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Criminal Law and Procedure

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CRIMINAL LAW AND PROCEDURE

During this survey period there were no criminal law cases which had the effect of changing existing South Carolina law; however, as a consequence of the increasing encroachment by the United States Supreme Court into areas of local law administration, our state cases must be read in the light of the trend of the Court. Of special interest in the field of criminal law is the recent case of *Miranda v. Arizona*.[1] This survey period covered only cases prior to the handing down of *Miranda*, and it has been held that *Miranda* is not retroactive;[2] however, three South Carolina cases during this period dealing with the question of confessions and the right to counsel were reversed on other grounds and sent back for new trials. Although no authority has been found on this precise point, it would seem that the rules enunciated in *Miranda* would apply to prevent the state from using evidence dealing with confessions at these subsequent de novo trials. So *Miranda* may yet affect their final disposition.

The issue of the negotiated guilty plea and its relationship to the constitutional right of an accused to a fair trial on the merits was given brief consideration in this article as was the issue of the Supreme Court's influence in state post-conviction remedies.

I. Right to Counsel

In *State v. Gamble*[3] the accused was arrested and charged with rape. He was advised of his right to remain silent but was not advised of his right to counsel. The accused later confessed to the crime. The state argued that the confession was voluntary; it was admitted into evidence over the objection of counsel for the accused, and the defendant was found guilty and sentenced to death. Upon appeal, the court held that the confession was validly admitted into evidence. The court based its opinion upon the *Escobedo v. Illinois*[4] decision. Viewing the surrounding circumstances of the confession, the court held that the confession was voluntary and that in South Carolina the

1. 384 U.S. 436 (1966).
2. Johnson v. New Jersey, 384 U.S. 719 (1966).
3. 247 S.C. 214, 146 S.E.2d 709 (1966).
4. 378 U.S. 478 (1964).

critical stage does not come prior to arraignment,[5] and therefore the right to counsel did not attach prior to the time of the incriminating statement. However, as a consequence of an error relating to another aspect of the confession, the conviction was reversed and the case was sent back for a new trial. Therefore it would seem that this case upon re-trial would be affected by the *Miranda* decision. Since the accused was not immediately upon arrest advised of his right to counsel, court-appointed if necessary, the confession in all likelihood will not be admissible into evidence.

The defendant in *State v. Cain*[6] was arrested and charged with murder. While at police headquarters the accused was advised of his right to counsel. Evidence was offered by the state to show that the accused waived this right and later confessed to the crime. The confession was admitted into evidence at trial over objection and the accused was convicted and sentenced to death.

However, this case also was reversed on other grounds and sent back for a new trial. On re-trial the court will be confronted with the waiver provision in *Miranda*. Not only must the state advise an accused of his rights, but it must also bear the burden of proving that the accused was aware of these rights and intelligently waived them.[7] The specific standards for ascertaining the validity of a waiver were not set out in *Miranda*. It is obvious, however, that since the Court has serious misgivings about the voluntariness of jailhouse confessions, it will also cast a dubious eye toward jailhouse waivers. The presence of some independent third party, such as a magistrate, may be required at this point.

The case of *Bostick v. State*[8] concerned a habeas corpus petition for review of the proceedings of a trial at which the petitioner was sentenced to death for the murder of the sheriff of Jasper County. The petitioner was arrested subsequent to the crime and informed of his various rights including that of assistance of counsel. Counsel was not requested. Thereafter petitioner made a confession which was admitted into evidence at the trial. The petitioner claimed that the absence of counsel

5. State v. White, 243 S.C. 238, 133 S.E.2d 320 (1963).

6. 246 S.C. 536, 144 S.E.2d 905 (1965).

