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Criminal Law and Procedure

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CRIMINAL LAW AND PROCEDURE

I. CRIMINAL PROCEDURE

A. Right to Counsel

In *Gerardi v. United States*[1] the defendant pleaded guilty to a charge of entering a bank with the intent to commit a felony.[2] In a motion to vacate the sentence, the defendant alleged inadequacy of counsel. In ruling on this motion the court prescribed that

> [t]he charge of inadequate legal representation can prevail only if it can be said that what was done or was not done by the attorney made the proceedings a farce and a mockery of justice, shocking to the court's conscience, and the speculation, hope, or fact that a different or more palatable result might have been obtained by a different lawyer does not mean the defendant has not had effective assistance of counsel.[3]

The court reviewed the trial record and determined that the defendant's motion failed to meet their prescription; it was therefore denied.

The denial of effective assistance of counsel was again raised in a habeas corpus proceeding in *Cousar v. State*.[4] The contention of the defendant was that the time between appointment of counsel and entry of the plea was, per se, insufficient for adequate consideration and preparation of the case.[5] Upon an examination of the trial transcript and testimony of the parties involved, the court found that the defendant had effective assistance of counsel and the dismissal of the writ was affirmed. Factors indicating sufficient time were: (1) Experienced attorneys carefully interviewed the defendant over a period of several hours on two different days; (2) additional investigation other than interviewing

1. 276 F. Supp. 956 (D.S.C. 1967).
2. 18 U.S.C. § 2113(a) (1964).
3. 276 F. Supp. at 957.
4. 250 S.C. 47, 156 S.E.2d 331 (1967).
5. *Id.* at 50, 156 S.E.2d at 331. The record indicated that the defense attorneys were appointed upon return of the indictment by the grand jury, entered a plea of not guilty, and the next afternoon changed the plea to guilty.

the client was conducted by counsel; (3) the defendant admitted his guilt and negotiated a guilty plea; and (4) the defendant requested that counsel arrange to dispose of the case on the second day of the term.

In *Dixon v. State*,[6] a federal habeas corpus proceeding, a similar contention was raised. The defendant asserted that counsel had been appointed only two days before his trial for murder, which resulted in a manslaughter conviction. The court reviewed the record and after taking testimony denied the writ, holding that the defense counsel had ample time. The court further concluded that no motion for continuance had been made because of the attorney's belief that further delay would not be to the benefit of the accused. The court stated that "an unnecessary and unexplained delay between incarceration and the appointment of counsel gives rise to a *prima facie* case of the denial of the effectiveness of counsel, and the burden of proving lack of prejudice is shifted to the state."[7] The court here decided that the state had met its burden and had shown that there was no prejudice to the case of the defendant.

In 1956 three defendants pleaded guilty to rape. Two of the accused were represented by retained counsel and the third did not object to being included in the representation. Eight years after his conviction, the third defendant, by a habeas corpus proceeding, asserted that he had not accepted the representation of the two attorneys who had represented his co-defendants.[8] The court found the trial transcript bare of any objection on the part of the defendant with respect to representation. Testimony by the attorneys for the co-defendants indicated that it was their understanding that they were representing the defendant in addition to the co-defendants. On these facts the court stated that it would be "trifling with the court" to allow the defendant to deny the authority of his attorneys when he remained silent during the original trial.

B. Arrest and Search and Seizure

Arrest. In *United States v. Lawson*[9] the defendant had rented a motel room and was seen departing at night with

6. 272 F. Supp. 674 (D.S.C. 1967).
7. *Id.* at 678.
8. Ross v. State, 158 S.E.2d 647 (S.C. 1967).
9. 384 F.2d 709 (4th Cir. 1967).

a television set. He left by the rear of the motel with his automobile lights out and became involved in a high speed chase with the police. During the chase the officers were advised by radio that a television set was missing from the defendant's motel room. He was apprehended and during the officer's search for the television set, incriminating matter was found indicating that the car in which he was riding was stolen. The defendant was convicted of interstate transportation of a stolen automobile. On appeal, he contended lack of probable cause on the part of the arresting officer. The court affirmed the conviction by noting that the information given the officers during the chase gave probable cause to arrest.

