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Criminal Law and Procedure

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CRIMINAL LAW AND PROCEDURE

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For the 1955 Survey we have endeavored to include not only (1) Substantive Criminal Law and (2) Criminal Procedure, but (3) Acts of the General Assembly, 1955, having a direct bearing on the criminal practice, and (4) preview of cases which the practitioner may look forward to, either pending before or on appeal to the South Carolina Supreme Court.

I. SUBSTANTIVE CRIMINAL LAW

Perjury

In *State v. Crowley*,[1] in re-emphasizing the requisite quantum that the falsity of the statement laid in the indictment cannot be proved by the testimony of only one witness unless that testimony is corroborated by other evidence in the case, and that the other evidence might be corroborating circumstances, the Supreme Court affirmed a conviction where the perjuries were established by the testimony of the investigating officers and others, by appellant's sworn statement and by corroborating circumstances. The entire testimony of a previous trial at which the alleged perjury had taken place, was introduced in evidence by the State, and the lower court allowed, and the Supreme Court affirmed, the reading from the introduced record to the jury.

Rape — Assault and Battery of a High and Aggravated Nature

In *State v. Christopher M. Henderson*,[2] defendant was charged with rape which included a third count of assault and battery of a high and aggravated nature. All parties admitted penetration of the person of the prosecuting witness. The jury convicted him of assault and battery of a high and aggravated nature and the defendant took the position that since the penetration was admitted, there could be no assault and battery of a high and aggravated nature. Reversal was refused upon this ground because of the fact that the question was raised for the first time in the South Carolina Supreme Court, but in a strong dissenting opinion Associate

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1. 85 S.E. 2d 714 (S.C. 1955).
2. 226 S.C. 227, 84 S.E. 2d 626 (1954).

Justice Taylor urged a reversal on the ground that since there had been an admitted penetration, the question resolved itself into a question of *rape* or *no rape*. The case was reversed on the grounds that the presiding judge failed to charge the jury, when they requested additional instructions, that if the prosecutrix consented, there could be no assault and battery of a high and aggravated nature.

Corpus Delicti in Murder — Larceny

In the second appeal in the case of *State v. Arthur Waitus*,[3] appellant challenged the sufficiency of the proof of the *corpus delicti*, which in the crime of murder consists of (1) the death of a human being and (2) causative criminal act or agency of another. The fact that the hidden lifeless victim was found a few hours after death and the post mortem disclosed external and internal proof of death by strangulation which indicated the application of external force was held to have proved *corpus delicti* beyond a reasonable doubt.

Corpus Delicti as to larceny was discussed in *State v. Teal*,[4] as consisting of the elements of (a) the loss of property by the owner, and (b) loss by felonious taking. The court defined *corpus delicti* as meaning, when applied to any particular offense, "that the specific crime has actually been committed", and recognized *stare decisis* in the rule that the conviction cannot be had upon the extra-judicial confessions of the defendant unless corroborated by other proof of *corpus delicti*. Appellant had confessed, and counsel took the position that his confession was admitted before sufficient proof of the *corpus delicti* by other means had been shown. The opinion details some of the testimony sufficient to support the proof of *corpus delicti*.

Forgery

In *State v. Orr*,[5] it was held that to constitute forgery the name alleged to be forged need not be that of any person in existence and that one found in possession of a forged instrument of which he purports to be the beneficiary, and who applied it to his own use, must in the absence of explanation satisfactory to the jury, be presumed to have forged it or to have been privy to its forgery.

