462, 38 S.E.2d 492; State v. Franklin, 310 S.C. 122, 425 S.E.2d 758; State v. McCall, 304 S.C. 465, 405 S.E.2d 414; State v. Clifton, 302 S.C. 431, 396 S.E.2d 831. Brightman v. State (S.C. 1999) 336 S.C. 348, 520 S.E.2d 614. Criminal Law 795(2.1)

In the prosecution of a matter for trafficking cocaine, the trial court did not err in refusing to give the defendant’s requested jury instruction even though the requested instruction was the correct statement of law where the instruction actually given to the jury was, considered as a whole, correct and adequately covered the law and the corrected instruction place undue emphasis on that portion of the statute which defines the selling and purchasing of the drugs as trafficking. State v. Ezell (S.C.App. 1996) 321 S.C. 421, 468 S.E.2d 679.

The defendant was not entitled to the reversal of her conviction for distribution of crack cocaine on the ground that the trial judge refused to give an identification charge, even though the case involved a single witness identification, where the judge addressed the issue of identification in his alibi charge, and then went on to charge that the defendant did not have to prove alibi and that the state had to prove that she committed the crime beyond a reasonable doubt; although the better procedure would have been to instruct the jury on the burden of proving identity, under the circumstances the jury’s mind was focused on the proper issue. State v. Simmons (S.C. 1992) 308 S.C. 80, 417 S.E.2d 92, rehearing denied.

The trial court erred in refusing to give the limiting charge that evidence of a defendant’s prior convictions were admissible only for impeachment purposes where the defendant was charged with distributing crack cocaine, even though none of the convictions were for drug‑related offenses, because the jury might have concluded the defendant had criminal tendencies. State v. Bryant (S.C. 1992) 307 S.C. 458, 415 S.E.2d 806, rehearing denied. Criminal Law 673(5); Criminal Law 1168(2)

A trial judge committed reversible error in a trial for conspiracy and possession with intent to distribute crack cocaine where he advised the jury that a defendant’s mere presence or association with people who possess controlled substances is sufficient proof that the defendant himself possessed the controlled substance or was a member of a conspiracy, and he never retracted the incorrect statement, despite repeated requests by counsel to do so, even though he correctly instructed the law of mere presence in the remainder of the instruction. State v. Robinson (S.C. 1991) 306 S.C. 399, 412 S.E.2d 411.

18. Sufficiency of evidence

Testimony of police captain was sufficient to establish chain of custody of drug evidence seized from defendant’s residence, although police investigator who seized and handled drug evidence was deceased at time of trial, where captain was present at defendant’s residence and observed all items that were seized, captain signed return to search warrant, captain testified that investigator collected drug evidence the scene and placed it in manila envelopes for transport to secured evidence locker at police department, and captain further testified that investigator, as evidence custodian, would have placed evidence inside a best evidence kit prior to storing it in secure evidence locker. State v. Trapp (S.C.App. 2017) 420 S.C. 217, 801 S.E.2d 742. Criminal Law 404.60

Testimony of forensic chemist, who worked for state police laboratory and who tested drug evidence seized from defendant’s residence, was sufficient to establish chain of custody of drug evidence, where chemist testified that evidence was still inside manila envelopes when she removed it from the best evidence kit for testing, items listed on laboratory report matched items that police investigator certified that he delivered to laboratory, and although two items, a straw and one razor blade, were documented by investigator on evidence log‑in form but were not delivered to laboratory, care given to such evidence went only to weight of evidence, as opposed to its admissibility. State v. Trapp (S.C.App. 2017) 420 S.C. 217, 801 S.E.2d 742. Criminal Law 404.60

There was insufficient evidence to show that defendant could have produced ten grams of methamphetamine with the equipment and ingredients he possessed, as required to support his conviction for trafficking in methamphetamine; although forensic chemist testified that it was theoretically possible to manufacture 17.67 grams of methamphetamine from the 19.2 grams of pseudoephedrine possessed by defendant, that figure was calculated on the assumptions of “ideal laboratory conditions” with “pure products” used by a “trained chemist,” and chemist admitted that defendant did not have ideal laboratory conditions and that she had no way to calculate how much methamphetamine defendant would actually have been able to manufacture given his particular circumstances. State v. Cain (S.C. 2017) 419 S.C. 24, 795 S.E.2d 846. Criminal Law 561(1)

State presented substantial circumstantial evidence of defendant’s custody and control of pseudoephedrine originally contained in empty blister packets found at scene to establish constructive possession as part of larger plan to manufacture in excess of ten grams of methamphetamine, as required to obtain trafficking conviction; in addition to blister packets, police discovered an active meth lab with a batch of methamphetamine in the gassing‑out phase, and components of the manufacturing process were in and around defendant’s residence, including face masks, coffee filters, wrappings from lithium batteries, needles, “one pot” bottles, and “pink solid,” which was comprised of remnants of pseudoephedrine cold tablets stripped of the active ingredient necessary in methamphetamine production. State v. Cain (S.C.App. 2015) 413 S.C. 508, 776 S.E.2d 374, rehearing denied, reversed 419 S.C. 24, 795 S.E.2d 846. Controlled Substances 82

Evidence was insufficient to establish that defendant was in constructive possession of crack cocaine, in prosecution for trafficking in crack cocaine; crack cocaine was found in car‑washing mitt in outside recycling bin near back door of home owned by defendant’s mother, there was no direct circumstantial evidence that linked defendant to crack cocaine, and state presented no evidence that defendant could have exercised dominion and control over area where crack cocaine was found. State v. Heath (S.C. 2006) 370 S.C. 326, 635 S.E.2d 18. Controlled Substances 79

Evidence was insufficient to establish intent to distribute in order to support possession with intent to distribute crack cocaine conviction; although defendant was observed in drug trafficking area, he was initially detained for open container violation, defendant did not have large amounts of cash, amount of cocaine defendant possessed was speculative as crack was never recovered for evidentiary testing, officer was not entirely clear as to how many rocks were in bag, and defendant’s healthy appearance was not conclusive as to whether he was drug dealer since it could also have raised inference that he was not long‑term user of cocaine. State v. James (S.C.App. 2004) 362 S.C. 557, 608 S.E.2d 455, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 375 S.C. 489, 654 S.E.2d 270. Controlled Substances 81

Evidence was sufficient to support entrapment defense in distribution of cocaine prosecution; friend of defendant’s and paid confidential informant initiated meeting by calling defendant several times on day of drug transaction, and defendant chose only to deal with friend and refused to sell to other officer, and defendant lacked predisposition to distribute cocaine as he was honorably discharged first sergeant, was gainfully employed and declined to conduct transaction at work, did not have any other drugs or cash in his possession, it took defendant hour and a half to procure drugs, and police had never previously bought drugs from defendant or had knowledge that defendant sold drugs. State v. Brown (S.C.App. 2004) 362 S.C. 258, 607 S.E.2d 93, rehearing denied, certiorari denied. Criminal Law 37(8)

Evidence was sufficient to submit defendant’s case of possession of crack cocaine with intent to distribute to the jury; defendant was arrested in a high crime area known for violence and drug activity, when arrested defendant possessed eight rocks of crack cocaine, defendant did not possess a crack pipe or other drug paraphernalia, defendant had $322 cash on his person in mostly twenty dollar bills, and police officer testified that a single rock of crack cocaine typically sold for twenty dollars. State v. Cherry (S.C.App. 2001) 348 S.C. 281, 559 S.E.2d 297, rehearing denied, certiorari granted, affirmed but criticized 361 S.C. 588, 606 S.E.2d 475. Controlled Substances 93

There was sufficient evidence to support conviction for possession with intent to distribute crack cocaine, not merely simple possession, even though the amount in possession was only 0.9 grams; police officers testified that it was not typical for a simple user to possess seven rocks of crack cocaine at one time and that users typically possess one rock, or at most, two, and one officer stated that he would expect to find crack cocaine in a dealer’s possession wrapped as it was in a black plastic bag. State v. Robinson (S.C.App. 2001) 344 S.C. 220, 543 S.E.2d 249, rehearing denied, habeas corpus dismissed 2008 WL 5158223, appeal dismissed 323 Fed.Appx. 267, 2009 WL 1114102. Controlled Substances 81

In the prosecution of a matter for possession with intent to distribute narcotics, there was sufficient evidence to find the defendant had actual possession of the drugs where (1) the defendant matched the description the police were given alerting them to the drug transaction, (2) the defendant seemed to be involved in a drug transaction at the time the police arrived, (3) when the defendant noticed the police in an unmarked car, the defendant put something in his pocket, (4) testimony was received that drugs had never been found in the specific area where the defendant was arrested and where the drugs were found, (5) testimony was received that although drug sellers often put drugs on the ground, they are always hidden and within visibility of the seller, (6) no other people were outside at the time the incident occurred, and (7) the drugs were found laying on the ground out in the open, in the location where the defendant fell. State v. Ballenger (S.C. 1996) 322 S.C. 196, 470 S.E.2d 851.

In the prosecution of a matter for trafficking cocaine, the trial court properly denied the defendant’s motion for directed verdict which argued that there was no evidence that the bottle of cocaine found near the area in which he was arrested was the defendant’s where the prosecution presented evidence that (1) the bottle was found on the ground, warm and dry even though the weather was cold and the ground was still wet from rain yet the defendant did not present any evidence that the bottle was found in an area frequented by others who stashed their drugs there, (2) no one else was in the area at the time the defendant was arrested, (3) no other bottles or litter were found in the area of the arrest and (4) the defendant fled from the police just prior to arrest. State v. Ezell (S.C.App. 1996) 321 S.C. 421, 468 S.E.2d 679.

19. Sentence and punishment

Crack cocaine conspiracy defendant’s guilty plea was knowing and voluntary. U.S. v. Feurtado (C.A.4 (S.C.) 2002) 39 Fed.Appx. 812, 2002 WL 340637, Unreported, certiorari denied 123 S.Ct. 42, 537 U.S. 940, 154 L.Ed.2d 246, certiorari denied 123 S.Ct. 462, 537 U.S. 986, 154 L.Ed.2d 352, appeal from denial of post‑conviction relief dismissed 232 Fed.Appx. 355, 2007 WL 2012788, certiorari denied 128 S.Ct. 2070, 553 U.S. 1012, 170 L.Ed.2d 807, on subsequent appeal 306 Fed.Appx. 809, 2008 WL 3977037, certiorari denied 130 S.Ct. 51, 175 L.Ed.2d 43. Criminal Law 273.1(1)

Defendant’s convictions for second‑offense conspiracy to manufacture methamphetamine and second‑offense possession with intent to distribute methamphetamine were no longer no‑parole offenses, for which defendant was required to serve 85% of sentence before being eligible for parole, following effective date of Omnibus Crime Reduction and Sentencing Reform Act, even though Act did not amend definition of term “no‑parole offense” in statute describing types of offenses for which offender was not eligible for parole, where Act amended separate statutory provision to indicate that, “notwithstanding any other provision of law,” a person convicted and sentenced as first or second offender pursuant to that subsection was eligible for parole. Bolin v. South Carolina Dept. of Corrections (S.C.App. 2016) 415 S.C. 276, 781 S.E.2d 914, rehearing denied. Pardon and Parole 50

A conviction for possession of drug paraphernalia may not be used for enhancement purposes under sentencing provisions for drug offenses as it does not “relate to” drugs as statutorily mandated. Berry v. State (S.C. 2009) 381 S.C. 630, 675 S.E.2d 425. Sentencing And Punishment 1257

Defendant, who was sentenced for drug offense as a first offender, wrongly classified and treated as second offender, and subsequently charged with violating conditions of Community Supervision Program (CSP), had served more than original sentence of four years imprisonment, and thus, was entitled to be released from CSP; warrant, indictment, and sentencing sheet all listed statute indicating first offense, defendant’s placement and participation in CSP was result of being treated as second offender, as indicated by Criminal Docket Report (CDR) code on sentencing sheet, and additional listing of CDR code, indicating second offense, could not trump statute. State v. Bennett (S.C.App. 2007) 375 S.C. 165, 650 S.E.2d 490. Sentencing And Punishment 1945

Defendant who pleaded guilty to distributing crack cocaine could be sentenced as a second offender even though he committed his only other offense, namely possession of crack cocaine, after he committed distribution offense, where defendant pleaded guilty to possession of crack cocaine before he pleaded guilty to distribution offense. Walters v. State (S.C. 2007) 371 S.C. 591, 641 S.E.2d 434. Sentencing And Punishment 1301

Imposition of sentence of time served upon indigent misdemeanor defendant, who had already served ten days in jail as result of his inability to post bail, did not result in defendant’s “imprisonment” and did not trigger defendant’s constitutional right to counsel, for purposes of determining whether misdemeanor conviction could serve as predicate offense in subsequent felony sentencing proceeding. Glaze v. State (S.C. 2005) 366 S.C. 271, 621 S.E.2d 655. Criminal Law 1715; Sentencing And Punishment 100

Counsel correctly advised defendant that maximum penalty for manufacturing methamphetamine was 30‑year sentence for second offense, for purposes of determining validity of guilty pleas on that charge in exchange for 25‑year sentence and on money laundering charge in exchange for 20‑year sentence to run concurrently; maximum penalty on manufacturing charge was not 10 years based on general statute addressing Schedule II drugs under which defendant was indicted, but was governed by stricter statute specifically addressing methamphetamine. Carter v. State (S.C. 1998) 329 S.C. 355, 495 S.E.2d 773. Criminal Law 273.1(1)

A defendant should not have been sentenced as a second offender under the crack cocaine statute which provides an enhanced sentence for a second offender or one whose first conviction was related to narcotic drugs where his second offender status was based on prior convictions for distributing marijuana, which is not a narcotic drug as defined by Section 44‑53‑110; Section 44‑53‑470, which provides that an offense is a second offense if the defendant had previously been convicted under a statute relating to marijuana, is inapplicable since Section 44‑53‑375 is both more recent and more specific. Rainey v. State (S.C. 1992) 307 S.C. 150, 414 S.E.2d 131.

Section 44‑53‑375 unambiguously provides that, except for a first offense where the amount of crack cocaine is less than 1 gram, a sentence for possession with intent to distribute crack cocaine may not be suspended. State v. Clifton (S.C.App. 1990) 302 S.C. 431, 396 S.E.2d 831, certiorari dismissed 305 S.C. 85, 406 S.E.2d 337.

A youthful offender convicted of possession with intent to distribute crack cocaine is not precluded from receiving a sentence under the Youthful Offender Act (YOA), even though the YOA permits the trial judge to suspend a sentence and grant probation while the crack statute prohibits suspension and probation. Since the legislature has specifically excluded YOA sentences for certain offenses ‑ convictions which carry a sentence of less than one year or a maximum sentence of death or life imprisonment as set forth in Section 24‑19‑10(f), and armed robbery as set forth in Section 16‑11‑330(1) ‑ it can be inferred that the legislature intended the YOA to apply to youthful offenders guilty of all other offenses. Although the legislature has provided for a mandatory minimum sentence for possession with intent to distribute crack cocaine, there is no conflict between the crack statute and the YOA since a YOA sentence is not specifically excluded by the crack statute. State v. Burton (S.C. 1990) 301 S.C. 305, 391 S.E.2d 583.

Armed career criminal enhancement to sentence for possession of firearm by convicted felon was supported by evidence that defendant had three prior state drug convictions punishable by more than ten years’ imprisonment. U.S. v. Brown (C.A.4 (S.C.) 2012) 494 Fed.Appx. 374, 2012 WL 4377814, Unreported. Sentencing and Punishment 1381(1)

20. Harmless error

Even if trial court erred in admitting testimony by defendant in drug trafficking and possession prosecution that was not objected to, that defendant drove a co‑conspirator who was also defendant’s cousin and co‑defendant’s mother to an attorney’s office so the mother could seek representation for her son, and gave money to co‑conspirator’s mother so she could aid her son financially, any such error was harmless because it was cumulative of co‑conspirator’s testimony, also admitted without objection, that defendant offered to provide financial assistance to him just prior to his obtaining counsel. State v. McEachern (S.C.App. 2012) 399 S.C. 125, 731 S.E.2d 604, rehearing denied, certiorari denied. Criminal Law 1170.5(1)

Any error in prosecution for drug trafficking and possession in allowing prosecutor to ask defendant who she sold drugs to was harmless, where defendant denied knowing two of the people named by prosecutor, and denied being involved with the named individual she did know, and no evidence was introduced as a result of the questioning. State v. McEachern (S.C.App. 2012) 399 S.C. 125, 731 S.E.2d 604, rehearing denied, certiorari denied. Criminal Law 1170.5(3)

Error in denying defendant’s request to present final closing argument was not harmless; defendant may have been prejudiced by his inability to make final arguments regarding charges of conspiracy to distribute crack cocaine and possession of firearm during violent crime, despite fact that his closing argument focussed on contesting murder charges for which he was acquitted. State v. Mouzon (S.C. 1997) 326 S.C. 199, 485 S.E.2d 918. Criminal Law 1166.6

Trial court’s erroneous instruction that defendant could be convicted of trafficking in crack if she acted with criminal negligence was not harmless; main issue before jury concerned whether defendant was merely present but not participating in drug transaction or whether she was an active participant. State v. Taylor (S.C.App. 1996) 323 S.C. 162, 473 S.E.2d 817, rehearing denied, certiorari denied. Criminal Law 1172.1(3)

21. Habeas corpus

Habeas petitioners were barred from asserting that their sentences for narcotics offenses violated Apprendi because they were imposed in part based upon trial courts’ drug quantity determinations, without findings by jury, and sentences exceeded statutory maximums sentences imposed for narcotics offenses without specified drug quantities; Apprendi was decided long after petitioners were convicted, claims were raised for first time in habeas petitions, and Apprendi could not be applied retroactively on collateral review. San‑Miguel v. Dove (C.A.4 (S.C.) 2002) 291 F.3d 257, certiorari denied 123 S.Ct. 46, 537 U.S. 938, 154 L.Ed.2d 242. Courts 100(1); Habeas Corpus 275.1; Habeas Corpus 278

22. Review

Defendant preserved for appellate review argument that State failed to establish strict chain of custody for drug evidence found in defendant’s residence and that trial court erred by admitting drug evidence, although defendant did not contemporaneously object when State’s forensic chemist presented her results at trial, where defendant objected to State’s line of questioning during testimony of police officer and argued that State was trying to “backdoor” chain of custody evidence through officer’s testimony, because police investigator who had handled drug evidence had passed away, and that without chain of custody was incomplete without investigator’s testimony, and, further, during forensic chemist’s testimony defendant objected based upon incomplete chain of custody. State v. Trapp (S.C.App. 2017) 420 S.C. 217, 801 S.E.2d 742. Criminal Law 1036.4

Defendant preserved for appellate review his argument that forensic chemist’s testimony was insufficient to prove the drug quantity element of his conviction for trafficking in methamphetamine; defendant made a pretrial motion to dismiss and a directed verdict motion on the basis that the State did not present sufficient drug quantity evidence, and while defendant used the term “potential yield” for first time on appeal to draw contrast between evidence that would have been sufficient and the “theoretical yield” evidence offered by the State, the argument was nevertheless the same argument made in his motions before the trial court. State v. Cain (S.C. 2017) 419 S.C. 24, 795 S.E.2d 846. Criminal Law 1044.2(1)

Defendant failed to preserve for appeal the issue of whether State could rely on a hypothetical theoretical yield, calculated using amount of empty blister packets of pseudoephedrine found at scene, to prove defendant’s intent to manufacture ten or more grams of methamphetamine, as required for a trafficking conviction, where the theoretical yield versus potential yield argument was not raised as a ground in defendant’s directed verdict motion, nor at any other point during the trial. State v. Cain (S.C.App. 2015) 413 S.C. 508, 776 S.E.2d 374, rehearing denied, reversed 419 S.C. 24, 795 S.E.2d 846. Criminal Law 1044.2(1)

Defendant failed to preserve argument for review that any use of his prior uncounselled municipal court conviction for open container violation in subsequent circuit court proceeding for possession of cocaine violated his Sixth Amendment right to counsel, since circuit court judge did not rule on issue. State v. Hewins (S.C. 2014) 409 S.C. 93, 760 S.E.2d 814, rehearing denied. Criminal Law 1045

Defendant’s argument in prosecution for drug trafficking and possession, that prosecutor asked questions regarding who the defendant sold drugs to without first laying the proper foundation, was not preserved for appellate review, where defense counsel first objected to prosecutor’s initial asking of those questions of defendant, but then failed to contest the basis given by prosecutor to submit the testimony as an insufficient one. State v. McEachern (S.C.App. 2012) 399 S.C. 125, 731 S.E.2d 604, rehearing denied, certiorari denied. Criminal Law 2040

Issue of whether prosecutor, in prosecution for drug trafficking and possession failed to meet its burden of producing witnesses that it alleged the defendant sold drugs to was not preserved for appeal, where prosecutor was never ordered by trial court to produce witnesses, but rather, prosecutor was merely prohibited from testifying as to what he had “heard” from witnesses, and issue was never raised by defense or ruled on by court. State v. McEachern (S.C.App. 2012) 399 S.C. 125, 731 S.E.2d 604, rehearing denied, certiorari denied. Criminal Law 1171.8(2)

Even if defendant’s claim of error in trial court’s refusal to grant a mistrial were preserved for appellate review in drug prosecution, the measure taken by the judge in instructing the jury to strike prosecutor’s statement during cross examination of defendant regarding who defendant sold drugs to, was sufficient to cure any prejudicial error that may have resulted from the statement. State v. McEachern (S.C.App. 2012) 399 S.C. 125, 731 S.E.2d 604, rehearing denied, certiorari denied. Criminal Law 1038.1(1)

Defendant failed to preserve for appellate review his claim that trial court’s failure to direct verdict violated his Fourteenth Amendment right to due process because evidence was not sufficient to convince rational trier of fact that he was guilty beyond reasonable doubt; at trial, defendant moved to exclude crack cocaine evidence on ground of Fourteenth Amendment violation, but in separate and subsequent argument, defendant moved for directed verdict without referencing Fourteenth Amendment. State v. James (S.C.App. 2004) 362 S.C. 557, 608 S.E.2d 455, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 375 S.C. 489, 654 S.E.2d 270. Criminal Law 1036.8

On appeal from the denial of a motion for directed verdict, the Court of Appeals must view the evidence in the light most favorable to the State. State v. Cherry (S.C.App. 2001) 348 S.C. 281, 559 S.E.2d 297, rehearing denied, certiorari granted, affirmed but criticized 361 S.C. 588, 606 S.E.2d 475. Criminal Law 1144.13(3)

**SECTION 44‑53‑376.** Disposal of waste from production of methamphetamine; penalty; emergency or environmental response restitution; exemptions.

 (A) It is unlawful for a person to knowingly cause to be disposed any waste from the production of methamphetamine or knowingly assist, solicit, or conspire with another to dispose of methamphetamine waste.

 (B) A person who violates subsection (A) is guilty of a felony and, upon conviction for a first offense, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. Upon conviction for a second or subsequent offense, a person must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both.

 (C) If a person is convicted of a violation of this section, in a manner that requires an emergency or environmental response, the person convicted must be required to make restitution to all public entities involved in the emergency response, to cover the reasonable cost of their participation in the emergency response. The convicted person shall make the restitution in addition to any other fine or penalty required by law.

 (D) Exempt from the provisions of this section are the individuals, entities, agencies, law enforcement groups, and those otherwise authorized, who are lawfully tasked with the proper disposal of the waste created from methamphetamine production.

HISTORY: 2006 Act No. 275, Section 3, eff 6 months after approval (became law without the Governor’s signature on May 4, 2006).

Library References

Environmental Law 747.

Westlaw Topic No. 149E.

**SECTION 44‑53‑378.** Exposing child to methamphetamine.

 (A) It is unlawful for a person who is eighteen years of age or older to:

 (1) either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufacture amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor child; or

 (2) knowingly permit a child to be in an environment where a person is selling, offering for sale, or having in such person’s possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture amphetamine or methamphetamine; or

 (3) knowingly permit a child to be in an environment where drug paraphernalia or volatile, toxic, or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture amphetamine or methamphetamine.

 (B) A person who violates subsection (A)(1), (2), or (3), upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. Upon conviction for a second or subsequent offense, the person must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both.

HISTORY: 2008 Act No. 361, Section 5, eff June 16, 2008.

Editor’s Note

This section was formerly Section 20‑7‑105.

Library References

Infants 1553.

Westlaw Topic No. 211.

C.J.S. Evidence Section 380.

**SECTION 44‑53‑380.** Prohibited acts B; penalties.

 (a) It shall be unlawful for any person:

 (1) Who is subject to the requirements of Sections 44‑53‑280 to 44‑53‑360 to distribute or dispense a controlled substance in violation of Section 44‑53‑360;

 (2) Who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

 (3) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or this article;

 (4) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this article;

 (5) To refuse any entry into any premises or inspection authorized by this article;

 (6) Knowingly to keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this article; or

 (7) Who is subject to the requirements of this article to fail to register as provided in Section 44‑53‑280 to manufacture, distribute, or dispense controlled substances prior to his engaging in such manufacturing, distribution, or dispensing.