The defendant in *State v. Hamilton*[10] was arrested without a warrant and subsequently tried and convicted of murder. A billfold belonging to the victim was found in the defendant's possession at the time of the arrest and was introduced into evidence at the trial. On appeal, the defendant sought a reversal on the grounds that the arrest was without probable cause and the evidence, therefore, should have been excluded as the fruit of an illegal arrest. Since the record of the trial was void of testimony as to the validity of the arrest, the court remanded to determine whether the arresting officers had probable cause. The court established this standard for the lower court to use in its determination: whether at the moment of arrest, the facts within the arresting officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the defendant had committed an offense.

In *State v. Poinsett*[11] the defendant had interfered with police officers while they were attempting to make an arrest of a third party. Subsequent to this interference, an arrest warrant was issued for the defendant. The authorities attempted to serve the warrant at the defendant's residence. He resisted the arrest by firing a pistol at the authorities. The defendant was subsequently arrested, tried, and convicted of pointing and discharging a firearm. On appeal, he contended that the arrest warrant was ineffective since served on Sunday in violation of Section 17-259 of the South Carolina

10. 159 S.E.2d 607 (S.C. 1968).
11. 250 S.C. 293, 157 S.E.2d 570 (1967).

Code.[12] The court affirmed the conviction by construing the statutory phase "breach of the peace" as including any crime which violates the public peace, and stated:

> In general terms a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which included any violation of any law enacted to preserve peace and good order.[13]

The court then included the offense of pointing and discharging a firearm at a person as a breach of the peace, thus permitting the Sunday service of the arrest warrant.

Search and Seizure. In *United States v. Campbell*[14] agents of the Alcohol and Tobacco Tax Division of The Internal Revenue Service had received reliable information of an impending purchase of illegal liquor. Although lacking a warrant for search or arrest, the agents staked out the home of the defendant by hiding in his cornfield. When the agents saw what appeared to be an illegal purchase, they arrested the defendant and seized a jug of liquor. In denying defendant's motion to suppress the evidence as illegally obtained by an unreasonable search and seizure, the court stated that the protections of the fourth amendment are not so broad as to extend to open fields.

In *State v. Richburg*[15] the defendant was arrested and tried for murder. At the trial a pistol found in the defendant's house was introduced into evidence, although no warrant had been issued for a search of the house. The record was bare as to the legality of the search and seizure. The court recognized the current habeas corpus standard requiring specific findings of fact when the legality of a search and seizure is in question and applied this standard to the trial itself. The court remanded, stating that in order to make a proper determination of the legality of the search and seizure, the specific findings of fact should be made within the trial itself so that the findings may be subject to appeal and review in the conventional fashion.

12. The statute reads in part, "[n]o criminal process shall be served on Sunday, except for treason, felony, violation of the laws relating to intoxicating liquors or breach of the peace." S.C. CODE ANN. § 17-259 (1962).
13. 250 S.C. at 297, 157 S.E.2d at 571; *see* State v. Edwards, 239 S.C. 339, 123 S.E.2d 247 (1961).
14. 275 F. Supp. 7 (D.S.C. 1967).
15. 158 S.E.2d 769 (S.C. 1968).

A search warrant served forty-two days after issuance was found to exceed a reasonable time for execution in *State v. Baker*.[16] The defendant had been arrested and tried for possessing and keeping alcoholic liquor in a place of business.[17] After conviction, an appeal was taken on the ground that the warrant was stale. The court reversed, finding that the warrant had been served more than a reasonable time after its issuance and holding that evidence obtained thereunder was inadmissible. The court said that when testing a warrant for staleness, a reasonable time can be determined only by considering the special facts of each case.[18]

In *State v. York*[19] a search warrant was issued on the basis of an affidavit which stated only that the affiant had good reason to believe that the defendant had contraband concealed on her premises. The affidavit, however, failed to provide any facts upon which the affiant's belief was based. The subsequent search produced evidence which led to the trial and conviction of the defendant for unlawful possession of drugs.[20] On appeal, the court reversed, indicating that the affidavit lacked sufficient facts to form the basis of a judgment by the issuing magistrate as to the existence of probable cause. Because the affidavit was deficient, the subsequent search warrant was nullified and the evidence thus obtained was excluded.