7. For discussion of *Miranda* and the waiver provision see Comment, 18 S.C.L. REV. 853 (1966).

8. 247 S.C. 22, 145 S.E.2d 439 (1965).

rendered the confession void, but the court once again cited *Escobedo* and held that, under the circumstances, absence of counsel did not render the confession inadmissible. So the petition was denied. Here, as in *Gamble* and *Cain*, the issue of waiver was not developed nor was the issue of whether petitioner was offered free counsel. The United States Supreme Court, however, has just reversed this decision on other grounds and ordered a new trial.[9] Therefore the issues concerning the confession may yet be relitigated in the light of *Miranda*.

In *State v. Lee*[10] the defendant had been arrested on a charge of operating a motor vehicle while under the influence of alcohol. The South Carolina Highway Patrol did not inform him that he had a right to remain silent, that his statements would be used against him, or that he had a right to counsel. The defendant was taken to jail and was not allowed to use the telephone. He made certain incriminating statements that were offered into evidence against him at magistrate's court. The state appealed a general sessions reversal of the conviction in the magistrate's court. The circuit judge, without citation of any authority, had reversed and remanded the case on the basis that the constitutional rights of the accused had been violated.

In reversing the circuit court, the supreme court held that the circumstances of the instant case had no relationship to those in *Escobedo*. Considering the admissibility of the incriminating statements the court said:

> We know of no case holding that a highway patrolman is required to warn a traffic violator as to his constitutional rights before engaging in a routine conversation with such violator. Neither do we know of any decision that has gone so far as to hold that such a traffic violator must be furnished with counsel immediately upon arrest.[11]

This case presents a very interesting question. *Miranda* demands that an accused have the right to counsel immediately upon arrest, but the decision does not say how far down along the criminal scale this right attaches. *Gideon v. Wainwright*[12] left this question open, and only vague and general terms have

9. Bostick v. State, ___ U.S. ___ (1967). See text accompanying note 17 *infra*.
10. 246 S.C. 311, 143 S.E.2d 604 (1965).
11. *Id.* at 316, 143 S.E.2d at 606.
12. 372 U.S. 335 (1963).

been used in this area.[13] Therefore until the Supreme Court is presented with a case directly in point, the issue will remain unsettled.

Although due process of law does require that defendants accused of certain crimes have the right to assistance of counsel, there is no requirement that there be perfection on the part of the attorney. The court in *Welch v. MacDougall*[14] held that a lack of effective assistance of counsel must be of such nature as to shock the conscience of the court and make the trial proceedings a farce and mockery of justice.

II. INDICTMENT

In *State v. Defee*[15] defendants were indicted for violating and for conspiring to violate an obscenity statute, section 16-414 of the South Carolina Code. The indictment was quashed by the circuit court and the state appealed. The supreme court adopted the opinion of the circuit court and based the decision upon the actions of the South Carolina Legislature concerning the obscenity area and upon judicial action dealing with analogous legislative changes of the law.

At the time of arrest, section 16-414 was in effect; however, between the time of arrest and trial, various changes of this section were considered and Act 265 of the South Carolina Acts and Joint Resolutions (1965) was passed. A comparison of the new act and section 16-414 revealed that all the areas covered by 16-414 were encompassed by the new act. The circuit court held that since there was no savings clause, which would generally be included if the old section were not to be superseded, the earlier statute was, in effect, repealed. Therefore the indictments against all the defendants were quashed and the arrest warrants were vacated.

III. SPEEDY TRIAL

The issue of the constitutional right to a speedy trial was presented on petition for the writ of habeas corpus in *Wheeler*

13. For discussion of this problem see Myers, *A View of the Proposed Defense of Indigents Act*, 18 S.C.L. REV. 403, 408 (1966). The South Carolina Proposed Defense of Indigents Act provides that the possibility of a six months' sentence determines whether a person is entitled to appointment of counsel.

14. 246 S.C. 258, 143 S.E.2d 455 (1965).

