

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-46-00272

THE STATE OF SOUTH
CAROLINA,

Appellant,

v.

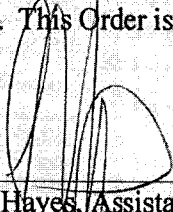
Tami Baker Sisler,

Respondent.

NOTICE OF APPEAL

The State of South Carolina appeals to the Court of Appeals the Order of the Honorable J. Cordell Maddox, Jr., dated February 5, 2015 (filed February 20, 2015). Appellant received written notice of entry of the latter order on February 23, 2015. This Order is enclosed herewith as Exhibit A.

February 24, 2015



Aaron J. Hayes, Assistant Solicitor
16th Judicial Circuit Solicitor's Office
1070 Heckle Boulevard, Suite 207
Rock Hill, South Carolina 29732
Attorney for Appellant

Other Counsel of Record:

Edward L. Phipps, Esquire
James D. Stanko, Esquire
260 W. Coleman Blvd., Ste. A
Mt. Pleasant, South Carolina 29464
Attorneys for Respondent

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MAR 06 2015

SC Court of Appeals

Exhibit A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4600272

South Carolina State Of

Tami Baker Sisler

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

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ORDER

MAR 06 2015

This order ends does not end the case.
Additional Information for the Clerk: _____

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

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FEB 23 2015

BY: *Adam J. Hayes* E.A

S/G. Cordell Maddox, Jr
Circuit Court Judge

2131
Judge Code

2/5/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on **February 20, 2015** , and a copy mailed first class or placed in the appropriate attorney's box on **February 20, 2015** , to attorneys of record or to parties (when appearing pro se) as follows:

Aaron Jameson Hayes 1070 Heckle Boulevard Suite 207
Rock Hill, SC 29732

Edward L. Phipps 260 West Coleman Blvd. Ste. A Mt.
Pleasant, SC 29464
James Douglas Stanko 260 W. Coleman Blvd. Ste. A Mount
Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

David Hamilton

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

State of South Carolina,
Appellant,
v.
Tami Baker Sisler,
Respondent.

CERTIFIED TRUE COPY

2015 FEB 20 PM 11:53

DAVID HAMILTON
CLERK OF COURT

YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-46-00272

Former Ticket Nos. 69327GM, -28GM

ORDER

DAVID HAMILTON
C.C. P. & C.S.
YORK COUNTY, SC

2015 FEB 20 AM 11:53

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SC Court of Appeals

This matter came before the Court on June 3, 2014, on the State's appeal of York County Magistrate Clayburn S. Barnette, Jr.'s order dismissing the above-referenced charges.

PROCEDURAL HISTORY

This case originated in the York County Magistrate's Centralized DUI Court as two charges: DUI 1st (Citation 69237GM) and Child Endangerment (Citation 69328GM). At a pretrial motions hearing on January 15, 2014, the Honorable Judge Barnette dismissed these charges for lack of probable cause. The State filed a Motion to Reconsider on January 16, 2014, which was denied via written order dated January 30, 2014. The State then filed an Appeal of the Magistrate's Order that same day.

FACTS

On August 17, 2013, at approximately 10:24 pm, the Respondent had pulled to the side of Hwy 5 and got stuck in the grass median after becoming lost. Deputy Chris Haire with the York County Sheriff's Office arrived on scene shortly after Respondent got stuck and stopped to help. After making contact, Deputy Haire and an unknown witness pushed Respondent's vehicle to get it unstuck and he provided her with directions on how to reach her stated destination. Deputy

Haire, along with two witnesses, who never mentioned any concern that they thought Respondent was intoxicated, were with her for approximately eight (8) minutes while trying to help her get back onto the road. After making contact with Respondent, Deputy Haire is asked over the radio by another officer if she is intoxicated, to which he responds that she was not. Respondent then performed a three (3) point turn, began driving away, and Deputy Haire followed behind her.

When the Respondent did not take the turn he had informed her she could take, Deputy Haire turned on his marked cruiser's blue lights, causing Respondent to pull over. During this secondary encounter, Deputy Haire requested Deputy Fowler to respond to the scene and investigate Respondent for Driving Under the Influence. After approximately six (6) minutes of investigation, Respondent was arrested for DUI and Child Endangerment.

STANDARD OF REVIEW

“In a criminal appeal from the Magistrate’s Court, the Circuit Court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception.” *State v. Hoyle*, 725 S.E.2d 720, 722 (S.C.App. 2012) The appellate court’s review in criminal cases is limited to correcting the order of the circuit court for errors of law. *State v. Johnson*, 396 S.C. 182, 186 (S.C.App. 2011). Restated, “[a]n appellate court must affirm the court’s ruling if there is *any* evidence to support the ruling.” *State v. Pinchardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct.App. 2005) (emphasis in original).

FINDINGS OF FACT AND CONCLUSION

It is undisputed that traffic stops implicate the “seizure” provisions of the Fourth Amendment, and therefore such stops must not be “unreasonable” under the circumstances.

