

## H. Supreme Court

The Supreme Court of South Carolina is the highest court in the state. It hears appeals from lower courts and renders decisions based on transcripts, briefs, and oral arguments. It ordinarily does not try cases but may reverse, remand to the lower court, and order a new trial if error was committed in the trial at the lower court level. The supreme court also has original jurisdiction in certain areas, makes rules for the state's unified judicial system, controls admission to the S.C. Bar, and disciplines the lawyers of the state. The chief justice and four associate justices are elected by the S.C. General Assembly for ten-year terms. They may be re-elected to any number of terms.

Most states now have a two-tiered appellate court system; that is, they have an intermediate appellate court between the trial court and the state supreme court. Jurisdictions with this arrangement generally guarantee every convicted person the right to appeal to the intermediate appellate court. There is, however, no absolute right to appeal decisions of that court to the highest state court; instead, the high court has discretion to decide which cases from the intermediate court it will hear.

## I. The Federal Courts

Article 1 of the U.S. Constitution vests the judicial power of the federal government in the U.S. Supreme Court and such lesser courts as Congress may establish. The U.S. Supreme Court is the highest court in the land. Congress has established ninety-one (91) federal district courts, of which each state has at least one; eleven (11) federal circuit courts of appeal, plus one for the District of Columbia; and one called the U.S. Court of Appeals for review of cases from specialized federal courts. The federal district courts have jurisdiction over federal offenses committed within that district. Each district may have several magistrate's courts and one federal district court. Federal district courts rule on appeals from federal magistrate's courts, and decisions of the federal district courts are, in turn, appealable to the federal circuit courts of appeal, and ultimately to the U.S. Supreme Court. The federal district courts have exclusive jurisdiction over serious crimes that violates only federal law.

If an offense violates both federal and state laws, two separate crimes are committed, and the accused may be tried in both state and federal courts. For example, a person accused of interstate transportation of drugs could be charged and tried under federal statutes and also under the laws of the state

where the offense occurred. Often the federal and state officials will decide which law they will prosecute under, but if both state and federal authorities choose to prosecute, the defense of double jeopardy is not available since there were two separate offenses against two separate sovereigns (the state and the federal government), even though only one act was involved. Neither sovereign is itself subjecting the defendant to double jeopardy. The U.S. Supreme Court has held that to permit state prosecutions to bar federal prosecutions based on the same facts would hinder federal law enforcement. Abbate v. United States, 359 U.S. 187 (1959). It is, however, extremely rare for one to be tried in both state and federal courts for the same offense.

Federal courts also have jurisdiction over certain criminal appeals when state as well as federal prisoners challenge their convictions on U.S. constitutional grounds. These appeals are generally referred to as habeas corpus appeals.

## Selected Amendments to the U.S. Constitution

### First. Freedom of Religion, of Speech and of the Press.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

### Fourth. Searches and Seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Fifth. Rights of Accused in Criminal Proceedings; Due Process; Eminent Domain.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Sixth. Right to Speedy Trial, Witnesses, etc..

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### Eighth. Bails, Fines and Punishments.

Excessive bails shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

### Fourteenth. Citizenship rights not to be abridged by states.

All persons born or naturalized in the United States, and subject to the

jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce and law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## Selected Sections of Article 1 of the South Carolina Constitution

### Article 1. Declaration of Rights

#### Sec. 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.

#### Sec. 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this state and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law,, nor shall any person be denied the equal protection of the laws.

#### Sec. 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

#### Sec. 10. Searches and seizures; invasion of privacy.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasion of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

#### Sec. 11. Presentment or Indictment.

No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The General Assembly may provide for the waiver of an indictment by the accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the

county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide.

Sec.12. Double jeopardy; self-incrimination.

No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself.

Sec.14. Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

Sec.15. Right of bail; excessive bail; cruel or unusual or corporal punishment; detention of witnesses.

All persons shall, before conviction, be bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required; nor shall excessive fines be imposed; nor shall cruel, nor corporal, nor unusual punishment be inflicted; nor shall witnesses be unreasonably detained.

Sec.18. Suspension of habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it.

## ARREST to INDICTMENT

### Initiating The Arrest

#### Arrest With a Warrant.

The S.C. Supreme Court has characterized an arrest as "an actual or constructive seizure or detention of the person, performed with the intention to effect an arrest and so understood by the person detained. It is not necessary that there be an application of actual force, or manual touching of the body, or physical restraint which may be visible to the eye, or a formal declaration of arrest; it is sufficient if the person arrested understands that he is in the power of the one arresting and submits in consequence." McCracken v. Ansley, 35 S.C.L. (4 Strob.) 1,5 (1849).