15. 246 S.C. 555, 144 S.E.2d 806 (1965).

v. State.[16] Petitioner had been held prisoner in the Greenville County jail for more than eight months between his arrest in the latter part of February 1964 and his trial early in November. The court held that the right to a speedy trial is necessarily relative and depends upon the circumstances involved. In this case the situation was such that the petitioner's trial quite reasonably would not have commenced as promptly as otherwise; the appellant was one of several persons charged in two separate indictments with four different crimes. However, the court found it unnecessary to go into this issue. It held that the petitioner had in effect waived his constitutional right and was in no position to invoke the protection of any constitutional mandate. Although for the first six months the petitioner was represented by employed counsel, no demand for trial or discharge was made. Also, upon the call of the case, a continuance was asked for and granted. The petitioner then voluntarily entered a plea of guilty without reserving his prior motion to quash the indictment. Therefore the question of a denial of a speedy trial was no longer open for litigation.

IV. JURY DISCRIMINATION

In *Bostick v. State*[17] the court once again was confronted with the issue of whether the state constitution and statutory laws relating to the qualifications and methods of selection of jurors were discriminatory against Negroes. In resolving the question against the contention of the petitioner, the court cited the recent case of *Moorer v. State*[18] and held that the petitioner had not established a prima facie case of systematic exclusion. Although there was testimony by one witness that during the past years he had seen no Negroes on the petit jury and not more than one Negro on the grand jury, the court records showed that one Negro had been on the grand jury which returned a true bill against the petitioner in the instant case and that two Negroes had been on the panel of petit jurors at the term the petitioner was tried. *Bostick* was appealed to the United States Supreme Court, and on Monday, March 27, 1967, the Court reversed this decision.

V. NEGOTIATED GUILTY PLEAS

In *Bailey v. MacDougall*[19] a habeas corpus petitioner claimed that his plea of guilty to murder was involuntary because it

16. 247 S.C. 393, 147 S.E.2d 627 (1966).
17. 247 S.C. 22, 145 S.E.2d 439 (1965).
18. 244 S.C. 102, 135 S.E.2d 713 (1964).
19. 247 S.C. 1, 145 S.E.2d 425 (1965).

was induced from him by false promises and misrepresentations by the solicitor and police chief. Evidence was introduced to show that the solicitor had made a written promise providing that if the defendant would enter a plea of guilty of murder, the solicitor would recommend pardon or parole after a period of ten years had been served. The circuit judge granted the petitioner a full hearing and found that the guilty plea was induced by the agreement, that the petitioner had understood that he would serve only ten years or less, and that the petitioner was led to believe that the state was bound by the solicitor's actions.

In reversing this decision the supreme court held that the agreement by the solicitor and the chief of police to recommend a pardon or parole after ten years did not in fact destroy the voluntariness of the plea and that there was nothing to show that the plea was induced by coercion, false promises or misrepresentation. The record showed that at no time was there any conversation between the solicitor and the defendant concerning the entry of the plea and that the defendant was represented by capable, retained counsel who fully explained to the defendant the meaning and consequences of the negotiations with the solicitor. The record also showed that the solicitor and police chief had in fact fulfilled their obligations by recommending to the board of pardons or governor that leniency be shown.

Much comment has been directed toward this issue of negotiated guilty pleas and the effect such pleas have upon due process of law.[20] Although the principle is well established that a plea of guilty must be freely made and cannot be accepted if induced by promises which deprive it of the nature of a voluntary act, too often the courts ignore underlying factors which constitute coercion. However voluntary it may appear, the negotiated guilty plea is, in effect, a flagrant tool for subtle coercion.

Negotiation is primarily an administrative device used by state prosecutors, limited by staff and budget, to avoid the burden of having to produce evidence to prove guilt.[21] It is

20. *E.g.*, Dash, *Cracks in the Foundation of Criminal Justice*, 46 ILL. L. REV. 385, 392 (1951); Note, 103 U. PA. L. REV. 1057 (1955); Note, 33 CORNELL L.Q. 407 (1948).

