

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 01 2014

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-08-0688

The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

INITIAL BRIEF OF APPELLANT

Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	2
ARGUMENT	
THE CIRCUIT COURT ERRED IN FAILING TO REVERSE THE MAGISTRATES COURT’S ORDER BECAUSE RESPONDENT’S INITIAL DETENTION WAS LAWFUL.....	3
CONCLUSION.....	5
CERTIFICATE OF COUNSEL.....	7

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>City of Camden v. Brassell</u> , 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997).....	4
<u>State v. Boswell</u> , 391 S.C. 592, 707 S.E.2d 265 (2011).....	3, 4
<u>State v. McAteer</u> , 340 S.C. 644, 532 S.E.2d 865 (2000).....	3
<u>State v. Sweat</u> , 379 S.C. 367, 374, 665 S.E.2d 645, 650 (Ct. App. 2008), affirmed as modified on other grounds by <u>State v. Sweat</u> , 386 S.C. 339, 688 S.E.2d 569 (2010).....	4
 <u>STATUTES</u>	
S.C. Code Ann. § 17-13-45 (2003).....	3, 4, 5
 <u>OTHER AUTHORITIES</u>	
1998 WL 61839 at * 2 (S.C.A.G. Op. filed February 17, 1998).....	4
2004 WL 323937 at *2 (S.C.A.G. Op. filed February 04, 2004).....	4
2009 WL 580559 at *4, (S.C.A.G. Op. filed February 26, 2009).....	4

STATEMENT OF THE CASE

On July 29, 2013, Senior Trooper Paul Yacobozzi of the South Carolina Highway Patrol cited Respondent Jennifer Alexander for Driving Under the Influence in violation of S.C. Code § 56-5-2930. Alexander was also ticketed for failure to change her driver's license address, not having proof of insurance on her vehicle, and a seatbelt violation. (Uniform Traffic Tickets G445153-156; Return, p. 1) At Respondent's request, the matter was scheduled for a jury trial and set by the court on Tuesday, February 11, 2014. (Return p. 1)¹ On that date, the parties appeared and argued several pre-trial motions advanced by Respondent. (Return p. 2; Order of Dismissal p. 2) The magistrate took the motions under advisement and subsequently issued an order dismissing the case, finding the Goose Creek police officer who originally detained Respondent was without authority to do so because he was outside the municipality's city limits when he first encountered Respondent, and thus the ensuing arrest by Trooper Yacobozzi was unlawful. (Return p. 5; Order of Dismissal p. 3)

Appellant filed a timely notice of appeal and appealed to the circuit court. (Notice of Appeal and Appeal filed April 2, 2014) On July 28, 2014, the matter was heard before the Hon. Markley Dennis, Jr. (Tr. pp. 1-14) The case was taken under advisement and Judge Dennis issued a Form 4 Order affirming the magistrate's decision on August 26, 2014. (Form 4 Order dated August 26, 2014) Notice of Appeal was timely filed with this Court on September 11, 2014. (Notice of Appeal filed September 11, 2014) This brief followed.

¹ Although the magistrate's Order dismissing the case and Return both state the court convened February 10, 2014, the actual date of the pre-trial hearing was February 11, 2014, as evidenced by the Berkeley County Summary Court Summons dated December 20, 2013 and the Audio Recording of Magistrates Court Proceedings on February 11, 2014 at 10:20:17 a.m. Appellant does not believe the date of the pre-trial hearing is disputed.

STATEMENT OF FACTS

On July 29, 2013, shortly after 11:30 p.m., the Goose Creek Police Department dispatched Officer Chad Hadden in response to a 911 call from a concerned citizen describing an unoccupied vehicle that appeared to be in a ditch with its inside and outside lights on and the doors open. (Audio Recording of Magistrate Court Proceedings on February 11, 2014, at 11:19:26-31; 11:29:48 – 11:30:43; 11:35:38-50) Upon arrival, Hadden found Respondent's vehicle, with its lights on, doors open and engine running, in the front yard of a residence located on U.S. Highway 176.² (Audio Recording at 11:19:36-50; 11:20:28-31; 11:35:38-50) Respondent, who was crawling from the back of the vehicle with her pants down around her ankles, told Officer Hadden she exited the car to urinate. (Audio Recording at 11:19:51 – 11:20:22) She admitted she had been driving the vehicle, (Audio Recording at 11:36:10-16) and Officer Hadden further determined that the car was registered to Respondent and that no one else was at the scene. (Audio Recording at 11:36:18-32; 12:40:57 – 12:41:01) He also observed fresh tire tracks running from the U.S. 176 roadway to where Respondent's vehicle came to rest in the yard. (Audio Recording at 11:36:33-44; 11:38:09-16; 12:39:17-18; 12:41:57-58)