Whren v. United States, 517 U.S. 806, 809-10 (1996). Additionally, an officer may only pull a vehicle over when he has probable cause to believe that a traffic violation has occurred or has reasonable suspicion to believe that any of the vehicle's occupants are involved in criminal activity. *State v. Burgess*, 394 S.C. 407, 412.

The stop of a motor vehicle must be justified by probable cause or reasonable suspicion based upon specific and articulable facts of unlawful conduct. "To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion 'would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.'" *Delaware v. Prouse*, 440 U.S. 648, 661 (citing *Terry v. Ohio*, 392 U.S. 1, 22).

The State initially had taken two positions regarding the traffic stop by Deputy Haire: *First*, that the second contact by Deputy Haire with Respondent was a lawful traffic stop. *Second*, if it was not a lawful traffic stop, then it was still lawful because the Deputy was merely performing a safety check. At the motion hearing that is the subject of this appeal, Deputy Haire testified that his second contact with the Respondent was not a traffic stop and denied even turning on his blue lights prior to her pulling over. His justification for the encounter was that he was conducting a safety check of the Respondent due to her pulling over on her own. (*Sisler Tr.* at pg. 36, line 11-25).

Deputy Haire testified several times that he did not initiate a traffic stop. The instances wherein he insisted he did not intend to stop the Respondent are exhaustive, and evidenced as follows:

- "I wasn't initiating a traffic stop for any other purpose than to, 'Lady, you're going the wrong way.'" (*Sisler Tr.* at pg. 36, line 8-10);

- "... the blue lights were not initiated to stop her on a traffic offense" (*Sisler Tr.* at pg. 37, line 4-5);
- "I didn't turn the blue lights on to pull her over" (*Id.* at line 10);
- Question from counsel for Sisler (hereinafter "Phipps"): "And so you're saying you didn't turn on your blue lights until after she pulled over?" Deputy Haire responded, "If I had stopped her, that would be my reason for the stop: because I didn't want her to get lost again," (*Id.* at line 17-19);
- Question from Phipps: "There is no statute for missing a turn?" Deputy Haire responded, "I just had to get her stopped, or had to get her basically reminding her to turn" (*Sisler Tr.* at pg. 40, line 14-15); "I was trying to get her back towards Rock Hill" (*Id.* at line 22).

Once the video was published during the motion hearing and Deputy Haire had the opportunity to re-view it, he changed his testimony and admitted to turning on his blue lights, evidenced as follows:

- "...I did blink it for the turn. I thought I was blinking my headlights. What I did, I blinked blue lights trying to get her to turn. She missed the turn." (*Sisler Tr.* at pg. 54, line 23-25 through pg. 55, line 1);

After Deputy Haire changed his testimony to admit that he did turn on his blue lights prior to Respondent pulling over, he continued to deny that it was a traffic stop, which was evidenced as follows:

- "I never initiated a traffic stop. I'll stick with that" (*Sisler Tr.* at pg. 56, line 7); and
- "You can turn it around all you want. I didn't initiate a traffic stop. I just blinked the lights to, 'Hey woman, don't miss your turn'" (*Sisler Tr.* at pg 57, line 9-11).

Per S.C. Code Ann. § 56-5-750, a driver is required to stop when signaled via either siren or flashing light by a law enforcement vehicle. At the motion hearing, Respondent testified that she observed blue lights behind her and immediately pulled her vehicle to the side of the road as

she was legally obligated to do. (*Sisler Tr.* at pg. 72, line 12-20). Deputy Haire admitted to the legal requirement to pull over when blue lights are observed. (*Sisler Tr.* at pg. 38, line 19).

Deputy Haire testifies over and over that he did not stop her, that it was not a traffic stop, and that the only reason he would have stopped the Respondent is because she missed her turn. Missing a turn is not a violation of any statute in the State of South Carolina, and it does not provide reasonable suspicion or probable cause to justify stopping the Respondent, as confirmed by both Deputies. Police are not authorized to use their blue lights to stop someone for merely missing their turn, and anything gained from that unlawful stop is inadmissible as a matter of law.


The State's "new" position now is that Respondent committed some violation prior to the activation of Deputy Haire's blue lights – a violation that was discovered and remotely testified to only after seeing it on the published video during the hearing. Even after seeing that on the video, it was not conclusive and Deputy Haire continued to deny that it was the reason he "pulled" her. Assistant Solicitor Hayes asked Deputy Haire if he had noticed the Respondent driving left of center prior to flashing his blue lights, to which Haire responded, "Yeah, I mean, I had seen that during the driving part of it. But, I mean, I'm not going to argue that that's why I pulled her. I blinked my lights for the turn. I didn't pull her over on a traffic stop." (*Sisler Tr.* at pg. 70, line 9-12).


The State cannot create new reasoning to justify a traffic stop when said reasoning did not exist at the time of the stop. The State has continued to go back and forth, changing their position/reasoning in this case to try to justify the unlawful stop. There are/were no specific and/or articulable facts of unlawful conduct.