 (b) Any person who violates this section is punishable by a civil fine of not more than one thousand dollars; provided, that, if the violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally, and the trier of fact specifically finds that the violation was committed knowingly or intentionally, such person shall be deemed guilty of a felony and, upon conviction, shall be imprisoned for not more than five years, or fined not more than ten thousand dollars, except that if such person is a corporation it shall be subject to a civil penalty of not more than one hundred thousand dollars. Imposition of a civil penalty pursuant to this item shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

HISTORY: 1962 Code Section 32‑1510.50; 1971 (57) 800; 1975 (59) 104.

CROSS REFERENCES

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Required response, under the Drug‑Free Workplace Act, of an employer upon receiving notice that an employee has been convicted of an offense under this section, see Section 44‑107‑50.

Library References

Controlled Substances 32.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 265 to 266, 270 to 271, 289 to 295, 304, 311 to 313.

NOTES OF DECISIONS

Prior convictions 1

1. Prior convictions

Recognizing the fairness and logic exemplified by the provisions of Sections 17‑25‑50 and 56‑1‑1020, the Court of Appeals has ruled that where a defendant has been convicted on 2 or more counts for the violation of the Controlled Substance Act arising out of simultaneous acts committed in the course of a single incident, the conviction will be considered as only one for the purpose of sentencing upon a subsequent conviction for a violation of the Controlled Substance Act. State v. Boyd (S.C.App. 1986) 288 S.C. 206, 341 S.E.2d 144.

**SECTION 44‑53‑390.** Prohibited acts C; penalties.

 (a) It is unlawful for a person knowingly or intentionally to:

 (1) distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by Section 44‑53‑350;

 (2) use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

 (3) acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

 (4) furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article;

 (5) make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render the drug a counterfeit substance;

 (6) distribute or deliver a noncontrolled substance or an imitation controlled substance:

 (A) with the expressed or implied representation that the substance is a narcotic or nonnarcotic controlled substance, or with the expressed or implied representation that the substance is of such nature or appearance that the recipient of the distribution or delivery will be able to dispose of the substance as a controlled substance;

 (B) when the physical appearance of the finished product is substantially similar to a specific controlled substance, or if in a tablet or capsule dosage form as a finished product it is similar in color, shape, and size to any controlled substances’ dosage form, or its finished dosage form has similar, but not necessarily identical, markings on each dosage unit as any controlled substances’ dosage form, or if its finished dosage form container bears similar, but not necessarily identical, markings or printed material as any controlled substances which is commercially manufactured and commercially packaged by a manufacturer or repackager registered under the provisions of Title 21, Section 823 of the United States Code. In any prosecution for unlawful delivery of a noncontrolled substance, it is no defense that the accused believed the noncontrolled substance to actually be a controlled substance.

 (b) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years, or fined not more than ten thousand dollars, or both. If such person is a corporation, it is subject to a civil penalty of not more than one hundred thousand dollars.

 (c) The provisions of Section 44‑53‑390(a)(6) do not apply to any transaction in the ordinary course of professional practice of a practitioner registered to dispense controlled substances under this article, nor do they apply to a pharmacy acting in the normal course of business, or pursuant to the lawful order of a placebo prescription.

HISTORY: 1962 Code Section 32‑1510.51; 1971 (57) 800; 1982 Act No. 427, Section 2; 1993 Act No. 184, Section 75.

CROSS REFERENCES

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Required response, under the Drug‑Free Workplace Act, of an employer upon receiving notice that an employee has been convicted of an offense under this section, see Section 44‑107‑50.

Library References

Controlled Substances 32.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 265 to 266, 270 to 271, 289 to 295, 304, 311 to 313.

Attorney General’s Opinions

It is likely the South Carolina legislature intended for convictions of imitation controlled substances to constitute an element of a controlled substance conviction for purposes of a drug felony concerning SNAP (formerly the Food Stamp program) in regards to the flexibility given to State legislatures by Food and Nutrition Services. S.C. Op.Atty.Gen. (June 4, 2013) 2013 WL 2732899.

A defendant who attempted or conspired to obtain a controlled substance by fraudulent means should be charged under Section 44‑53‑420 in conjunction with Section 44‑53‑390. S.C. Op.Atty.Gen. (August 3, 1983) 1983 WL 142724.

NOTES OF DECISIONS

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1. In general

While there may be exceptions, ordinarily there is no offense involving counterfeit LSD or cocaine, as these drugs are typically produced illegally and therefore do not have a trademark or label of manufacturer. Murdock v. State (S.C. 1992) 311 S.C. 16, 426 S.E.2d 740. Controlled Substances 43

2. Construction with other laws

Holding that prescription obtained by subterfuge or deception was not valid prescription for purposes of possession under South Carolina Code Section 32‑1510.49(c) (1962) [Section 44‑53‑370(c) (1976)] did not render as superfluous South Carolina Code Section 32‑1510.51(a)(3) (1962) [Section 44‑53‑390(a)(3)(1976)], since latter statutory provision is not concerned soley with element of possession. State v. Tolbert (S.C. 1977) 269 S.C. 210, 237 S.E.2d 55.

3. Prescription

Possession of quaalude in prescription bottle for controlled substance Placidyl, together with testimony that appellant obtained five or six prescriptions for quaalude during 2 month period from several doctors located in different counties, supports finding either that appellant came into possession of quaalude other than through lawful prescription or that visits to several different doctors and procurement of prescription from each was result of misrepresentation and deception. State v. Tolbert (S.C. 1977) 269 S.C. 210, 237 S.E.2d 55. Controlled Substances 80

4. Prior convictions

Recognizing the fairness and logic exemplified by the provisions of Sections 17‑25‑50 and 56‑1‑1020, the Court of Appeals has ruled that where a defendant has been convicted on 2 or more counts for the violation of the Controlled Substance Act arising out of simultaneous acts committed in the course of a single incident, the conviction will be considered as only one for the purpose of sentencing upon a subsequent conviction for a violation of the Controlled Substance Act. State v. Boyd (S.C.App. 1986) 288 S.C. 206, 341 S.E.2d 144.

5. Indictment

A defendant charged with obtaining a controlled substance by misrepresentation, deception, and subterfuge was not entitled to dismissal of the indictment where the indictment had been phrased substantially in the language of the statute, had given her notice of the time of the allegedly unlawful activity, and had identified the substance allegedly acquired. State v. Shoemaker (S.C. 1981) 276 S.C. 86, 275 S.E.2d 878. Indictment And Information 110(3)

Where accused was indicted and convicted of conspiracy to violate a controlled substances statute, it was immaterial whether an amphetamine was designated as schedule 1 or schedule 2 under the act, since in either event it was a controlled substance, thus the claim that due process required a specific designation of such schedule was without merit. State v. Lawrence (S.C. 1974) 264 S.C. 3, 212 S.E.2d 52, certiorari denied 95 S.Ct. 2619, 422 U.S. 1025, 45 L.Ed.2d 683, rehearing denied 96 S.Ct. 157, 423 U.S. 884, 46 L.Ed.2d 115.

6. Admissibility of evidence

Evidence of manufacturer’s recommendations as to use and dosage of amphetamines was properly admitted over objection, where good faith of prescribing physician was of the essence, and jury was entitled to consider these recommendations in weighing the credibility of physician’s testimony. State v. Lawrence (S.C. 1974) 264 S.C. 3, 212 S.E.2d 52, certiorari denied 95 S.Ct. 2619, 422 U.S. 1025, 45 L.Ed.2d 683, rehearing denied 96 S.Ct. 157, 423 U.S. 884, 46 L.Ed.2d 115.

Testimony of psychiatrist which condemned the use of amphetamines as an aid to weight reduction went beyond the theory of the state’s case for narcotics violation by prescribing physician, and should have been excluded as irrelevant, but since other medical testimony clearly recognized the medical value of the discreet use of amphetamine for weight reduction there was no prejudice caused by the testimony. State v. Lawrence (S.C. 1974) 264 S.C. 3, 212 S.E.2d 52, certiorari denied 95 S.Ct. 2619, 422 U.S. 1025, 45 L.Ed.2d 683, rehearing denied 96 S.Ct. 157, 423 U.S. 884, 46 L.Ed.2d 115.

In proceeding for violation of Controlled Substances Act, expert testimony of pharmacist as to usual dose of amphetamine was within his competence and therefore admissible. State v. Lawrence (S.C. 1974) 264 S.C. 3, 212 S.E.2d 52, certiorari denied 95 S.Ct. 2619, 422 U.S. 1025, 45 L.Ed.2d 683, rehearing denied 96 S.Ct. 157, 423 U.S. 884, 46 L.Ed.2d 115.

In prosecution of physician for violation of Controlled Substances Act, questions related to the black market value of drugs obtained by allegedly illicit prescriptions was admissible as relevant to the charge of conspiracy. State v. Lawrence (S.C. 1974) 264 S.C. 3, 212 S.E.2d 52, certiorari denied 95 S.Ct. 2619, 422 U.S. 1025, 45 L.Ed.2d 683, rehearing denied 96 S.Ct. 157, 423 U.S. 884, 46 L.Ed.2d 115.

7. Instructions

Judges instruction correctly stated law where, in charge laid against appellant under South Carolina Code Section 32‑15110.49(c) (1962) [Section 44‑53‑370(c) (1976)] for unlawful possession of controlled substance, effect of also reading to jury language from South Carolina Code Section 32‑15110.51(a)(3) (1962) [Section 44‑53‑390(a)(3) (1976)] was to charge that prescription obtained by misrepresentation, fraud, forgery, deception, or subterfuge would not be valid prescription of practitioner. State v. Tolbert (S.C. 1977) 269 S.C. 210, 237 S.E.2d 55.

8. Sentence and punishment

A sentence of three years in prison for an attempt to obtain possession of a controlled substance by fraud was invalid since Section 44‑53‑390(B) provides a maximum sentence of five years for one who obtains or acquires such possession and Section 44‑53‑420 limits the sentence for an attempt to commit a crime to one‑half the sentence provided for the completed crime. State v. Swaringen (S.C. 1980) 275 S.C. 509, 273 S.E.2d 339.

**SECTION 44‑53‑391.** Unlawful to advertise for sale, manufacture, possess, sell or deliver, or to possess with intent to sell or deliver, paraphernalia.

 (a) It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.

 (b) In determining whether an object is paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

 (1) Statements by an owner or by anyone in control of the object concerning its use;

 (2) The proximity of the object to controlled substances;

 (3) The existence of any residue of controlled substances on the object;

 (4) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of law; the innocence of an owner, or of anyone in control of the object, as to a direct violation of law shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

 (5) Instructions, oral or written, provided with the object concerning its use;

 (6) Descriptive materials accompanying the object which explain or depict its use;

 (7) National and local advertising concerning it use;

 (8) The manner in which the object is displayed for sale;

 (9) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

 (10) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

 (11) The existence and scope of legitimate uses for the object in the community;

 (12) Expert testimony concerning its use.

 (c) Any person found guilty of violating the provisions of this section shall be subject to a civil fine of not more than five hundred dollars except that a corporation shall be subject to a civil fine of not more than fifty thousand dollars. Imposition of such fine shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

HISTORY: 1982 Act No. 400, Section 2.

CROSS REFERENCES

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

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Required response, under the Drug‑Free Workplace Act, of an employer upon receiving notice that an employee has been convicted of an offense under this section, see Section 44‑107‑50.

Library References

Controlled Substances 31, 32.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 265 to 266, 270 to 271, 288 to 295, 304, 307, 311 to 314, 316.

Attorney General’s Opinions

Discussion of the validity of a county drug paraphernalia ordinance that, in addition to a fine of not more than $500, imposes a jail sentence of up to 30 days imprisonment. S.C. Op.Atty.Gen. (June 25, 2012) 2012 WL 2586920.

A municipality may constitutionally impose a jail sentence of up to thirty days imprisonment for a violation of a drug paraphernalia ordinance even though state law only imposes a civil fine for such a violation. S.C. Op.Atty.Gen. (September 10, 2009) 2009 WL 3208471.

A civil fine imposed for a conviction for possession of drug paraphernalia does not prevent an individual from receiving an expungement otherwise authorized by Section 22‑5‑910(B). S.C. Op.Atty.Gen. (August 25, 2009) 2009 WL 2844874.

The state law provision which makes possession of drug paraphernalia subject to a civil fine does not preempt a local ordinance which makes the possession criminal; since there is no evidence that the state intended to occupy the field and the local ordinance does not appear to conflict with state law. S.C. Op.Atty.Gen. (July 1, 2004) 2004 WL 1557091.

A civil action would lie for recovery of the civil fine imposed by violation of the statute. S.C. Op.Atty.Gen. (July 25, 1996) 1996 WL 494765.

**SECTION 44‑53‑392.** Weight of controlled substance.

 Notwithstanding any other provision of this article, the weight of any controlled substance referenced in this article is the weight of that substance in pure form or any compound or mixture thereof.

HISTORY: 1990 Act No. 604, Section 9.

Library References

Controlled Substances 9.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 1 to 3, 5 to 13, 19 to 21, 27 to 28, 31 to 57, 83 to 86, 221 to 227, 304 to 305.

NOTES OF DECISIONS

In general 1

1. In general

Statute providing for punishment for trafficking in methamphetamine, based on amount of methamphetamine involved, applied to weight of all of the mixture that contained methamphetamine, not merely weight of methamphetamine in its pure form; controlled substances statute defined weight of controlled substance as weight of the substance in pure form or any compound or mixture thereof, and methamphetamine trafficking statute defined weight of methamphetamine as the weight of the mixture of liquid and methamphetamine. State v. Johnson (S.C.App. 2014) 410 S.C. 10, 763 S.E.2d 36, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 539, 779 S.E.2d 554. Controlled Substances 100(2)

**SECTION 44‑53‑395.** Prohibited acts; penalties.

 (A) It shall be unlawful:

 (1) for any practitioner to issue any prescription document signed in blank. The issuance of such document signed in blank shall be prima facie evidence of a conspiracy to violate this section. The possession of prescription document signed in blank by a person other than the person whose signature appears thereon shall be deemed prima facie evidence of a conspiracy between the possessor and the signer to violate the provisions of this section;

 (2) for any person other than a practitioner registered with the Department under this article to possess a blank prescription not completed and signed by the practitioner whose name appears printed thereon;

 (3) for any person to withhold the information from a practitioner that such person is obtaining controlled substances of like therapeutic use in a concurrent time period from another practitioner.

 (B) Any person who knowingly and intentionally violates this section a first time shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a term of imprisonment for not more than two years or by a fine of not more than two thousand dollars, or both. Any person who knowingly and intentionally violates this section a second or subsequent time shall be deemed guilty of a felony and upon conviction shall be punished by a term of imprisonment for not more than five years.

HISTORY: 1978 Act No. 546, Section 2.

CROSS REFERENCES

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Required response, under the Drug‑Free Workplace Act, of an employer upon receiving notice that an employee has been convicted of an offense under this section, see Section 44‑107‑50.

Library References

Controlled Substances 21.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 270, 273, 319 to 320, 322, 326 to 327, 329 to 331.

RESEARCH REFERENCES

ALR Library

19 ALR 6th 577 , Wrongful or Excessive Prescription of Drugs as Ground for Revocation or Suspension of Physician’s or Dentist’s License to Practice.

NOTES OF DECISIONS

In general 1

Prior convictions 2

Sentence and punishment 3

1. In general

Violation of crime of knowingly and intentionally acquiring or obtaining possession of a controlled substance, pursuant to a prescription authorized by one medical doctor, withholding from that doctor fact of obtaining controlled substance of like use in a concurrent time period from another medical doctor, is a serious crime as defined in Rules For Lawyer Disciplinary Enforcement, since it includes as a necessary element, misrepresentation, fraud and deceit, and violates Rules of Professional Conduct. Matter of Floyd (S.C. 1997) 328 S.C. 167, 492 S.E.2d 791, reinstatement granted 339 S.C. 1, 528 S.E.2d 77. Attorney And Client 39

2. Prior convictions

Recognizing the fairness and logic exemplified by the provisions of Sections 17‑25‑50 and 56‑1‑1020, the Court of Appeals has ruled that where a defendant has been convicted on 2 or more counts for the violation of the Controlled Substance Act arising out of simultaneous acts committed in the course of a single incident, the conviction will be considered as only one for the purpose of sentencing upon a subsequent conviction for a violation of the Controlled Substance Act. State v. Boyd (S.C.App. 1986) 288 S.C. 206, 341 S.E.2d 144.

3. Sentence and punishment

Twelve month definite suspension was warranted against attorney who pled guilty to possession of heroin and to knowingly and intentionally acquiring or obtaining possession of controlled substance, pursuant to prescription authorized by one medical doctor, withholding from that doctor fact that he was obtaining a controlled substance of like use in a concurrent time period from another medical doctor. Matter of Floyd (S.C. 1997) 328 S.C. 167, 492 S.E.2d 791, reinstatement granted 339 S.C. 1, 528 S.E.2d 77. Attorney And Client 59.13(5)

**SECTION 44‑53‑398.** Sale of products containing ephedrine or pseudoephedrine; penalties; training of sales personnel.

 (A) Nonprescription products whose sole active ingredient is ephedrine, pseudoephedrine, or phenylpropanolamine may be offered for retail sale only if sold in blister packaging. The retailer shall ensure that such products are not offered for retail sale by self‑service but only from behind a counter or other barrier so that such products are not directly accessible by the public but only by an employee or agent of the retailer.

 (B)(1) A retailer may not sell to an individual in any single day a nonprescription product or a combination of nonprescription products containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine; and a retailer may not sell to an individual in a thirty‑day period a nonprescription product or a combination of nonprescription products containing more than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine.

 (2) An individual may not purchase in any single day a nonprescription product or a combination of nonprescription products containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine; and an individual may not purchase in a thirty‑day period a nonprescription product or a combination of nonprescription products containing more than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine.

 (C) It is unlawful for a retailer to purchase any product containing ephedrine, pseudoephedrine, or phenylpropanolamine from any person or entity other than a manufacturer or a wholesale distributor registered by the United States Drug Enforcement Administration.

 (D)(1) A retailer selling nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine shall require the purchaser to produce a government issued photo identification showing the date of birth of the person and require the purchaser to sign an electronic log showing the date and time of the transaction, the person’s name and address, the type, issuing governmental entity, identification number, and the amount of the compound, mixture, or preparation. The retailer shall determine that the name entered in the log corresponds to the name on the identification and that the date and time entered are correct and shall enter in the log the name of the product and the quantity sold. The retailer shall ensure that the product is delivered directly into the custody of that purchaser. The log must include a notice to purchasers that entering false statements or misrepresentations in the log may subject the purchaser to criminal penalties.

 (2) Before completing a sale of a product regulated by this section, the retailer electronically shall transmit the information entered in the log to a data collection system provided by the National Association of Drug Diversion Investigators, or a successor or similar entity. The system must collect this data in real time and generate a stop sale alert if the sale would result in a violation of subsection (B) or a federal quantity restriction, which must be assessed on the basis of sales or purchases made in any state to the extent that information is available in the data collection system. If the retailer receives a stop sale alert, the retailer must not complete the sale unless the retailer, upon notifying the purchaser the sale cannot be completed, reasonably fears bodily harm if he denies the sale due to the stop sale alert. A product regulated by this section may not be sold without being reported to the data collection system unless the system is experiencing temporary technical difficulties that prevent a retailer from reporting the information to the system, and in that case, the retailer shall enter the necessary information in a written log, which must subsequently be entered into the electronic log within three business days of each business day that the electronic log was not operational. A retailer using a written log under these circumstances is immune from liability during the time the system is temporarily disabled.

 (3) Any information entered in the electronic log that is retained by a retailer, or information maintained by a retailer pursuant to subsection (J)(2), is confidential and not a public record as defined in Section 30‑4‑20(C) of the Freedom of Information Act. A retailer or an employee or agent of a retailer who in good faith releases information in a log to federal, state, or local law enforcement authorities is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or wilful misrepresentation.

 (E) Except as authorized by this section, it is unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute, any substance containing any amount of ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers which have been altered from their original condition so as to be powdered, liquefied, dissolved, solvated, or crushed. This subsection does not apply to any of the substances identified within this subsection which are possessed or altered for a legitimate medical purpose as directed by a person licensed under Title 40 and authorized to prescribe legend drugs.

 (F) It is unlawful for a person to enter false statements or misrepresentations on the log required pursuant to subsection (D)(1).

 (G) This section preempts all local ordinances or regulations governing the retail sale or purchase of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine except such local ordinances or regulations that existed on or before December 31, 2004.

 (H)(1) Except as otherwise provided in this section, it is unlawful for a retailer knowingly to violate subsection (A), (B)(1), (C), (D)(1), or (D)(2), and it is unlawful for a person knowingly to violate subsection (B)(2), (E), or (F).

 (2) A retailer convicted of a violation of subsection (A) or (B)(1) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than five thousand dollars and, upon conviction for a second or subsequent offense, must be fined not more than ten thousand dollars.

 (3) A retailer convicted of a violation of subsection (C) is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than one year or fined not more than one thousand dollars, or both and, upon conviction for a second or subsequent offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both.

 (4) A retailer convicted of a violation of subsection (D)(1), (D)(2), or (J)(2) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than one thousand dollars and not less than five hundred dollars. Upon conviction for a second offense, a retailer must be fined not more than five thousand dollars and not less than one thousand dollars. Upon conviction for a third or subsequent offense, a person must be fined not more than ten thousand dollars and not less than five thousand dollars.

 (5) A person convicted of a violation of subsection (B)(2) or (E) is guilty of a felony and, upon conviction for a first offense, must be imprisoned not more than five years and fined not more than five thousand dollars. The court, upon approval from the solicitor, may request as part of the sentence, that the offender enter and successfully complete a drug treatment program. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not less than ten thousand dollars.

 (6) A person convicted of a violation of subsection (F), upon conviction for a first offense, is guilty of a misdemeanor and must be fined not more than one thousand dollars and, upon conviction for a second or subsequent offense, is guilty of a felony and must be fined not more than five thousand dollars.

 (7) It is an affirmative defense to a violation of subsection (A), (C), or (D)(1) if a retailer provided the training, maintained records, and obtained employee and agent statements of agreement required by subsection (I) for all employees and agents at the retail location where the violation occurred and at the time the violation occurred.

 (8) It is an affirmative defense to completing a sale following receipt of a stop sale alert received pursuant to subsection (D)(2) if the retailer, upon notifying the purchaser the sale cannot be completed, reasonably fears bodily harm if he denies the sale due to the stop sale alert.

 (I) A retailer shall provide training on the requirements of this section to all agents and employees who are responsible for delivering the products regulated by this section into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products. A retailer shall obtain a signed, written agreement from each employee or agent that the employee or agent agrees to comply with the requirements of this section. The retailer shall maintain records demonstrating that these employees and agents have been provided this training and the documents executed by the retailer’s employees and agents agreeing to comply with this section.

 (J)(1) The following are exempt from the electronic log requirements of this section but shall maintain a written log containing the information required to be entered in the electronic log, as provided for in subsection (D)(1):

 (a) a retailer that only sells single dose packages of nonprescription ephedrine, pseudoephedrine, or phenylpropanolamine;

 (b) a pharmacy that does not have a compatible point of sale system.

 (2) A retailer who maintains a written log pursuant to this subsection shall retain the written log for two years after which the log may be destroyed. The log must be made available for inspection within twenty‑four hours of a request made by a local, state, or federal law enforcement officer.

 (3) A retailer who violates the requirements of maintaining a written log as provided for in subsection (J)(2) is subject to the penalties provided for in subsection (H)(4).

 (K) The sheriff or chief of police shall monitor and determine if retailers, other than licensed pharmacies, are in compliance with the provisions of this section by ensuring that a retailer:

 (1) is entering all sales of a product regulated by this section in an electronic log as required by this section;

 (2) if not maintaining an electronic log, is exempt as provided for in subsection (J)(1), and is continuing to maintain the written log as provided for in subsection (J);

 (3) is not selling products regulated by this section.

 (L) This section does not apply to:

 (1) pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under twelve years of age according to label instructions;

 (2) products that the Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors; and

 (3) a purchase of a single sales package containing not more than sixty milligrams of pseudoephedrine.

 (M) For purposes of this section “retailer” means a retail distributor, including a pharmacy, where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale and does not include an employee or agent of a retailer.

HISTORY: 2006 Act No. 275, Section 1, eff 6 months after approval (became law without the Governor’s signature on May 4, 2006); 2010 Act No. 242, Section 1, eff July 1, 2010.