A warrant legally and duly issues authorizes a law enforcement officer to arrest the individual named therein. The S.C. Constitution, Art.1§10, states that "no warrants shall issue but upon probable cause, supported by oath or affirmation..." An arrest under a warrant not supported by oath or affirmation showing probable cause is illegal, entitling the person arrested to be released. State v. Higgins, 28 S.E. 15,16-17 (1897). However, the Fourth Amendment requirement that arrest warrants be based upon probable cause, supported by oath or affirmation, may be satisfied by indictment returned by a grand jury, but not by mere filing of criminal charges in unsworn information signed by the prosecutor. Kalina v. Fletcher, 118 S.Ct. 502 (1997).

The task of a magistrate when determining whether to issue a warrant is to determine whether the warrant is supported by probable cause. State v. Bonilla, 838 S.E.2d 1 (2019). The term "probable cause" does not import absolute certainty; instead, it merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that an offense has been committed and that the accused committed it. State v. Bowie, 600 S.E.2d 112 (2004). Jones v. City of Columbia, 389 S.E.2d 662,663 (1990) ("Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinary prudent and cautious man, under the circumstances, to believe likewise.").

If a warrant has been issued based on a false affidavit or affirmation, it invalidates the warrant and makes the arrest unconstitutional. Franks v. Delaware, 438 U.S. 154 (1978) (holding the 4th and 14th Amendments gives a defendant the right to challenge the veracity of a warrant affidavit after the warrant was issued and excuted if the defendant could make a preliminary showing that the officer who presented the case to the magistrate judge intentionally or with reckless disregard told false information to the judge.)

A warrant based solely on information provided by a confidential informant must contain information supporting the credibility of the informant and the basis of his knowledge; however, independent verification by law enforcement officers cures any defect. State v. Dill, 816 S.E.2d 557 (2018).

When any person is arrested in a criminal matter pursuant to an arrest warrant, the person so arrested shall be furnished with a copy of such warrant and the affidavit upon which the warrant was issued. Code §22-5-210.

#### Arrest Without a Warrant.

A law enforcement officer is authorized to make a warrantless arrest based upon his knowledge that a valid arrest warrant has been issued against the defendant. State v. Grate, 423 S.E.2d 119 (1992).

Section 17-13-10 of the S.C. Code authorizes any person, including a private citizen, to make a warrantless arrest of a felon or thief under three specified circumstances:

1. Upon view of a felony;
2. Upon view of a larceny; and
3. Upon "certain information" that the other has committed a felony.

In considering what constitutes "certain information" to support a felony arrest under Code §17-13-10(3), the S.C. Supreme Court has held that this statute "was intended to change the existing law" so as to authorize arrest "upon information, although it might not be true, provided it was of such a nature as to convince a reasonable man that the act had been committed from which the law presumed the felony by the person arrested." Burton v. McNeill, 13 S.E.2d 10,13 (1941). The Court explained that the word "certain" in the statute "is used in the sense of trustworthy, capable of being depended upon, credible, positive, or reliable, and has reference to the evidence or information upon which the person making the arrest is allowed to act, and not to the actual fact that a felony has been committed." State v. Nall, 404 S.E.2d 202 (Ct. App. 1999).

#### After Arrest - Disposition of Warrant.

Rule 3, SCRCrim.P states that within 90 days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on the warrant by:

1. preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the grand jury;
2. formally dismissing the warrant, noting on the face of the warrant the action taken; or

3. making other affirmative disposition in writing and filing such action with the Clerk of Court.

However, the Court has held, that because this Rule for the Solicitor to act on a warrant within 90 days is administrative and non-jurisdictional, failure of the solicitor to act on a warrant within 90 days does not within itself invalidate the warrant or prevent subsequent prosecution. State v. Edwards, 649 S.E.2d 112 (2007).

#### **MIRANDA**

Upon arrest by the police, they must advise you of your constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966). They must advise you that:

1. You have the right to remain silent. 2. Anything you say can and will be used against you. You have the right to an attorney, and 4. If you can't afford an attorney, one will be appointed to represent you.

Also, you will be asked "Do you understand these rights?"

Any person arrested has a right to know the grounds on which the arrest is made. Code §17-13-50.