Rape — Degree of Force

In the celebrated case of *State v. Whitener*,[6] the court went into an exhaustive history of the crimes and elements of the crimes of

3. 226 S.C. 44, 83 S.E. 2d 629 (1954).
4. 225 S.C. 472, 82 S.E. 2d 787 (1954).
5. 225 S.C. 369, 82 S.E. 2d 523 (1954).
6. ..... S.E. 2d ..... (S.C. 1955).

what we knew and now know as common law rape[7] and statutory rape.[8] Appellant had taken the position that there was no force used by him in the commission of the crime accused of, he having been convicted of common law rape, in a case in which he asked the court, after successfully moving for an election to leave in the indictment both the counts of common law rape and statutory rape. Associate Justice Legge traced the history and development of our statutes, and, for the court, defined that the force used may be actual or constructive and the degree of force and of resistance required to characterize the act of rape must, of necessity, vary with the circumstances of the particular case. Sexual intercourse with a woman who is unconscious or insane is rape, and neither force nor resistance is necessary to constitute the offense. It was held that where the female was under the age of consent, force and resistance are immaterial and not necessary to constitute the offense and to constitute the offense as to a female below the age of consent the only material elements to be proved are *the carnal knowledge* and *the age of the female.*

When the female is under the age of fourteen and unmarried, the only other element necessary to be proven in order to establish the crime of rape is the fact that defendant had sexual intercourse with her. Where she is under the age of sixteen, the only other element necessary to be proven in order to establish the crime of carnal knowledge under Section 16-80 is the fact that defendant had intercourse with the prosecutrix. In neither case is it necessary for the State to prove force, or want of consent; the conviction was affirmed.

Presumption from Possession of Stolen Property

In *State v. Coleman,*[9] defendant's conviction of larceny of an outboard motor was affirmed in an opinion that reaffirmed the rule that possession of recently stolen property, in the absence of explanation consistent with innocence, raises a presumption of guilt of larceny of the property, and will authorize and substantiate a conviction thereof. Appellant never was able to satisfactorily explain his acquisition of the admittedly stolen property.

Involuntary Manslaughter and Reckless Homicide — Elements

In *State v. Phillips,*[10] which arose on a question of the jurisdiction of the County Court for Greenville County, South Carolina, the court

7. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 16-71.
8. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 16-80.
9. 86 S.E. 2d 484 (S.C. 1955).
10. 226 S.C. 297, 84 S.E. 2d 855 (1954).

redefined the necessary elements of involuntary manslaughter, as opposed to the necessary elements of reckless homicide. The court said that in automobile homicide cases, not involving the elements of murder, the accused may be prosecuted for reckless homicide, in which event the State must show recklessness, or something more than the mere failure to exercise due care — and when a conviction is sought for involuntary manslaughter, the State need only show simple negligence which is sufficient for a conviction. The County Court of Greenville County was held to have had no jurisdiction to try a reckless homicide case since the degree of negligence required was greater than that required for involuntary manslaughter.

Assault with Intent to Ravish — Includes Lesser Offenses

In *State v. Shea*,[11] appellant was tried upon an indictment which contained two counts, to-wit: (1) Assault with Intent to Ravish; and (2) Assault and Battery of a High and Aggravated Nature. He was convicted on the latter. The prosecuting witness testified that she was sweeping her porch when appellant appeared in her yard and made advances to her. She testified that he got hold of her shoulder, pulled her to him and forced a kiss upon her and tried to get her to go into a nearby house with him, but she refused and asked him to leave. She also testified that she was not hurt in any way, bruised in any way, nor were her clothes torn, nor did the defendant try to put his hands where his hands should not have been. Under this evidence it was held that the issue of simple assault and battery, as a lesser offense, was included in the greater offense as charged, and should have been submitted to the jury, because there was some evidence tending to show that the defendant was only guilty of simple assault and battery. The conviction was reversed.