Editor’s Note

2010 Act No. 242, Section 3, provides as follows:

“Before January 1, 2011, the State Law Enforcement Division (SLED) shall enter into a memorandum of agreement with the National Association of Drug Diversion Investigators (NADDI), or a successor or other entity, to identify the roles and responsibilities of SLED and NADDI, or a successor or other entity, in carrying out the collection of sales and purchase data of ephedrine, pseudoephedrine, or phenylpropanolamine products and the transference of this information to the State Law Enforcement Division as provided for in this act. The memorandum must provide that the data and information in SLED’s electronic monitoring system is property of the State and that NADDI will provide SLED with that data and information at least four times a year in a format agreed to by SLED and NADDI and that is consistent with the most recent standards adopted by the American Society for Automation in Pharmacy (ASAP), as well as the most recent standards adopted by the National Information Exchange Model (NIEM).”

Library References

Controlled Substances 32.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 265 to 266, 270 to 271, 289 to 295, 304, 311 to 313.

**SECTION 44‑53‑400.** Penalties in article in addition to those under other laws.

 Any penalty imposed for violation of this article shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

HISTORY: 1962 Code Section 32‑1510.52; 1971 (57) 800.

Library References

Controlled Substances 100.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 228 to 232, 489 to 506.

**SECTION 44‑53‑410.** Prosecution in another jurisdiction shall be bar to prosecution.

 If a violation of this article is a violation of a Federal law or the law of another state, the conviction or acquittal under Federal law or the law of another state for the same act is a bar to prosecution in this State.

HISTORY: 1962 Code Section 32‑1510.53; 1971 (57) 800.

Library References

Controlled Substances 60.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 222 to 223, 229 to 230, 232, 342 to 344, 360.

RESEARCH REFERENCES

ALR Library

97 ALR 5th 201 , Conviction or Acquittal in Federal Court as Bar to Prosecution in State Court for State Offense Based on Same Facts‑Modern View.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Government’s motion to dismiss prosecution for possession with intent to distribute marijuana so that pending state charges on the same crime would not be precluded did not violate the public policy expressed in Section 44‑53‑410. U.S. v. Manbeck (C.A.4 (S.C.) 1984) 744 F.2d 360, certiorari denied 105 S.Ct. 1197, 469 U.S. 1217, 84 L.Ed.2d 342.

Defendant’s participation in continuing conspiracy to traffic in cocaine, subsequent to his arrest and plea under a federal indictment, constituted a new offense for which he could be prosecuted without violating double jeopardy principles. State v. Harris (S.C. 2002) 351 S.C. 643, 572 S.E.2d 267, rehearing denied. Double Jeopardy 152

2. Review

Court of Appeals would not review defendant’s unpreserved claim that since federal court dismissed possessory drug offenses with prejudice, prosecution of state charges evolving from the same facts was barred by statute providing that an acquittal under federal law was a bar to prosecution, as defendant did not raise issue in trial court and statute did not involve subject matter jurisdiction, and therefore claim could not be raised for the first time on appeal. State v. Rice (S.C.App. 2001) 348 S.C. 417, 559 S.E.2d 360, rehearing denied, certiorari denied. Criminal Law 1030(3)

**SECTION 44‑53‑420.** Attempt and conspiracy; attempt to possess; penalties.

 (A) Except as provided in subsection (B), a person who attempts or conspires to commit an offense made unlawful by the provisions of this article, upon conviction, be fined or imprisoned in the same manner as for the offense planned or attempted; but the fine or imprisonment shall not exceed one half of the punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

 (B) A person who attempts to possess a substance made unlawful by the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

HISTORY: 1962 Code Section 32‑1510.54; 1971 (57) 800; 2005 Act No. 127, Section 7, eff June 7, 2005.

CROSS REFERENCES

Notwithstanding provisions of this section, person convicted of conspiracy must serve full, not half, sentence or punishment, see Section 44‑53‑370.

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Required response, under the Drug‑Free Workplace Act, of an employer upon receiving notice that an employee has been convicted of an offense under this section, see Section 44‑107‑50.

Library References

Conspiracy 28(3).

Criminal Law 44.

Westlaw Topic Nos. 91, 110.

C.J.S. Conspiracy Sections 243 to 256, 273 to 278, 286 to 289, 291.

C.J.S. Criminal Law: Substantive Principles Sections 150 to 160.

Attorney General’s Opinions

Only state Supreme Court could make ultimate determination of whether crime of attempted possession of crack cocaine is crime of moral turpitude, since question is one of first impression in state; indications exist to support Attorney General’s belief that Court very well might hold that it was. S.C. Op.Atty.Gen. (June 25, 1991) 1991 WL 474771.

A defendant who attempted or conspired to obtain a controlled substance by fraudulent means should be charged under Section 44‑53‑420 in conjunction with Section 44‑53‑390. S.C. Op.Atty.Gen. (August 3, 1983) 1983 WL 142724.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

1. In general

Those guilty of conspiring to traffic drugs are subject to the full sentence for trafficking, notwithstanding statute limiting conspiracy sentences to one‑half of the planned offense. State v. Harris (S.C. 2002) 351 S.C. 643, 572 S.E.2d 267, rehearing denied. Conspiracy 51

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

Defendant convicted of conspiracy to traffic in 400 or more grams of cocaine was properly sentenced under drug trafficking statute, as opposed to conspiracy statute, as drug trafficking statute included conspiracy within the substantive framework of offense of trafficking. State v. Castineira (S.C.App. 2000) 341 S.C. 619, 535 S.E.2d 449, rehearing denied, certiorari granted, affirmed 351 S.C. 635, 572 S.E.2d 263. Sentencing And Punishment 20

The trial court erred in sentencing a defendant to a term of 9 years for a conviction of conspiracy to distribute marijuana, second offense, where the maximum sentence for distribution of marijuana, second offense, is 10 years; the case would be remanded for resentencing to a term not to exceed 5 years. State v. Fowler (S.C. 1982) 277 S.C. 472, 289 S.E.2d 412.

A sentence of three years in prison for an attempt to obtain possession of a controlled substance by fraud was invalid since Section 44‑53‑390(B) provides a maximum sentence of five yeras for one who obtains or acquires such possession and Section 44‑53‑420 limits the sentence for an attempt to commit a crime to one‑half the sentence provided for the completed crime. State v. Swaringen (S.C. 1980) 275 S.C. 509, 273 S.E.2d 339.

It is not absolutely necessary for the prosecution to show that a defendant directly promoted a drug venture or had specific knowledge of the dealings taking place in order to convict defendant of conspiracy to violate the drug laws. State v. Hayden (S.C. 1977) 268 S.C. 214, 232 S.E.2d 889.

2. Admissibility of evidence

Defendant was not prejudiced by joint trial with seven other defendants, which occurred after trial court refused to sever conspiracy to traffic in cocaine charges, even though evidence of prior federal drug conviction was admitted; defendant’s trial defense was that he had, in fact, participated in the conspiracy up until his federal arrest, but that he ceased participating thereafter, and thus introduction of his prior drug conviction was inextricably linked with his defense, such that it would necessarily have been admitted in a separate trial. State v. Harris (S.C. 2002) 351 S.C. 643, 572 S.E.2d 267, rehearing denied. Criminal Law 1166(6)

**SECTION 44‑53‑430.** Appeals from orders of Department.

 Any person may appeal from any order of the Department within thirty days after the filing of the order, to the court of common pleas of the county in which the aggrieved party resides or in which his place of business is located. The Department shall thereupon certify to the court the record in the hearing. The court shall review the record and the regularity and the justification for the order, on the merits, and render judgment thereon as in ordinary appeals in equity. The court may order or permit further testimony on the merits of the case, in its discretion such testimony to be given either before the judge or referee by him appointed. From such judgment of the court an appeal may be taken as in other civil actions.

HISTORY: 1962 Code Section 32‑1510.55; 1971 (57) 800.

CROSS REFERENCES

Appeals to circuit and county courts, generally, see Sections 18‑7‑10 et seq.

Library References

Health 158.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 38 to 39.

**SECTION 44‑53‑440.** Distribution to persons under eighteen.

 Any person eighteen years of age or over who violates Section 44‑53‑370(a) by distributing a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug, or who violates Section 44‑53‑375(B) by distributing crack cocaine to a person under eighteen years of age is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years or fined not more than thirty thousand dollars, or both, and the sentence may not be suspended and probation may not be granted. Any person eighteen years of age or over who violates Section 44‑53‑370(a) and (b) by distributing any other controlled substance listed in Schedules I through V to a person under eighteen years of age is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than ten years or fined not more than ten thousand dollars, or both. Any violation of this section constitutes a separate offense.

HISTORY: 1962 Code Section 32‑1510.56; 1971 (57) 800; 1974 (58) 2284; 1987 Act No. 128, Section 3.

CROSS REFERENCES

Murder committed while drug trafficking as aggravating circumstance, see Section 16‑3‑20.

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

Library References

Infants 1553.

Westlaw Topic No. 211.

C.J.S. Evidence Section 380.

LAW REVIEW AND JOURNAL COMMENTARIES

Circumventing the Fourth Amendment via the Special Needs Doctrine to Prosecute Pregnant Drug Users: Ferguson v. City of Charleston. 51 S.C. L. Rev. 671.

**SECTION 44‑53‑445.** Distribution of controlled substance within proximity of school.

 (A) It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one‑half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

 (B) For a person to be convicted of an offense pursuant to subsection (A), the person must:

 (1) have knowledge that he is in, on, or within a one‑half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university; and

 (2) actually distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, the controlled substance within a one‑half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

 (C) A person must not be convicted of an offense pursuant to subsection (A) if the person is stopped by a law enforcement officer for the controlled substance offense within a one‑half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, but did not actually commit the controlled substance offense within a one‑half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

 (D)(1) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

 (2) When a violation involves only the purchase of a controlled substance, the person is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

 (E) For the purpose of creating inferences of intent to distribute, the inferences set out in Sections 44‑53‑370 and 44‑53‑375 apply to criminal prosecutions under this section.

HISTORY: 1984 Act No. 504, Section 2; 1987 Act No. 128, Section 4; 1990 Act No. 579, Section 2; 1993 Act No. 184, Section 76; 1995 Act No. 83, Section 55; 2010 Act No. 273, Section 39, eff June 2, 2010.

CROSS REFERENCES

Murder committed while drug trafficking as aggravating circumstance, see Section 16‑3‑20.

Prohibition against the appointment of any person convicted under this section as guardian ad litem for a child in an abuse or neglect proceeding, see Section 63‑11‑520.

RESEARCH REFERENCES

ALR Library

27 ALR 5th 593 , Validity, Construction, and Application of State Statutes Prohibiting Sale or Possession of Controlled Substances Within Specified Distance of Schools.

8 ALR 2nd 285 , Former Jeopardy as Ground for Habeas Corpus.

Encyclopedias

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

S.C. Jur. Appeal and Error Section 21.1, Subject Matter Jurisdiction.

S.C. Jur. Children and Families Section 102, Transfer of Jurisdiction.

S.C. Jur. Homicide Section 27, Aggravating Circumstances.

LAW REVIEW AND JOURNAL COMMENTARIES

The doctrine of deference: Shifting constitutional presumptions and the Supreme Court’s restatement of student rights after Board of Education v. Earls. 56 S.C. L. Rev. 1 (Autumn 2004).

Attorney General’s Opinions

To be sufficient for a conviction of possession of a controlled substance, there must be some corroborating evidence indicating that there was a knowing possession of the substance prior to or simultaneous with ingestion. S.C. Op.Atty.Gen. (December 30, 2002) 2002 WL 31958837.

If money or property seized at a cockfight can be shown to be an integral part of or the fruits of gambling, it is subject to seizure and forfeiture. Property used in gambling or gambling upon cockfights should be forfeited in a separate civil proceeding to insure notice and an opportunity to be heard to every person. Forfeitures by consent could be approved by the court which would provide an additional validating authority. An argument can be made that conviction for distribution and distribution in proximity to a school do not constitute double jeopardy. In regards to mandatory sentencing, such should be deferred to the Solicitor and the sentencing judge. S.C. Op.Atty.Gen. (September 22, 1997) 1997 WL 665441.

Section 44‑53‑445 creating a separate criminal offense of unlawful distribution, etc. of drugs within a half‑mile radius of a school is entitled to strong presumption of constitutionality accorded legislation. S.C. Op.Atty.Gen. (April 13, 1984) 1984 WL 159850.

NOTES OF DECISIONS

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Sufficiency of evidence 9

1. In general

State could re‑open its case against defendant, who was charged with distribution of cocaine and crack cocaine within one‑half mile of school, to present testimony that institution defendant was within one‑half mile of was school; proof that institution was school was essential fact under statute that made it separate criminal offense for person to distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, controlled substance while in, on, or within one‑half mile radius of grounds of school. State v. Green (S.C.App. 2002) 350 S.C. 580, 567 S.E.2d 505, rehearing denied. Criminal Law 686(1)

1.5. Construction and application

Amended version of statute defining offense of distribution of controlled substance within proximity of school, adding a requirement that defendant have knowledge that he was in proximity of school, did not apply to defendant who was arrested for this offense before the statute was amended. State v. Pradubsri (S.C.App. 2017) 420 S.C. 629, 803 S.E.2d 724. Controlled Substances 8

2. Constitutional issues

Two offenses for which defendant was convicted under South Carolina law, purchasing crack cocaine and purchasing crack cocaine in proximity of school, were same offense, for double jeopardy purposes, inasmuch as all elements of former offense were necessary for conviction for latter offense. Riley v. South Carolina, 2000, 82 F.Supp.2d 474, appeal from denial of habeas corpus 225 F.3d 655. Double Jeopardy 146

South Carolina courts’ determination that convictions and sentences for both purchasing crack cocaine and purchasing crack cocaine in proximity of school did not violate Double Jeopardy, on grounds that state legislature clearly intended for underlying statutes to impose cumulative punishment, was not contrary to, nor unreasonable application of, established federal law, and thus did not warrant federal habeas relief. Riley v. South Carolina, 2000, 82 F.Supp.2d 474, appeal from denial of habeas corpus 225 F.3d 655. Habeas Corpus 466

Defendant, who had been convicted of distributing cocaine within one‑half mile of school, was not entitled to postconviction relief based on alleged ineffective assistance of counsel due to counsel’s failure to measure distance between school and location of drug transaction; evidence presented by defendant allegedly showing that school was over one‑half mile from school based on odometer measurements was insufficient to show that straight‑line distance between school and transaction exceeded one‑half mile. Brown v. State (S.C. 1998) 333 S.C. 238, 510 S.E.2d 212. Criminal Law 1519(6); Criminal Law 1618(10)

3. Possession

Conviction of possession requires proof of possession, either actual or constructive, coupled with knowledge of its presence. State v. Muhammed (S.C.App. 1999) 338 S.C. 22, 524 S.E.2d 637, rehearing denied, certiorari denied. Controlled Substances 27; Controlled Substances 28

Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury. State v. Muhammed (S.C.App. 1999) 338 S.C. 22, 524 S.E.2d 637, rehearing denied, certiorari denied. Controlled Substances 68; Controlled Substances 93

4. Distance from school

Term “grounds,” as used in statute making it separate criminal offense for person to distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, controlled substance while in, on, or within one‑half mile radius of grounds of school, includes all school‑owned property contiguous to, or surrounding, school’s physical plant. State v. Green (S.C.App. 2002) 350 S.C. 580, 567 S.E.2d 505, rehearing denied. Controlled Substances 22; Controlled Substances 26; Controlled Substances 34; Controlled Substances 36

To prove distribution of crack cocaine within the proximity of a school, the state must establish the following elements: (1) the defendant had actual control, or the right to exercise control over the crack cocaine; (2) he knowingly distributed or delivered the crack cocaine; (3) the substance upon analysis was, in fact, crack cocaine; and (4) the distribution occurred within a one‑half mile radius of the grounds of an elementary, middle, secondary or vocational school, public playground or park, or college or university. Brown v. State (S.C. 2001) 343 S.C. 342, 540 S.E.2d 846.

5. Jurisdiction

Trial court lacked subject matter jurisdiction to accept defendant’s guilty pleas to three counts of distributing crack cocaine within proximity of a school on grounds that indictments stated that distribution took place within proximity of a daycare; statute prohibiting distribution of cocaine within proximity of a “school” did not apply to day care centers. Brown v. State (S.C. 2001) 343 S.C. 342, 540 S.E.2d 846. Controlled Substances 34; Criminal Law 273(4.1)

6. Indictment

Indictment sufficiently gave defendant notice that distribution of crack cocaine allegedly occurred at public school that was within terms of statute prohibiting distribution of cocaine within proximity of a “school;” indictment alleged that distribution occurred within half‑mile radius of public school in violation of statute and named institution. State v. Walton (S.C.App. 2004) 361 S.C. 282, 603 S.E.2d 873. Controlled Substances 64

Failure of indictments for distribution of crack cocaine and distribution of crack cocaine within proximity of a school to allege that defendant “knowingly” committed those offenses did not deprive trial court of subject matter jurisdiction over those charges; respective statutes defining those offenses did not include “knowingly” as an element of the offense, both indictments listed statutory elements of offenses, and indictments sufficiently informed defendant of charges he faced and what he must defend against. State v. Gill (S.C.App. 2003) 355 S.C. 234, 584 S.E.2d 432, rehearing denied, certiorari denied, habeas corpus dismissed 2010 WL 4365540. Controlled Substances 64

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)

The evidence was sufficient to support a conviction for “possession with intent to distribute crack cocaine within close proximity of school” where the indictment contained language alleging that the defendant “distributed” crack cocaine, but there was no evidence of distribution in the record; the offense of possession with intent to distribute does not require a showing of actual distribution, and unnecessary matter in the indictment may be disregarded as surplusage. State v. Toliver (S.C.App. 1991) 304 S.C. 298, 403 S.E.2d 676. Controlled Substances 81

7. Admissibility of evidence

State failed to prove a sufficient chain of custody, and thus, the crack cocaine should not have been admitted into evidence; although State presented the testimony of the first and last links in the chain of custody, the State did not provide testimony from either of the intervening links in the chain, and State did not submit the testimony of each individual who handled the evidence nor did the State comply with rule which allows for the admission of sworn statements in lieu of the appearance of chain of custody witnesses. State v. Chisolm (S.C.App. 2003) 355 S.C. 175, 584 S.E.2d 401, rehearing denied, certiorari denied. Criminal Law 404.60

8. Questions of fact

Jury question was presented in cocaine trafficking prosecution as to whether defendant had constructive possession of those drugs; informant testified that defendant was with codefendant when he presented drug deal and that codefendant had sealed plastic bag filled to top with individual rocks of crack, defendant carried key to bedroom in which police found crack cocaine, he had unlimited access to house, and homeowner testified that defendant and codefendant had been visiting her for two days prior to incident, that crack did not belong to her, and that key to bedroom did not belong to her brother. State v. Muhammed (S.C.App. 1999) 338 S.C. 22, 524 S.E.2d 637, rehearing denied, certiorari denied. Controlled Substances 94

9. Sufficiency of evidence

State presented sufficient evidence for the jury to determine whether the sale of drugs occurred within one‑half mile of school so as to support defendant’s conviction for distribution of crack cocaine within the proximity of a school. State v. Chisolm (S.C.App. 2003) 355 S.C. 175, 584 S.E.2d 401, rehearing denied, certiorari denied. Controlled Substances 82

Viewed in light most favorable to state, evidence reasonably tended to prove defendant was guilty of distribution of crack cocaine and distribution of crack cocaine within one‑half mile radius of playground, or was such that his guilt for these offenses could be fairly and logically deduced and, therefore, trial judge properly denied defendant’s motion for directed verdict and submitted case to jury; there was no dispute concerning actual sale of crack cocaine and that it occurred within one‑half mile radius of playground, police officers positively identified defendant as individual who sold crack cocaine, and any question concerning identity of seller involved weight of evidence. State v. Wakefield (S.C.App. 1996) 323 S.C. 189, 473 S.E.2d 831, rehearing denied, certiorari denied. Controlled Substances 94

10. Sentence and punishment

Statute prohibiting distribution of controlled substance within proximity of school contained no provision prohibiting the suspension of a sentence imposed pursuant to the statute, and thus, trial judge had the general authority to suspend the minimum sentence. State v. Thomas (S.C. 2007) 372 S.C. 466, 642 S.E.2d 724. Sentencing And Punishment 1848

**SECTION 44‑53‑450.** Conditional discharge; eligibility for expungement.

 (A) Whenever any person who has not previously been convicted of any offense under this article or any offense under any state or federal statute relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under Section 44‑53‑370(c) and (d), or Section 44‑53‑375(A), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires, including the requirement that such person cooperate in a treatment and rehabilitation program of a state‑supported facility or a facility approved by the commission, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record shall be forwarded to and retained by the Department of Narcotic and Dangerous Drugs under the South Carolina Law Enforcement Division solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this article. Discharge and dismissal under this section may occur only once with respect to any person.

 (B) Upon the dismissal of the person and discharge of the proceedings against him pursuant to subsection (A), the person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained as provided in subsection (A)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose.

 (C) Before a person may be discharged and the proceedings dismissed pursuant to this section, the person must pay a fee of three hundred fifty dollars if the person is in a general sessions court and one hundred fifty dollars if the person is in a summary court. No portion of the fee may be waived, reduced, or suspended, except in cases of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee. The revenue collected pursuant to this subsection must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. The amounts generated by this subsection are in addition to any amounts presently being provided for drug treatment court programs and may not be used to supplant funding already allocated for these services. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

HISTORY: 1962 Code Section 32‑1510.57; 1971 (57) 800; 1974 (58) 2284; 2009 Act No. 36, Section 7, eff June 2, 2009; 2010 Act No. 273, Section 40, eff June 2, 2010.

CROSS REFERENCES

Conditional discharge under this section for minor marijuana or hashish offenses, see Section 44‑53‑370.

Expungement, retention of certain information by law enforcement or prosecution agencies, see Section 17‑1‑40.

Library References

Controlled Substances 100.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 228 to 232, 489 to 506.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 10, Duties.

S.C. Jur. Governor Section 37, Expungement.

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

Attorney General’s Opinions

Prosecutors have the authority to condition the non‑prosecution of a case upon the meeting of certain reasonable conditions such as restitution or good behavior. S.C. Op.Atty.Gen. (March 15, 2016) 2016 WL 2607249.

An expungement order would not require the Department of Probation, Parole, and Pardon Services to destroy records in the offender file representing information related to a particular charge compiled for purposes other than recording an arrest and the ensuing criminal charges, but would require the destruction of records of the actual criminal charge, such as the underlying arrest and booking record, indictment, sentencing sheet, or other bookkeeping entries for recording the arrest and the ensuing charge. S.C. Op.Atty.Gen. (August 8, 2011) 2011 WL 3918182.

A student in probation under this section would remain eligible for LIFE scholarships. S.C. Op.Atty.Gen. (April 27, 2000) 2000 WL 655465.

Records relating to arrest for possession of controlled substance, maintained by magistrate’s court or municipal court, may be destroyed as required by Section 44‑53‑450. S.C. Op.Atty.Gen. (October 25, 1985) 1985 WL 166090.

The bookkeeping entries for recording an arrest and ensuing charge, as described in S. C. Code, Sections 17‑1‑40 and 44‑53‑450 (1976), may be expunged once the conditions of the said statutes have been fulfilled. The work product of law enforcement agencies pertaining to investigation of criminal activity, and the evidence of criminal activity, do not constitute bookkeeping entries for recording of an arrest and the ensuing charge under the above‑mentioned statutes; A person seeking expungement of applicable records of the South Carolina Law Enforcement Division must apply to the Circuit Court of jurisdiction, with proper notice to the Circuit Solicitor, for an Order of Expungement, which must then be served upon SLED; a copy of the Order, under the Circuit Judge’s original signature or certified by the Clerk of Court, may serve as a non‑public record under Section 44‑53‑450 (a) (1976); a Magistrate’s Court or Municipal Court may not order the South Carolina Law Enforcement Division to expunge criminal record information. S.C. Op.Atty.Gen. (February 26, 1979) 1979 WL 29039.

If the provisions of Code 1962 Section 32‑1510.57, as amended [Code 1976 Section 44‑53‑450] as amended, are applied then no judgment of guilt or imposition of sentence may be rendered at trial; an indictment comes with the purview of Code 1962 Section 32‑1510.57, as amended [Code 1976 Section 44‑53‑450] and is therefor subject to expungement under this Section. S.C. Op.Atty.Gen. (December 22, 1975) 1975 WL 22519.

**SECTION 44‑53‑460.** Reduced sentence for accommodation offenses.

 Any person who enters a plea of guilty to or is found guilty of a violation of Section 44‑53‑370(a) or (c) may move for and the court shall grant a further hearing at which evidence may be presented by the person, and by the prosecution if it so desires, relating to the nature of the act on the basis of which the person has been convicted. If the convicted person establishes by clear and convincing evidence that he delivered or possessed with intent to deliver a controlled substance, except a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug, only as an accommodation to another individual and not with intent to profit thereby nor to induce the recipient or intended recipient of the controlled or counterfeit substance to use or become addicted to or dependent upon the substance, the court shall sentence the person as if he had been convicted of a violation of Section 44‑53‑370(c).