#### **BOOKING**

After arrest, the next step in the criminal justice process involves booking the arrestee. This is the administrative step in which officials enter the person's name, the criminal charge, and other relevant facts at the jail, and it may involve photographing and fingerprinting, depending on the practice of the particular facility, the sophistication of procedures, and the seriousness of the offense. If the arrest was made as a result of a warrant, the person will ordinarily be taken to a municipal or county jail, depending on the jurisdiction in which the arrest was made, and booked immediately. If the arrest was not made as a result of a warrant, the accused will usually be taken to jail and detained or held, but not booked, until after an arrest warrant is issued. If an arrest warrant is not issued, the accused will be released.

#### **BAIL / BOND**

After being booked, the arrestee will thereafter be given a bond/bail hearing. Bail is a contract between the State and the defendant, that on a condition of release pending trial, a defendant agrees to do certain things, such as appear for court, and as a method of guaranteeing the defendant's performance, certain monies or property are deposited with the Court, which may be forfeited to the State on the failure of the defendant to perform.

S.C. Constitution Art.1§15 guarantees the right to bail before conviction

except in capital cases. However, bail can still be denied by the court if the court determines that release on bond will not reasonably assure the defendant's appearance in court for trial or will create an unreasonable danger to the community. If the court determines that either of these risks exists, the court may, in accord with Code §17-15-10, deny bond or:

1. Require the defendant to execute a bond at a specified amount.
2. Place the person in the custody of a designated person or organization.
3. Place restrictions on travel, association, or places of abode.
4. Impose any other conditions deemed reasonably necessary to assure appearance as required.

Bail/Bond is granted either by the magistrate pursuant to Code §22-5-510 where the punishment for the crime is other than death or life imprisonment; or by the Circuit judge pursuant to Code §17-15-10 to individuals charged with any offense triable in the court of General Sessions.

The two most common Bonds granted are Personal Recognizance Bond and Surety Bond.

Personal Recognizance Bond, referred to as a "PR" bond, Code §17-15-10, is granted where the court determines that the defendant would not constitute a risk to the community and the court is reasonably assured of the defendant's appearance in court. The PR bond requires no money or property to be posted with the court. If the defendant fails to appear in court on a felony charge, they will be charged with an additional crime of failing to appear. Code §17-15-90.

Surety Bond, which is the majority bond granted, requires a person or an institution that has sufficient capital to secure a bond. Surety may be a friend, family members, a professional bonding company or an insurance company. However, the surety cannot be an attorney or an immediate member of an attorney's family. The most common is the professional bondsman. They are approved by the Clerk of Court to post a determined amount of bonds based upon their property holdings. They generally charge a non-refundable premium of 10% of the face amount of the bond, and may require that the defendant or his family put up certain collateral, which all or part of may be forfeited to the state if the defendant fails to appear.

Any person authorized or required to give bail may deposit money equal to the amount of the bond. Code §17-15-190. The cash bail may be given to the Clerk of Court. Code §17-15-200. Upon satisfaction of the conditions of the bond, the money may be returned to the person depositing it.

The Court may permit the defendant to deposit 10% of the amount of the bond. Code §17-15-15 and 15-1-270.

A denial of bail is not appealable until sentenced. Pearson v. State, 347 S.E.2d 504 (1986).

#### RIGHT TO COUNSEL

At the bail or bond hearing, the magistrate will advise the accused that he has a right to counsel, and that if he cannot afford an attorney, one will be appointed to represent him. The right to counsel applies both in general sessions and in magistrate court. The accused is guaranteed not only a right to counsel, but also that counsel be effective. And this is required regardless of whether the attorney is provided free by the state or is privately retained by the accused.

The right to counsel, like any other right, can be waived by the accused. This is not a step to be taken lightly. A waiver of the right to counsel is invalid unless the judge personally questions the accused to make sure they understands that they have such a right and the significance of waiving it.

#### THE PRELIMINARY HEARING - RULE 2 SCRCrim.P

Code §17-23-160 provides that a defendant be notified at their bail hearing, of their right to a preliminary hearing. If they fail to state they want a preliminary hearing, there opportunity to have one is considered waived. This must be in writing. The defendant is given a form to request a preliminary hearing, and must return it to court at that time or within ten days after notice.

The preliminary hearing must be held within ten days after it is requested. However, if the defendant is indicted, the preliminary hearing will not be held.

If probable cause is found at the preliminary hearing, the defendant's case is bound over to the grand jury for the next term of court of General Sessions. If no probable cause is found, the defendant is discharged, but discharge is not a final disposition of the case, because the solicitor may still present the case to the grand jury.

A preliminary hearing may also be requested by the attorney by directing a letter to the magisterial court administrator; to the magistrate who issued the warrant; or to the magistrate designated within the county to receive preliminary hearings requests.