21. See Note, 103 U. PA. L. REV. 1057, 1070 (1955); Note, 33 CORNELL L.Q. 407, 409 (1948).

prompted also by the realization that regardless of the strength of a case a conviction at trial is not a certainty. Therefore the public representative responsible for the prosecution of criminal offenders bargains with the accused, through the use of society's claims, in order to secure a waiver of his constitutional right to trial. It would seem also that the desire for an impressive record of convictions and impotent investigation and preparation could be interrelated with the practice of negotiation.

In order to entice a guilty plea, the state presents to the accused an offer to prosecute only for the lessor of several charges entailing less severe punishment than the crime charged in the initial indictment. The defendant may plead guilty with the expectation of thereby obtaining reduced punishment for his crimes. The consequences of the negotiated guilty plea do not end at this stage. The usual tendency of the courts is to award a lenient judicial sentence following such plea.[22]

The primary reason for the granting of lenient sentences by the court seems to be that the court is much impressed by a wayward soul manifesting repentant supplications. If the accused were not aware of the fruits of his actions, derived from the leniency of both prosecutor and judge, it could well be possible that a guilty plea evidenced a step toward rehabilitation. However, the knowledge of a mitigated punishment, implanted by the negotiating prosecutor, taints the value of the plea as a gauge of character.

The combination of the prosecutor's negotiating and the resultant lenient sentence introduces the likelihood that a defendant will obtain dual sentencing advantages. A paradox thus results: one defendant, originally indicted for the more serious of two related offenses, by pleading guilty may incur less severe punishment than another defendant charged only with the minor offense and proven guilty at trial. Herein lies the coercion, because a price tag is placed upon the constitutionally guaranteed right to a trial on the merits of a criminal charge brought by the state. An accused who receives a harsher punishment for his exercise of this right pays a judicially imposed penalty. This discrepancy between the sentences to be imposed following trial convictions and guilty pleas magnifies the accused's fear of standing trial and proscribes freedom of

22. King, *Criminal Procedure from the Viewpoint of the Trial Judge*, 25 CONN. B.J. 202 (1951).

choice. The innocent accused, therefore, receives the full brunt of the subtle coercion which is inherent in the policy of negotiating the claims of society and manipulating the scales of justice. While variable sentencing may constitute a reward for the culpable defendant, viewed through the eyes of an innocent accused it represents a veritable hoisted axe.

The absence of the practice of negotiating would not necessarily put an end to guilty pleas and strangle the already crowded criminal dockets. Faced with convincing evidence of guilt, an accused will likely enter a guilty plea for reasons of expediency by his own free choice. If proper investigation and professional case development by the prosecutor is the problem at hand, then this segment of criminal law enforcement needs the attention and aid of the state. The end product of negotiated guilty pleas is not administrative efficiency—it is compromised justice.

VI. SOLICITOR AND JUDGE

The court in *State v. White*[23] for the second time reversed a death sentence conviction for rape and remanded the case for a new trial. The court held that the argument by the solicitor asking jurors to imagine their mothers, wives, sisters and daughters in the place of the victim was reversibly erroneous where the jury failed to recommend mercy. Wide discretion is allowed the trial judge in dealing with the propriety of argument of counsel, but here the court found that the trial judge did not properly counteract the argument which the court found to be materially prejudicial.

The state, basing its case on the decision in *State v. Gilstrap*,[24] contended that even if the argument were improper it could not have prejudiced the defendant because of the overwhelming proof of guilt against him. The court held, however, that by relating the circumstances of the case to the loved ones of the jury the solicitor injected foreign considerations into the case and thereby removed from the trial the element of impartiality.

In a strong dissent, Acting Justice Legge questioned the basis for reversal and expressed his opinion that "to forbid argument such as is here condemned would unduly restrict the

23. 246 S.C. 502, 144 S.E.2d 481 (1965).
24. 205 S.C. 412, 32 S.E.2d 163 (1944).

solicitor's function as the representative of society in capital cases."[25]

It appears that the court in considering this capital case was ultimately and primarily concerned with the issue of mercy and with the jury's absolute discretion in this regard. And it would seem that in order to resolve this subjective issue of mercy one would quite naturally relate his family to the crime involved. It is submitted, therefore, that it is difficult to see how the element of impartiality was prejudiced by the solicitor's argument. A crime committed upon any member of society is in effect a crime committed upon *each* member thereof.