HISTORY: 1962 Code Section 32‑1510.58; 1971 (57) 800; 1974 (58) 2284.

CROSS REFERENCES

Conviction and sentence, see Sections 17‑25‑10 et seq.

Library References

Controlled Substances 100.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 228 to 232, 489 to 506.

LAW REVIEW AND JOURNAL COMMENTARIES

Evidence of prior guilty plea to accommodation sale of controlled substance admissible for impeachment. 39 S.C. L. Rev. 102 (Autumn 1987).

NOTES OF DECISIONS

In general 1

1. In general

Defendant’s conduct, in providing marijuana to minor females, who thereafter had sexual relations with each other in defendant’s presence while he photographed their activities, constituted an accommodation, entitling defendant to sentencing as if he had been convicted of simple marijuana possession; victim testified that defendant did not offer the marijuana to her, but rather that she asked if she could smoke it, that she did not pay petitioner for the marijuana nor did she do anything in return for its provision, and that her girlfriend initiated the kissing, and that she and her girlfriend initiated sex, not defendant. State v. Cobb (S.C. 2003) 355 S.C. 98, 584 S.E.2d 371. Controlled Substances 100(1)

In a prosecution for distribution of marijuana, in violation of Section 44‑53‑370(a), in which defendant was sentenced to consecutive terms of two years on each count, the court properly determined that the distribution was not an accommodation offense, pursuant to Section 44‑53‑460, entitling defendant to a lesser sentence, where, although the defendant testified that he never sold marijuana before and only took money from an undercover law enforcement agent and used it to purchase the marijuana from someone else, as an accommodation without any intent to profit from the sale, there was also evidence that defendant had a prior criminal record and the court was not required to accept defendant’s testimony as clear and convincing evidence that he committed the crime as an accommodation. State v. Martin (S.C. 1982) 278 S.C. 427, 298 S.E.2d 87.

**SECTION 44‑53‑470.** “Second or subsequent offense” defined; certain convictions considered prior offenses.

 (A) An offense is considered a second or subsequent offense if:

 (1) for an offense involving marijuana pursuant to the provisions of this article, the offender has been convicted within the previous five years of a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana possession;

 (2) for an offense involving marijuana pursuant to the provisions of this article, the offender has at any time been convicted of a first, second, or subsequent violation of a marijuana offense provision of this article or of another state or federal statute relating to marijuana offenses, except a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana offenses;

 (3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and

 (4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

 (B) In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.

 (C) If a person is sentenced to confinement as the result of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later. For purposes of this section, confinement includes incarceration and supervised release, including, but not limited to, probation, parole, house arrest, community supervision, work release, and supervised furlough.

HISTORY: 1962 Code Section 32‑1510.59; 1971 (57) 800; 2005 Act No. 127, Section 6, eff June 7, 2005; 2010 Act No. 273, Section 41, eff June 2, 2010; 2016 Act No. 154 (H.3545), Section 10, eff April 21, 2016.

Library References

Controlled Substances 100.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 228 to 232, 489 to 506.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Construction with other laws 3

Review 4

1. In general

Defendant’s prior guilty plea to possession of crack cocaine as well as possession with intent to distribute crack cocaine resulted in two separate offenses for purposes of sentencing for later convictions, such that defendant’s subsequent conviction for trafficking in crack cocaine constituted third drug offense, and thus trial court’s imposition of statutory recidivist sentencing for trafficking conviction was proper, notwithstanding that prior guilty plea encompassing offenses of possession and possession with intent to distribute were entered in same proceeding, as defendant could permissibly enter valid plea to first and second drug offense during same proceeding, and prior offenses occurred separately and did not stem from continuous course of conduct. Robinson v. State (S.C. 2010) 387 S.C. 568, 693 S.E.2d 402. Sentencing and Punishment 1257

A conviction for possession of drug paraphernalia may not be used for enhancement purposes under sentencing provisions for drug offenses as it does not “relate to” drugs as statutorily mandated. Berry v. State (S.C. 2009) 381 S.C. 630, 675 S.E.2d 425. Sentencing And Punishment 1257

Under the statute defining a “second offense” for purposes of sentencing defendants for drug offenses, the timing of the crimes is irrelevant to the determination of a subsequent offense so long as there is a prior conviction. Walters v. State (S.C. 2007) 371 S.C. 591, 641 S.E.2d 434. Sentencing And Punishment 1301

Trial court had statutory authority to use prior conviction for possession of marihuana to enhance sentence on subsequent conviction for possession of crack cocaine. Patterson v. State (S.C. 2004) 359 S.C. 115, 597 S.E.2d 150. Sentencing And Punishment 95

For purposes of sentencing enhancement, conviction of defendant for trafficking in crack cocaine was a second offense, due to his prior conviction for possession with intent to distribute cocaine; statute specifically provided that offense was a second offense if there had been a prior conviction relating to narcotic drugs, and it did not require that prior offense be for trafficking. State v. Dupree (S.C.App. 2003) 354 S.C. 676, 583 S.E.2d 437. Sentencing And Punishment 95

Disposition of previous marijuana charge was a bond forfeiture, not a conviction, for purposes of enhanced sentencing statute, and thus defendant’s attorney erred in failing to challenge trial judge’s decision to treat marijuana bond forfeiture as a first offense when sentencing defendant for convicted of trafficking in and transportation of cocaine. Scott v. State (S.C. 1999) 334 S.C. 248, 513 S.E.2d 100. Criminal Law 1957

A drug distribution offense was properly treated as a second offense for sentencing purposes where, at the time of the imposition of sentence, defendant stood convicted of a first drug offense by way of a guilty plea; the fact that he had not been convicted of a first offense at the time the second offense occurred, or at the time of the indictment for the second offense was of no consequence under this section. State v. Patterson (S.C. 1978) 272 S.C. 2, 249 S.E.2d 770.

2. Constitutional issues

Sentencing provisions for marijuana trafficking contained in South Carolina’s Controlled Substances Act, mandating a term of imprisonment of 25 years “for a third or subsequent offense,” were not ambiguous and did not require that the prior offenses also be for trafficking ten pounds or more of marijuana, but applied generally to previous convictions under any state or federal statute “relating to” a broad range of controlled substances, and in any event, South Carolina Supreme Court’s implicit conclusion that statutes were not ambiguous so as to deprive petitioner of fair notice, in violation of due process, was not an objectively unreasonable application of established legal principles to the facts of the case, so as to warrant federal habeas relief. Thomas v. Davis (C.A.4 (S.C.) 1999) 192 F.3d 445. Habeas Corpus 509(1); Sentencing And Punishment 1210; Sentencing And Punishment 1257

Trial counsel did not render ineffective assistance by failing to challenge defendant’s conviction for trafficking in crack cocaine as third offense for purposes of recidivist sentencing; defendant was properly sentenced for third drug offense, in that defendant had two prior drug convictions. Robinson v. State (S.C. 2010) 387 S.C. 568, 693 S.E.2d 402. Criminal Law 1957

Defendant, who was sentenced as a second offender to thirty years in prison and a $50,000 fine for his conviction for trafficking in and transportation of cocaine, was prejudiced by his attorney’s failure to challenge trial judge’s decision to treat previous marijuana bond forfeiture as a first offense when sentencing defendant, where maximum sentence for first offender was ten years and $25,000 fine, and thus he was entitled to remand for resentencing as a first offender. Scott v. State (S.C. 1999) 334 S.C. 248, 513 S.E.2d 100. Criminal Law 1181.5(8); Criminal Law 1957

3. Construction with other laws

A defendant should not have been sentenced as a second offender under the crack cocaine statute which provides an enhanced sentence for a second offender or one whose first conviction was related to narcotic drugs where his second offender status was based on prior convictions for distributing marijuana, which is not a narcotic drug as defined by Section 44‑53‑110; Section 44‑53‑470, which provides that an offense is a second offense if the defendant had previously been convicted under a statute relating to marijuana, is inapplicable since Section 44‑53‑375 is both more recent and more specific. Rainey v. State (S.C. 1992) 307 S.C. 150, 414 S.E.2d 131.

4. Review

Defendant charged with trafficking in crack cocaine was barred on appeal of trial court’s denial of his post‑conviction relief motion, concerning recidivist sentencing enhancement, from attacking validity of guilty pleas to prior drug offenses, where defendant failed to appeal prior guilty pleas or file post‑conviction relief applications for prior offenses within the statute of limitations. Robinson v. State (S.C. 2010) 387 S.C. 568, 693 S.E.2d 402. Criminal Law 1069(2)

**SECTION 44‑53‑475.** Financial transactions, monetary instruments, or financial institutions involving property or proceeds of unlawful activities in narcotic drugs or controlled substances; penalties.

 (A)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of unlawful activity relating to narcotic drugs or controlled substances, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds:

 (a) with the intent to promote the carrying on of unlawful activity relating to narcotic drugs or controlled substances; or

 (b) knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, sources, ownership, or control of the proceeds of the unlawful activity is guilty of a felony and, upon conviction, must be punished by a fine of not more than five hundred thousand dollars or twice the value of the property involved in the transaction, whichever is greater, or by imprisonment for not more than twenty years, or both.

 (2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to or through a place outside the United States or to a place in South Carolina from or through a place outside the United States:

 (a) with the intent to promote the carrying on of unlawful activity relating to narcotic drugs or to controlled substances; or

 (b) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of the unlawful activity and knowing that the transportation is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity is guilty of a felony and, upon conviction, must be punished by a fine of five hundred thousand dollars or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or by imprisonment for not more than twenty years, or both.

 (3) Whoever, with the intent:

 (a) to promote the carrying on of unlawful activity relating to narcotic drugs or to controlled substances; or

 (b) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of the unlawful activity, conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of the unlawful activity, or property used to conduct or facilitate the unlawful activity is guilty of a felony and, upon conviction, must be punished by a fine of five hundred thousand dollars or twice the value of the property involved, whichever is greater, or by imprisonment for not more than twenty years, or both. For purposes of this subitem, the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a state official authorized to investigate or prosecute violations of this section.

 (B) Whoever conducts or attempts to conduct a transaction described in subsection (A)(1), or transportation described in subsection (A)(2), is liable to the State for a civil penalty of not more than the greater of:

 (1) the value of the property, funds, or monetary instruments involved in the transaction; or

 (2) ten thousand dollars.

 (C) As used in this section:

 (1) the term “conducts” includes initiating, concluding, or participating in initiating or concluding a transaction;

 (2) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

 (3) the term “financial transaction” means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments;

 (4) the term “monetary instruments” means coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in that form that title to it passes upon delivery, and negotiable instruments in bearer form or otherwise in that form that title to it passes upon delivery;

 (5) the term “financial institution” has the definition given that term in Section 5312(a)(2) of Title 31, United States Code, and the regulations promulgated thereunder.

 (D) Nothing in this section supersedes any provision of law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

HISTORY: 1990 Act No. 604, Section 10.

CROSS REFERENCES

Anti‑money laundering act, additional criminal penalties, definitions, see Section 35‑11‑740.

State grand jury jurisdiction over offense of money laundering, see Section 14‑7‑1630.

Federal Aspects

Definition of financial institution, see 31 U.S.C.A. Section 5312(a)(2).

Library References

Currency Regulation 4.

Westlaw Topic No. 111H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 13, Use of a Deadly Weapon.

S.C. Jur. Burglary Section 17, of Another.

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

NOTES OF DECISIONS

In general 1

1. In general

Conviction of laundering drug money and admission of perjury warrants indefinite suspension from the practice of law, in light of mitigating factors. In re Colvin (1995, SC) 458 SE2d 430, amd on reh (1995, SC).

**SECTION 44‑53‑480.** Enforcement.

 (a) The South Carolina Law Enforcement Division shall establish within its Division a Department of Narcotics and Dangerous Drugs, which shall be administered by a director and shall be primarily responsible for the enforcement of all laws pertaining to illicit traffic in controlled and counterfeit substances. The Department of Narcotics and Dangerous Drugs, in discharging its responsibilities concerning illicit traffic in narcotics and dangerous substances and in suppressing the abuse of controlled substances, shall enforce the State plan formulated in cooperation with the Narcotics and Controlled Substance Section as such plan relates to illicit traffic in controlled and counterfeit substances.

 As part of its duties the Department of Narcotics and Dangerous Drugs shall:

 (1) Assist the Commission on Alcohol and Drug Abuse in the exchange of information between itself and governmental and local law‑enforcement officials concerning illicit traffic in and use and abuse of controlled substances.

 (2) Assist the Commission in planning and coordinating training programs on law enforcement for controlled substances at the local and State level.

 (3) Establish a centralized unit which shall accept, catalogue, file and collect statistics and make such information available for Federal, State and local law‑enforcement purposes.

 (4) Have the authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses.

 (b) The Department of Health and Environmental Control shall be primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, health care facilities and other practitioners as well as in the possession of any individuals or institutions authorized to have possession of such substances and shall also be primarily responsible for such other duties in respect to controlled substances as shall be specifically delegated to the Department of Health and Environmental Control by the General Assembly. Drug inspectors and special agents of the Department of Health and Environmental Control as provided for in Section 44‑53‑490, while in the performance of their duties as prescribed herein, shall have:

 (1) Statewide police powers;

 (2) Authority to carry firearms;

 (3) Authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses;

 (4) Authority to make investigations to determine whether there has been unlawful dispensing of controlled substances or the removal of such substances from regulated establishments or practitioners into illicit traffic;

 (5) Authority to seize property; and

 (6) Authority to make arrests without warrants for offenses committed in their presence.

 (c) The Department of Health and Environmental Control may contract with the Board of Pharmaceutical Examiners for the Chief Drug Inspector of the Board of Pharmacy and his assistants, to enforce the provisions of this article with respect to inspections and audits which apply to pharmacists or pharmacies whether located in drugstores, hospitals or other health care facilities.

HISTORY: 1962 Code Section 32‑1510.60; 1971 (57) 800; 1972 (57) 2396; 1974 (58) 2228; 1985 Act No. 143, Section 1; 1986 Act No. 404, Section 1.

Library References

Controlled Substances 60.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 222 to 223, 229 to 230, 232, 342 to 344, 360.

Attorney General’s Opinions

Discussion of the requirements for DHEC drug inspectors and special agents to perform duties beyond those relating to controlled substances. S.C. Op.Atty.Gen. (September 6, 1990) 1990 WL 599287.

South Carolina Law Enforcement Division has authority to conduct analysis of evidence, including controlled substances, seized by private security guards in employ of Department of Energy at Savannah River plant. S.C. Op.Atty.Gen. (January 15, 1985) 1985 WL 165973.

**SECTION 44‑53‑485.** Handling of seized controlled substances; use of photographs or videotapes of substances at trial; admissibility of evidence.

 (A) Controlled substances seized pursuant to this article must be inventoried, reported, audited, handled, tested, stored, preserved, or destroyed pursuant to procedures promulgated by the South Carolina Law Enforcement Division.

 (B) The chief law enforcement official of the seizing agency, his designee, or the clerk of court, after one year following the conviction, guilty plea, plea by nolo contendere, or other disposition of the criminal case, may order the destruction or other lawful disposition of the substances unnecessary for evidentiary purposes in accordance with procedures promulgated by the division.

 (C) The chief law enforcement official of the seizing agency or his designee, after a reasonable period of time following the seizure, may order the destruction or other lawful disposition of substances that do not come within the jurisdiction of court.

 (D) When large amounts of substances are seized and storage is impractical, a law enforcement officer, only with the prior written approval and consent of the solicitor, may substitute photographs or videotapes of the substances at trial so long as a representative sample is analyzed for proof of the matter that the substances actually are present. When substitutions are used, the chief law enforcement official or his designee may authorize the destruction of the substances ten days following seizure.

 (E) In all subsequent court proceedings following the disposition of the case, all evidence presented at the original proceedings is admissible through introduction of the certified record of the case.

HISTORY: 1992 Act No. 387, Section 2.

CROSS REFERENCES

Authority of Law Enforcement Division to promulgate regulations to provide uniform procedures for seizure, inventory, reporting, etc. of controlled substances, see Section 44‑53‑120.

Uniform procedures for handling of controlled substances, see S.C. Code of Regulations R. 73‑70 et seq.

Library References

Criminal Law 404.60.

Westlaw Topic No. 110.

C.J.S. Criminal Procedure and Rights of the Accused Section 1154.

**SECTION 44‑53‑490.** Drug inspectors.

 The Department of Health and Environmental Control shall designate persons holding a degree in pharmacy to serve as drug inspectors. Such inspectors shall, from time to time, but no less than once every three years, inspect all practitioners and registrants who manufacture, dispense, or distribute controlled substances, including those persons exempt from registration but who are otherwise permitted to keep controlled substances for specific purposes. The drug inspector shall submit an annual report by the first day of each year to the Department and a copy to the Commission on Alcohol and Drug Abuse specifying the name of the practitioner or the registrant or such exempt persons inspected, the date of inspection and any other violations of this article.

 The Department may employ other persons as agents and assistant inspectors to aid in the enforcement of those duties delegated to the Department by this article.

HISTORY: 1962 Code Section 32‑1510.61; 1971 (57) 800; 1974 (58) 2228.

Library References

Controlled Substances 60.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 222 to 223, 229 to 230, 232, 342 to 344, 360.

**SECTION 44‑53‑500.** Procedure for issuance and execution of administrative inspection warrants.

 (a) Issuance and execution of administrative inspection warrants shall be as follows:

 (1) Any judge or magistrate of a court having jurisdiction where the inspection or seizure is to be conducted, may, upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this article or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, “probable cause” means a valid public interest in the effective enforcement of this article or regulations sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

 (2) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the item or types of property to be seized, if any. The warrant shall be directed to a person authorized by Section 44‑53‑480(b) to execute it. The warrant shall state the grounds for issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned;

 (3) A warrant issued pursuant to this section must be executed and returned within ten days of its date. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. The clerk of the court, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and

 (4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall cause them to be filed with the court which issued such warrant.

 (b) The Department of Health and Environmental Control is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

 (1) For the purposes of this article only, “controlled premises” means:

 (a) Places where persons registered or exempted from registration requirements under this article are required to keep records, and

 (b) Places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this article are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

 (2) When so authorized by an administrative inspection warrant issued pursuant to this section an officer or employee designated by the Commission on Alcohol and Drug Abuse upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

 (3) When so authorized by an administrative inspection warrant, an officer or employee designated by the Department may:

 (a) Inspect and copy records required by this article to be kept;

 (b) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b)(5) of this section, all other things therein including records, files, papers, processes, controls, and facilities bearing on violation of this article; and

 (c) Inventory any stock of any controlled substance therein and obtain samples of any such substance.

 (4) This section shall not be construed to prevent entries and administrative inspections (including seizures of property) without a warrant:

 (a) With the consent of the owner, operator or agent in charge of the controlled premises;

 (b) In situations presenting imminent danger to health or safety;

 (c) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

 (d) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

 (e) In all other situations where a warrant is not constitutionally required.

 (5) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to:

 (a) Financial data;

 (b) Sales data other than shipment data;

 (c) Pricing data;

 (d) Personnel data; or

 (e) Research data.

HISTORY: 1962 Code Section 32‑1510.62; 1971 (57) 800.

CROSS REFERENCES

Administrative inspection warrants used in investigation of cases of lead poisoning, see Sections 44‑53‑1400 et seq.

Library References

Controlled Substances 141.

Westlaw Topic No. 96H.

Attorney General’s Opinions

It is questionable whether inspection warrant authorized by Child Fatality Review and Prevention Act would authorize seizure of items from home for further investigation. S.C. Op.Atty.Gen. (December 7, 1993) 1993 WL 560530.

Administrative inspection warrants issued pursuant to Sections 44‑53‑1390, 44‑53‑500, and 48‑1‑50(24) are distinguishable from search warrants, and, therefore, are not required to conform to search warrant forms as approved by the State Attorney General’s Office pursuant to Section 17‑13‑160 of the Code. S.C. Op.Atty.Gen. (April 13, 1987) 1987 WL 245438.

**SECTION 44‑53‑520.** Forfeitures.

 (a) The following are subject to forfeiture:

 (1) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this article;

 (2) all raw materials, products, and equipment of any kind which are used, or which have been positioned for use, in manufacturing, producing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article;

 (3) all property which is used, or which has been positioned for use, as a container for property described in items (1) or (2);

 (4) All property, both real and personal, which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in various controlled substances as defined in this article;

 (5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of this article;

 (6) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels which are used or intended for use unlawfully to conceal, contain, or transport or facilitate the unlawful concealment, possession, containment, manufacture, or transportation of controlled substances and their compounds, except as otherwise provided, must be forfeited to the State. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 44‑53‑370(a), involving at least one pound or more of marijuana, one pound or more of hashish, more than four grains of opium, more than two grains of heroin, more than four grains of morphine, more than ten grains of cocaine, more than fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, more than ten grains of crack, or more than one gram of ice or crank, as defined in Section 44‑53‑110, or unless it is used, intended for use, or in any manner facilitates a violation of Section 44‑53‑370(e) or fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4‑methylenedioxymethamphetamine (MDMA);

 (7) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange;

 (8) all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances and all monies seized at the time of arrest or search involving violation of this article. If the person from whom the monies were taken can establish to the satisfaction of a court of competent jurisdiction that the monies seized are not products of illegal acts, the monies must be returned pursuant to court order.

 (b) Any property subject to forfeiture under this article may be seized by the department having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if:

 (1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

 (2) the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this article;

 (3) the department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

 (4) the department has probable cause to believe that the property was used or is intended to be used in violation of this article.

 (c) In the event of seizure pursuant to subsection (b), proceedings under Section 44‑53‑530 regarding forfeiture and disposition must be instituted within a reasonable time.

 (d) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the department making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property described in Section 44‑53‑520(a) is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

 (e) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and must be seized and summarily forfeited to the State. Controlled substances listed in Schedule I, which are seized or come into the possession of the State, the owners of which are unknown, are contraband and must be summarily forfeited to the State.

 (f) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

 (g) The failure, upon demand by the department having authority to make the demand, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

 (h) For the purposes of this section, whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

 (i) Law enforcement agencies seizing property under this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Any monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

 (j) When property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

 (1) The report shall provide the following information with respect to the property seized:

 (a) description;

 (b) circumstances of seizure;

 (c) present custodian and where the property is being stored or its location;

 (d) name of owner;

 (e) name of lienholder, if any;

 (f) seizing agency; and

 (g) the type and quantity of the controlled substance involved.

 (2) If the property is a conveyance, the report shall include the:

 (a) make, model, serial number, and year of the conveyance;

 (b) person in whose name the conveyance is registered; and

 (c) name of any lienholders.

 (3) In addition to the report provided for in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

 (a) a description of the quantity and nature of the property and money seized;

 (b) the seizing agency;

 (c) the type and quantity of the controlled substance involved;

 (d) the make, model, and year of a conveyance; and

 (e) the law enforcement agency responsible for the property or conveyance seized.

 (k) Property or conveyances seized by a law enforcement agency or department must not be used by officers for personal purposes.

HISTORY: 1962 Code Section 32‑1510.64; 1971 (57) 800; 1980 Act No. 372, Section 6; 1984 Act No. 482, Section 3; 1986 Act No. 404, Section 2; 1986 Act No. 540, Part II, Section 40; 1990 Act No. 604, Sections 1, 11; 1992 Act No. 333, Sections 1, 2; 2002 Act No. 267, Section 4, eff May 20, 2002.

CROSS REFERENCES

Penalty for use of property in a manner which makes it subject to forfeiture, see Section 44‑53‑590.

Provisions for return of seized items to innocent owners, lienholders, and others, see Section 44‑53‑586.

Return of money used by law enforcement officers to purchase drugs, see Section 44‑53‑582.

Library References

Controlled Substances 168.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 233, 237.

RESEARCH REFERENCES

ALR Library

101 ALR 6th 1 , Evidence Considered in Tracing Currency, Bank Account, or Cash Equivalent to Illegal Drug Trafficking So as to Permit Forfeiture, or Declaration as Contraband, Under State Law‑Factors Other Than Proximity, Explanation, Amount, Packaging, and Odor.

Encyclopedias

S.C. Jur. Forfeitures Section 4, Character of Forfeiture Prosecutions.

S.C. Jur. Forfeitures Section 5, Statutory Basis.

S.C. Jur. Forfeitures Section 8, Attorney Fees.

S.C. Jur. Forfeitures Section 13, Burden and Standard of Proof.

S.C. Jur. Lis Pendens Section 27, Forfeiture of Property.

United States Supreme Court Annotations

Forfeitures, civil rights action challenging statute allowing seizure of car or cash facilitating drug crime, case or controversy requirement, mootness doctrine, see Alvarez v. Smith, 2009, 130 S.Ct. 576, 558 U.S. 87, 175 L.Ed.2d 447, on remand 365 Fed.Appx. 20, 2010 WL 510636.

Attorney General’s Opinions

A court would likely find that funds seized pursuant to Section 44‑53‑520 may properly be used to purchase a gyroplane to be used primarily for drug law enforcement purposes, even if other incidental uses are contemplated at the time of purchase. S.C. Op.Atty.Gen. (May 17, 2017) 2017 WL 2399760.