A preliminary hearing is conducted in the following manner:

1. Reading of the charge by the magistrate, however this can be waived.
2. No plea entered at the hearing.
3. The State will present its evidence, and the defendant has a right to fully cross-examine the witness.
4. The affiant listed on an arrest warrant or the chief investigating officer for the case must be present to testify at the preliminary hearing. Code §17-23-162.
5. Hearsay testimony is admissible at a preliminary hearing.

Testimony adduced on cross-examination is not admissible in subsequent proceedings, State v. White, 133 S.E.2d 320 (1963), but may be used to impeach the witness at trial. State v. Hicks, 199 S.E.2d 304 (1973).

The defendant is not entitled to offer evidence at the preliminary hearing, but they may make an unsworn statement.

The magistrate may bind the case over, dismiss it, or reduce the charge, or remand the case to magistrate court. For example, grand larceny to petit larceny.

It is not advisable to ever waive a preliminary hearing. A preliminary hearing may open opportunities to negotiate with the solicitor for a reduction of charges, and even for a disposition in the magistrate's court. The hearing may show the weaknesses in the solicitor's case, and a nolle prossed by the solicitor may be granted. A nolle prossed is a solicitor's dismissal of the charge, and he may reactivate the charge at any time, either by re-arrest or by direct presentment to the grand jury.

A preliminary hearing shall not be held if the defendant is already indicted by a grand jury. Rule 2(b), SCRCrim.P.

#### GRAND JURY

The 5th Amendment's requirement of a "presentment of indictment of a grand jury" applies to federal trials only and not to those in state courts. Consequently, each state may decide whether to require an indictment or an information to charge a person with a serious crime. An information is an accusatory document prepared by the prosecution advising the court and the accused of the precise charge.

Art. 1§11 of the S.C. Constitution provides: "No person may be held to answer for any crime...unless on a presentment or indictment of a grand jury of the county where the crime has been committed."

For a serious case to move forward in South Carolina, there must be an indictment. Following the preliminary, if there was one, the records of the

arrest, charge, and findings are forwarded to the office of the court administrator of the state circuit court having jurisdiction in the case. The state is divided into 16 circuits, and each has an elected solicitor. The circuit solicitor presents the facts of the case to the grand jury, which, if it agrees with the solicitor's case, will issue a "true bill" indicting the defendant for the offense charged as being in violation of state statutes or the common law. The indictment must set forth the necessary elements of the crime in plain language so that the accused will know precisely what he must defend against, and so that the court, looking alone at the indictment and the verdict, can impose the sentence prescribed by law.

On those occasions when the grand jury finds the evidence such that the defendant should not be tried, it may return a "no bill", and the charge is effectively dismissed. This rarely happens.

In S.C. the grand jury is composed of 18 members chosen from the voter registration list, 12 of whom must agree in a matter before a true bill can be issued.

Grand jury hearings are usually secret. The defendant does not ordinarily appear, although he may, in special circumstances, with the consent of the grand jury.

The grand jury, in addition to indicting for criminal offenses presented by the solicitor, has broad investigative powers and may call witnesses to give testimony on matters which may not have been presented for that body's consideration by the circuit solicitor.

The state grand jury will be assisted by the attorney general or his designee who shall attend its sessions and serve as its advisor as well as examine witnesses and present evidence to it. A transcript of all witness testimony shall be kept in state grand juries. There is no transcript in county grand juries.

While the state grand jury's authority extends throughout the state, its jurisdiction is limited to certain offenses enumerated in Code §14-7-1630. The state grand jury was created to improve the state's ability to "detect and eliminate" multi-county criminal activity. Code §14-7-1610. Investigations and deliberations of a grand jury are conducted in secret and are, as a rule, legally sealed against divulgence.

The law requires presentment of a grand jury as a condition precedent to the trial of a crime, except in certain minor offenses. State v. Beachum, 342 S.E.2d 597 (1986). A conviction obtained without the presentment of a grand jury will be voided on appeal. State v. Hann, 12 S.E.2d 720 (1940).

Code §17-19-10 holds that no person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury, except in the following cases:

1. when a prosecution by information is expressly authorized by statute;
2. in proceedings before a police court or magistrate; and
3. in proceedings before courts martial.

Challenges to the sufficiency of an indictment must be made before the jury is sworn. Code §17-19-90.