In *Squires v. SLED*[21] an action for claim and delivery was brought by the owner of certain machine parts, subassemblies, dyes and molds used for slot machines. The parts had been seized by the state authorities pursuant to Section 5-622 of the South Carolina Code.[22] The owner contended that the statute permitting the seizure and destruction of slot machines did not extend to the parts or components. The court affirmed the seizure, holding that although the statute did not explicitly extend to parts, it would be inconsistent for

16. 160 S.E.2d 556 (S.C. 1968).
17. The alcoholic liquor was found in a filling station, thus violating S.C. CODE ANN. § 4-95 (1962).
18. *See, e.g.*, Farmer v. Sellers, 89 S.C. 492, 72 S.E. 224 (1911), in which the jury found forty-eight days between issuance and service of a warrant to be within a reasonable time.
19. 250 S.C. 30, 156 S.E.2d 326 (1967).
20. S.C. CODE ANN. § 56-1313 (1962).
21. 249 S.C. 609, 155 S.E.2d 859 (1967).
22. S.C. CODE ANN. § 5-622 (1962) provides: "[A]ny vending or slot machine, punch board, pull board or other device pertaining to games of chance prohibited by § 5-621 shall be seized . . . ."

the legislature to authorize the seizure of slot machines but not their component parts.

Miscellaneous. In *State v. Nelson*[23] and *State v. Ladd*[24] the court faced the issue of whether a lineup confrontation violated the current constitutional standards. It is to be noted that the United States Supreme Court in *Stovall v. Denno*[25] stated that a denial of due process of law occurs when the confrontation is unnecessarily suggestive and conducive to irreparable mistaken identification. *Stovall* continued by stating that the rules in *United States v. Wade*[26] and *Gilbert v. California,*[27] requiring exclusion of identification evidence, which had been tainted by exhibiting the accused to identifying witnesses before trial in absence of his counsel, were not to be applied retroactively. Since the area is now governed by the Supreme Court decision, the outcome of the state cases is not commented on here.

C. *Solicitor and Judge*

In *State v. Hamilton*[28] the defendant was tried for murder. In the *voir dire* questioning, the trial judge asked jurors whether they were opposed to capital punishment. The judge, however, refused the defense counsel's request that the jurors be asked whether they would be disposed to grant mercy in a case on a given set of facts and circumstances. The trial judge's refusal was affirmed on appeal as being within his discretion and not subject to review in the absence of clear abuse.

In 1962, Hopson Wilson entered a written plea of guilty to assault and battery and an oral plea of guilty to burglary. He was subsequently found guilty on both counts and sentenced by the trial court to concurrent terms of ten and twenty-five years respectively. Approximately three years later, in *Wilson v. State*[29] habeas corpus proceedings were commenced challenging his conviction of burglary pursuant to the oral guilty plea. His position was that since the assault and battery plea was in writing and the burglary plea oral, the oral

23. 250 S.C. 6, 156 S.E.2d 341 (1967).
24. 161 S.E.2d 230 (S.C. 1968).
25. 388 U.S. 293 (1967).
26. 388 U.S. 218 (1967).
27. 388 U.S. 263 (1967).
28. 159 S.E.2d 607 (S.C. 1968).
29. 159 S.E.2d 282 (S.C. 1968).

plea was improperly entered and thus the burglary sentence was illegal. The lower court refused to set aside the sentence. On appeal the supreme court stated that "[w]hile it is the better, and suggested, practice in such cases to have the accused sign a plea of guilty when such is entered, there is no stautory requirement in this State that such plea be in writing or in any particular form."[30] In the present case, the court affirmed the denial of the writ because the record indicated that the accused was represented by counsel, informed of the nature of the accusation to which he was to plead, and advised of the possible results to him under a trial and a plea. The court concluded by stating that the mere absence of his signature does not vitiate the otherwise valid plea.

The question of voluntariness of a guilty plea arose in *Thompson v. MacDougall*.[31] The defendant had been indicted for murder and had pleaded guilty. He asked for mercy and was sentenced to life imprisonment. Later, a writ of habeas corpus was filed in the state court on the question of voluntariness of the guilty plea. The lower court found the plea to be voluntary, and on appeal the state supreme court affirmed.[32] The defendant, having exhausted all state remedies, sought a writ of habeas corpus on the same grounds in the federal district court. At the hearing, the defendant's trial counsel changed his testimony. He had testified in the state proceedings that he knew of no reason why the plea was not voluntary. In the federal proceedings, however, counsel acknowledged that the guilty plea was voluntary only to the extent that the defendant "did what his attorneys told him to do." This divergence was crucial to the guilty plea in view of the requirement that a guilty plea be the "reasoned choice" of the defendant himself.[33] The federal court retained jurisdiction for a reasonable time in order that the state court might be allowed to pass on the effect of the new evidence and to modify its prior decision if it so chose.