To this same import is *State v. Self*,[12] in which the court said that where one is charged with the crime of assault and battery with intent to kill, there is ordinarily included, as a part of the offense of assault and battery, divided through common usage into three degrees, the additional crimes of assault and battery of a high and aggravated nature and simple assault and battery. The court went on to define assault and battery of a high and aggravated nature as an unlawful act of violent injury to the person of another, accompanied by circumstances of aggravation, such as the use of a deadly weapon, infliction of serious bodily injury, attempt to commit a greater felony, great disparity between the ages and physical conditions of the par-

11. 85 S.E. 2d 858 (S.C. 1955).
12. 225 S.C. 267, 82 S.E. 2d 63 (1954).

ties, difference in sexes, indecent liberties, *et cetera.* The court went on to say that where the testimony was that the prosecutrix was hit with something like a black-jack and robbed, that it was unnecessary, under the charge of assault and battery with intent to kill, to charge simple assault, but it was necessary to charge assault and battery of a high and aggravated nature.

The two cases above may be easily distinguished because in one case there was no doubt about the fact that the prosecuting witness was badly hurt, and in the other case the prosecuting witness testified that she was not hurt in any way. The violence of the blow alone, as testified to in the *Self* case, would be sufficient, as the opinion is interpreted, to remove the cause from the realm of simple assault and battery to that of assault and battery of a high and aggravated nature.

II. CRIMINAL PROCEDURE

Confessions — Evidence — The Fifth Amendment

The past decade has seen more concentrated discussion about freedom than at any time since 1776. From congressional investigations, up and down the line, the investigator and investigated proclaim with considerable passion and questionable oratory that the future of this nation depends upon the preservation of the basic freedoms contained in the Bill of Rights of the United States Constitution. The Fifth Amendment of the United States Constitution has been much in the news, and, in parallel Article I, Section 17, of the South Carolina Constitution of 1895, which guarantees the same personal liberty. In this State no legal implication may be properly drawn in a criminal proceeding from the refusal to answer, and it is elementary that the accused may remain silent and the prosecution may not even comment on the fact.

Up to this time there has been no decision by the Supreme Court of South Carolina concerning *the obligation of an innocent accused not to remain silent.* Granted that the object of any controversy in the court is to arrive at the truth and apply the legal principles to that truth, what has the innocent to fear from telling the truth?

South Carolina cases in the last year have evidenced new zeal in an attack on confessions, which the investigator depends on more and more. We have discussed the *Crowley* case, stating the cardinal principle that extra-judicial confessions, uncorroborated, are insufficient to prove the *corpus delicti.* This was followed, in a general way, by dicta in *State v. Vernon Ned Sanders.*[18] In the *Sanders* case the

13. ..... S.E. 2d ..... (S.C. 1955).

confession was attacked as compulsory and involuntary because same was taken before a Notary Public. The court said that the test of the confession is not whether it is sworn to or not, but whether the statement was free and voluntary. To the same end is *State v. Waitus*[14] in which the court applied the same test, stating that the question of whether or not the confession is voluntary is first addressed to the court who shall allow testimony as to same if apparently voluntary, but if the evidence with respect to same is conflicting the jury must be the final arbiter of such fact, and if the jury decides it voluntary, the second test is also met.

In the *Waitus* case, there was a question as to the admission of the shoes of the appellant, which fitted into the tracks at the scene of the crime, and were later introduced in evidence. The shoes were held to be admissible, and it is evident that counsel intended to raise the issue, by their objection, that the introduction of the shoes would be causing appellant, by his property, since Waitus had never directly consented to their use or introduction, to testify against himself; since, insofar as appellant was concerned, the shoes were taken from him involuntarily, same would, theoretically, be compelling accused to testify against himself. The question of physical evidence was raised directly in the case of *State v. Greene,*[15] in which the accused was given a physical examination immediately after his arrest upon the charge of rape. Counsel raised the question of whether compulsory physical examination did not deprive defendant of due process of law by requiring him to incriminate himself in violation of the State and Federal Constitutions as hereinabove discussed. The Supreme Court of South Carolina held that the protection of the Fifth Amendment of the United States Constitution and Article I, Section 17, of the South Carolina Constitution of 1895, did not extend to the exclusion of evidence obtained through search of a defendant or an examination of his person unaided by his enforced testimony or positive action. In the *Greene* case, *supra,* the court went on to say that in every case where confession is obtained by an officer, the conduct of the officer obtaining the confession will be rigidly scrutinized in order that the court may determine, before admitting it in evidence, that it was made freely, voluntarily and uninfluenced by threats or other inducements.