Believing Respondent to be heavily intoxicated, (Audio Recording at 11:20:33 – 11:21:12; 11:31:37 – 11:32:01; 11:36:47-52) Hadden radioed dispatch to confirm his location and was told the residence and yard were actually in Berkeley County, not Goose Creek. (Audio Recording at 11:22:08-12; 11:37:10-31) Mistakenly believing Hadden lacked jurisdiction to make an arrest, Lt. Upchurch, Hadden's supervisor, notified the South Carolina Highway Patrol. (Audio Recording at 11:22:08-12; 11:37:10-

² It is not disputed that the U.S. 176 roadway in front of the residence is in the City of Goose Creek. (Audio Recording at 11:34:17-20; 11:38:16-21; 12:36:06-09; 12:49:48-55)

31) Trooper Yacobozzi was dispatched to the scene and, after discussing the jurisdiction issue without resolution,³ decided to assume responsibility for the investigation since he was already present. (Audio Recording at 12:33:37-45; 12:36:20-37) After speaking with Officer Hadden and Respondent, and administering standardized field sobriety tests to her, Trooper Yacobozzi placed Respondent under arrest for driving under the influence.

ARGUMENT

THE CIRCUIT COURT ERRED IN FAILING TO REVERSE THE
MAGISTRATE COURT'S ORDER BECAUSE RESPONDENT'S
INITIAL DETENTION WAS LAWFUL PURSUANT TO § 17-13-
45 OF THE SOUTH CAROLINA CODE OF LAWS.

The State's appeal is based on the fact that the magistrate judge erred as a matter of law in dismissing this case because the initial detention of Respondent was lawful. At a pre-trial hearing on February 11, 2014, Respondent argued the case should be dismissed pursuant to State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), because the yard where Officer Hadden detained Respondent was outside the City of Goose Creek's jurisdictional limits. The magistrate agreed, citing McAteer and State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011), and found that because Officer Hadden was not within Goose Creek's city limits, he had no police authority to detain Respondent. (Order of Dismissal, p. 3) Although both cases address the issue of police authority to arrest outside of their territorial jurisdiction, neither applies to the case at bar. In McAteer, the issue of jurisdiction was conceded, as all parties agreed the incident occurred outside the police officer's municipal jurisdiction, and the question became one of the authority to

³ Indeed, there was a continuing question at the scene concerning whether Officer Hadden had jurisdiction, and following a discussion with Trooper Yacobozzi, Lt. Upchurch can be heard on the roadside video, which was introduced at the hearing, telling Hadden, "next time this case is yours to work." (Audio Recording at 12:53:44 – 12:54:30)

make a citizen's arrest. Similarly, Boswell is unavailing because the dispute in that case concerned the validity of a multi-jurisdictional agreement between law enforcement agencies. Neither case, however, addresses the issue herein regarding § 17-13-45's extension of law enforcement powers into adjacent jurisdictions.

Section 17-13-45 of the South Carolina Code expands the jurisdiction of a law enforcement officer responding to a distress call or request for assistance in an adjacent jurisdiction. This section reads, in pertinent part: "When a law enforcement officer responds to a distress call or a request for assistance in an adjacent jurisdiction, the authority, rights, privileges, and immunities . . . that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction." S.C. Code Ann. § 17-13-45 (2003). As the statute is facially unambiguous, the only question to be decided is whether it applies to the facts of this case.⁴ See generally State v. Sweat, 379 S.C. 367, 374, 665 S.E.2d 645, 650 (Ct. App. 2008), *affirmed as modified on other grounds by* State v. Sweat, 386 S.C. 339, 688 S.E.2d 569 (2010) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."); City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.