An indictment that cites the applicable general criminal statute is sufficient to fulfill the required notice and jurisdictional functions, where the body of the indictment indicates the particular crime of which the defendant is accused. Carter v. State, 495 S.E.2d 773 (1998). When a defendant timely objects to the sufficiency of the indictment, before the jury is sworn, a ruling that an indictment is not sufficient will result in the quashing of the indictment, unless the defendant waives presentment to the grand jury and pleads guilty.

Non-jurisdictional defects apparent on the face of the indictment must be timely raised as required by Code §17-19-90, or they are waived. Hooks v. State, 577 S.E.2d 211 (2003), overruled on other grounds by State v. Gentry, 610 S.E.2d 494 (2005).

A grand jury may meet at any time ordered by a circuit judge. Code §§14-5-910 to -940 (allowing for terms of court not provided for by law). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet during a term of court as provided for in Code §§14-5-620 to -820. Order No.2011-02-04-01 (S.C. Sup. Ct. Order dated Feb. 4, 2011).

#### AFTER INDICTMENT AND PRIOR TO TRIAL

When an accusatory document is filed, in S.C. the indictment, the accused must be called into the court with jurisdiction to be advised of the charges against him and to give him an opportunity to plead. At this time, he will be advised of his constitutional rights, including the right to counsel. This is usually called the arraignment.

Between the time of indictment and trial, the accused and his attorney will attempt to discover the strength and weakness of the state's case. The extent of discovery allowable varies from state to state. The U.S. Supreme Court has left discovery to the discretion of the states. However, in the case of Brady v. Maryland, 373 U.S. 83 (1963), the court said that if the defendant has requested disclosure of specific evidence, and if that evidence is favorable

to the defendant, his due process rights have been violated if the prosecution refused to disclose it, regardless of the good faith or bad faith of the prosecutor in failing to do so. Discovery in S.C. is allowed in accordance with SCRCrim.P, Rule 5.

The discovery rules are reciprocal. If the defendant requests disclosure under the rule, and the prosecution complies, then the defendant, upon request, must extend the same to the prosecution.

During this phase, an effective attorney will at a minimum will:

- make sure he has all the "rap sheets" (records) of all known witnesses and/or co-defendants.
- make sure he has copies of all statements which have been given to law enforcement and investigators.
- will keep in communication with co-counsel (if any) to learn of progress in the case.
- obtain copies of all incident reports (handwritten and typed) as well as supplemental reports relating to the incident.
- obtain whatever written reports which are available from law enforcement officers, detectives, security personnel, etc..
- obtain copies of all legal documents which are pertinent to the case, such as search warrants, arrest warrants, indictments, chain of custody reports, and court records and have them certified.
- obtain all photographs, sketches, diagrams, and plats of the scene of the offense and have them properly authenticated so a proper foundation can be laid at trial for their admissibility.
- make a final determination as to whether or not to employ the services of psychiatrists, physicians, psychologist, handwriting analysts, pathologists, weapon experts, and laboratory experts. Make sure they have sufficient time in which to complete their studies and issue their reports.
- make sure you have in your possession copies of all transcripts from any proceeding related to the case and insure that they are properly authenticated and ready for admission at trial. For example:
  1. prior trials;
  2. Prior hearings (extradition, preliminary);
  3. Coroner's inquest;
  4. Depositions.

- make sure that he has in his possession copies of all reports that have been issued in connection with the case.
  - make sure he has in your file all medical records, emergency room records, and business records which you intend to use during the trial of the case and insure that you have on stand-by the proper witness to document their authenticity.
  - insure that all background checks on all pertinent witnesses have been completed.
  - insure that he has fully complied with Rule 5 disclosure and so has the state.
  - and personally examine all of the evidence the state intends to offer at the trial of the case so that objections can be prepared in advance of trial.
- Some other things which an attorney should be conscious of are:
- avoiding embarrassing moments at trial where the effect of a document may be diminished by not being readily available.
  - maintain a trial notebook and record ideas, strategy, tactics, charges, closing argument, evidence, and information about witnesses. Reduce to an outline prior to trial.

An effective attorney will organize their file with:

1. voir dire;
2. motions;
3. discovery;
4. research;
5. documents;
6. medical;
7. witnesses; and
8. charges.

Their strategy should be developing from their first interview of their client, and they will review all documents with their clients, including the jury list. The discovery of each item of evidence will in some way alter their strategy. They will visualize the most effective use of the information at trial. They will see how does each item of evidence relate to the whole. They will be prepared for the unexpected. They will continue to plan strategy of the case even as the case is being prepared, and they will solilcit ideas from fellow members of the bar who are competent in defending clients who faced the same or similar charges.