In 1965, Huel Bailey pleaded guilty to murder and was sentenced by the trial court to life imprisonment. In *Bailey v. MacDougall*,[34] a state habeas corpus proceeding, the de-

30. *Id.* at 285.
31. 272 F. Supp. 313 (D.S.C. 1967).
32. Thompson v. State, 248 S.C. 475, 151 S.E.2d 221 (1966).
33. *See, e.g.*, United States v. Gilligan, 363 F.2d 961 (2d Cir. 1966).
34. 162 S.E.2d 177 (S.C. 1968).

fendant alleged that amnesia had affected the voluntariness of his guilty plea. The defendant contended that he was not in control of his mental faculties at the time the guilty plea was entered. The lower court denied relief and on appeal the decision was affirmed. In reaching its decision, the court relied upon testimony of lay observers who were present at the trial. They testified that when the defendant was questioned as to the voluntariness of his plea, he appeared fully in control of his faculties. The court indicated further that if medical testimony as to amnesia had been presented, this testimony would have affected the weight but not the competence or admissibility of lay testimony.

In *State v. Cantrell*[35] the defendant entered a plea of guilty to housebreaking and petty larceny. After receiving the plea and with a view to fixing the sentence, the trial judge began reading a statement concerning the past conduct of the defendant. When it became apparent that the defendant was not going to be given a probationary sentence, counsel for the defendant moved to withdraw the guilty plea. The trial court refused the motion and sentenced the defendant to two years in prison. On appeal, the court stated that the motion to withdraw the guilty plea was addressed to the discretion of the trial judge and his action would not be altered absent clear abuse of that discretion.[36] The court in reviewing the record found no clear abuse and thus affirmed the conviction.

Pre-sentence reports came under review in *Baker v. United States*[37] when the defendant pleaded guilty to armed robbery. The trial court, on reviewing the pre-sentence report, commented that the seriousness of the defendant's previous record could not be overlooked. The defendant did not see the report and on appeal contended that the report was not accurate, and as a result of the deviation, the sentencing judge had been given a distorted picture of the defendant's past conduct. The court vacated the sentence and remanded the case for further consideration. In the opinion, the court set forth

35. 250 S.C. 376, 158 S.E.2d 189 (1967).
36. A motion for new trial must be made, absent newly discovered evidence, before adjournment of the term at which trial was had, or before sentence or judgment, or upon a case made up and settled by the judge who tried the case. State v. David, 14 S.C. 428 (1880). *See also* Catoe v. State, 241 S.C. 351, 128 S.E.2d 417 (1962).
37. 388 F.2d 931 (4th Cir. 1968).

minimum requirements with respect to pre-sentence reports:[38] (1) The sentencing judge should apprise the defendant of important matters of public record as conviction and charges of crime attributed to the defendant in the pre-sentence report; (2) the defendant should then have an opportunity to comment; and (3) no conviction or criminal charge should be included in the report unless referrable to an official record.[39] The court, however, is not obligated to divulge the entire report at any time.

In *State v. Cannon*[40] the defendant in a previous trial had been convicted of rape. At the original trial a confession by the defendant was introduced into evidence. On appeal the court remanded for a determination by the trial court of the voluntariness of the confession.[41] Upon remand, the trial court found that the defendant's confession was voluntary. The defendant appealed this decision and the supreme court remanded again, in this instance finding the brief, general trial court statement to be insufficient with respect to both the determination of admissibility of the confession and the collateral issue of the search and seizure. The search and seizure reference concerned certain articles taken from the defendant's home which appear to have been in the interrogation room at the time of the confession. There was a serious question as to the legality of the search and seizure of the items, and the court remanded the case for a more specific finding of: (1) the admissibility and voluntariness of the confession, (2) the legality of the search and

38. FED. R. CRIM. P. 32(c) (2) was amended February 28, 1966, effective July 1, 1966, to read:

> The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances of his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court. The court before imposing sentence may disclose to the defendant or his counsel all or part of the material contained in the report of the presentence investigation and afford an opportunity to the defendant or his counsel to comment thereon. Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.

