

STATE OF SOUTH CAROLINA)
MARLBORO COUNTY)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Case No.: 2012-CP-34-00248

v.

ORDER

DEFENDANT.

This matter comes before the Court by way of appeal from a conviction in the Marlboro County Magistrate Court for assault and battery. The trial below was prosecuted, over the Defendant's objection, by the pro-se complaining witness. This Court hereby reverses and remands for a new trial for the following reasons:

A pro-se complaining witness is permitted to prosecute or defend his or her own cause, pursuant to S.C. Code Sec. 40-5-80, which states: "This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires." However, it is the State who is the plaintiff in a criminal action and not the complaining witness. If an individual is wronged, they can seek redress in tort, and they have the right to represent themselves. This statute does not give to individuals the right to represent the State against a person charged with a "public offense." S.C. Code Sec. 17-1-10 states: "A criminal action is prosecuted by the State, as a party, against a person charged with a public offense, for the punishment thereof.

In re Lexington County Transfer Court, 334 S.C. 47, 512 S.E.2d 791 (1999), summarizes the limits of unauthorized practice of law in the context of criminal prosecutions, holding that "[t]he representation of a party in a guilty plea in transfer court requires the presence and participation of legal counsel. Narrow exceptions to this general rule have been recognized in magistrates' courts. *State v. Messervy*, 258 S.C. 110, 187 S.E.2d 524 (S.C. 1972) (arresting

officer may prosecute case in magistrates courts); State Ex Rel. McLeod v. Seaborn, 270 S.C. 3)
17, 244 S.E.2d 3 17 (S.C. 1978) (Messervy exception extended to include a supervisory officer of
the arresting officer); State v. Sossamon, 29S S.C. 72, 378 S.E.2d 259 (S.C. 19S9) (Messervy
exception limited to arresting officer and his supervisor, and request to extend Messervy
exception denied)."

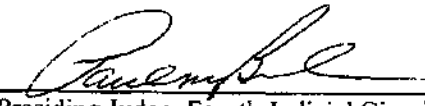
The South Carolina Supreme Court held in In re Richland County Magistrate's Court, 389
S.C. 408, 414, 699 S.E.2d 161, 165 (2010) that a non-lawyer employee cannot represent a
corporation in a criminal matter in magistrate court, stating that "a non-lawyer's representation of
a business entity in criminal magistrate's court runs afoul of South Carolina law, is repugnant to
our system of justice and constitutes the unauthorized practice of law."

Furthermore, the South Carolina Attorney General's Office has issued an opinion on July
9, 2013, advising a South Carolina Magistrate's Office that the practice of an affiant on a courtesy
summons prosecuting criminal cases in the magistrate's court is not permitted under the law. Op.
Att'y Gen. 919 (July 9, 2013).

This Court finds that the complaining witness is not a party in a criminal prosecution, and
there is no exception that would permit a complaining witness to prosecute a criminal case on
behalf of the State. Based on the foregoing, this Court reverses the Defendant's conviction for
assault and battery third degree and remands this case to the magistrate court for prosecution by
an arresting officer, an arresting officer's supervisor, or a licensed attorney who represents the
State of South Carolina.

IT IS SO ORDERED.

January 22, 2014


Presiding Judge, Fourth Judicial Circuit