

1980 WL 121092 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 12, 1980

*1 Honorable Walter M. Culbreth
City Recorder
Town of Patrick, South Carolina 29584

Dear Judge Culbreth:

You have requested an Opinion from this Office concerning whether, prior to a jury having appeared in Court and been sworn, does a municipal court have the authority to dismiss a juror or jury if he receives information which leads him to believe that there is evidence of jury tampering?

Initially, this Office does not express an Opinion with respect to the merits of the attached Motions by defense counsel Roger E. Henderson, Esquire. Nor does this Office express an Opinion with respect to the merits of any allegations of jury tampering. The aforementioned matters would best be resolved via a conference of all parties concerned conducted by the City Recorder, if such has not already occurred.

[Section 14-25-10 of the Code of Laws of South Carolina \(1976\)](#) provides that the municipal court shall have the power of a magistrate in criminal cases occurring within the corporate limits and police jurisdiction of their respective cities and towns. Under South Carolina law, magistrates have pervasive authority in the impaneling of a jury and the conduct of trial. Therefore, municipal courts have like authority: 'The matter of excusing jurors is addressed to the sound discretion of the trial judge, the exercise of which will not be interfered with unless it is clearly shown to have been abused to the actual prejudice of the complainant party.' 50 C. J. S. Jury § 205; 47 Am. Jur. 2d, Jury, Section 120.

The opinion of [State v. Rogers, 263 S. C. 373, 210 S. E. 2d 604 \(1974\)](#) is applicable to the issue of this case. The Supreme Court held that the defense has no right to a trial by any particular jury or jurors and has the right only to a trial by a competent and impartial jury. The Court further held that the 'excusing of a juror by the court of its own motion is not reversible error in favor of the accused, where it does not appear that he did not have a fair and impartial trial by a competent jury or that the party had exhausted all its challenges, or that by the action of the court the panel was depleted.' In a holding directly applicable to this case, the Court adopted the doctrine that 'the defendant in a criminal prosecution is not placed in jeopardy until the jury has been sworn is sufficient cause for sustaining the right of the trial court to excuse jurors prior to that time. There is no doubt that after a proper panel is drawn, the court in his discretion, for adequate reason, may excuse some of them before a trial.'

Applying the law to the facts of this case, the Municipal Court has ample authority to dismiss the jury, assuming there is evidence of jury tampering. The defendant has not been prejudiced, in that the jury had not been summoned to appear at trial, and had not been sworn. Jeopardy had not attached, and there is no evidence to show that the defendant has been prejudiced.

*2 It is therefore the Opinion of this Office that a Municipal Court does have authority, prior to the summoning and swearing of a jury, to dismiss a prospective juror or the prospective jury for adequate cause. Allegations made by the Police Chief of the Town of Patrick concerning possible jury tampering would be cause to inquire whether or not the jury had been contacted, and once contact had been established, there would be sufficient cause for dismissal. A defendant does not have a right to a particular jury-only an-impartial one; and any right a defendant may have does not attach until after the jury has been summoned and sworn.

Very truly yours,

Wayne G. Carter, Jr.
Staff Attorney

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