39. Judge Winter advocated the policy of complete disclosure except for the confidential recommendation of the probation officer to the sentencing judge and except where there is tangible good cause to withhold exhibition of a portion of the report. 388 F.2d at 934 (concurring opinion).

40. 158 S.E.2d 357 (S.C. 1967).

41. State v. Cannon, 248 S.C. 506, 151 S.E.2d 752 (1966).

seizure, and (3) the possibility of an induced confession by use of articles illegally seized.

The defendant in *State v. Goodwin*[42] was convicted of involuntary manslaughter and based his appeal upon the introduction of an oral confession. The court found the confession admissible because it was introduced by testimony elicited by the defendant's counsel on cross-examination of a patrolman to whom the defendant had made the admission.

In *State v. Marshall*[43] the defendant was charged with "driving while under the influence." During the trial, testimony was offered by the defendant that he had run off the road and while waiting for assistance had a drink of bourbon whiskey. The defendant's motion for a directed verdict was denied, and the jury brought in a guilty verdict. An appeal was taken on the judge's refusal to grant the defendant a directed verdict. The court affirmed the conviction stating that

> on a motion for a directed verdict of not guilty, the testimony must be viewed in the light most favorable to the State. The case must be submitted to the jury if there is substantial evidence reasonably tending to prove the defendant's guilt, or from which his guilt may be fairly and logically deduced.[44]

D. Indictments

In *State v. Richburg*[45] the defendant was convicted of murder and sentenced to death. An appeal was taken upon the contention that the systematic exclusion of women and Negroes from the grand and petit jury was sufficient grounds to quash the indictment. Noting that since the trial the state constitution had been amended to permit women to serve on juries,[46] the court nonetheless found no Fourteenth Amendment violation under the old state constitutional prohibition. The court reviewed the record and found no systematic exclusion of Negro jurors. The state in this case had excused five Negroes by the use of the peremptory challenges. The court held that these challenges may be used for any cause

42. 250 S.C. 403, 158 S.E.2d 195 (1967).
43. 158 S.E.2d 650 (S.C. 1968).
44. *Id.* at 651; *see* State v. Rayfield, 232 S.C. 230, 101 S.E.2d 505 (1958).
45. 158 S.E.2d 769 (S.C. 1968).
46. S.C. CONST. art. 5, § 22.

satisfactory to counsel or for no cause, and it is not the province of the trial judge or appellate court to interfere.

In *Gerardi v. United States*[47] a motion to vacate sentence by attacking the indictment as insufficient was denied when it was shown, in a review of the trial record, that the defendant had not objected to or challenged the sufficiency of the indictment on arraignment or on the plea of guilty. The court stated it would grant relief only on a showing that the indictment was so obviously defective that by no reasonable construction could it be said to charge the offense for which the conviction was had. The court found the indictment to be within the acceptable limits.

E. Habeas Corpus

Joseph Earl Sullivan was tried and convicted of safe-cracking but no appeal was taken. Later, in a habeas corpus proceeding,[48] the defendant attempted to show that the compartment was not a safe[49] because it was not used for storing money or other valuables. The lower court denied the writ, and it was affirmed on the grounds that the defendant could not challenge by a habeas corpus proceeding the sufficiency of the evidence used to sustain the conviction.[50]

In *Posey v. State*[51] the defendant sought, by both habeas corpus proceedings and appeal to avoid the sentence. The proceedings were focused on the lack of jurisdiction of the trial court. The claim was based on the defendant's allegation that the rape occured in a different county than the trial. The record of the trial indicated that there was conflict with respect to this point and that the trial judge had submitted the issue to the jury, who resolved it in favor of the state. The court approved of the trial judge's submission of the issue of jurisdiction to the jury, finding that in the presence of conflicting testimony the jury's verdict is conclusive of the question of jurisdiction.