The *Greene* case is also authority for the fact that although an accused was not advised beforehand that he need make no statement or warned that what he might say would be used against him, the

14. See note 3 *supra.*
15. 86 S.E. 2d 598 (S.C. 1955).

absence of such warning or advice does not render a voluntary confession inadmissible. Again we come to the test of whether the confession is voluntary or involuntary.

In the recent case of *State v. James Eugene Smith,*[16] appellant took the position that the trial court was in error in admitting the testimony of an oral confession made the day after defendant had made a written confession. Citing *State v. Branham,*[17] in which the court said the best evidence upon the subject is the written confession, the court went on to say that a confession or confessions may betake of many forms, such as a statement of one's own part in the crime, a series of questions and answers, a letter or letters, detached conversations, a formal conversation of one or more, and in the event several confessions related to the same subject, all are admissible. Again the test applied was the test of whether the confession, whether oral or written, was voluntary. It so happened that the *Smith* case was reversed because the word "may" was used with reference to whether or not there had been any contradiction and the word "shall" as to whether or not there had been any corroboration, the court saying that the jury *should* take into consideration both questions.

In the recent case[18] reported in the July 1955 American Bar Association Journal, the Supreme Court of the United States approved the conviction for contempt of a former New York City policeman who refused to answer the Grand Jury's questions about receiving bribes from gamblers. New York State has a statute similar to our constitutional provision providing for a witness' immunity from prosecution for any criminal activity revealed by his testimony, and the defendant signed a waiver of this immunity while a policeman under a provision of the Charter of the City of New York. After his discharge he was called before the Grand Jury and questioned and refused to answer. He was indicted and convicted of criminal contempt. The majority opinion by Mr. Justice Reed affirmed the conviction, holding that, if the waiver was valid, any testimony defendant gave could be used as a basis for prosecution, as a result of his voluntary choice to waive his immunity; but on the other hand, if the waiver was invalid, then the referred-to Statute of the State of New York protected him from prosecution and therefore he was obliged to testify before the Grand Jury. Mr. Justice Black and Mr. Justice Douglas joined in a strong dissenting opinion in which it was held that by compelling defendant to testify, he was being deprived of his constitutional rights, and the dissenting opinion also expressed the doubt as to whether or

16. 88 S.E. 2d 345 (S.C. 1955).
17. 13 S.C. 389 (1879).
18. Regan v. New York, 349 U.S. 58, 99 L.Ed. 494, 75 S.Ct. 585 (1955).

not a waiver of this type could be used to bargain away, in advance, the benefits of the Bill of Rights.

To date, in this State, the decisions reported do not reflect any case in which there has been raised an objection to a written confession on the ground that same constituted a statement of the defendant, and, if defendant objected to same, then defendant was objecting to testimony given or to be given by himself against himself. The prosecution will probably counter with an argument that by giving a voluntary confession, he had waived his right to claim his constitutional immunity, to which would be replied the argument that a citizen cannot waive his constitutional privileges. In such event, the question would probably resolve into whether or not, when given, the alleged confession was voluntary or involuntary. So far, our Supreme Court has not gone so far as to say that where a confession has been introduced, if the defendant contends that the confession is erroneous, and does not express the truth, then, if the defendant knows the truth, *he has a duty or obligation not to remain silent.*