Drug forfeiture funds may be used to purchase items provided the items are used primarily for drug enforcement activities of the Department, and may be used by the Department for drug or other law enforcement training or education. S.C. Op.Atty.Gen. (March 5, 2013) 2013 WL 1695515.

The South Carolina Law Enforcement Division may use state forfeited funds to support the Implied Consent Program. S.C. Op.Atty.Gen. (August 1, 2011) 2011 WL 3918177.

Discussion of the forfeiture of seized property in conjunction with plea bargains. S.C. Op.Atty.Gen. (September 19, 2008) 2008 WL 4489045.

There is no requirement for an audit of the monies seized and held by a police department before the final judgment of forfeiture. S.C. Op.Atty.Gen. (October 3, 2005) 2005 WL 2652378.

Directed verdict acquittal does not preclude a civil forfeiture proceeding. S.C. Op.Atty.Gen. (November 7, 2001) 2001 WL 1736768.

Even where there has been a Fourth Amendment violation, a forfeiture action may proceed, but any evidence seized as a result of the violation remains subject to the exclusionary rule. S.C. Op.Atty.Gen. (November 7, 2001) 2001 WL 1736768.

Unless forfeiture is accomplished through consent, an individual sued in civil court is entitled to a jury trial in a drug forfeiture case. S.C. Op.Atty.Gen. (November 7, 2001) 2001 WL 1736768.

Where defendants cannot be located to complete consent order forfeitures, petitions may be filed and service made through publication, after which cases could proceed as civil matters. S.C. Op.Atty.Gen. (May 23, 2001) 2001 WL 790253.

Deductions for expenses for purchase of drugs and payments to confidential informants prior to distribution of funds seized in accordance with Section 44‑53‑530 does not appear to be authorized. S.C. Op.Atty.Gen. (March 5, 1993) 1993 WL 720084.

Funds derived from drug forfeitures and seizures could be used to purchase handguns for deputies involved in drug arrests, eradication, and/or deterrent activities, inasmuch as such handguns will be used for drug enforcement activities. S.C. Op.Atty.Gen. (August 19, 1991) 1991 WL 474780.

There is no requirement mandating county council approval where vehicle seized during drug operation is traded for another vehicle. S.C. Op.Atty.Gen. (August 6, 1991) 1991 WL 474778.

Whether sheriff in making purchases with proceeds from sale of vehicles seized during drug operations is required to obtain approval of county council would depend upon whether such expenditure constitutes a “recurring expense.” S.C. Op.Atty.Gen. (August 6, 1991) 1991 WL 474778.

When law enforcement agency retains vehicle there is no requirement to pay state or solicitor’s office their percentages until vehicle is disposed of by agency. S.C. Op.Atty.Gen. (July 9, 1991) 1991 WL 474773.

Where law enforcement agency is awarded several low‑priced vehicles, there appears to be no prohibition against agency trading such vehicles for one or more newer vehicles. S.C. Op.Atty.Gen. (July 9, 1991) 1991 WL 474773.

Discussion of the use of funds from forfeiture proceedings. S.C. Op.Atty.Gen. (May 7, 1991) 1991 WL 632962.

Under South Carolina Hazardous Waste Management Act, confiscated 55 gallon drum of ether, apparently used as part of illicit drug manufacturing process, is defined as “uncontrolled hazardous waste”. Under such circumstances, Contingency Fund may be utilized for disposal of such waste. S.C. Op.Atty.Gen. (November 7, 1984) 1984 WL 159936.

NOTES OF DECISIONS

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1. In general

Under statute providing that no motor vehicle may be forfeited to the state unless it was used in a crime involving at least one pound or more of marijuana, motor home in which police found less than a pound of marijuana was not subject to forfeiture pursuant to other subsections of forfeiture statute addressing containers and addressing property used to facilitate certain drug activities; allowing a seizing agency to proceed pursuant to other subsections would render the one‑pound weight limitation regarding marijuana meaningless and, therefore, superfluous, because motor vehicles could in every situation be forfeited pursuant to another subsection. Hembree v. One Thousand Eight Hundred Forty‑Seven Dollars (1,847.00), U.S. Currency (S.C.App. 2013) 404 S.C. 241, 743 S.E.2d 864. Controlled Substances 171

An action for forfeiture of property is a civil action at law. Gowdy v. Gibson (S.C.App. 2008) 381 S.C. 225, 672 S.E.2d 794, rehearing denied, certiorari granted, affirmed 391 S.C. 374, 706 S.E.2d 495. Forfeitures 81

After seizing property due to controlled substances violations, city police department and county sheriff’s office had no duty to defend against city’s independent legal process to condemn the property due to building, structural and fire code deficiencies; forfeiture and condemnation proceedings were distinct competing legal processes. Gadson v. Hembree (S.C. 2005) 364 S.C. 316, 613 S.E.2d 533, rehearing denied. Controlled Substances 178; Health 392; Health 393

A law enforcement agency that seizes property that is subject to forfeiture due to controlled substances violations has a duty to take reasonable steps to maintain the property once a warrant is issued for seizure of the property. Gadson v. Hembree (S.C. 2005) 364 S.C. 316, 613 S.E.2d 533, rehearing denied. Controlled Substances 178

The only persons who may apply pursuant to Section 44‑53‑586 for the return of seized items which are normally used for lawful purposes, are third parties who hold an interest in the property seized, and who did not consent to, were not privy to, or did not have knowledge of the use of the property which made it subject to seizure or forfeiture. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

2. Constitutional issues

**SECTION 44‑53‑520 does not violate the “takings” clause of the constitution by providing that property which facilitates trafficking in various controlled substances is subject to seizure and forfeiture, since forfeiture is within the legitimate exercise of the police power, not the power of eminent domain, and is directed to the prevention of serious public harm.** Myers v. Real Property at 1518 Holmes Street (S.C. 1991) 306 S.C. 232, 411 S.E.2d 209.

3. Traceability

For purposes of statute providing for forfeiture of all property furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds traceable to any exchange, in evaluating traceability, a court may weigh the evidence presented to draw its conclusion, but the court may not draw inferences based on evidence that is unrelated to the property being seized. Gowdy v. Gibson (S.C. 2011) 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 184

For purposes of statute providing for forfeiture of all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, the term “close proximity” should be decided on a case by case basis. Gowdy v. Gibson (S.C. 2011) 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 165

For purposes of statute providing for forfeiture of all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, the circuit judge’s finding of close proximity is a question of fact. Gowdy v. Gibson (S.C. 2011) 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 185

State established probable cause that money found in a small fire safe in attic during search of home suspect shared with his mother was “traceable” to suspect’s alleged illegal drug activity, and therefore, money was subject to civil forfeiture; drugs and drug paraphernalia were discovered on premises outside home, safe where money was held could only be accessed through a hole cut in ceiling of suspect’s bedroom and was inaccessible to mother, who allegedly owned the home, a drug dog alerted to safe where money was found, indicating that safe or its contents had at some point been in contact with illegal narcotics, and drugs were found at another location under suspect’s control. Gowdy v. Gibson (S.C.App. 2008) 381 S.C. 225, 672 S.E.2d 794, rehearing denied, certiorari granted, affirmed 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 171

4. Jury trial

A defendant‑owner of property, normally used for lawful purposes but which was seized pursuant to a drug offense, was entitled to a jury trial in a civil forfeiture action since forfeiture proceedings and similar actions were triable to a jury under the common law when the State Constitution was adopted, and since the defendant‑owner would not have a right to replevy against the state for the property, if wrongfully forfeited. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

The forfeiture procedure articulated in Section 44‑53‑530(a), which provides that forfeiture proceedings pursuant to Sections 44‑53‑520 and ‑530 be held before a judge alone, is unconstitutional to the extent that it denies a property owner the right to a jury trial in those cases where the property subject to forfeiture is normally used for lawful purposes, since the legislature may not abrogate the right to a jury trial simply by designating a proceeding as a civil action without a jury. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

5. Sufficiency of evidence

Sufficient evidence supported trial court’s conclusion that currency seized from home that convicted drug dealer shared with his mother was in close proximity to illegal drugs and drug distributing paraphernalia found in home, such that currency was subject to forfeiture under statute providing for forfeiture of all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia; the drugs and currency were housed on the same property, and the property was under the control of its occupant. Gowdy v. Gibson (S.C. 2011) 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 184

State established probable cause that currency found in safe in attic during search of home convicted drug dealer shared with his mother was “traceable” to dealer’s alleged illegal drug activity, and, thus, the currency was subject to forfeiture under statute providing for forfeiture of all property furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds traceable to any exchange; large sum of cash was found hidden in dealer’s bedroom, under his sole control, bundled in a way that was typical for drug transactions, and in close proximity to drug paraphernalia, and narcotics canine alerted on the safe. Gowdy v. Gibson (S.C. 2011) 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 171

The State failed to establish probable cause that the money in defendant’s bank accounts contained proceeds traceable to illegal drug transactions, and thus the bank accounts were not subject to civil forfeiture; evidence established that defendant’s bank accounts contained legitimate business income, there was no evidence that the deposit ticket seized from defendant’s nephew showed the deposit of drug money or money from defendant’s business, and there was no evidence that defendant was “washing” large amounts of undocumented money through the bank accounts. Pope v. Gordon (S.C.App. 2004) 359 S.C. 572, 598 S.E.2d 288, rehearing denied, certiorari granted, affirmed 369 S.C. 469, 633 S.E.2d 148. Controlled Substances 184

Trial court finding that the State failed to establish probable cause to support the forfeiture of defendant’s truck was legal error; evidence was presented by the State to show that defendant’s truck was used to transport and conceal crack cocaine, and the State presented evidence that approximately 20 grams of cocaine had been in defendant’s truck. Pope v. Gordon (S.C.App. 2004) 359 S.C. 572, 598 S.E.2d 288, rehearing denied, certiorari granted, affirmed 369 S.C. 469, 633 S.E.2d 148. Controlled Substances 184

The forfeiture of car under Section 44‑53‑520, on the ground that it was used to facilitate sale of a controlled substance, was not warranted where the evidence showed only that the arrestee drove the car on the day he was arrested for the sale of drugs to an informant, and that he had its keys in his pocket when police arrested him. Condon v. One 1985 BMW, 4 Door, VIN No. WBAAE6403F0704170 (S.C.App. 1994) 312 S.C. 431, 440 S.E.2d 895, rehearing denied, certiorari denied.

6. Review

Order denying motor home owner’s motion for summary judgment was not a final appealable order in county police department’s action seeking forfeiture of motor home, and thus, determination of trial court in order, that forfeiture of motor home was allowable under sections of forfeiture statute addressing containers and addressing property used to facilitate certain drug activities, was not law of the case at forfeiture trial. Hembree v. One Thousand Eight Hundred Forty‑Seven Dollars (1,847.00), U.S. Currency (S.C.App. 2013) 404 S.C. 241, 743 S.E.2d 864. Controlled Substances 185; Controlled Substances 186

**SECTION 44‑53‑530.** Forfeiture procedures; disposition of forfeited items; disposition of proceeds of sales.

 (a) Forfeiture of property defined in Section 44‑53‑520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall set forth the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances shall also include: the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. The petition shall set forth the type and quantity of the controlled substance involved. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

 The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture, he shall then determine the lienholder’s interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to Section 44‑53‑582.

 If there is a dispute as to the allocation of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to subsection (e) of this section.

 All property, conveyances, and equipment not reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred must not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency shall be at the discretion and approval of the Department of Administration.

 If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a South Carolina Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

 (b) If the property is seized by a state law enforcement agency and is not transferred by the court to the seizing agency, the judge shall order it transferred to the Division of General Services of the Department of Administration for sale. Proceeds may be used by the division for payment of all proper expenses of the proceedings for the forfeiture and sale of the property, including the expenses of seizure, maintenance, and custody, and other costs incurred by the implementation of this section. The net proceeds from any sale must be remitted to the State Treasurer as provided in subsection (g) of this section. The Division of General Services of the Department of Administration may authorize payment of like expenses in cases where monies, negotiable instruments, or securities are seized and forfeited.

 (c) If the property is seized by a local law enforcement agency and is not transferred by the court to the agency, the judge shall order it sold at public auction by the seizing agency as provided by law. Notwithstanding any other provision of the law, proceeds from the sale may be used by the agency for payment of all proper expenses of the proceeding for the forfeiture and sale of the property, including the expenses of the seizure, maintenance, and custody and other costs incurred by the implementation of this section. The net proceeds from the sale must be disposed of as provided by this section.

 (d) Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

 All proceeds of property and cash forfeited by consent order must be disposed of as provided in subsection (e) of this section.

 (e) All real or personal property, conveyances, and equipment of any value defined in Section 44‑53‑520, when reduced to proceeds, any cash more than one thousand dollars, any negotiable instruments, and any securities which are seized and forfeited must be disposed of as follows:

 (1) seventy‑five percent to the law enforcement agency or agencies;

 (2) twenty percent to the prosecuting agency; and

 (3) five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State.

 (f) The first one thousand dollars of any cash seized and forfeited pursuant to this article remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency.

 (g) All forfeited monies and proceeds from the sale of forfeited property as defined in Section 44‑53‑520 must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug‑related matters.

 These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law.

 In the case of a state law enforcement agency or state prosecution agency, monies and proceeds must be remitted to the State Treasurer who shall establish separate, special accounts as provided in this section for local agencies.

 All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under the provisions of Chapter 4, Title 30, the Freedom of Information Act.

 (h) The use of all property forfeited pursuant to Section 44‑53‑520 and retained by the law enforcement agency must be documented and the documentation available upon request by a person subject to the provisions of Chapter 4 of Title 30.

 (i) An expenditure from these accounts must be made in accordance with the established procurement procedures of the jurisdiction where the account is established.

 (j) A law enforcement agency may draw from the account an amount necessary to maintain a confidential financial account to be used in the purchase of information or evidence relating to an investigation, to purchase services, or to provide compensation in matters which are confidential and in support of law enforcement activity. The disbursement of funds from the confidential financial account must be made in accordance with procedures approved by the South Carolina Law Enforcement Division (division). All records of disbursement must be maintained and made available for audit purposes as provided in this section.

 All expenditures from these accounts must be fully documented and audited annually with the general fund of the appropriate jurisdiction.

 (k) In all cases where the criminal offense giving rise to the forfeiture of property described in Section 44‑53‑520 is prosecuted in a state court, the forfeiture proceeding must be accomplished in the court of common pleas for the jurisdiction where the items were seized.

HISTORY: 1962 Code Section 32‑1510.64:1; 1973 (58) 429; 1979 Act No. 185 Section 1; 1980 Act No. 462, Section 1; 1984 Act No. 482, Section 4; 1986 Act No. 404, Section 3; 1990 Act No. 604, Section 2; 1992 Act No. 333, Section 3; 1995 Act No. 145, Part II, Section 45; 2006 Act No. 345, Section 5, eff June 12, 2006; 2009 Act No. 62, Section 1, eff upon approval (became law without the Governor’s signature on June 3, 2009); 2014 Act No. 121 (S.22), Pt V, Section 7.CC, eff July 1, 2015.

CROSS REFERENCES

Notice of a hearing or rule to show cause with respect to an application by innocent owners for the return of seized items, see Section 44‑53‑586.

Penalty for use of property in a manner which makes it subject to forfeiture, see Section 44‑53‑590.

Retail theft, penalties, see Section 16‑13‑135.

Library References

Controlled Substances 176.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 249 to 254, 257 to 260.

RESEARCH REFERENCES

ALR Library

1 ALR 5th 317 , Effect of Forfeiture Proceedings Under Uniformed Controlled Substances Act or Similar Statute on Lien Against Property Subject to Forfeiture.

Encyclopedias

S.C. Jur. Forfeitures Section 9, Statutes of Limitation.

S.C. Jur. Forfeitures Section 11, Notice and Opportunity to be Heard.

S.C. Jur. Forfeitures Section 12, Venue and Jurisdiction.

S.C. Jur. Forfeitures Section 13, Burden and Standard of Proof.

S.C. Jur. Lis Pendens Section 27, Forfeiture of Property.

S.C. Jur. South Carolina Rules of Civil Procedure Section 17.0, Rule 17. Parties Plaintiff and Defendant: Capacity.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law. 38 S.C. L. Rev. 81 (Autumn 1986).

Attorney General’s Opinions

A court would likely find that funds seized pursuant to Section 44‑53‑520 may properly be used to purchase a gyroplane to be used primarily for drug law enforcement purposes, even if other incidental uses are contemplated at the time of purchase. S.C. Op.Atty.Gen. (May 17, 2017) 2017 WL 2399760.

Drug forfeiture funds may be used to purchase items provided the items are used primarily for drug enforcement activities of the Department, and may be used by the Department for drug or other law enforcement training or education. S.C. Op.Atty.Gen. (March 5, 2013) 2013 WL 1695515.

The South Carolina Law Enforcement Division may use state forfeited funds to support the Implied Consent Program. S.C. Op.Atty.Gen. (August 1, 2011) 2011 WL 3918177.

The first $1,000 of any cash seized and forfeited pursuant to the Forfeiture Act remains the property of the law enforcement agency which seized the cash and can be used for any public purpose of law enforcement. S.C. Op.Atty.Gen. (June 28, 2011) 2011 WL 2648712.

Law enforcement agencies involved in seizures must be notified of forfeiture proceedings and should participate in both the proceedings and the approval of any forfeiture by consent order. S.C. Op.Atty.Gen. (January 2, 2009) 2009 WL 276741.

Discussion of the procedure for the forfeiture of drug‑related property. S.C. Op.Atty.Gen. (September 25, 2008) 2008 WL 4489053.

Discussion of the forfeiture of seized property in conjunction with plea bargains. S.C. Op.Atty.Gen. (September 19, 2008) 2008 WL 4489045.

There is no requirement for an audit of the first $1000 which remains with the law enforcement agency, but there is a requirement for an audit of any additional funds. S.C. Op.Atty.Gen. (October 3, 2005) 2005 WL 2652378.

A proposed law enforcement program focused on saturating identified drug problems in the City of Myrtle Beach could be funded with drug forfeiture proceeds. S.C. Op.Atty.Gen. (November 15, 2004) 2004 WL 2745673.

Directed verdict acquittal does not preclude a civil forfeiture proceeding. S.C. Op.Atty.Gen. (November 7, 2001) 2001 WL 1736768.

Even where there has been a Fourth Amendment violation, a forfeiture action may proceed, but any evidence seized as a result of the violation remains subject to the exclusionary rule. S.C. Op.Atty.Gen. (November 7, 2001) 2001 WL 1736768.

Unless forfeiture is accomplished through consent, an individual sued in civil court is entitled to a jury trial in a drug forfeiture case. S.C. Op.Atty.Gen. (November 7, 2001) 2001 WL 1736768.

Where defendants cannot be located to complete consent order forfeitures, petitions may be filed and service made through publication, after which cases could proceed as civil matters. S.C. Op.Atty.Gen. (May 23, 2001) 2001 WL 790253.

A magistrate cannot sign the consent form for the forfeiture of seized gambling funds in lieu of a circuit court judge. S.C. Op.Atty.Gen. (July 6, 1999) 1999 WL 1814563.

Only a judge in the court of common pleas in the appropriate jurisdiction can sign the Consent Forfeiture Order form for the forfeiture of seized gambling funds. S.C. Op.Atty.Gen. (June 30, 1999) 1999 WL 626628.

The procedure for disposition of forfeited vehicles is the same manner as generally established for the sale of surplus property in the particular county, and any funds received from the sale must be deposited in the special fund. S.C. Op.Atty.Gen. (December 2, 1998) 1998 WL 993669.

Discussion of the costs of filing fees for drug forfeiture actions. S.C. Op.Atty.Gen. (June 23, 1998) 1998 WL 745998.

It is not unreasonable to purchase a computerized, video imaging system to be used in developing lineups for identification purposes with drug forfeiture monies, since the equipment will be primarily used for drug enforcement activities. S.C. Op.Atty.Gen. (July 10, 1997) 1997 WL 568838.

The purchase of a traffic radar unit with confiscated drug money is likely authorized. S.C. Op.Atty.Gen. (December 9, 1996) 1996 WL 766534.

When selling seized vehicles that had been purchased with drug proceeds, the proceeds from the vehicle sales must be used only for drug enforcement activities and may be placed into the account of the law enforcement agency, following the procedure generally established for the sale of surplus property in the county. S.C. Op.Atty.Gen. (October 9, 1996) 1996 WL 679444.

Funds generated by the sale of a vehicle purchased with drug fund assets should be placed into the account established for the law enforcement agency. S.C. Op.Atty.Gen. (May 1, 1995) 1995 WL 803548.

Deducting the expenses for purchase of drugs and payments to confidential informants prior to the distribution of funds seized in accordance with this section is not authorized. S.C. Op.Atty.Gen. (March 5, 1993) 1993 WL 720084.

Forfeited drug funds may not be expended to pay overtime salaries of narcotics officers inasmuch as Section 44‑53‑530 expressly prohibits the use of such funds to supplant operating funds in a law enforcement agency’s budget. S.C. Op.Atty.Gen. (December 22, 1992) 1992 WL 575683.

Drug forfeiture funds may not be expended to purchase automobiles for a program primarily related to traffic safety although one purpose of the program is to decrease drug trafficking on rural roads. S.C. Op.Atty.Gen. (December 3, 1992) 1992 WL 575680.

Discussion of form consent agreements for drug forfeiture situations where the defendant relinquishes his right to seized currency. S.C. Op.Atty.Gen. (October 2, 1991) 1991 WL 633058.

Funds derived from drug forfeitures and seizures could be used to purchase handguns for deputies involved in drug arrests, eradication, and/or deterrent activities, inasmuch as such handguns will be used for drug enforcement activities. S.C. Op.Atty.Gen. (August 19, 1991) 1991 WL 474780.

There is no requirement mandating county council approval where vehicle seized during drug operation is traded for another vehicle. S.C. Op.Atty.Gen. (August 6, 1991) 1991 WL 474778.

Whether sheriff in making purchases with proceeds from sale of vehicles seized during drug operations is required to obtain approval of county council would depend upon whether such expenditure constitutes a “recurring expense.” S.C. Op.Atty.Gen. (August 6, 1991) 1991 WL 474778.

Discussion of the use of funds from forfeiture proceedings, particularly as to the establishment of a drug enforcement training center. S.C. Op.Atty.Gen. (August 1, 1991) 1991 WL 633026.

Discussion of the use of funds from forfeiture proceedings, particularly as to the establishment of a drug enforcement training program. S.C. Op.Atty.Gen. (July 31, 1991) 1991 WL 633027.

When law enforcement agency retains vehicle there is no requirement to pay state or solicitor’s office their percentages until vehicle is disposed of by agency. S.C. Op.Atty.Gen. (July 9, 1991) 1991 WL 474773.

Where law enforcement agency is awarded several low‑priced vehicles, there appears to be no prohibition against agency trading such vehicles for one or more newer vehicles. S.C. Op.Atty.Gen. (July 9, 1991) 1991 WL 474773.

Comparison of language of this section and Section 56‑5‑6240. S.C. Op.Atty.Gen. (April 17, 1991) 1991 WL 474757.

In absence of local restrictions, police agency may use first $1,000 of each cash drug forfeiture for general law enforcement expenses such as equipment, vehicles, weapons, training, etc.; remaining money acquired pursuant to provisions of Section 44‑53‑588 must be used “exclusively by law enforcement in the control of drug offenses”. S.C. Op.Atty.Gen. (January 17, 1990) 1990 WL 482396.

Sheriff may spend first $1,000 of cash drug forfeiture without county council’s approval; however, money cannot be spent in manner inconsistent with state regulations or county provisions restricting use of public funds, and remaining money becomes part of governing body’s funds and subject to distribution as approved by such body. S.C. Op.Atty.Gen. (January 17, 1990) 1990 WL 482396.

A vehicle transferred to a law enforcement agency pursuant to a forfeiture proceeding becomes the property of the agency with special limitations on its use according to the forfeiture statute; however, if the vehicle becomes surplus property, its disposition is governed by the agency’s surplus disposition procedures; property obtained by an agency pursuant to a consent order is to be treated the same as if it was obtained in a contested forfeiture proceeding. S.C. Op.Atty.Gen. (April 10, 1989) 1989 WL 406132.