In *Young v. State*[52] the defendant sought an unconditional release using the habeas corpus proceeding. He claimed that a perjured statement was presented as evidence to the grand

47. 276 F. Supp. 956 (D.S.C. 1967).
48. Sullivan v. State, 159 S.E.2d 918 (S.C. 1968).
49. *Id.* at 918. The defendant contended that the top compartment of a metal filing cabinet was the item in question and not a safe.
50. *Accord,* Medlock v. Spearman, 185 S.C. 296, 194 S.E. 21 (1937).
51. 250 S.C. 55, 156 S.E.2d 340 (1967).
52. 158 S.E.2d 764 (S.C. 1968).

jury that indicted him for murder. The murder charge was later dropped and a gulity plea to manslaughter entered. In the petition for habeas corpus, the defendant asked for absolute and unconditional release. The court denied this by reference to *Grant v. MacDougall.*[53] *Grant* held that when a guilty plea has been set aside, the petitioner is at most entitled to a new trial and not to an absolute release. The court stated in the instant case that even if the indictment were void, it would not entitle the defendant to an absolute release.

In March, 1947, Oscar Schneider was arrested and charged with arson. The court sustained his attorney's motion for a mental examination and the defendant was sent to the State Hospital. The examination revealed mental illness, and the court ordered the defendant confined for the duration of his sickness. Some years later in *Schneider v. State,*[54] the defendant instituted habeas corpus proceedings. The writs were denied in the lower court, and on appeal the defendant introduced a new argument, that he was not represented by a *guardian ad litem* during the commitment proceedings. The court, sympathetic toward appellant's particular situation, took the case regarding it as a belated appeal from the original disposition of the case instead of a habeas corpus appeal. The court, however, dismissed the appeal on the merits by distinguishing the instant case, as criminal commitment, from the defendant's precedent, resting on civil commitment.[55]

F. Motion for Change of Venue and Continuance

In *State v. Bell*[56] the defendant was indicted for murder. The state's psychiatrist spent several hundred hours examining the defendant whereas the psychiatrist for the defense was able to see the defendant on only two occasions before the trial. The defense counsel made a motion for a continuance on the ground that the defense psychiatrist needed further time for examination. The trial court denied this motion and after defendant's conviction, an appeal was taken. On appeal, the court reversed and remanded for a new trial holding that

53. 244 S.C. 387, 137 S.E.2d 270 (1964).
54. 250 S.C. 298, 157 S.E.2d 593 (1967) (per curiam).
55. *Accord,* Wines v. State, 249 S.C. 191, 153 S.E.2d 392 (1967).
56. 250 S.C. 37, 156 S.E.2d 313 (1967).

> [t]he trial judge erred in putting the defendant to his trial without, at least, affording an opportunity for a meaningful examination and evaluation of his mental condition by an admittedly qualified psychiatrist whose assistance had been enlisted by [defense] counsel and who stood ready to perform this professional service.[57]

G. Disqualification of Jurors

In *State v. Goodwin*[58] the defendant was tried and convicted of manslaughter. On appeal, the defendant contended that a conversation which took place during a recess in the trial between a state witness and a juror was sufficient error to grant a new trial. The record, however, indicated that the subject of the conversation was unrelated to the trial. The court stated that a mere discussion of a matter between a prosecution witness and a juror, not related to the trial, was insufficient grounds to grant a new trial, for it produced no prejudice to the defendant's position.

II. SUBSTANTIVE CRIMINAL LAW

A. Conspiracy

In *United States v. Leavell*[59] a conviction for conspiracy to violate the National Firearms Act[60] was upheld on the evidence that appellant had sold all the parts necessary to assemble completely sixteen fifty-calibre machine guns. The court found that the evidence showed that the defendant agreed to sell and did sell the machine guns. Evidence further indicated that the defendant sold the parts to the co-conspirators who then assembled and sold the assembled weapons to undercover agents.

B. Rape

In *State v. Gamble*[61] the defendant was tried and convicted of rape, and was sentenced to death.[62] On appeal, the constitutionality of the death sentence was challenged as constituting cruel and unusual punishment. The court confirmed

57. *Id.* at 43, 156 S.E.2d at 316.
58. 250 S.C. 403, 158 S.E.2d 195 (1967).
59. 386 F.2d 776 (4th Cir. 1967) (per curiam).
60. INT. REV. CODE of 1954, § 5801-62.
61. 249 S.C. 605, 155 S.E.2d 916 (1967).
62. S.C. CODE ANN. § 16-72 (1962).

the constitutionality of the death sentence and held that the death penalty for rape is not cruel and unusual punishment.