⁴ While no case has interpreted or applied § 17-13-45, multiple opinions from the Attorney General's Office have concluded it operates to expand the territorial jurisdiction of law enforcement into adjacent areas. See, e.g., 2009 WL 580559 at *4 (S.C.A.G. Op. filed February 26, 2009) (stating § 17-13-45 "provides for the response of a law enforcement officer to a distress call or request for assistance in an adjacent jurisdiction" and "serves as a basis for expanded territorial jurisdiction of a law enforcement officer"); 2004 WL 323937 at *2 (S.C.A.G. Op. filed February 04, 2004) (finding that because a law enforcement officer is authorized to respond in an adjacent jurisdiction under § 17-13-45, and "adjacent" is defined as "lying near or close to . . . neighboring," a Barnwell city police officer "would be authorized to go into [Barnwell] county" to answer a call pursuant to the statute); 1998 WL 61839 at * 2 (S.C.A.G. Op. filed February 17, 1998) (declaring that under § 17-13-45, "police jurisdiction extends outside corporate limits . . . to include an adjacent jurisdiction when the officer responds to a distress call or call for assistance").

App. 1997) (“Where the terms of a statute are clear, the court must apply those terms according to their literal meaning.”).

Appellant asserts the following three facts are undisputed: 1) Chad Hadden was a police officer with the City of Goose Creek on July 29, 2013; 2) Officer Hadden was dispatched to investigate following a 911 call from a passerby reporting a possibly wrecked vehicle with its doors open and interior and exterior lights on; and 3) Officer Hadden responded to the front yard of a residence in the adjacent jurisdiction of Berkeley County. Because Goose Creek Police Officer Chad Hadden was responding to a 911 distress call or request for assistance in Berkeley County, a jurisdiction adjacent to the City of Goose Creek, § 17-13-45 operated to enlarge his territorial jurisdiction such that his detention of Respondent was a lawful exercise of the “authority, rights, privileges and immunities” invested in him as a member of the City of Goose Creek Police Department. The magistrate, therefore, erred as a matter of law in finding Officer Hadden lacked the authority to detain the defendant until Trooper Yacobozzi arrived.

CONCLUSION

The State, having asserted its grounds and legal authority in support thereof, hereby asks this Court to reverse the circuit court order and remand the case to the magistrate court for trial, and grant such other relief as the Court deems just and proper under the circumstances.

Catherine Fant

Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P.O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

Blythewood, S. C.
Date: November 26, 2014

In the Court of Appeals

RECEIVED

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

DEC 01 2014

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2014-CP-08-0688

The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief of Appellant complies with Rule 208, SCACR.



Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

Dated: November 26, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 01 2014

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-08-0688

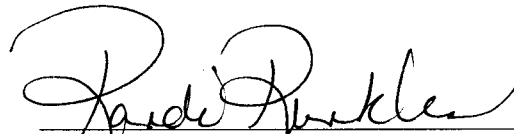
The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

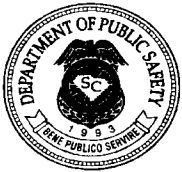
PROOF OF SERVICE

I hereby certify that I have served the Initial Brief of Appellant on the Respondent, Jennifer Lynn Alexander, addressed to her attorney of record, Norbert E. Cummings, Jr., Esq. and Henry Schlein, Esq. at Post office Box 1318, Summerville, South Carolina, 29484-1318, via United States Mail, postage prepaid, on this 26th day of November, 2014.



Randy Runkles
Paralegal

Dated: November 26, 2014



South Carolina Department of Public Safety

OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S.C. 29016

Tel: (803) 896-7965 • Fax: (803) 896-7967

November 26, 2014

RECEIVED

DEC 01 2014

SC Court of Appeals

Ms. Jenny Abbott Kitchings
Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State of South Carolina vs. Jennifer Lynn Alexander
Appeal from Berkeley County C/A 2014-CP-08-0688
The Honorable R. Markley Dennis, Jr
Appellate Case No. 2014-CP-08-0688

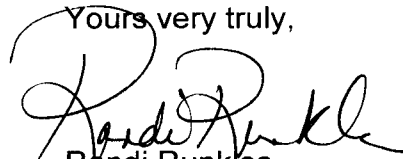
Dear Ms. Kitchings:

Enclosed please find the following items for filing in the above matter:

1. Initial brief and Proof of Service;
2. Designation of Matter, Certificate of Counsel and Proof of Service;

Please clock-in the copies enclosed and return them to me in the envelope provided. Thank you for your attention to this matter.

Yours very truly,


Randi Runkles
Paralegal

/rr

Enclosures

cc: Norbert E. Cummings, Jr., Esq.
Henry Schlein, Esq.

RECEIVED
DEC 9 1 2014
SC Court of Appeals

Abbott Kitchings
Court
of Appeals
11629
SC 29211