NOTES OF DECISIONS

In general 1

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1. In general

Regardless of whether forfeiture of property is contingent on a criminal conviction involving that property, a post‑seizure hearing is the means by which an individual deprived by the government of his or her property is able to be heard on the matter. Farmer v. Florence County Sheriff’s Office (S.C.App. 2010) 390 S.C. 358, 701 S.E.2d 48, rehearing denied, certiorari granted, vacated 401 S.C. 606, 738 S.E.2d 473. Forfeitures 156(8)

The purpose of a forfeiture hearing is to confirm the state had probable cause to seize the property in question. Gowdy v. Gibson (S.C.App. 2008) 381 S.C. 225, 672 S.E.2d 794, rehearing denied, certiorari granted, affirmed 391 S.C. 374, 706 S.E.2d 495. Forfeitures 107

After seizing property due to controlled substances violations, city police department and county sheriff’s office had a duty to take reasonable steps to maintain the property, even though a forfeiture action was never initiated; a warrant authorizing seizure was issued by court, and the duty to take reasonable steps to maintain the property began upon issuance of the warrant. Gadson v. Hembree (S.C. 2005) 364 S.C. 316, 613 S.E.2d 533, rehearing denied. Controlled Substances 178

The only persons who may apply pursuant to Section 44‑53‑586 for the return of seized items which are normally used for lawful purposes, are third parties who hold an interest in the property seized, and who did not consent to, were not privy to, or did not have knowledge of the use of the property which made it subject to seizure or forfeiture. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

2. Constitutional issues

The forfeiture procedure articulated in Section 44‑53‑530(a), which provides that forfeiture proceedings pursuant to Sections 44‑53‑520 and ‑530 be held before a judge alone, is unconstitutional to the extent that it denies a property owner the right to a jury trial in those cases where the property subject to forfeiture is normally used for lawful purposes, since the legislature may not abrogate the right to a jury trial simply by designating a proceeding as a civil action without a jury. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

3. Innocent owner or lienholder

A corporation was not an innocent owner of a boat under Section 44‑53‑530(4)(a) where a corporate officer, operating the boat consistent with the work of the corporation, was apprehended with a load of marijuana on board upon returning from a trip to Florida. Even if the officer was not acting on behalf of the corporation in hauling the marijuana, he was acting as an officer of the corporation when he surrendered the boat to himself as an individual and then used it to smuggle drugs. Accordingly, the boat would be forfeited to the state. South Carolina Law Enforcement Div. v. Michael and Lance (68 Foot Double Net Shrimp Trawler, White Hull with Black Trim, North Carolina Fisheries License No. AC‑892) (S.C. 1985) 284 S.C. 368, 327 S.E.2d 327.

Requirement for forfeiture of vehicles used in drug traffic were intended to curb distribution of drugs and statute must be interpreted in light of evil sought to be remedied; provision that innocent lienholder will be protected if he secures affidavit by borrower stating that he has not been convicted or charged with violation of any drug act was designed to require lenders to closely inquire into character of prospective borrowers and put borrowers on notice at time of financing that conveyances used in contravention of drug laws would be subject to forfeiture; if affidavit is not signed at time of financing, lien does not survive forfeiture. South Carolina State Law Enforcement Division v. Crook (S.C. 1979) 273 S.C. 285, 255 S.E.2d 846. Controlled Substances 175

4. Initiation of proceedings

Sheriff’s office that had custody of owner’s counterfeit goods that were seized did not have statutory authority to initiate forfeiture proceedings, and therefore, had no duty to initiate forfeiture proceedings within reasonable time; rather, forfeiture proceedings had to be initiated by appropriate prosecution authority, with notice to law enforcement. Farmer v. Florence County Sheriff’s Office (S.C. 2013) 401 S.C. 606, 738 S.E.2d 473. Forfeitures 95; Forfeitures 98

5. Jury trial

A defendant‑owner of property, normally used for lawful purposes but which was seized pursuant to a drug offense, was entitled to a jury trial in a civil forfeiture action since forfeiture proceedings and similar actions were triable to a jury under the common law when the State Constitution was adopted, and since the defendant‑owner would not have a right to replevy against the state for the property, if wrongfully forfeited. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

6. Review

Matter involving erroneous appointment of counsel as guardian ad litem (GAL) of an inmate in a civil forfeiture action would be remanded for trial court to determine whether the inmate should be appointed a GAL, and if so, whether counsel should be appointed to that position, under rule governing in appointment procedure of GALs, in consideration of whether inmate was indigent, whether the nature of the civil forfeiture action was so complex that the fact of the inmate’s incarceration would unfairly hamper his ability to defend his case, if a GAL was appointed, whether she would be entitled to be compensated out of the proceeds of the forfeited property for her investigative costs and/or for her time as a “proper expense of the proceeding.” Ex parte Foster (S.C. 2002) 350 S.C. 238, 565 S.E.2d 290. Appeal And Error 1178(1)

**SECTION 44‑53‑540.** Burden of proof.

 (a) It shall not be necessary for the State to negate any exemption or exception set forth in this article in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this article, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

 (b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this article, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

HISTORY: 1962 Code Section 32‑1510.65; 1971 (57) 800; 1974 (58) 2284.

Library References

Controlled Substances 68.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 359, 361 to 384.

**SECTION 44‑53‑550.** Prosecutions prior to effective date of article.

 Prosecution occurring prior to June 17, 1971 is not affected or abated by this article. However, if the offense being prosecuted is similar to one set forth in Sections 44‑53‑370 to 44‑53‑470, then the penalties under Sections 44‑53‑370 to 44‑53‑470 shall apply if they are less than under prior law.

 Offenses occurring prior to June 17, 1971 may be prosecuted under the statute then in force, but shall be subject to penalty limitations in this section.

HISTORY: 1962 Code Section 32‑1510.66; 1971 (57) 800; 1974 (58) 2228.

Library References

Controlled Substances 8.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 15 to 17, 19 to 23, 89, 214 to 218.

**SECTION 44‑53‑560.** Transfer of agents from Department of Health and Environmental Control.

 All agents of the Department of Health and Environmental Control who, sixty days after June 17, 1971, are either engaged in the enforcement of laws or regulations relating to controlled or counterfeit substances, except whose primary responsibility is making accountability audits, are hereby transferred to and shall be considered part of the Department of Narcotics and Dangerous Drugs under the South Carolina Law Enforcement Division.

HISTORY: 1962 Code Section 32‑1510.67; 1971 (57) 800.

Library References

Controlled Substances 60.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 222 to 223, 229 to 230, 232, 342 to 344, 360.

**SECTION 44‑53‑570.** Service of search warrants.

 A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the magistrate or judge of any court of record of the State having jurisdiction over the area where the property sought is located is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

HISTORY: 1962 Code Section 32‑1510.68; 1971 (57) 800.

Library References

Controlled Substances 150.

Westlaw Topic No. 96H.

C.J.S. Searches and Seizures Sections 77, 79 to 93.

NOTES OF DECISIONS

In general 1

1. In general

Search warrant was not invalid by reason of fact that place to be searched was outside jurisdiction of officer applying for warrant, where magistrate was empowered by statute to issue warrants for county in which place to be searched was located. State v. Hammond (S.C. 1978) 270 S.C. 347, 242 S.E.2d 411.

**SECTION 44‑53‑577.** Illegal acts involving persons under seventeen years of age; penalties; separate offense.

 (A) It is unlawful for any person at least seventeen years of age to knowingly and intentionally:

 (1) use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under seventeen years of age to violate Section 44‑53‑370 or 44‑53‑375(B);

 (2) receive a controlled substance from a person under seventeen years of age in violation of this chapter; or

 (3) conspire to use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under seventeen years of age to violate Section 44‑53‑370 or 44‑53‑375(B).

 (B) Any person who violates subsection (A)(1), (A)(2), or (A)(3) is guilty of a felony and, upon conviction, must be punished by a term of imprisonment of not less than five years nor more than fifteen years. A violation of this section constitutes a separate offense.

HISTORY: 1990 Act No. 604, Section 12.

Library References

Infants 1567.

Westlaw Topic No. 211.

C.J.S. Evidence Section 380.

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

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 13, Use of a Deadly Weapon.

S.C. Jur. Burglary Section 17, of Another.

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

**SECTION 44‑53‑582.** Return of monies used to purchase controlled substances.

 All monies used by law enforcement officers or agents, in the line of duty, to purchase controlled substances during a criminal investigation must be returned to the state or local agency or unit of government furnishing the monies upon a determination by the court that the monies were used by law enforcement officers or agents, in the line of duty, to purchase controlled substances during a criminal investigation. The court may order a defendant to return the monies to the state or local agency or unit of government at the time of sentencing.

HISTORY: 1984 Act No. 482, Section 6; 1986 Act No. 404, Section 5; 2010 Act No. 273, Section 42, eff June 2, 2010.

CROSS REFERENCES

Determination by judge whether property must be returned to a law enforcement agency pursuant to this section, see Section 44‑53‑530.

Library References

Controlled Substances 60.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 222 to 223, 229 to 230, 232, 342 to 344, 360.

NOTES OF DECISIONS

In general 1

1. In general

The State was entitled to recover $880.00 of law enforcement funds from defendant, in civil forfeiture action; the State gave an informant marked money to use during a drug transaction with defendant, and defendant admitted that there was an amount of “marked cash” seized from him. Pope v. Gordon (S.C.App. 2004) 359 S.C. 572, 598 S.E.2d 288, rehearing denied, certiorari granted, affirmed 369 S.C. 469, 633 S.E.2d 148. Controlled Substances 165

**SECTION 44‑53‑586.** Return of seized items to innocent owners; notice of hearing or rule to show cause; continuation of liens of innocent persons.

 (a) Any innocent owner or any manager or owner of a licensed rental agency or any common carrier or carrier of goods for hire may apply to the court of common pleas for the return of any item seized under the provisions of Section 44‑53‑520. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies entitled to notice under Section 44‑53‑530. If the judge denies the application, the hearing may proceed as a forfeiture hearing held pursuant to Section 44‑53‑530.

 (b) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

 (1) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

 (2) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

 If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

 (c) The lien of any innocent person or other legal entity, recorded in public records, shall continue in force upon transfer of title of any forfeited item, and any transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

HISTORY: 1984 Act No. 482, Section 8; 1986 Act No. 404, Section 7.

Library References

Controlled Substances 190.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 255 to 256, 262.

RESEARCH REFERENCES

Encyclopedias

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Annual Survey of South Carolina Law: Criminal Law. 38 S.C. L. Rev. 81 (Autumn 1986).

NOTES OF DECISIONS

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1. In general

Once probable cause exists to believe property was, or was intended to be, used illegally, it may be seized. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373. Searches And Seizures 83

The purpose of a forfeiture hearing is to confirm that the state had probable cause to seize the property forfeited. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373. Forfeitures 107

A civil in rem forfeiture proceeding is in the nature of a penal action and accordingly must also be strictly construed. Ducworth v. Neely (S.C.App. 1995) 319 S.C. 158, 459 S.E.2d 896. Forfeitures 24(2); Forfeitures 28

Section 44‑53‑586 should be classified as remedial because it affords a remedy not previously recognized to the innocent owner of property sought by the government for forfeiture. Ducworth v. Neely (S.C.App. 1995) 319 S.C. 158, 459 S.E.2d 896.

The only persons who may apply pursuant to Section 44‑53‑586 for the return of seized items which are normally used for lawful purposes, are third parties who hold an interest in the property seized, and who did not consent to, were not privy to, or did not have knowledge of the use of the property which made it subject to seizure or forfeiture. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

2. Constitutional issues

The forfeiture procedure articulated in Section 44‑53‑530(a), which provides that forfeiture proceedings pursuant to Sections 44‑53‑520 and ‑530 be held before a judge alone, is unconstitutional to the extent that it denies a property owner the right to a jury trial in those cases where the property subject to forfeiture is normally used for lawful purposes, since the legislature may not abrogate the right to a jury trial simply by designating a proceeding as a civil action without a jury. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

3. Actual knowledge

The term “knowledge” contained in Section 44‑53‑586(b)(1), means actual knowledge; hence, in a forfeiture proceeding, the trial judge erred in applying a “reasonable person” standard in deciding whether the property owners established that they lacked knowledge of drug activity on their premises. Ducworth v. Neely (S.C.App. 1995) 319 S.C. 158, 459 S.E.2d 896.

4. Jurisdiction

The State Grand Jury does not have subject matter jurisdiction to hear civil forfeiture actions. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373.

A confirmation of forfeiture proceeding would not be overturned on the ground of lack of subject matter jurisdiction because the forfeiture complaint had been filed with the State Grand Jury where the case was tried in a Court of Common Pleas to a civil jury. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373.

5. Jury trial

A defendant‑owner of property, normally used for lawful purposes but which was seized pursuant to a drug offense, was entitled to a jury trial in a civil forfeiture action since forfeiture proceedings and similar actions were triable to a jury under the common law when the State Constitution was adopted, and since the defendant‑owner would not have a right to replevy against the state for the property, if wrongfully forfeited. Medlock v. 1985 Ford F‑150 Pick Up VIN 1FTDF15YGFNA22049 (S.C. 1992) 308 S.C. 68, 417 S.E.2d 85.

6. Admissibility of evidence

In a civil forfeiture action arising from alleged criminal activity, evidence regarding police surveillance of the defendant’s house was relevant where the defendant claimed she was an innocent owner. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373.

7. Presumptions and burden of proof

In a forfeiture proceeding, the initial burden lies with the state to show it had probable cause for believing a substantial connection exists between the property to be forfeited and the criminal activity; once probable cause is shown, the burden shifts to the property owner to show by a preponderance of the evidence that the property was innocently owned. Gowdy v. Gibson (S.C. 2011) 391 S.C. 374, 706 S.E.2d 495. Forfeitures 103(1); Forfeitures 105(2)

The State has the initial burden of demonstrating probable cause for the belief that a substantial connection exists between the property to be forfeited and the criminal activity defined by statute, and if probable cause is shown, the burden then shifts to the owner to prove that he or she was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture. Pope v. Gordon (S.C. 2006) 369 S.C. 469, 633 S.E.2d 148. Forfeitures 51; Forfeitures 68(1); Forfeitures 103(1); Forfeitures 105(2)

When asserting the innocent owner provision of Section 44‑53‑586 as a counterclaimant on an affirmative defense, the statute places the onus upon the owner to come forward with evidence that he did not have actual knowledge of the illicit use of the property. Ducworth v. Neely (S.C.App. 1995) 319 S.C. 158, 459 S.E.2d 896.

8. Instructions

In a forfeiture action, the trial court did not err in instructing the jury that the State’s burden of proof is to show probable cause for forfeiture; Section 44‑53‑586(b) specifically places the burden of proof on the property owner to show innocent ownership by a preponderance of the evidence, showing legislative intent to place the burden of proving innocence on the property owner. Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001 (S.C. 1996) 322 S.C. 127, 470 S.E.2d 373.

9. Sufficiency of evidence

Mother of convicted drug dealer failed to show by a preponderance of the evidence that currency found during search of home shared by mother and dealer in a safe in attic constituted her life savings and was innocently owned, such as would preclude forfeiture of currency; mother did not know the combination to the safe, she admitted that she could not reach the safe, and she stated she always gave money she earned from her job to dealer to put in the safe, but she admitted that dealer had been in prison for several years and had just recently been released, and officer at home when currency was confiscated testified that mother looked surprised when she say the money officers retrieved from safe. Gowdy v. Gibson (S.C. 2011) 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 184

Mother of suspect being investigated for illegal drug activity failed to show by a preponderance of the evidence that money found during search in a small fire safe in attic of home she and suspect shared constituted her life savings, such that money was not traceable to alleged illegal drug activity and not subject to civil forfeiture; even though mother testified that money seized was her life savings, safe where money was kept could only be accessed through a hole cut in ceiling of suspect’s bedroom, mother admitted she could not access safe herself and did not know the combination, mother was unable to provide any documentation supporting her claim that source of money was work earnings and profits from illegal gambling or in any way rebut state’s evidence that money was connected to illegal drug activity, and trial court found neither mother nor suspect to be credible regarding their explanation of money’s source. Gowdy v. Gibson (S.C.App. 2008) 381 S.C. 225, 672 S.E.2d 794, rehearing denied, certiorari granted, affirmed 391 S.C. 374, 706 S.E.2d 495. Controlled Substances 184

State failed to meet its burden of proof of demonstrating probable cause that the money in defendant’s bank accounts contained proceeds traceable to illegal drug transactions, such that bank accounts were subject to civil forfeiture; defendant had legitimate car detailing business that involved cash transactions, and bank records showed that money in the accounts came from car detailing business. Pope v. Gordon (S.C. 2006) 369 S.C. 469, 633 S.E.2d 148. Controlled Substances 171

**SECTION 44‑53‑590.** Penalty for use of property in manner which makes it subject to forfeiture.

 Any person who uses property or a conveyance in a manner which would make the property or conveyance subject to forfeiture as provided for in Sections 44‑53‑520 or 44‑53‑530, except for innocent owners, rental agencies, lienholders, and the like as provided for in this article, is guilty of a misdemeanor and upon conviction must be imprisoned for not less than thirty days nor more than one year or fined not more than five thousand dollars, or both, in the discretion of the court. The penalties prescribed in this section are cumulative and must be construed to be in addition to any other penalty prescribed by any other provision of this article relating to controlled substances or harmful or illegal drugs.

HISTORY: 1984 Act No. 482, Section 10.

Library References

Controlled Substances 100.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 228 to 232, 489 to 506.

ARTICLE 4

Controlled Substances Therapeutic Research

**SECTION 44‑53‑610.** Short title.

 This article may be cited as the “South Carolina Controlled Substances Therapeutic Research Act of 1980”.

HISTORY: 1980 Act No. 323, Section 1.

**SECTION 44‑53‑620.** Definitions.

 As used in this article unless the context clearly indicates otherwise:

 (a) “Director” means the Director of the Department of Health and Environmental Control;

 (b) “Marijuana” means marijuana, all tetrahydrocannabinols or a chemical derivative of any tetrahydrocannabinol;

 (c) “Practitioner” means a physician licensed to practice medicine in this State and licensed to prescribe and administer drugs which are subject to regulation under the provisions of Article 3, Chapter 53 of Title 44 of the 1976 Code.

HISTORY: 1980 Act No. 323, Section 3; 1993 Act No. 181, Section 1110.

**SECTION 44‑53‑630.** Establishment of therapeutic research program; regulations; limits as to patient eligibility.

 (A) There is established in the Department of Health and Environmental Control a controlled substances therapeutic research program. The program shall be administered by the director. The program shall distribute to cancer chemotherapy and radiology patients and to glaucoma patients who are certified pursuant to this article marijuana under the terms and conditions of this article for the purpose of alleviating the patient’s discomfort, nausea and other painful side effects of their disease or chemotherapy treatments. The department shall promulgate regulations necessary for the proper administration of this article and in such promulgation, the department shall take into consideration those pertinent regulations promulgated by the Drug Enforcement Agency, U. S. Department of Justice; Food and Drug Administration; the National Institute on Drug Abuse, and the National Institutes of Health.

 (B) Except as provided in subsection (c) of Section 44‑53‑640, the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review advisory board by a practitioner as being involved in a life‑threatening or sense‑threatening situation and who are not responding to conventional controlled substances or where the conventional controlled substances administered have proven to be effective but where the patient has incurred severe side effects.

HISTORY: 1980 Act No. 323, Section 4; 1993 Act No. 181, Section 1111.

CROSS REFERENCES

The Department of Health and Environmental Control, generally, see Section 44‑1‑20 et seq.

The director of the Department of Health and Environmental Control, see Section 44‑1‑40.

General powers of the Department of Health and Environmental Control regarding controlled substances, see Section 44‑53‑10.

Narcotics and controlled substances, generally, see Section 44‑53‑110 et seq.

Other provisions regarding the treatment of cancer, see Section 44‑35‑10 et seq.

Promulgation of rules and regulations by the Department of Health and Environmental Control, generally, see Section 44‑1‑140.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑53‑640.** Patient Qualification Review Advisory Board; membership; compensation; duties.

 (a) The director shall appoint a Patient Qualification Review Advisory Board to serve at his pleasure. The Patient Qualification Review Advisory Board shall be comprised of:

 (1) a physician licensed to practice medicine in South Carolina and certified by the American Board of Ophthalmology;

 (2) a physician licensed to practice medicine in South Carolina and certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology;

 (3) a physician licensed to practice medicine in South Carolina and certified by the American Board of Psychiatry; and

 (4) a pharmacologist holding a Doctoral degree or its equivalent.

 Members of the board shall be paid the usual per diem, mileage and subsistence as provided by law for members of boards, commissions and committees.

 (b) The department shall review all applicants for the controlled substances therapeutic research program and their licensed practitioners and certify their participation in the program.

 (c) The department, in its discretion, may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the director and the department and after necessary approval is received by the appropriate federal agencies.

HISTORY: 1980 Act No. 323, Section 5; 1993 Act No. 181, Section 1112.

CROSS REFERENCES

Provision leaving determination of compensation of public officers and employees to General Assembly or to department involved, see Section 8‑15‑10.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑53‑650.** Director to obtain and distribute marijuana.

 (a) The director shall obtain marijuana through whatever means he deems most appropriate consistent with federal law.

 (b) The director shall cause such analyzed marijuana to be transferred to various locations throughout the State that provide adequate security as set forth in federal and state regulations for the purpose of distributing such marijuana to the certified patient in such manner as is consistent with federal law. The patient shall not be required to pay for such marijuana but the director may charge for ancillary medical services provided by the department to compensate the department for the cost, if any, of securing such marijuana, and providing it to the patient.

HISTORY: 1980 Act No. 323, Section 6; 1993 Act No. 181, Section 1113.

Library References

Health 361.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 9 to 10, 18 to 27, 41 to 42, 61 to 68, 73 to 80.

**SECTION 44‑53‑660.** Annual report.

 The director shall annually report to the General Assembly his opinion as to the effectiveness of this program and his recommendations for any changes thereto.

HISTORY: 1980 Act No. 323, Section 7; 1993 Act No. 181, Section 1114.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

ARTICLE 5

Methadone

**SECTION 44‑53‑710.** Exclusive control over methadone vested in Department of Health and Environmental Control.

 The South Carolina Department of Health and Environmental Control has exclusive control over the controlled substance methadone.

HISTORY: 1962 Code Section 32‑1510.81; 1972 (57) 2642; 1980 Act No. 439, Section 1; 1993 Act No. 181, Section 1115; 2000 Act No. 355, Section 11.

Library References

Chemical Dependents 23.1.

Westlaw Topic No. 76A.

C.J.S. Chemical Dependents Section 30.

Attorney General’s Opinions

The South Carolina Council for the Control of Methadone Program for Narcotic Addicts must comply with the process of promulgating rules and regulations of the Administrative Procedures Act, as a regulation applying only to hospitals is a regulation of “general public applicability.” S.C. Op.Atty.Gen. (September 15, 1977) 1977 WL 24629.

**SECTION 44‑53‑720.** Restrictions on use of methadone.

 Methadone and its salts are restricted to:

 (1) use in treatment, maintenance, or detoxification programs as approved by the Department of Health and Environmental Control.

 (2) dispensing by a hospital for analgesia, pertussis, and detoxification treatment as approved by the Department of Health and Environmental Control.

 (3) dispensing by a retail pharmacy for analgesia as provided for by R. 61‑4, Section 507.5.

HISTORY: 1976 Code Section 44‑53‑730; 1962 Code Section 32‑1510.83; 1972 (57) 2642; 1980 Act No. 439, Section 1; 2000 Act No. 355, Section 12.

Library References

Chemical Dependents 23.1.

Westlaw Topic No. 76A.

C.J.S. Chemical Dependents Section 30.

Attorney General’s Opinions

The South Carolina Council for the Control of Methadone Program for Narcotic Addicts must comply with the process of promulgating rules and regulations of the Administrative Procedures Act, as a regulation applying only to hospitals is a regulation of “general public applicability.” 1976‑77 Op.Atty.Gen. No. 77‑289, p. 219 (September 15, 1977) 1977 WL 24629.

**SECTION 44‑53‑730.** Restrictions on sale and distribution of methadone.

 No supplier, distributor, or manufacturer may sell or distribute methadone or its salts to an entity for use, except as provided for in Section 44‑53‑720.

HISTORY: 1976 Code Section 44‑53‑740; 1962 Code Section 32‑1510.84; 1972 (57) 2642; 1980 Act No. 439, Section 1; 2000 Act No. 355, Section 13.

Library References

Chemical Dependents 23.1.

Westlaw Topic No. 76A.

C.J.S. Chemical Dependents Section 30.

Attorney General’s Opinions

The South Carolina Council for the Control of Methadone Program for Narcotic Addicts must comply with the process of promulgating rules and regulations of the Administrative Procedures Act, as a regulation applying only to hospitals is a regulation of “general public applicability.” 1976‑77 Op.Atty.Gen. No. 77‑289, p. 219 (September 15, 1977) 1977 WL 24629.

South Carolina 1962 Code Section 32‑1510.83 and Section 32‑1510.84 [1976 Code Sections 44‑53‑730 and 44‑53‑740] are not affected by a recent Federal Court decision. 1975‑76 Op.Atty.Gen. No. 4499, p. 358 (October 21, 1976) 1976 WL 23116.

**SECTION 44‑53‑740.** Promulgation of rules and regulations.

 The Board of the Department of Health and Environmental Control shall promulgate regulations necessary to carry out the provisions of this article.