The appellant in *State v. Wilson*[26] was convicted and sentenced for official misconduct as clerk of court. He contended that the trial judge erred in charging any statutory provisions to the jury since the state consistently insisted that its position was that the offense of official misconduct was a common law offense. The trial judge charged the jury with the provisions of sections 14-3624, 15-1782 and 15-1785 of the South Carolina Code appertaining to the duties of the appellant in connection with fees and fines collected by him. However, at the conclusion of the charge the defendant made no objection. Therefore the court held that on appeal it was too late to voice a complaint. The court added, nevertheless, that appellant's guilt of any official misconduct had to be determined in the light of what his duties were under the law and, therefore, that no prejudicial error was committed.

In *State v. Cain*[27] the defendant, charged with murder, had been previously confined to the state hospital with a mental condition diagnosed as schizophrenic reaction of the paranoid type and had been released only approximately two and a half months prior to the occurrence of the crime. At the trial, defense counsel had sought to have stricken the confession made by the defendant on the grounds that it was involuntary because the defendant was mentally incapable of making and understanding the contents of his statements.

Although the court found that the confession was properly admitted into evidence, it held that the lack of mental capacity was an important factor to have been considered by the jury in

25. 246 S.C. 502, 508, 144 S.E.2d 481, 484 (1965) (dissenting opinion).
26. 246 S.C. 580, 145 S.E.2d 20 (1965).
27. 247 S.C. 214, 146 S.E.2d 709 (1966).

determining whether the purported confession was in fact voluntary. Since the trial court failed to give any instructions whatsoever concerning this element of the confession, even though there was no request to do so, the supreme court held that prejudicial error had been committed.

The court in citing *State v. Clinkscales*[28] stated that in the final analysis it is the jury who must determine the factual issue of voluntariness and that they should be properly instructed in this duty by the trial court.

In *State v. Gamble*[29] the court once again reiterated the principle that the state may not attack in any way the character of a defendant in a criminal prosecution unless that issue be first tendered by him. In this case the trial court admitted into evidence the entire confession of the defendant without first striking certain portions which alluded to the commission of other crimes which were not material nor legally connected to the rape allegedly committed. Although the court found that the confession of the rape itself was voluntary and could be considered by the jury, it held that the other portion would have the effect of placing the "character" of the appellant in issue and was, therefore, prejudicial.

Contrary to *Gamble*, the defendant in *State v. Millings*[30] took the witness stand and subjected himself to cross-examination. Consequently he became subject to the same duties and liabilities of witnesses generally. In this prosecution for manslaughter, evidence elicited on cross-examination that the defendant had been convicted of automobile theft and receiving stolen goods was held to be competent. The court held that such evidence of prior convictions of crimes involving moral turpitude was properly introduced on the issue of the credibility of the defendant as a witness.

In *United States v. Smith*[31] the court of appeals reversed the district court and held that the defendant was entitled to a new trial because the jury was given an unbalanced version of the "Allen" charge. Although at the outset the district judge had stated, "while undoubtedly the verdict of the jury should represent the opinion of each individual juror . . ."[32] he did not

28. 231 S.C. 650, 99 S.E.2d 663 (1957).
29. 247 S.C. 214, 146 S.E.2d 709 (1966).
30. 247 S.C. 52, 145 S.E.2d 422 (1965).
31. 353 F.2d 166 (4th Cir. 1965).
32. *Id.* at 168.

otherwise inform the jurors of their duty of dissent if reasonable grounds for such existed. Even though no objection was made at the proper time by the court-appointed counsel, the court held that it should note as plain error a charge which was so clearly coercive and destructive of the right of the jurors in the minority to maintain their position. The court also stated that upon cross-examination prior convictions could be elicited from the defendant but that the prosecutor could not explore the details of such convictions.