Separation or Sequestration

In *State v. Williams,*[19] a conviction was reversed for error in the trial judge's failure to allow defendant's motion for sequestration of witnesses. The court said that ordinarily granting or refusing of such a motion is left to the sound discretion of the trial judge, and is not demandable as a matter of right, but in the particular case some of the defendant's witnesses were prisoners serving current sentences under guard who appeared as witnesses for the prosecution, and the court held that those prisoners were bound to have hesitated in directly contradicting the guards' testimony when they had to continue the service of their sentence under the particular guards, and that to refuse sequestration in such a setting or situation was erroneous. In a concurring opinion Associate Justice Oxner opined, concurred in by a majority of the court, that a motion of sequestration should rarely be denied in capital and other serious criminal cases, but that such motion should be specific and supported by some reason when made. In later commenting on the *Williams* case, in *State v. Vernon Ned Sanders,*[20] Associate Justice Stukes commented: "It (*Williams* case) involved the unusual fact that the defendant's witnesses were prisoners in the custody of the County Chaingang guards who were State's witnesses."

19. 85 S.E. 2d 863 (S.C. 1955).
20. See note 13 *supra.*

Arguments of Counsel

In *State v. Hinson, et al.*,[21] Appellants were charged with rape. They admitted that they went to the scene of the alleged crime for the purpose of robbery, but denied the rape. Associate counsel for the State, in the opening argument referred to appellants as "criminals and robbers" and it was objected to at the trial, and made exception to before the Supreme Court, that this was prejudicial argument. The court said that since they had admitted the robbery, it was permissible for counsel to argue the fact as bearing upon the credibility of their testimony. Appellants also took the position that since, at the time the objection was made, it was in the presence of the jury, and the court said that since they admitted they were guilty of robbery and for that reason were not worthy of belief, it was a legitimate argument, that such was prejudicial, but the Supreme Court found that the trial judge made no such statement in front of the jury, but if he had done so, it would have been prejudicial.

Law of Habitation and Retreat — Self Defense

In *State v. Elmore Smith*,[22] defendant was convicted of assault and battery of a high and aggravated nature. The prosecuting witness was allegedly assaulted while a guest in the home where the accused lived; the Supreme Court held that if defendant lived in the home, he was not bound to retreat, although he had no right to eject an assailant who was a guest of the owner. The trial court had charged defendant had a duty to retreat and the conviction was reversed on the ground that the inclusion of such charge was erroneous.

Motion for New Trial — Time and Jurisdiction

In *State v. Jones*,[23] the defendant pleaded guilty before the presiding judge, who imposed sentence. Later, while the presiding judge was still in the circuit, and after the adjournment of the term at which the defendant had pleaded guilty, a motion in behalf of defendant was made for a new trial based on facts and circumstances, and supported by affidavits of facts, or alleged facts, occurring at and immediately connected with the entering of the plea of guilty by defendant and his subsequent sentence. This motion was made before the resident judge of the circuit about two weeks after adjournment of the term at which the plea was taken. The court said that whenever a motion for a new trial is based upon facts occurring

21. 85 S.E. 2d 735 (S.C. 1955).
22. 85 S.E. 2d 409 (S.C. 1955).
23. 225 S.C. 508, 83 S.E. 2d 179 (1954).

at the trial, or immediately connected therewith, the motion must be made before the adjournment of the term and settled by the judge who tried the case. Such was not done in this instance. The resident judge granted the motion, but the Supreme Court, on appeal by the State, set aside the order granting the motion and reinstated the sentence.

The opinion by Judge Mann contains an interesting discussion of the ancient common law principle of *coram nobis;* Judge Mann determined, with and for the court, that, in the passing of the sentence and in the events surrounding same, defendant had been deprived of no substantial legal right. By dicta the court went on to say that if the solicitor, or other person in authority, had advised defendant not to obtain counsel, and as a result defendant did not obtain counsel, such advice, under certain circumstances could be interpreted as advising or depriving defendant of a substantial legal right, or *coram nobis,* which under such circumstances would result in the granting of a new trial.

