

ORIGINAL 2

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

2013-CP-32-0582

2014 MAR 18 P 1:03

THE STATE OF
SOUTH CAROLINA,

ESTH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ORDER

Plaintiff,

v.

Lee Barton,

Defendant,

This criminal appeal from Magistrate's Court was heard on October 17, 2013.

Appearing at that time was Frank A. Barton on behalf of the Appellant. Prior to conducting the hearing the Court was advised by the Clerk's Office notice was sent to all parties. The Court attempted to contact counsel for the Respondent by phone without success. The hearing then proceeded.

The Appellant was charged with criminal domestic violence by an arrest warrant issued on August 18, 2012. In the lower court Appellant moved to vacate the arrest warrant on the grounds the State did not comply with the affirmation or oath requirement of S.C. Code Section 22-3-710 and Article I, Section 10 of the Constitution of South Carolina. The lower court denied the Motion to Vacate and that decision has been appealed.

It is clear S.C. Code Section 22-3-710 requires a criminal arrest warrant "shall be commenced on information under oath". Article I, Section 10, of the South Carolina Constitution also provides "no warrants shall issue but upon probable cause, supported by oath or affirmation".

Esth Carrigg 1/3

On its face, the affidavit for the current arrest warrant indicates one Lexington County Sheriff's Deputy was set forth as the affiant in the affidavit supporting the ^{let} warrant, but the affidavit was signed by another deputy, purportedly for the deputy listed in the affidavit. At the hearing of Appellant's Motion it was shown the deputy signing the warrant reviewed the affidavit and warrant to ensure it was in proper form, and then took it to the Magistrate for signing. The second deputy signed as affiant in front of the Magistrate. It was made clear, however, the signing deputy had absolutely no knowledge of the supporting facts set forth in the affidavit supporting the arrest warrant.


South Carolina Code Section 22-3-710 and Article I, Section 10 of the Constitution of South Carolina, set forth a fundamental requirement an arrest warrant or search warrant may only be issued upon a showing of probable cause based upon information under oath. The failure of the State to comply with these fundamental requirements renders a warrant invalid. Gist v. Berkley County Sheriff's Department, 336 S.C. 611, 521 S.E. 2d 163 (Ct. App. 1999); Law v. South Carolina Department of Corrections, 368 S.C. 424, 629 S.E. 2d 642 (2006). A law enforcement officer who knows nothing about the facts of a case, cannot properly provide information under oath to support probable cause upon which to issue an arrest warrant.

For all of the above reasons the arrest warrant issued against the Appellant in this matter is hereby vacated and declared null and void. Attorney for the State shall be allowed thirty (30) days from the filing of this Order to provide any additional information or memorandum for the Court's consideration in this matter.

AND IT IS SO ORDERED.

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March 17, 2014
Norfolk, South Carolina



Judge Eugene C. Griffith, Jr.
Eleventh Judicial Circuit

SEN 3/3

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3200582**

State Of South Carolina	Lee Walton Barton
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
For Clerk of Court Office Use Only		

This judgment was entered on **18TH OF MARCH 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **18TH OF MARCH 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Nicole Howland
PO Box 639
Lexington, SC 29071

Frank Barton
1611 Augusta Road
West Columbia, SC 29169

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court ,

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