VII. SUFFICIENCY OF THE EVIDENCE

The court in *State v. Brazzell*[33] reversed a conviction for the violation of the fraudulent check statute[34] and held that there was no substantial evidence which reasonably tended to prove that the check was one within the purview of the statute. The defendant had purchased a quantity of liquor for the purpose of illicit resale and had given the check in question for it. In accordance with the defendant's established practice, the liquor store operator was to hold his checks out to be paid in cash by the defendant at a later date in return for the checks. On exceptional occasions when the defendant did not come back, the owner was to go ahead and deposit the checks. When in the instant case the operator was not reimbursed in cash, he deposited the check, and it was returned for lack of sufficient funds.

Having no cases precisely in point, the court analogized the check given in this situation with one that had been postdated. In *State v. Winter*[35] it was held that a postdated check was a promise to pay at a future time and did not come within the provisions of the fraudulent check statute.

The state's case was based upon the presumption of fraudulent intent arising under section 8-177. The court held, however, that the state's primary burden was proving that the check actually came within the provisions of the statute. Based upon the facts of the case, the court found that it was not reasonably inferable that the check was within the scope of the statute and held that the trial judge should have directed a verdict of acquittal.

33. 248 S.C. 118, 149 S.E.2d 339 (1966).
34. S.C. CODE ANN. § 8-176 (1962).
35. 98 S.C. 294, 82 S.E. 419 (1914).

VIII. HABEAS CORPUS

During this survey period the court was presented with many habeas corpus petitions, none of which have striking significance and most of which were denied upon the following grounds:

1. Habeas corpus cannot be used as a substitute for appeal for the correction of errors of law. *Tyler v. State*,[36] *Wheeler v. State*.[37]

2. Habeas corpus will not lie to review the sufficiency of the evidence to sustain a conviction. *Shelnut v. State*,[38] *Dickson v. State*.[39]

3. Habeas corpus is not available to test the legality of a conviction or sentence where a decision in the prisoner's favor will leave him in lawful confinement under another existing sentence. *McCall v. State*,[40] *Shelnut v. State*,[41] *Tyler v. State*.[42]

4. Habeas corpus petitions must contain an adequate statement of facts to make possible an intelligent judgment on the merits of the petition. It is incumbent upon the applicant to make at least a prima facie showing entitling him to relief. *Welch v. MacDougall*,[43] *Dickson v. State*.[44]

5. Persons seeking relief by writ of habeas corpus have the burden to sustain allegations of their petitions by the preponderance of evidence. *Bailey v. MacDougall*.[45]

The writ of habeas corpus as a post-conviction remedy is actually of limited value.[46] State courts have restricted its use by various procedural rules. By application of the concept of waiver, state courts have held that the failure of an accused to

36. 247 S.C. 34, 145 S.E.2d 434 (1965).
37. 247 S.C. 393, 147 S.E.2d 627 (1966).
38. 247 S.C. 41, 145 S.E.2d 420 (1965).
39. 247 S.C. 153, 146 S.E.2d 257 (1966).
40. 247 S.C. 15, 145 S.E.2d 419 (1965).
41. 247 S.C. 41, 145 S.E.2d 420 (1965).
42. 247 S.C. 34, 145 S.E.2d 434 (1965).
43. 246 S.C. 258, 143 S.E.2d 455 (1965).
44. 247 S.C. 153, 146 S.E.2d 257 (1966).
45. 247 S.C. 1, 145 S.E.2d 425 (1965).
46. See Wright, Sofaer, *Federal Habeas Corpus for State Prisoners: The Allocation of Fact-Finding Responsibility*, 75 YALE L.J. 895 (1966); Meador, *Accommodating State Criminal Procedure and Federal Post-conviction Review*, 50 A.B.A.J. 928 (1964).

observe court procedural rules precludes his right to later raise the question of a denial of a constitutionally guaranteed right. As a consequence of the fact that the writ of habeas corpus is not a substitute for appeal,[47] the failure to perfect a timely appeal will forever terminate a prisoner's right to get a state hearing on the merits of an issue.