C. Assault and Battery

In *State v. DeBerry*[63] the defendant's automobile was stopped after a seven mile chase at speeds up to one hundred miles per hour. A scuffle occured between the arresting officer and the defendant during which the defendant seized the patrolman's pistol and pointed it at him. The defendant was later arrested, tried, and convicted of assault and battery of a high and aggravated nature. An appeal was taken on the grounds that the state failed to show an assault coupled with an unlawful act of violent injury under aggravated circumstances.[64] The court affirmed the conviction by stating:

> Serious bodily harm to the prosecuting witness is not necessary to establish an assault and battery of a high and aggravated nature. Should a stranger on the street embrace a young lady, or a large man improperly fondle a child, the assault and battery would be aggravated though no actual bodily harm was done. In like fashion, resistance to lawful arrest by constituted authority accompanied by an unlawful act against the person of a police officer becomes an assault and battery and may be of an aggravated nature though the officer suffers no actual bodily harm.[65]

The defendant further objected to the judge's refusal to charge the jury for simple assault and battery in addition to assault and battery of a high and aggravated nature. The court affirmed the trial judge's refusal by stating that the evidence showed either assault and battery of a high and aggravated nature, or nothing.

D. Forgery

The United States Court of Appeals for the Fourth Circuit reaffirmed the "broad rule" with respect to forgery in the

63. 250 S.C. 314, 157 S.E.2d 637 (1967).

64. Examples of aggravated circumstances include, but are not limited to: the use of a deadly weapon, the infliction of serious bodily injury, the intent to commit a felony, the great disparity between the ages and physical conditions of the parties, a difference in the sexes, indecent liberties or familiarities with a female, the infliction of shame and disgrace, and resistance of lawful authority. State v. Jones, 133 S.C. 167, 181, 130 S.E. 747, 751 (1925).

65. 250 S.C. at 319-20, 157 S.E.2d at 640.

case of *United States v. Metcalf*.[66] In that case, the defendant had opened an account in a fictitious name, drawn a check in that name and represented himself to the payee as the fictitious person. The defendant was later convicted of interstate transportation of forged securities.[67] On appeal the defendant contended that under the "narrow rule" the forged instrument must purport to be the act of another; that is, he could not forge the name of a fictitious person. The court rejected this view as being opposed to the current Fourth Circuit standard[68] and then stated that the "broad rule" prevailed. The rule is this:

> [O]ne who signs a check or other paper with a fictitious name that he represents to be his own is guilty of forgery if he acts with fraudulent intent, and if the paper has sufficient appearance of validity upon its face to enable it to be used to the prejudice of another. Under the 'narrow rule' it must appear that the false signature is the act of someone other than the person actually making it.[69]

E. Theft

In *United States v. Fields*[70] the defendant rented an automobile from a commercial rental agency in New York for one day. Two months later the vehicle was found in South Carolina. The defendant was arrested and tried for interstate transportation of a stolen vehicle. The court was convinced that at the time the automobile was rented or shortly thereafter, the defendant decided to convert the car to his own use. It found the defendant guilty by stating that the Dyer Act[71] encompassed rental automobiles and covered situations in which the intent to steal is present at the time of rental and also when the intent arises at some later time.

In *State v. Raines*[72] the defendant was convicted of grand larceny and appealed on the ground of insufficiency of evidence. The court affirmed the conviction. Upon review of the record it found that the defendant and a co-worker had

66. 388 F.2d 440 (4th Cir. 1968).
67. 18 U.S.C. § 2314 (1964).
68. Cunningham v. United States, 272 F.2d 791, 794 (4th Cir. 1959).
69. 388 F.2d at 442.
70. 271 F. Supp. 277 (D.S.C. 1967).
71. 18 U.S.C. § 2312 (1964).
72. 158 S.E.2d 655 (S.C. 1968).

gone to the victim's house to pick up a rug. At the defendant's request, the victim left the house to deliver a message to defendant's co-worker, leaving the defendant alone in the victim's house. Shortly after their departure, the victim noted that a valuable ring was missing and it was subsequently found in the truck that the defendant was using. The court found these facts sufficient to submit the case to the jury and did not disturb the jury's finding of guilt.

ADAM FISHER, JR.