

1980 WL 120830 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 18, 1980

***1 RE: State of South Carolina vs. Steven K. McDaniel Summons No. L25502**

Thomas F. McDow, Esquire
Post Office Box 891
Rock Hill, South Carolina 29730

Dear Mr. McDow:

The Attorney General has referred your letter of August 12, 1980, regarding the above-named subject, to me for review and response. Your letter indicates that the Solicitor and the Highway Patrol were notified of Magistrate Lumpkin's Order of May 7, 1980, and therefore the State had notice regarding the Order. You further state that the Order of Judge Lumpkin does not affirmatively show that there was not a timely motion made implying that there is a possibility that there was a timely motion for a new trial regarding Mr. McDaniel's bond forfeiture for driving an uninsured motor vehicle.

If there was in fact a timely motion for a new trial and notice to the State, then we have no difficulty in advising the Department of Highways and Public Transportation to return the ticket in compliance with the Order of Judge Lumpkin. However, before this office can advise the Department to comply with an Order reopening the case, that Order must show affirmatively that the motion for the new trial was made in a timely fashion. Magistrate Lumpkin's Order of May 7, 1980 mentions nothing about the date of the motion or that it was timely. In light of the fact that the Highway Department received Judge Lumpkin's Order some ten months after the case was properly disposed of on its face, it is imperative that the issue of timeliness be resolved.

This office has advised the Department to return tickets to magistrates for a new trial when the Department receives an Order which complies with the requirements of [Ishmell vs. South Carolina State Highway Department](#), 264 S.C. 340, 215 S.E.2d 201 (1975). This is the same procedure and case that Mr. Teague informed you of in your telephone conversation with him on May 28, 1980. That case provides a procedure for the reopening of traffic cases where the timeliness of the motion for new trial is at issue. The case provides that the magistrate may hold a hearing with notice to all parties to determine the issues. [Ishmell](#) requires that orders to reopen cases contain the following information:

1. The date on which the case was initially disposed of.
2. The date on which the defendant received notice of the disposition of the case.
3. The date on which the request to reopen the case was made and the finding of such request was timely.
4. The reason why the case is to be reopened.

If the motion was in fact made in a timely fashion, there should be little difficulty in establishing this fact, and including it in the magistrate's order. If on the other hand no motion for a new trial was in fact made until some months after the bond forfeiture, then the magistrate's court is without jurisdiction to reopen the case. [State vs. Adkison](#), 264 S.C. 180, 213 S.E.2d 591 (1975).

This office has the responsibility of advising the Highway Department on the law and is bound to follow the Supreme Court's direction found in [Ishmell](#). I do not believe that merely requiring a magistrate to establish jurisdiction over a case before he reverses a criminal conviction is an overly-burdensome or unjust requirement. This office has no authority to create jurisdiction

where none exists nor are we authorized by law to advise the Highway Department to disregard lack of same. As the Supreme Court stated in the case of [Harden vs. South Carolina State Highway Department, 221 S.E.2d 851](#):

*2 The jurisdiction of a court or of a particular judge over the subject matter of a proceeding depends upon the authority granted by the Constitution and laws of the state and is fundamental. Lack of jurisdiction of the subject matter cannot be waived, even by consent and therefore such lack can and should be taken notice of by this court, ex more motu. (Citation omitted)

I trust that this response answers all of your questions regarding this matter. If it does not and you have further need for clarification, please do not hesitate to contact this office.

Sincerely yours,

Richard D. Bybee
Assistant Attorney General

1980 WL 120830 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.