But the United States Supreme Court, by use of the elastic concept of the due process clause, has expanded federal substantive rights and has complemented this development by an equally important phase in the amplification of the procedural protections of those rights.[48] Through the recent decisions of *Fay v. Noia*[49] and *Townsend v. Sain*[50] the Court has provided that a state prisoner may go into the federal courts on a habeas corpus petition and get a full evidentiary hearing on all federal issues. The federal courts have the power to look behind the facade of state procedural grounds which would otherwise block a review in the state courts.

Therefore, in order that the states may retain substantial control over their administration of criminal justice, it is of dire necessity that they adopt a waiver standard which is no stricter than the federal standard[51] and provide each petitioner a full review of all federal claims.

One major step in this direction is section 9(a) of the Proposed Defense of Indigents Act. This section provides that under proper circumstances counsel may be appointed for the filing of a writ of habeas corpus. Appointment of counsel would greatly facilitate the processing of writs and the presentation of all federal issues.[52]

IX. MISCELLANEOUS

In *State v. McWaters*[53] the court once again reiterated the principle that the state has no right of appeal from a directed verdict of not guilty.

47. *E.g.*, Tyler v. State, 247 S.C. 34, 145 S.E.2d 434 (1965); Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966).

48. 54 CAL. L. REV. 1262, 1299 (1966).

49. 372 U.S. 391 (1963).

50. 372 U.S. 293 (1963).

51. As explained in *Noia*, only a "deliberate bypassing" of a procedural rule by the defendant will amount to a waiver.

52. Meador, *Accommodating State Criminal Procedure and Federal Post-conviction Review*, 50 A.B.A.J. 928 (1964).

53. 246 S.C. 530, 144 S.E.2d 718 (1965).

The court in *State v. Morrison*[54] held that the credibility of newly discovered evidence offered in support of a new trial motion is for the determination of the judge to whom the evidence is offered. The power to weigh the evidence and evaluate its credibility is his, and his judgment will not be disturbed except for abuse of his discretion.

A novel question dealing with the state's waiver of its right to require a prisoner to complete his prison sentence was presented on habeas corpus petition in *Scott v. MacDougall*.[55] Pursuant to an executive order of the governor, the petitioner was removed from his confinement in the South Carolina Correctional Institution and sent to Florida to stand trial there. Upon his conviction of murder, the petitioner was returned to South Carolina. The petitioner claimed that the South Carolina Constitution[56] did not grant such power of release as was here exercised and that lacking such power the Governor's action operated as a permanent waiver of South Carolina's jurisdiction of his person.

In dismissing the petition, the court held that the power of a state to release temporarily one of its prisoners so that another state can subject him to trial is a power inherent in sovereignty and, therefore, needs no affirmative statutory authority.

A reversal by the circuit court of the Tax Commission's conviction of a beer supplier was upheld by the state supreme court in *South Carolina Tax Comm'n v. Schafer Distrib. Co.*[57] The defendant was charged with having violated section 4-204 of the South Carolina Code by selling beer on Sunday. The court held, however, that since the offer by officials at Shaw Air Force Base to purchase the beer was conditioned upon immediate delivery at the base, title did not pass prior to the delivery upon federal grounds, within the federal jurisdiction. The conviction for violating the state liquor law was precluded, therefore, since the actual sale did not occur within the state's jurisdiction. The laws, rules and regulations of the state of South Carolina have no application within Shaw Air Force Base.[58]

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54. 246 S.C. 575, 145 S.E.2d 15 (1965).
55. 246 S.C. 252, 143 S.E.2d 457 (1965).
56. S.C. CONST. art. 4, § 11.
57. 247 S.C. 491, 148 S.E.2d 156 (1966).
58. S.C. CODE ANN. § 39-132 (1962).