HISTORY: 1976 Code Section 44‑53‑750; 1962 Code Section 32‑1510.85; 1972 (57) 2642; 1980 Act No. 439, Section 1; 1993 Act No. 181, Section 1116; 2000 Act No. 355, Section 14.

Library References

Chemical Dependents 23.1.

Westlaw Topic No. 76A.

C.J.S. Chemical Dependents Section 30.

Attorney General’s Opinions

The South Carolina Council for the Control of Methadone Program for Narcotic Addicts must comply with the process of promulgating rules and regulations of the Administrative Procedures Act, as a regulation applying only to hospitals is a regulation of “general public applicability.” 1976‑77 Op.Atty.Gen. No. 77‑289, p. 219 (September 15, 1977) 1977 WL 24629.

South Carolina 1962 Code Section 32‑1510.83 and Section 32‑1510.84 [1976 Code Sections 44‑53‑730 and 44‑53‑740] are not affected by a recent Federal Court decision. 1975‑76 Op.Atty.Gen. No. 4499, p. 358 (October 21, 1976) 1976 WL 23116.

**SECTION 44‑53‑750.** Autopsy on person dying while enrolled in program.

 An autopsy shall be performed on any person on a methadone program who dies while enrolled in such program. A report concerning the autopsy shall be filed with the Department of Health and Environmental Control. Each person enrolling in such program shall be notified of the autopsy provision as a part of such person’s consent which is required prior to admission to such program.

HISTORY: 1976 Code Section 44‑53‑760; 1962 Code Section 32‑1510.86; 1972 (57) 2642; 1980 Act No. 439, Section 1.

Library References

Chemical Dependents 23.1.

Westlaw Topic No. 76A.

C.J.S. Chemical Dependents Section 30.

Attorney General’s Opinions

The South Carolina Council for the Control of Methadone Program for Narcotic Addicts must comply with the process of promulgating rules and regulations of the Administrative Procedures Act, as a regulation applying only to hospitals is a regulation of “general public applicability.” 1976‑77 Op.Atty.Gen. No. 77‑289, p. 219 (September 15, 1977) 1977 WL 24629.

**SECTION 44‑53‑760.** Admission of minors to programs.

 Parental consent shall be obtained for all persons under eighteen years of age prior to admission to a methadone maintenance program; provided, that if any court of competent jurisdiction declares a person under eighteen years of age an emancipated minor, then such person may be admitted to the program without parental consent.

HISTORY: 1976 Code Section 44‑53‑770; 1962 Code Section 32‑1510.87; 1972 (57) 2642; 1980 Act No. 439, Section 1.

Library References

Chemical Dependents 23.1.

Westlaw Topic No. 76A.

C.J.S. Chemical Dependents Section 30.

Attorney General’s Opinions

The South Carolina Council for the Control of Methadone Program for Narcotic Addicts must comply with the process of promulgating rules and regulations of the Administrative Procedures Act, as a regulation applying only to hospitals is a regulation of “general public applicability.” 1976‑77 Op.Atty.Gen. No. 77‑289, p. 219 (September 15, 1977) 1977 WL 24629.

ARTICLE 6

Drug Awareness Resistance Education Fund

**SECTION 44‑53‑810.** Legislative findings.

 The General Assembly finds:

 (1) that the future of this State rests in the hands of school children;

 (2) the Drug Abuse Resistance Education Program taught in this State and in many schools nationally provides an effective and proven awareness of instilling drug resistance skills in our school children, and promoting the hope of a secure and healthy future for these children.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

**SECTION 44‑53‑820.** Establishment of DARE Fund; purpose.

 There is established the Drug Awareness Resistance Education (DARE) Fund, an eleemosynary corporation, the resources of which must be used to promote and encourage the Drug Awareness and Resistance Education Program in this State. The trust fund supplements and augments services provided by government agencies and does not take the place of these services.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

**SECTION 44‑53‑830.** Board of directors; membership; terms.

 (A) The DARE Fund is to be administered by a board of directors appointed by the Governor, with the advice and consent of the Senate, and is composed of:

 (1) the Attorney General, ex officio, or his designee;

 (2) two county sheriffs, who shall serve ex officio;

 (3) two police chiefs;

 (4) two local law enforcement officers assigned to the DARE Program; and

 (5) two school principals.

 Directors who are not elected officials serve by virtue of their position at the time of appointment.

 (B) Members shall serve terms of four years and until successors are appointed and qualify. A board member may be removed by the Governor in accordance with Section 1‑3‑240(B). Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

**SECTION 44‑53‑840.** Board members to be reimbursed for expenses.

 Board members are not entitled to per diem but may be reimbursed for mileage and all necessary and reasonable expenses incurred in the performance of their duties under this article.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

**SECTION 44‑53‑850.** Powers of board.

 In administering this article, the board is authorized, but not limited to:

 (1) develop and implement educational programs and campaigns in support of the DARE Program in South Carolina;

 (2) make policy recommendations for the DARE Program in South Carolina;

 (3) assess the needs of DARE Programs;

 (4) determine how the monies in the fund are to be disbursed;

 (5) acquire and hold property;

 (6) invest trust monies, including pooled investment funds maintained by the State;

 (7) utilize local resources including volunteers when appropriate.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

**SECTION 44‑53‑860.** Chairman; meetings; quorum.

 The board shall elect a chairman from among its members and shall adopt rules for the governance of its operations. The board shall meet at least semiannually. Six members constitute a quorum.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

**SECTION 44‑53‑870.** Director and staff; maximum administrative costs.

 The board may employ a director and other staff as necessary to carry out the provisions of this article; however, administration of this article may not exceed twenty percent of the total funds credited to the trust fund, excluding the administrative fee paid to the Department of Revenue pursuant to Section 12‑6‑5080.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

**SECTION 44‑53‑880.** Use of funds.

 Funds credited to the trust fund, excluding the administrative fees paid to the Department of Revenue, may be used for, but are not limited to:

 (1) administration of this article including, but not limited to, personnel and board expenses;

 (2) development and promotion of the DARE Program in this State;

 (3) a reserve fund in an interest‑bearing account with five percent of the funds received by the trust fund annually to be placed in this account. No withdrawals may be made from this account until the minimum balance has reached one hundred thousand dollars and then these funds may be used only in years in which donations do not meet the average normal operating cost incurred by the trust fund and funds are needed to meet expenses. Once the balance in the reserve funds reaches one hundred thousand dollars, excess fund earned by interest and yearly allocations may be used at the discretion of the board to cover operating costs and to provide additional funds.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

**SECTION 44‑53‑890.** Annual report.

 The fund board annually by February first shall submit a report to the General Assembly concerning its expenditures of fund monies and activities.

HISTORY: 1997 Act No. 155, Part II, Section 64B.

Library References

Education 717.

Westlaw Topic No. 141E.

ARTICLE 7

Hypodermic Needles and Syringes

**SECTION 44‑53‑930.** Retail sales shall be made only by registered pharmacists or assistant pharmacists; exception.

 Sales at retail of hypodermic needles or syringes shall be made only by a registered pharmacist or registered assistant pharmacist through a permitted pharmacy as authorized by Section 40‑43‑370, except that syringes and hypodermic needles may be sold by persons lawfully selling veterinary medicines as authorized by item (8) of Section 40‑69‑220 if they register annually with the Department of Health and Environmental Control and pay such registration fee as may be required by the Department and they shall be subject to the provisions of Section 44‑53‑920.

HISTORY: 1975 (59) 188; 1980 Act No. 383, Section 1.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑53‑950.** Veterinarians and licensed durable medical equipment providers exception.

 Nothing in this article applies to veterinarians in connection with the practice of their profession or to certified or licensed durable medical equipment providers when selling hypodermic needles and syringes to insulin dependent diabetics.

HISTORY: 1975 (59) 188; 2000 Act No. 239, Section 1; 2002 Act No. 365, Section 4, eff September 26, 2002.

CROSS REFERENCES

Department of Health and Environmental Control regulations pertaining to controlled substances, see S.C. Code of Regulations R. 61‑4.101 et seq.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

**SECTION 44‑53‑960.** Penalties.

 Any person who sells or purchases at retail any hypodermic needles or syringes, except in accordance with the terms of this article, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than sixty days.

HISTORY: 1962 Code Section 32‑1510.123; 1974 (58) 2399.

Library References

Health 256.

Westlaw Topic No. 198H.

C.J.S. Hospitals Section 2.

ARTICLE 9

Aromatic Hydrocarbons

**SECTION 44‑53‑1110.** Prohibition on aromatic hydrocarbons used as intoxicants.

 No person shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of his brain or nervous system, intentionally smell or inhale the fumes from any substance containing aromatic hydrocarbons; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes.

HISTORY: 1962 Code Section 32‑1510.91; 1972 (57) 2766.

CROSS REFERENCES

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

Library References

Controlled Substances 38.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 264, 304.

NOTES OF DECISIONS

In general 1

1. In general

In a prosecution for intentional inhalation of aromatic hydrocarbons, the trial court properly took judicial notice that tidy oil, a solvent used in the textile industry, contained aromatic hydrocarbons, and was therefore within the purview of Section 44‑53‑1110. Matter of Harry C. (S.C. 1984) 280 S.C. 308, 313 S.E.2d 287. Criminal Law 304(1)

**SECTION 44‑53‑1120.** Unlawful use or possession of aromatic hydrocarbons.

 No person shall, for the purpose of violating Section 44‑53‑1110, use or possess for the purpose of so using, any substance containing aromatic hydrocarbons.

HISTORY: 1962 Code Section 32‑1510.92; 1972 (57) 2766.

Library References

Controlled Substances 38.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 264, 304.

**SECTION 44‑53‑1130.** Penalties.

 Any person who violates any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed one hundred dollars or imprisoned for a term not to exceed thirty days.

HISTORY: 1962 Code Section 32‑1510.93; 1972 (57) 2766.

Library References

Controlled Substances 100.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 228 to 232, 489 to 506.

ARTICLE 11

Dangerous Caustic and Corrosive Substances

**SECTION 44‑53‑1210.** Definitions.

 The term “dangerous caustic or corrosive substance” means each and all of the acids, alkalis and substances named below:

 (1) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCL) in a concentration of ten per cent or more;

 (2) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H2SO4) in a concentration of ten per cent or more;

 (3) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO3) in a concentration of five per cent or more;

 (4) Carbolic acid, otherwise known as phenol, and any preparation containing carbolic acid or phenol in a concentration of five per cent or more;

 (5) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H2C2O4) in a concentration of ten per cent or more;

 (6) Any salt or oxalic acid and any preparation containing any such salt in a concentration of ten per cent or more;

 (7) Acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC2H3O2) in a concentration of twenty per cent or more;

 (8) Hypochlorous acid, either free or combined, including calx chlorinata, bleaching powder, chloride of lime, chlorinated soda, chlorinated potash and any preparation containing any of the aforesaid substances so as to yield a concentration of ten per cent or more of available chlorine;

 (9) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and vienna paste, in a concentration of ten per cent or more;

 (10) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten per cent or more;

 (11) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO3) in a concentration of five per cent or more;

 (12) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH3), including ammonium hydroxide and “hartshorn,” in a concentration of five per cent or more; and

 (13) Any other alkali, acid, salt or preparation thereof having caustic or corrosive properties equivalent to those of any of the alkalis, acids, salts and preparations named above.

 The term “misbranded parcel, package or container” means a retail parcel, package or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous easily legible label or sticker, containing:

 (1) The name of the article;

 (2) The name and place of business of the manufacturer, packer, seller or distributor;

 (3) The word “POISON” running parallel with the main body of reading matter on the label or sticker, on a clear plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty‑four‑point size unless there is on the label no other type so large, in which event the type shall not be smaller than the largest type on the label; and

 (4) Directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance.

HISTORY: 1962 Code Section 32‑1801; 1952 Code Section 32‑1801; 1942 Code Section 5128‑26; 1932 Code Section 1451; 1924 (33) 1127.

**SECTION 44‑53‑1220.** Sale of caustic or corrosive substance in misbranded parcel, package, or container prohibited.

 No person shall sell, barter, exchange, receive, hold, pack or display or offer for sale, barter or exchange in the State any dangerous caustic or corrosive substance in a misbranded parcel, package or container designed for household use.

HISTORY: 1962 Code Section 32‑1802; 1952 Code Section 32‑1802; 1942 Code Section 5128‑26; 1932 Code Section 1451; 1924 (33) 1127.

Library References

Antitrust and Trade Regulation 239.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 72.

**SECTION 44‑53‑1230.** Confiscation of misbranded caustic or corrosive substance parcels, packages, or containers.

 Any dangerous caustic or corrosive substance in a misbranded parcel, package or container for household use that is being sold, bartered or exchanged or held, displayed or offered for sale, barter or exchange shall be liable to be proceeded against in any magistrate’s court and seized for confiscation in a manner provided by law. If such substance is condemned as misbranded by such court, it shall be disposed of by destruction or sale, as the court may direct, and, if sold, the proceeds less the actual costs and charges shall be paid over to the magistrate. But such substance shall not be sold contrary to the provisions of the laws of the State. Such proceedings shall conform as near as may be to the law providing for confiscating goods exposed for sale on Sunday.

 But upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof.

HISTORY: 1962 Code Section 32‑1803; 1952 Code Section 32‑1803; 1942 Code Section 5128‑26; 1932 Code Section 1451; 1924 (33) 1127.

Library References

Antitrust and Trade Regulation 239.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 72.

**SECTION 44‑53‑1240.** Enforcement; approval of brands and labels.

 The sheriff, deputy sheriffs and other peace officers shall enforce the provisions of this article and may approve and register such brands and labels intended for use under the provisions of this article as may be submitted to them for that purpose and as may in their judgment conform to the requirements of this article. But in any prosecution under this article the fact that any brand or label involved in the prosecution has not been submitted to the sheriff, a deputy sheriff or a peace officer to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this article shall cause appropriate proceedings to be commenced and prosecuted, without delay, for the enforcement of the penalties in such cases herein provided.

HISTORY: 1962 Code Section 32‑1804; 1952 Code Section 32‑1804; 1942 Code Section 5128‑26; 1932 Code Section 1451; 1924 (33) 1127.

Library References

Antitrust and Trade Regulation 239.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 72.

**SECTION 44‑53‑1250.** Penalties.

 Any person violating the provisions of this article shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ninety days, or by both such fine and imprisonment, in the discretion of the court.

HISTORY: 1962 Code Section 32‑1805; 1952 Code Section 32‑1805; 1942 Code Section 5128‑26; 1932 Code Section 1451; 1924 (33) 1127.

Library References

Antitrust and Trade Regulation 239.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 72.

RESEARCH REFERENCES

Encyclopedias

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

ARTICLE 13

Childhood Lead Poisoning Prevention and Control

**SECTION 44‑53‑1310.** Short title.

 This article may be cited as the “Childhood Lead Poisoning Prevention and Control Act”.

HISTORY: 1979 Act No. 78, Section 1; 2005 Act No. 142, Section 1, eff June 7, 2005.

CROSS REFERENCES

Physical site, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑507.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Poisons Section 13, Lead Poisoning.

**SECTION 44‑53‑1320.** Definitions.

 As used in this article, unless the context requires otherwise:

 (1) “Accessible surface” means any protruding interior or exterior surface that a child can mouth or chew including, but not limited to, an interior windowsill.

 (2) “Child” or “children” means a person under six years of age.

 (3) “Childcare facility” means a structure or portion of a structure in which children are present on a regular basis, including a structure used as a school, nursery, childcare facility, or other facility catering to the needs of children, including an outbuilding, fencing, or other structure used in conjunction with the structure.

 (4) “Department” means the Department of Health and Environmental Control.

 (5) “Dwelling” means a structure, all or part of which is designed or used for human habitation, including a primary residence, secondary residence, outbuilding, fencing, or other structure used in conjunction with the structure.

 (6) “Dwelling unit” means a room, group of rooms, or other areas of a dwelling.

 (7) “Friction surface” means an interior or exterior surface subject to abrasion or friction including, but not limited to, a window or stair tread.

 (8) “Householder” means the occupant of a dwelling or dwelling unit or the occupant’s agent, the owner of an unoccupied dwelling unit or the owner’s agent, or the owner or occupant of a childcare facility or the owner’s or occupant’s agent.

 (9) “Impact surface” means an interior or exterior surface subject to damage by repeated impact on contact including, but not limited to, doors and door jambs.

 (10) “Lead‑based hazard” means a condition that causes exposure to lead from lead‑contaminated paint, lead‑contaminated dust, bare lead‑contaminated soil, or other lead‑based substance that is deteriorated in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

 (11) “Lead‑base substance” means paint, lacquer, glaze, or other material containing more than six hundredths of one percent (0.06 percent) lead by weight, or seven‑tenths or more milligrams per square centimeter (0.7 mg/cm2) of lead in the dried paint film applied. Standards for lead‑contaminated dust and lead‑contaminated soil must be the same as those established by the United States Environmental Protection Agency.

 (12) “Person” means an individual, firm, corporation, association, trust, or partnership.

 (13) “Lead poisoning” means a blood lead level at an elevation hazardous to health as established by the Department of Health and Environmental Control.

HISTORY: 1979 Act No. 78, Section 2; 1993 Act No. 181, Section 1117; 2005 Act No. 142, Section 1, eff June 7, 2005.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

**SECTION 44‑53‑1350.** Exemptions.

 The provisions of this article do not apply to items that are exempt pursuant to federal law.

HISTORY: 1979 Act No. 78, Section 5; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

**SECTION 44‑53‑1360.** Program for early diagnosis of cases of childhood lead poisoning; examinations; records.

 (A) The department may establish a program for the early diagnosis of cases of childhood lead poisoning. The program must provide for systematic examination for lead poisoning of children at risk residing within the State. Examinations must be made by such means and at such intervals as the department determines to be medically necessary.

 The program must give priority in examinations to those children residing, or who have recently resided, in areas where significant numbers of lead poisoning cases have been reported recently or where other reliable evidence indicates that significant numbers of lead poisoning cases may be found.

 (B) When the department is notified of a case of lead poisoning, the department shall examine or refer for examination within thirty days all other children under six years of age, and other children as the department finds advisable to examine, residing or recently residing in the household of the victim or in all other dwelling units in the dwelling of the victim or in a childcare facility occupied by the victim, unless the parents or guardian of the child objects to the examination because it conflicts with his or her religious beliefs or practices.

 The department shall maintain comprehensive records of all examinations conducted pursuant to this section. These records are strictly confidential and may not be released except as required by law or by court order.

HISTORY: 1979 Act No. 78, Section 6; 1993 Act No. 181, Section 1119; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

**SECTION 44‑53‑1370.** Childhood lead poisoning prevention education program.

 The department may institute a childhood lead poisoning prevention education program. The program shall emphasize the dangers and sources of lead poisoning and the methods of lead poisoning prevention and lead‑based hazard remediation.

HISTORY: 1979 Act No. 78, Section 7; 2005 Act No. 142, Section 1, eff June 7, 2005.

CROSS REFERENCES

Educational exhibits authorized by Department of Health and Environmental Control for display at county fairs, see Sections 4‑33‑10 et seq.

Library References

Health 292.

Westlaw Topic No. 198H.

**SECTION 44‑53‑1380.** Notification of incidents of lead poisoning.

 (A) If a physician, hospital, public health nurse, or other diagnosing person or agency knows or has reason to believe that a child he or she examines or treats has or is suspected of having lead poisoning, the person shall notify the department within seven days. The department shall specify the procedure to be followed and shall provide the necessary forms.

 (B) A laboratory doing business in this State shall notify the department of the results of any blood lead analyses conducted on children under six years of age; this notification must be submitted to the department within thirty days of completion of the analysis.

HISTORY: 1979 Act No. 78, Section 8; 1993 Act No. 181, Section 1120; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

**SECTION 44‑53‑1390.** Investigation of lead poisoning case reports; right of entry.

 When the department is notified of a lead poisoning case, the department, upon presentation of the appropriate credentials to the householder, and with the consent of the householder or his agent, may enter a dwelling, dwelling unit, or childcare facility at reasonable times and in a reasonable manner for the purpose of conducting a lead‑based hazard investigation and may remove samples of objects necessary for laboratory analysis. If the householder refuses admission to the premises, the department may obtain an administrative warrant from a court of competent jurisdiction to investigate the premises. This section also applies to secondary residences and any other premises routinely occupied by the child.

HISTORY: 1979 Act No. 78, Section 9; 1993 Act No. 181, Section 1121; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 31, Inspections.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

Attorney General’s Opinions

Administrative inspection warrants issued pursuant to Sections 44‑53‑1390, 44‑53‑500, and 48‑1‑50(24) are distinguishable from search warrants, and, therefore, are not required to conform to search warrant forms as approved by the State Attorney General’s Office pursuant to Section 17‑13‑160 of the Code. S.C. Op.Atty.Gen. (April 13, 1987) 1987 WL 245438.

**SECTION 44‑53‑1400.** Warrants for purpose of conducting investigation; oath or affirmation showing probable cause; contents of warrant.

 The issuance and execution of an administrative warrant to investigate must be as follows:

 (1) A judge or magistrate of a court having jurisdiction where the investigation is to be conducted, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting investigations authorized by this article or regulations promulgated pursuant to this article and removing samples of objects from the premises appropriate to the investigations. For the purpose of this section, “probable cause” exists when the circumstances indicate there is reason to believe a child has been exposed or is at risk of being exposed to a lead‑based hazard at the premises specified in the warrant.

 (2) A warrant must be issued only upon an affidavit of a department employee designated and having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge or magistrate shall issue a warrant identifying the area, premises, building, or conveyance to be investigated, the purpose of the investigation, and, where appropriate, the type of property to be investigated. The warrant must authorize the removal of samples of objects for laboratory analysis, where appropriate. The warrant must be directed to a designated department employee to execute it. The warrant must state the grounds for issuance and the name of the person or persons whose affidavit has been taken in support of the warrant. The warrant must command the person to whom it is directed to investigate the area, premises, building, or conveyance identified for the purpose specified and, where appropriate, authorize removal of samples of objects for laboratory analysis. The warrant must direct that it be served during reasonable hours and must designate the judge or magistrate to whom it must be returned.

 (3) A warrant issued pursuant to this section must be executed and returned within ten days of the date of issuance.

 (4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection with the warrant and shall cause these papers to be filed with the court which issued the warrant.

HISTORY: 1979 Act No. 78, Section 10; 2005 Act No. 142, Section 1, eff June 7, 2005.

CROSS REFERENCES

Issuance and execution of administrative inspection warrants, generally, see Section 44‑53‑500.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 31, Inspections.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

**SECTION 44‑53‑1430.** Notice of identification of lead‑based hazard; order that it be remediated; appeals.

 (A) If a child resides in a dwelling or dwelling unit or is routinely present at a childcare facility in which a lead‑based hazard has been identified, the department shall:

 (1) post in or upon the dwelling, dwelling unit, or childcare facility, in a conspicuous place, notice of the existence of the hazard. The notice must not be removed until the department determines that the identified lead‑based hazard has been remediated.

 (2) give written notice of the existence of the lead‑based hazard to the householder occupying the dwelling, dwelling unit, or childcare facility.

 (3) give written notice of the existence of the lead‑based hazard to the property owner and order that the hazard be remediated within a reasonable period of time.

 (B) The property owner of a building subject to this article has the right to appeal the order of the department as a contested case.

HISTORY: 1979 Act No. 78, Section 13; 1993 Act No. 181, Section 1122; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 32, Notice/Warning.

**SECTION 44‑53‑1440.** Restriction on rental; existing occupants.

 A person must not rent or offer for occupancy a dwelling or dwelling unit to be occupied by children which has been posted and ordered remediated of lead‑based hazards until the identified hazards have been remediated. If the presence of the lead‑based hazard becomes known when the dwelling or dwelling unit is already rented to a family with children, the family of the children must not be evicted for that reason.

HISTORY: 1979 Act No. 78, Section 14; 1993 Act No. 181, Section 1123; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 33, Prohibition on Rental.

**SECTION 44‑53‑1450.** Regulations.

 The department may promulgate regulations as necessary to carry out the intent and provisions of this article.

HISTORY: 1979 Act No. 78, Section 15; 1993 Act No. 181, Section 1124; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

**SECTION 44‑53‑1460.** Legal actions not affected.

 Nothing in this article may be interpreted or applied in any manner to defeat or impair the right of a person, municipality, or other political entity to maintain an action or suit for damages sustained, or equitable relief of, for violation of an ordinance by reason of, or in connection with, a violation of this article.

HISTORY: 1979 Act No. 78, Section 16; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 34.50, Causes of Action Not Created or Affected.

LAW REVIEW AND JOURNAL COMMENTARIES

The evolving paradigm of laws on lead‑based paint: From code violation to environmental hazard. 45 S.C. L. Rev. 511 (Spring 1994).

**SECTION 44‑53‑1480.** Penalties.

 A person who knowingly violates a provision of this article or an order of the department issued pursuant to this article is guilty of a misdemeanor and, upon conviction, must be fined or imprisoned not more than the maximum allowed by the magistrates’ courts in this State. Each day’s violation constitutes a separate offense. Isolated lead‑based hazard violations existing in dwellings, dwelling units, or childcare facilities must be considered separate violations.