III. LEGISLATIVE ACTION

Milk Distribution Bill — A Misdemeanor Created

Evidently sponsored by the South Carolina Dairy Commission, the 1955 General Assembly by an act approved May 11, 1955, which, after reciting certain legislative findings of fact, making necessary or proper, as a part of the police power of the State, the regulation of milk distribution, provided for the licensing of milk distributors by the Dairy Commission, provided certain powers by the Commission in relation thereto, including rigid control and the power to make administrative rulings and regulations, hold hearings, etc., and defined and made unlawful certain "unfair practices". Violations of the provisions of this Act are classified as misdemeanors punishable by a fine not exceeding $500.00, or imprisonment not exceeding one (1) year.

The Act also provides for contempt proceedings in connection with hearings, and provides for mandatory appearance of witnesses, etc., upon proper application to the Court of Common Pleas. Actually, it seems that either the Court of Common Pleas or the Court of General Sessions would have jurisdiction to issue the necessary subpoenas.

Prisoners — Allowance of Time for Good Conduct

By act approved May 11, 1955, the General Assembly provides that good conduct credit, for the purpose of computation, shall only

be computed upon the time the prisoner actually serves, and shall not be applicable to times when he is on parole or on probation and not in custody.

Point System — Motor Vehicles

By Act approved April 15, 1955, the Legislature provided a point system for evaluation of the operating record of persons having driver's licenses. This replaces the old regulations made by the South Carolina State Highway Department, which was successfully attached in litigation originating in Greenville County, South Carolina. The new Act sets up a graduated scale of points, and includes a plea of guilty, plea of nolo contendere, and forfeiture of bail in the term "conviction", which conviction is necessary before points are placed against the licensee's record. The Act also provides for a system of review by an agent of the South Carolina State Highway Department, but does not provide for any system of appeal, or supersedeas in case of an adverse decision by the review agent.

Safe Cracking Statute Amended

By Act approved February 26, 1955, the Safe Cracking Statute,[24] which provides that any person using *explosives* in and about a safe with intent to commit larceny of money or other valuables to be guilty of a felony and sentenced to life, *et cetera,* has been amended to include any person convicted of using explosives, *tools or other implements* in or about a safe used for keeping money or other valuables with intent to commit larceny or other crimes, should be guilty of a felony and be sentenced to the Penitentiary during the term of his life, *et cetera.* This only adds to the law a provision that if any instrument is used about a safe, life imprisonment may be the penalty unless a jury recommends mercy.

Probationers — Release on Bond Pending Hearing

By Act approved March 1, 1955, Probationers, arrested for violation, are to be released upon bond pending a hearing, in the discretion of the Magistrate, in the jurisdiction where the alleged violation of probation occurred. Previously, Section 55-595 of the 1952 Code, treating with this problem, did not provide for bond and a probationer had to remain in jail until his cause was heard.

24. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 16-337.

Increase Penalties — Sale of Narcotics to Persons Under the Age of Eighteen Years

The penalty for selling, furnishing or giving narcotics to a person under the age of eighteen (18) was increased by Act approved April 8, 1955, for the first offense: *from* a fine not exceeding $500.00 or imprisonment not exceeding six (6) months or both, *to* a fine of $5,000.00 or imprisonment for five (5) years or both; for any subsequent offense, *from* a fine not exceeding $2,000.00 or imprisonment not exceeding two (2) years or both, to a mandatory sentence of ten (10) years imprisonment at hard labor of which there shall be no probation or suspension. If the defendant be under eighteen (18) for a first offense, sentence shall be in the discretion of the court.

Solicitors May Order Certain Autopsies

By Act approved April 18, 1955, the General Assembly gave the solicitor of the circuit concerned the power to order an autopsy or post mortem in the event the coroner should for any reason be unavailable.

