

1977 S.C. Op. Atty. Gen. 206 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-269, 1977 WL 24609

Office of the Attorney General

State of South Carolina

Opinion No. 77-269

August 24, 1977

\*1 TO: Honorable Lester L. Chitty  
Magistrate  
Aiken County  
James D. Bailey, Esquire

QUESTIONS PRESENTED:

- (1) Should the eighteen members of the venire, who form the basis for the jury selected to determine a criminal case in Magistrate's Court in Aiken County, be chosen from among all eligible voters of Aiken County?
- (2) Is the official county jury box to be used in selecting the eighteen potential jurors for a criminal case in Magistrate's Court in Aiken County?
- (3) Does the attorney for a defendant have the right to be present at such a drawing from the county jury box as outlined in Question 2?

CITATION OF AUTHORITIES:

Section 22-3-780, Code of Laws of South Carolina, 1976; [Utsey v. Charleston, S. and N. Railroad Company](#), 38 S.C. 399, 17 S.E. 141 (1891);

[Patterson v. Charleston and W. C. Railway Company](#), 190 S.C. 66, 1 S.E.2d 920 (1939);

[Graham v. Beverly](#), 235 S.C. 222, 110 S.E.2d 923 (1959);

[Karnes v. Commonwealth](#), 125 Va. 758, 99 S.E. 562 (1919);

Black's Law Dictionary, 1968;

47 Am.Jur.2d, Section 25;

Section 14-7-280, Code of Laws of South Carolina, 1976.

Section 22-3-780, Code of Laws of South Carolina, 1976, which is the statute which serves as the basis for your inquiry, states in part:

In criminal causes in a magistrate's court a jury shall be selected in the following manner: The sheriff, constable, or other officer appointed by the magistrate shall write and fold up eighteen ballots, each containing the name of a respectable voter of the vicinity. He shall deliver the ballots to the magistrate, who shall put them into a box and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury unless challenged by either party. (Emphasis Added)

To properly make a determination of your position that since Aiken magistrates may issue arrest warrants for offenses committed throughout the county, the jury selected to try a case in magistrate's court in Aiken County should be selected from the same jurisdictional area in which the magistrate has the authority to act, i.e. the entire county, it is necessary to make a determination of the meaning of the word 'vicinity' insofar as it relates to the jury selection process.

In researching the question, I have been unable to find where there has been any determination by the South Carolina Supreme Court as to the actual meaning of the word 'vicinity' as used in the previous context. However, the Court has in matters relating to motions for change of venue indicated that the ends of justice are promoted by requiring juries of the vicinage to pass upon the credibility of witnesses. [Utsey v. Charleston, S. and N. Railroad Company](#), 38 S.C. 399, 17 S.E. 141 (1891); [Patterson v. Charleston and W. C. Railway Company](#), 190 S.C. 66, 1 S.E.2d 920 (1939). In [Graham v. Beverly](#), 235 S.C. 222, 110 S.E.2d 923 (1959), the Court in reference to the [Utsey](#) and [Patterson](#) cases noted that 'vicinage', as it was used in those cases, meant county so as to relate to the county in which the witnesses reside.

\*2 In [Karnes v. Commonwealth](#), 125 Va. 758, 99 S.E. 562 (1919), the Virginia Court in discussing the rights of a prisoner to have a trial by a jury of his vicinage stated that:

The rule in England, from which we get the provision for a trial by a jury of the vicinage, is that the vicinage includes the county in which the crime is committed. In this country, likewise, while as a general rule the county constitutes the district (and hence the vicinage) of the court in which the indictments for crime are prosecuted, still the true construction of the word 'vicinage' as used in the Constitution is that it corresponds with the territorial jurisdiction of the court in which the venue of the crime is laid. 99 S.E. at 563. (Emphasis Added)

Furthermore, the word 'vicinage' is subject to various definitions, mainly depending on the sense in which it is used. It has been defined as:

neighborhood; near dwelling; vicinity . . . . In modern usage, it means the county where a trial is had, a crime committed, etc . . . . Black's Law Dictionary, 1968. (Emphasis Added)

Therefore, by equating vicinage with vicinity, there appears to be a basis for holding that the jurors selected to try a case in magistrate's court in Aiken County could be chosen from those eligible voters of the entire county.

It has repeatedly been held also that ' . . . it is promotive of the ends of justice to have the credibility of witnesses passed upon by jurors of the vicinage.' 47 Am.Jur.2d, Section 25. In evaluating this right in association with the fact that since the alleged offense which prompted this request for an opinion took place just outside the city limits of Aiken and not in the immediate area of Langley, Bath, and Gloverville, the area Judge Chitty normally serves and from which, according to you, the jury panel is normally selected, it would also seem that the jury which should pass on the credibility of witnesses should not be limited to an area removed from the area where the offense occurred if there is to be compliance with this mandate of 'promoting the ends of justice'.

As to your assertion concerning the use of the official county jury box in selecting potential jurors for magistrate's court, I am unaware of any statute authorizing the use by a magistrate of the official county jury box to select potential jurors as is suggested in the letter to Judge Chitty of July 19, 1977. Section 14-7-280, Code of Laws of South Carolina, 1976, does state that jurors are to be selected by drawing jurors' names from a jury box. However, this procedure is limited to the selection of jurors in circuit courts and furthermore, I am unaware of any other statute or case holding it applicable to the selection of jurors in magistrate's courts. Instead, as stated by the aforementioned Section 22-3-780, supra, the sheriff, constable, or other officer appointed by a magistrate to perform such function shall write and fold up eighteen (18) ballots, each with the name of a respectable voter of the vicinity. These ballots are then forwarded to the magistrate to be used in selecting those six to actually serve as the jury for a particular trial. Accordingly, there also appears to be no concomitant right to be present at any drawing of potential jurors as suggested in the aforementioned letter to Judge Chitty.

CONCLUSION:

\*3 Therefore, it is the opinion of this Office that with reference to the fact that Aiken County magistrates have county-wide jurisdiction, 'respectable voter of the vicinity' should be construed to include voters of the entire county. Thus, the eighteen members of the venire who are to serve as the basis for the jury selected to determine a criminal case in magistrate's court in Aiken County should be chosen from among the eligible voters of the entire county of Aiken. Also as previously noted, there is no provision authorizing the use of the county jury box to select these eighteen potential jurors and therefore, there is no right for an attorney to be present at any drawing from the box.

Charles H. Richardson  
Staff Attorney

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