Based on the above findings of fact and conclusions of law, it is therefore:

ORDERED, ADJUDGED, and DECREED that York County Magistrate Clyburn S. Barnette, Jr.'s order is hereby **AFFIRMED** and that the charges of DUI 1st and Child Endangerment against Tami Baker Sisler are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.


_____, South Carolina
November ____, 2014
Tami Baker Sisler 5



J. Cordell Maddox, Jr.
Circuit Court Judge

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APPEAL FROM YORK COUNTY
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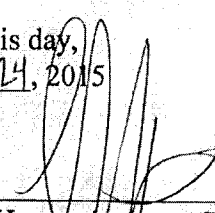
Tami Baker Sisler,

Respondent.

PROOF OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal in the above-referenced matter upon Edward L. Phipps, Esquire and James D. Stanko, Esquire, as counsel of record for Respondent, by depositing a copy of same in the United States Mail, addressed to their office at 260 W. Coleman Blvd., Ste. A, Mt. Pleasant, South Carolina 29464, in accordance with the provisions of Rule 262(b) of the South Carolina Appellate Court Rules.

Served this day,
February 24, 2015



Aaron J. Hayes, Assistant Solicitor
16th Judicial Circuit Solicitor's Office
1070 Heckle Boulevard, Suite 207
Rock Hill, South Carolina 29732
Attorney for Appellant

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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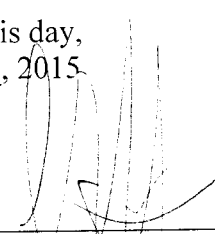
Tami Baker Sisler,

Respondent.

PROOF OF ADDITIONAL SERVICE

I hereby certify that I have served another copy of the foregoing Notice of Appeal in the above-referenced matter upon Edward L. Phipps, Esquire and James D. Stanko, Esquire, as counsel of record for Respondent, by depositing a copy of same in the United States Mail, addressed to their office at 260 W. Coleman Blvd., Ste. A, Mt. Pleasant, South Carolina 29464, in accordance with the provisions of Rule 262(b) of the South Carolina Appellate Court Rules.

Served this day,
March 4, 2015.



Aaron J. Hayes, Assistant Solicitor
16th Judicial Circuit Solicitor's Office
1070 Heckle Boulevard, Suite 207
Rock Hill, South Carolina 29732
Attorney for Appellant

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SC Court of Appeals



KEVIN S. BRACKETT
SOLICITOR

February 24, 2015

VIA FIRST CLASS MAIL

Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

VIA INTER-DEPARTMENTAL DELIVERY

Hon. David Hamilton, Clerk of Court
York County Court of Common Pleas
300 W. Liberty Street
York, South Carolina 29745

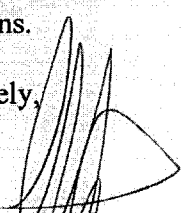
Re: *State v. Tami Baker Sisler*, Case No. 2014-CP-46-00272

Dear Ms. Kitchings and Mr. Hamilton:

Please find enclosed an original of the Notice of Appeal and Proof of Service in the above-referenced matter. Please file these items in accordance with your normal procedures.

Since this Appeal is being pursued by the State of South Carolina, I am informed that no filing fee is necessary. As always, please do not hesitate to contact me at (803) 909-7582, should you have any questions or concerns.

Sincerely,


Aaron J. Hayes
Assistant Solicitor

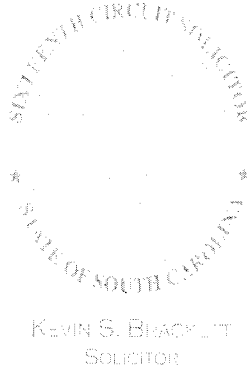
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MAR 06 2015

enclosures as stated

cc: Edward L. Phipps, Esquire (*via US Mail*)
James D. Stanko, Esquire (*via US Mail*)
Salley W. Elliot, Senior Assistant Deputy Attorney General (*via email*)

SC Court of Appeals



March 4, 2015

VIA FIRST CLASS MAIL

Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: *State v. Tami Baker Sisler*, Case No. 2014-CP-46-00272

Dear Ms. Kitchings:

After conversation with your office, and out of an abundance of caution, please find enclosed another copy of the Notice of Appeal I mailed for service/filing on February 24, 2015. Also enclosed is a Proof of Additional Service, which indicates that today I have mailed another copy to Respondent Sisler.

Please have someone from your office call me at the number listed below, to confirm receipt. Thank you for your assistance and please do not hesitate to let me know if you have any questions.

Sincerely,

Aaron J. Hayes
Assistant Solicitor
(803) 909-7582

enclosures as stated

cc: Edward L. Phipps, Esquire (*via US Mail*)
James D. Stanko, Esquire (*via US Mail*)

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MAR 06 2015

SC Court of Appeals

Sixteenth Circuit Solicitor's Office
DUI Unit
1070 Heckle Boulevard, Suite 207
Rock Hill, SC 29732

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MAR 06 2015

Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

SC Court of Appeals

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