HISTORY: 1979 Act No. 78, Section 18; 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

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

S.C. Jur. Poisons Section 13, Lead Poisoning.

S.C. Jur. Public Health Section 34, Penalties.

**SECTION 44‑53‑1485.** Civil penalties.

 A person who violates a provision of this article or a final determination or order of the department issued pursuant to this article is subject to a civil penalty not to exceed one thousand dollars a day.

HISTORY: 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 34, Penalties.

**SECTION 44‑53‑1490.** Private causes of action; action by municipality.

 (A) A violation of this article does not give rise to a private cause of action. However, this article does not prohibit a person from commencing an action for damages or injunctive relief pursuant to other law; and this article does not prohibit an action by a municipality or other governmental entity for damages or injunctive relief or an action authorized by other law or regulation.

 (B) This section does not prohibit the introduction of evidence of failure to comply with the provisions of this article in establishing the appropriate standard of care in the other action.

HISTORY: 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 34.50, Causes of Action Not Created or Affected.

**SECTION 44‑53‑1495.** Funding contingency.

 The provisions of this article are contingent upon the appropriation of state general funds or the availability of financial support from other sources.

HISTORY: 2005 Act No. 142, Section 1, eff June 7, 2005.

Library References

Health 292.

Westlaw Topic No. 198H.

ARTICLE 14

Anabolic Steroids

**SECTION 44‑53‑1510.** Definition of “anabolic steroid”; exceptions.

 (A) The term “anabolic steroid” includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

 (1) clostebol;

 (2) dehydrochlormethyltestosterone;

 (3) ethylestrenol;

 (4) fluoxymesterone;

 (5) mesterolone;

 (6) methandienone;

 (7) methandrostenolone;

 (8) methenolone;

 (9) methyltestosterone;

 (10) nandrolone;

 (11) norethandrolone;

 (12) oxandrolone;

 (13) oxymesterone;

 (14) oxymetholone;

 (15) stanozolol; and

 (16) testosterone.

 (B) Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for this use, are not considered anabolic steroids as defined by this article and are not governed by its provisions.

HISTORY: 1989 Act No. 115, Section 1.

**SECTION 44‑53‑1520.** Unprofessional conduct to dispense under certain circumstances.

 It is unprofessional conduct, and is not a valid medical purpose, for a practitioner or veterinarian to prescribe, dispense, or administer an anabolic steroid, or a pharmacist to dispense an anabolic steroid, for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so, or for the intended purpose of improving performance in any form of exercise, sport, or game.

HISTORY: 1989 Act No. 115, Section 1.

Library References

Health 211.

Westlaw Topic No. 198H.

C.J.S. Drugs and Narcotics Sections 87 to 88, 197.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Section 52.

**SECTION 44‑53‑1530.** Possessing anabolic steroids without a prescription, or prescribing anabolic steroids, by nonpractitioner, pharmacist, or veterinarian unlawful; penalties.

 It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally possess anabolic steroids as defined in this article unless the steroids were obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice. It is unlawful for any person who is not a practitioner, pharmacist, or veterinarian to knowingly or intentionally prescribe, dispense, deliver, or administer anabolic steroids to a person. Any person who violates this article with respect to:

 (1) prescription, dispensation, delivery, or administration of an anabolic steroid, or delivery of an anabolic steroid to a person for human use without any purpose other than a valid medical purpose, or the sale or delivery of an anabolic steroid to a person for human use without a valid prescription, or the prescription, dispensation, delivery, or administration of an anabolic steroid to a person by any person who is not a practitioner, pharmacist, or veterinarian, is guilty of a felony and, upon conviction, must be punished as follows:

 (a) for a first offense, imprisoned for a term not to exceed five years or fined in an amount not to exceed five thousand dollars, or both;

 (b) for a second or subsequent offense, imprisoned for a term not to exceed ten years or fined in an amount not to exceed ten thousand dollars, or both;

 (2) possession of ten or fewer dosage units of anabolic steroids without a valid prescription is guilty of a misdemeanor and, upon conviction, must be punished as follows:

 (a) for a first offense, imprisoned for a term not to exceed six months or fined in an amount not to exceed one thousand dollars;

 (b) for a second or subsequent offense, imprisoned for a term not to exceed one year or fined in an amount not to exceed two thousand dollars, or both;

 (3) possession of more than ten but fewer than one hundred dosage‑units of anabolic steroids without a valid prescription is guilty of a misdemeanor and, upon conviction, must be punished as follows:

 (a) for a first offense, imprisoned for a term not to exceed one year or fined in an amount not to exceed two thousand dollars, or both;

 (b) for a second or subsequent offense, imprisoned for a term not to exceed two years or fined in an amount not to exceed three thousand dollars, or both;

 (4) possession of more than one hundred dosage‑units of anabolic steroids without a valid prescription is guilty of a felony and, upon conviction, must be punished as follows:

 (a) for a first offense, imprisoned for a term not to exceed five years or fined in an amount not to exceed five thousand dollars, or both;

 (b) for a second or subsequent offense, imprisoned for a term not to exceed ten years or fined in an amount not to exceed ten thousand dollars, or both.

HISTORY: 1989 Act No. 115, Section 1.

Library References

Controlled Substances 24.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 274 to 287, 304, 306, 308 to 309, 314.

**SECTION 44‑53‑1550.** What constitutes a prior offense.

 For purposes of determining whether or not a person has committed a second or subsequent offense under the provisions of this article, a violation of any other provision of this article or provision of law of the United States or any state, territory, or district, relating to an anabolic steroid, constitutes a prior offense.

HISTORY: 1989 Act No. 115, Section 1.

Library References

Controlled Substances 100.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 228 to 232, 489 to 506.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Drug and Alcohol Dependence Section 2, Definitions.

ARTICLE 15

Prescription Monitoring Program

**SECTION 44‑53‑1610.** Citation of article.

 This article may be cited as the “South Carolina Prescription Monitoring Act”.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006.

**SECTION 44‑53‑1620.** Purpose.

 This article is intended to improve the state’s ability to identify and stop diversion of prescription drugs in an efficient and cost effective manner that will not impede the appropriate medical utilization of licit controlled substances.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006.

**SECTION 44‑53‑1630.** Definitions.

 As used in this article:

 (1) “Authorized delegate” means an individual who is approved as having access to the prescription monitoring program and who is directly supervised by an authorized practitioner or pharmacist.

 (2) “Controlled substances” means those substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270.

 (3) “Dispenser” means a person who delivers a Schedule II‑IV controlled substance to the ultimate user, but does not include:

 (a) a licensed hospital pharmacy that distributes controlled substances for the purpose of inpatient hospital care or dispenses prescriptions for controlled substances at the time of discharge from the hospital;

 (b) a practitioner or other authorized person who administers these controlled substances; or

 (c) a wholesale distributor of a Schedule II‑IV controlled substance.

 (4) “Drug control” means the Department of Health and Environmental Control, Bureau of Drug Control.

 (5) “Patient” means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, or both.

 (6) “Practitioner” means an individual authorized pursuant to state and federal law to prescribe controlled substances.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006; 2014 Act No. 244 (S.840), Section 1, eff June 6, 2014; 2017 Act No. 91 (H.3824), Section 2, eff May 19, 2017.

Effect of Amendment

2017 Act No. 91, Section 2, in the introductory paragraph, substituted “article” for “section”; redesignated (5), relating to the definition of authorized delegate, as (1), and redesignated accordingly; and added (6), relating to the definition of practitioner.

**SECTION 44‑53‑1640.** Authority to establish and maintain prescription monitoring program; electronic submission of information by dispensers; exemptions.

 (A) The Department of Health and Environmental Control, Bureau of Drug Control shall establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III, and IV controlled substances by professionals licensed to prescribe or dispense these substances in this State.

 (B)(1) A dispenser shall submit to drug control, by electronic means, information regarding each prescription dispensed for a controlled substance. The following information must be submitted for each prescription:

 (a) dispenser DEA registration number;

 (b) date drug was dispensed;

 (c) prescription number;

 (d) whether prescription is new or a refill;

 (e) NDC code for drug dispensed;

 (f) quantity dispensed;

 (g) approximate number of days supplied;

 (h) patient name;

 (i) patient address;

 (j) patient date of birth;

 (k) prescriber DEA registration number;

 (l) date prescription issued by prescriber.

 (2) A dispenser shall submit daily to the department the information required pursuant to subsection (B)(1) in accordance with transmission methods and protocols provided in the latest edition of the “ASAP Telecommunications Format for Controlled Substances”, developed by the American Society for Automation in Pharmacy.

 (3) Drug control may issue a waiver to a dispenser who is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means if all information required pursuant to subsection (B)(1) is submitted in this alternative format.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006; 2014 Act No. 244 (S.840), Section 2, eff June 6, 2014; 2017 Act No. 91 (H.3824), Section 3, eff May 19, 2017.

Effect of Amendment

2017 Act No. 91, Section 3, in (A), substituted “shall establish” for “may establish”.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

**SECTION 44‑53‑1645.** Requirement to review patient’s prescription history.

 (A) A practitioner, or the practitioner’s authorized delegate, shall review a patient’s controlled substance prescription history, as maintained in the prescription monitoring program, before the practitioner issues a prescription for a Schedule II controlled substance. If an authorized delegate reviews a patient’s controlled substance prescription history, the practitioner must consult with the authorized delegate regarding the prescription history before issuing a prescription for a Schedule II controlled substance. The consultation must be documented in the patient’s medical record.

 (B) The requirements of this section do not apply to:

 (1) a practitioner issuing a prescription for a Schedule II controlled substance to treat a hospice‑certified patient;

 (2) a practitioner issuing a prescription for a Schedule II controlled substance that does not exceed a five‑day supply for a patient;

 (3) a practitioner prescribing a Schedule II controlled substance for a patient with whom the practitioner has an established relationship for the treatment of a chronic condition; however, the practitioner must review the patient’s controlled substance history maintained in the prescription monitoring program at least every three months;

 (4) a practitioner approving the administration of a Schedule II controlled substance by a health care provider licensed in South Carolina;

 (5) a practitioner prescribing a Schedule II controlled substance for a patient in a skilled nursing facility, nursing home, community residential care facility, or an assisted living facility and the patient’s medications are stored, given, and monitored by staff; or

 (6) a practitioner who is temporarily unable to access the prescription monitoring program due to exigent circumstances; however, the exigent circumstances and the potential adverse impact to the patient if the prescription is not issued timely must be documented in the patient’s medical record.

 (C) A practitioner is deemed to be in compliance with this section if the practitioner utilizes technology that automatically displays the patient’s controlled substance prescription history from the prescription monitoring program in the practitioner’s electronic medical record system. The practitioner must be able to demonstrate that this technology has been deployed in his practice, but no additional documentation is required in the patient’s medical record.

HISTORY: 2017 Act No. 91 (H.3824), Section 1, eff May 19, 2017.

**SECTION 44‑53‑1650.** Confidentiality; persons to whom data may be released.

 (A) Prescription information submitted to drug control is confidential and not subject to public disclosure under the Freedom of Information Act or any other provision of law, except as provided in subsections (C) and (D).

 (B) Drug control shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in subsections (C) and (D).

 (C) If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, drug control shall notify the appropriate law enforcement or professional licensure, certification, or regulatory agency or entity and shall provide prescription information required for an investigation.

 (D) Drug control may provide data in the prescription monitoring program to the following persons:

 (1) a practitioner or pharmacist or authorized delegate who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide patient;

 (2) an individual who requests the individual’s own prescription monitoring information in accordance with procedures established pursuant to state law;

 (3) a designated representative of the South Carolina Department of Labor, Licensing and Regulation responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

 (4) a local, state, or federal law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of the laws governing licit drugs and who is involved in a bona fide specific drug related investigation involving a designated person;

 (5) the South Carolina Department of Health and Human Services regarding Medicaid program recipients;

 (6) a properly convened grand jury pursuant to a subpoena properly issued for the records;

 (7) personnel of drug control for purposes of administration and enforcement of this article;

 (8) qualified personnel for the purpose of bona fide research or education; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser must be deleted or redacted from such information prior to disclosure. Further, release of the information only may be made pursuant to a written agreement between qualified personnel and the department in order to ensure compliance with this subsection.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006; 2014 Act No. 244 (S.840), Section 3, eff June 6, 2014.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

**SECTION 44‑53‑1660.** Contract for administration by other state agency or private vendor.

 Drug control may contract with another agency of this State or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. A contractor shall comply with the provisions regarding confidentiality of prescription information in Section 44‑53‑1650 and is subject to the penalties specified in Section 44‑53‑1680 for unlawful acts.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

**SECTION 44‑53‑1670.** Promulgation of regulations.

 Drug control may promulgate regulations setting forth the procedures and methods for implementing this article.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

**SECTION 44‑53‑1680.** Violations and penalties.

 (A) A dispenser or authorized delegate who knowingly fails to submit prescription monitoring information to drug control as required by this article, or who knowingly submits incorrect prescription information, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

 (B) A person who knowingly discloses prescription monitoring information in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

 (C) A person who knowingly uses prescription monitoring information in a manner or for a purpose in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

 (D) A pharmacist or practitioner, licensed in Title 40, who knowingly discloses prescription monitoring information in a manner or for a purpose in violation of this article shall be reported to his respective board for disciplinary action.

 (E) Nothing in this chapter requires a pharmacist to obtain information about a patient from the prescription monitoring program. A practitioner or authorized delegate of a practitioner who knowingly fails to review a patient’s controlled substance prescription history, as maintained in the prescription monitoring program, or a practitioner who knowingly fails to consult with his authorized delegate regarding a patient’s controlled substance prescription history before issuing a prescription for a Schedule II controlled substance, as required by this article, must be reported to his respective board for disciplinary action.

 (F) A pharmacist or practitioner does not have a duty and must not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or practitioner did or did not seek or obtain information from the prescription monitoring program. A pharmacist or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.

HISTORY: 2006 Act No. 396, Section 1, eff June 14, 2006; 2014 Act No. 244 (S.840), Section 4, eff June 6, 2014; 2017 Act No. 91 (H.3824), Section 4, eff May 19, 2017.

Effect of Amendment

2017 Act No. 91, Section 4, amended the section, establishing a penalty if a practitioner or authorized delegate fails to review a patient’s controlled substance prescription history before prescribing a schedule II controlled substance.

Library References

Health 395.

Westlaw Topic No. 198H.

C.J.S. Health and Environment Sections 24, 28, 30, 69 to 70.

ARTICLE 18

Julian’s Law, Cannabidiol in Clinical Trials to Treat Patients with Epilepsy

**SECTION 44‑53‑1810.** Definitions.

 As used in this article:

 (1) “Academic medical center” means a research hospital that operates a medical residency program for physicians and conducts research that involves human subjects, and other hospital research programs conducting research as a subrecipient with the academic medical center as the prime awardee.

 (2) “Approved source” means a provider approved by the United States Food and Drug Administration which produces cannabidiol that:

 (a) has been manufactured and tested in a facility approved or certified by the United States Food and Drug Administration or similar national regulatory agency in another country which has been approved by the United States Food and Drug Administration; and

 (b) has been tested in animals to demonstrate preliminary effectiveness and to ensure that it is safe to administer to humans.

 (3) “Cannabidiol” means a finished preparation containing, of its total cannabinoid content, at least 98 percent cannabidiol and not more than 0.90 percent tetrahydrocannabinol by volume that has been extracted from marijuana or synthesized in a laboratory.

 (4) “Designated caregiver” means a person who provides informal or formal care to a qualifying patient, with or without compensation, on a temporary or permanent or full‑time or part‑time basis and includes a relative, household member, day care personnel, and personnel of a public or private institution or facility.

 (5) “Pharmacist” means an individual health care provider licensed by this State to engage in the practice of pharmacy.

 (6) “Physician” means a doctor of medicine or doctor of osteopathic medicine licensed by the South Carolina Board of Medical Examiners.

 (7) “Qualifying patient” means anyone who suffers from Lennox‑Gastaut Syndrome, Dravet Syndrome, also known as severe myoclonic epilepsy of infancy, or any other form of refractory epilepsy that is not adequately treated by traditional medical therapies.

HISTORY: 2014 Act No. 221 (S.1035), Section 2, eff June 2, 2014.

RESEARCH REFERENCES

Encyclopedias

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

**SECTION 44‑53‑1820.** FDA approved clinical trials to treat patients who have certain forms of epilepsy with cannabidiol; principal investigators; subinvestigators.

 (A) A statewide investigational new drug application may be established in this State, if approved by the United States Food and Drug Administration to conduct expanded access clinical trials using cannabidiol on qualifying patients with severe forms of epilepsy.

 (B) Any physician who is board certified and practicing in an academic medical center in this State and treating patients with severe forms of epilepsy may serve as the principal investigator for such clinical trials if such physician:

 (1) applies to and is approved by the United States Food and Drug Administration as the principal investigator in a statewide investigational new drug application; and

 (2) receives a license from the United States Drug Enforcement Administration.

 (C) Such physician, acting as principal investigator, may include subinvestigators who are also board certified and who practice in an academic medical center in this State and treat patients with severe forms of epilepsy. Such subinvestigators shall comply with subsection (B)(2) of this section.

 (D) The principal investigator and all subinvestigators shall adhere to the rules and regulations established by the relevant institutional review board for each participating academic medical center and by the United States Food and Drug Administration, the United States Drug Enforcement Administration, and the National Institute on Drug Abuse.

 (E) Nothing in this article prohibits a physician licensed in South Carolina from applying for Investigational New Drug authorization from the United States Food and Drug Administration.

HISTORY: 2014 Act No. 221 (S.1035), Section 2, eff June 2, 2014.

Library References

Controlled Substances 10.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 15, 65, 75 to 77, 99 to 100, 103 to 111, 135, 225 to 227, 311, 331.

**SECTION 44‑53‑1830.** Cannabidiol for use in clinical trials.

 (A) Expanded access clinical trials conducted pursuant to a statewide investigational new drug application established pursuant to this chapter only shall utilize cannabidiol which is:

 (1) from an approved source; and

 (2) approved by the United States Food and Drug Administration to be used for treatment of a condition specified in an investigational new drug application.

 (B) The principal investigator and any subinvestigator may receive cannabidiol directly from an approved source or authorized distributor for an approved source for use in the expanded access clinical trials.

HISTORY: 2014 Act No. 221 (S.1035), Section 2, eff June 2, 2014.

Library References

Controlled Substances 10.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 15, 65, 75 to 77, 99 to 100, 103 to 111, 135, 225 to 227, 311, 331.

**SECTION 44‑53‑1840.** Immunity.

 (A) A person acting in compliance with the provisions of this article must not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the use, prescription, administration, possession, manufacture, or distribution of medical cannabis.

 (B) The State must defend a state employee against a federal claim or suit that arises or by virtue of their good faith performance of official duties pursuant to this article.

HISTORY: 2014 Act No. 221 (S.1035), Section 2, eff June 2, 2014.

Library References

Controlled Substances 10.

Westlaw Topic No. 96H.

C.J.S. Drugs and Narcotics Sections 15, 65, 75 to 77, 99 to 100, 103 to 111, 135, 225 to 227, 311, 331.

ARTICLE 19

Drug or Alcohol‑Related Overdose Medical Treatment

**SECTION 44‑53‑1910.** Definitions.

 As used in this article:

 (1) “Controlled substance” has the same meaning as provided in Section 44‑53‑110.

 (2) “Drug or alcohol‑related overdose” means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, alcohol, or another substance with which a controlled substance or alcohol was combined, that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.

 (3) “Seeks medical assistance” means seeking medical assistance by contacting the 911 system, a law enforcement officer, or emergency services personnel.

HISTORY: 2017 Act No. 95 (S.179), Section 1, eff June 10, 2017.

**SECTION 44‑53‑1920.** Limited immunity for a person who seeks medical assistance for another.

 (A) A person who seeks medical assistance for another person who appears to be experiencing a drug or alcohol‑related overdose may not be prosecuted for any of the offenses listed in subsection (B), if the evidence for prosecution was obtained as a result of the person seeking medical assistance for the apparent overdose on the premises or immediately after seeking medical assistance and the person:

 (1) acted in good faith when seeking medical assistance, upon a reasonable belief that he was the first person to call for assistance;

 (2) provided his own name to the 911 system or to a law enforcement officer upon arrival; and

 (3) did not seek medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

 (B) A person who seeks medical assistance for another person in accordance with the requirements of subsection (A) may not be prosecuted for:

 (1) dispensing or delivering a controlled substance in violation of Section 44‑53‑370(a), when the controlled substance is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

 (2) possessing a controlled substance in violation of Section 44‑53‑370(c);

 (3) possessing less than one gram of methamphetamine or cocaine base in violation of Section 44‑53‑375(A);

 (4) dispensing or delivering methamphetamine or cocaine base in violation of Section 44‑53‑375(B), when the methamphetamine or cocaine base is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

 (5) possessing paraphernalia in violation of Section 44‑53‑391;

 (6) selling or delivering paraphernalia in violation of Section 44‑53‑391, when the sale or delivery is to the person who appears to be experiencing a drug‑related overdose;

 (7) purchasing, attempting to purchase, consuming, or knowingly possessing alcoholic beverages in violation of Section 63‑19‑2440;

 (8) transferring or giving to a person under the age of twenty‑one years for consumption beer or wine in violation of Section 61‑4‑90; or

 (9) contributing to the delinquency of a minor in violation of Section 16‑17‑490.

 (C) If the person seeking medical assistance pursuant to this section previously has sought medical assistance for another person pursuant to this article, the court may consider the circumstances of the prior incidents and the related offenses to determine whether to grant the person immunity from prosecution.

 (D) A person described in this section must use his or her own name when contacting authorities, fully cooperate with law enforcement and medical personnel, and must remain with the individual needing medical assistance until help arrives.

HISTORY: 2017 Act No. 95 (S.179), Section 1, eff June 10, 2017.

CROSS REFERENCES

Civil and criminal immunity for law enforcement officers, see Section 44‑53‑1970.

Construction of article, see Section 44‑53‑1960.

Decision to seek medical assistance a mitigating factor, see Section 44‑53‑1940.

Limitation of immunity to allow prosecution for other crimes arising out of the drug or alcohol‑related overdose, see Section 44‑53‑1950.

Limited immunity for overdose victim, see Section 44‑53‑1930.

**SECTION 44‑53‑1930.** Limited immunity for overdose victim.

 (A) A person who experiences a drug or alcohol‑related overdose and is in need of medical assistance may not be prosecuted for any of the offenses listed in Section 44‑53‑1920 if the evidence for prosecution was obtained as a result of the drug or alcohol‑related overdose and need for medical assistance.

 (B) A person described in Section 44‑53‑1920 must use his or her own name when contacting authorities, and fully cooperate with law enforcement and medical personnel.

HISTORY: 2017 Act No. 95 (S.179), Section 1, eff June 10, 2017.

CROSS REFERENCES

Construction of article, see Section 44‑53‑1960.

Decision to seek medical assistance a mitigating factor, see Section 44‑53‑1940.

**SECTION 44‑53‑1940.** Decision to seek medical assistance a mitigating factor.

 The court may consider a person’s decision to seek medical assistance pursuant to Section 44‑53‑1920(A) or 44‑53‑1930 as a mitigating factor in a criminal prosecution or sentencing for a drug or alcohol‑related offense that is not an offense listed in Section 44‑53‑1920(B).

HISTORY: 2017 Act No. 95 (S.179), Section 1, eff June 10, 2017.

**SECTION 44‑53‑1950.** Limitation of immunity to allow prosecution for other crimes arising out of the drug or alcohol‑related overdose.

 This article does not prohibit a person from being arrested, charged, or prosecuted, or from having his supervision status modified or revoked, based on an offense other than an offense listed in Section 44‑53‑1920(B), whether or not the offense arises from the same circumstances for which the person sought medical assistance.

HISTORY: 2017 Act No. 95 (S.179), Section 1, eff June 10, 2017.

**SECTION 44‑53‑1960.** Construction of article.

 Nothing in this article may be construed to:

 (1) limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of Section 44‑53‑1920(A) or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to Section 44‑53‑1920(A) or Section 44‑53‑1930;

 (2) limit any seizure of evidence or contraband otherwise permitted by law; or

 (3) limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effect an arrest for any offense, except as provided in Section 44‑53‑1920(A) or Section 44‑53‑1930.

HISTORY: 2017 Act No. 95 (S.179), Section 1, eff June 10, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, in the introductory paragraph, “article” was substituted for “section” to correct a scrivener’s error.

**SECTION 44‑53‑1970.** Civil and criminal immunity for law enforcement officers.

 A law enforcement officer who arrests a person for an offense listed in Section 44‑53‑1920(B) is not subject to criminal prosecution, or civil liability, for false arrest or false imprisonment if the officer made the arrest based on probable cause.

HISTORY: 2017 Act No. 95 (S.179), Section 1, eff June 10, 2017.