Habitual Criminal Act

South Carolina's first Habitual Criminal Act provides for maximum sentence the third time anyone was convicted under the law of any State, or of the United States, for the crime of murder and other selected felonies, and for persons convicted for a fourth time of any such felonies, a term of life imprisonment. The life sentence is subject to review by said board for the maximum sentence for the third offender. This act also provides that where a number of offenses were committed at times so closely connected that they may be considered as one, the court shall so consider them. On the other hand, the Act provides that if the defendant had been convicted of one or more crimes which were not taken into account at the time of the imposition of the original sentence the court may issue its Rule to Show Cause, upon ten-day notice, ruling defendant to show why the former sentence should not be revoked and the defendant sentenced under the Habitual Criminal Act. This Act was approved April 8, 1955.

South Carolina State Board of Funeral Services (Substitution of a Misdemeanor)

Replacing Chapter 11, Volume 5, Page 583 through 587 of the 1952 Code, the 1955 General Assembly created a South Carolina

State Board of Funeral Service, and provided therein for the licensing, inspecting and treatment of the bodies of the dead. By Section 10 of the Act, approved May 12, 1955, any person violating the provisions of the Act shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000.00 or imprisonment for not more than one year or both, in the discretion of the court.

IV. Cases Pending

Now pending before the Supreme Court of South Carolina, or headed in that direction, are certain cases which the practitioner might be interested in in connection with some current question arising in his office. An Appeal from the First Circuit: in the case of *State v. Samuel Wright, Jr.*, the defendant was tried and sentenced to death on May 9, 1955. The electrocution date was set for June 17, 1955, and no Notice of Intention to Appeal was served upon the solicitor within the ten days prescribed by statute. On June 16, a court-appointed attorney appeared before the Governor and secured a stay until July 22. Thereafter, counsel for defendant attempted to serve upon the solicitor of the First Circuit, Notice of Intention to Appeal, based upon the executive order of the Governor, and the solicitor declined to accept; the Notice of Appeal was served by the Sheriff of Orangeburg County. The solicitor was again served July 12, 1955, with Notice of Application for an Order Extending Time to Appeal to the Supreme Court on the grounds of newly discovered evidence and this matter came on for a hearing before Judge Brailsford on July 16, and he held that the circuit court was without jurisdiction and overruled the motion for a new trial on after-discovered evidence, under the authority of *State v. Strickland*.[25] On July 19, 1955, the attorney for the defendant attempted to serve the solicitor with Notice of Intention to Appeal from Judge Brailsford's order, which the solicitor refused to accept and the next day an attempt was made to file the Notice of Intention to Appeal with the Clerk of the Supreme Court, who declined to accept same. On July 21, the day before the date for execution, the Chief Justice of the South Carolina Supreme Court passed an order staying the execution. The case poses some very interesting propositions of law on the question of jurisdiction, failure to file the Notice of Intention to Appeal, and possibly other questions.

In the case of *State v. Hamp Jones, Jr.*, a murder case, defendant made oral and written statements. During the course of the trial he was examined on a written statement which was not introduced and

25. 201 S.C. 170, 22 S.E. 2d 417 (1940).

was not relied upon by the State. The apparent question which will be raised is the question of whether he could be examined on the statement for the purpose of showing that he first falsified and later told the truth. The appeal is from the Fourth Circuit.

In an appeal from the Tenth Circuit, in the case of the *State v. Willie Jenkins,* from Anderson County, the defendant was found guilty of manslaughter. There seems to have been no question of proof of the *corpus delicti,* but the State relied upon the statement of the accused that he did the shooting. The accused claimed self-defense and defense of habitation, but the State's evidence showed that the deceased was shot in the back and the apparent question which the court will be called upon to decide will be the sufficiency of the evidence.

In a case from the Thirteenth Circuit, *State v. Horace Littlejohn,* the defendant was convicted for violation of the Liquor Law. The defendant operated and owned a "beer joint" near Clemson and one of his employees, a female, lived in an apartment upstairs in the same building. Fifteen pints of legal whiskey were found under the bed in the employee's apartment and defendant was convicted of having legal liquor in a place of business. The apparent question is the possession and control of the defendant over the whiskey in question, and the sufficiency of evidence of possession.