

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS
Rock Hill City Of

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015SCP4601587

RECEIVED

Anthony Michael
Ketchum

AUG 11 2015

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; 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

ORDER

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

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)
n/a	n/a	n/a

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.

s/ Daniel D. Hall

Circuit Court Judge

2753

Judge Code

7/16/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on July 16, 2015, and a copy mailed first class or placed in the appropriate attorney's box on July 16, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Edward Barton
201 East Main Street 3Rd Floor
Rock Hill, SC 29730

Leland B. Greeley
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

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)

City of Rock Hill,)

Respondent,)

v.)

Anthony Michael Ketchum,)

Appellant.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No. 2015-CP-46-1587

ORDER

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

FILED-RECEIVED
2015 JUL 16 8 29 AM '15

This matter comes before the undersigned in the York County Court of Common Pleas on July 6, 2015. Appearing for the Respondent was Christopher E. Barton, Esquire. Leland B. Greeley, Esquire, appeared for the Appellant. Appellant was arrested and charged with DUI First Offense on November 4, 2014. Appellant filed a pre-trial Motion to Suppress in Rock Hill Municipal Court, which was denied. Appellant was subsequently found guilty of DUI on May 14, 2015. Appellant now appeals the denial of the pre-trial Motion to Suppress.

Facts

On November 4, 2014 at or around 2 a.m., Officer Maury of the Rock Hill Police Department was on routine patrol sitting stationary facing the intersection of Cherry Road and Charlotte Avenue in Rock Hill, South Carolina. The officer knew it was closing time for the Pub House, a bar in Rock Hill that serves alcohol. The officer saw the Appellant leave the bar. He crossed over Cherry Road and stated he witnessed the Appellant swerving back and forth in his lane on Charlotte Avenue. After closing some distance between he and the Appellant, The officer states that he witnessed the Appellant swerve into the bike lane located within the

Appellant's lane. He then activated his blue lights and performed a vehicle stop on the Appellant, shortly after passing Wilson Street on Charlotte Avenue. The officer then conducted three field sobriety tests on the Appellant and subsequently arrested him for DUI. The Appellant then registered 0.14% Blood Alcohol Content on the breathalyzer.

In a pretrial motion on May 14, 2015 held by the municipal judge, testimony was taken from Officer Maury. The officer testified that he saw the Appellant leave and began to follow him. The officer then testified that he did not specifically target the defendant "at the beginning." He saw the Appellant leave the bar, and began to follow him. However, the officer stated he was "not in hot pursuit," "not answering a call," and "saw no traffic violation at that time." Then after following the Appellant for a short while, the officer testified that he saw the Appellant's vehicle visibly swerving in its lane, but was too far away to tell if the Appellant was crossing the line. He closed the gap between his patrol car and the Appellant's vehicle, and testified that he saw the Appellant cross the white line into the bike lane. He then pulled the defendant over.

After reviewing the patrol vehicle video recording of the stop, the Municipal Court found that the officer had reasonable suspicion for the stop based on the following: the Appellant left the bar at 2:00 a.m., the officer observed the Defendant's vehicle weaving back and forth in its own lane and observed the Appellant weave over the white line into the bike lane. For all of these reasons, the Municipal Court found that the officer had reasonable suspicion the believe the crime of Driving Under the Influence was being committed.

Law

This appeal is based on the following ground:

The Trial Court erred in not granting the Appellant's Motion to Suppress any and all evidence presented by the City of Rock Hill, which had been accumulated by law

enforcement following the stop of the Appellant. The stop initiated by law enforcement was not supported by reasonable suspicion under the totality of the circumstances test and thus the evidence should have been suppressed due to an illegal stop.

The Fourth Amendment to the Constitution of the United States grants citizens the right to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; see also S.C. Const. art. I, §10. A traffic stop constitutes a Fourth Amendment seizure; thus, the traffic stop must be reasonable under the circumstances. State v. Rogers, 368 S.C. 529, 533, 629 S.C. 2d 679, 681 (Ct. App. 2006); see also State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing Whren v. U.S., 517 U.S. 806, 810, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996)). "Reasonableness is measured in objective terms by examining the totality of the circumstances." Pichardo, 367 S.C. at 101, 623 S.E. 2d at 849. A traffic stop is not unreasonable if conducted with probable cause to believe a traffic violation has occurred, or when the officer has a reasonable suspicion the occupants are involved in criminal activity. State v. Burgess, 394 S.C. 407, 412, 714 S.E. 2d 917, 919 (Ct. App. 2011); see also Whren, 517 U.S. at 810 ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that the traffic violation has occurred."). Moreover, a police officer's "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." State v. Corley, 383 S.C. 232, 241, 679 S.E.2d 187, 192 (Ct. App. 2009) (Internal quotation marks omitted).

In denying the Appellant's motion to dismiss, the municipal court found the officer had reasonable suspicion to believe that the Appellant violated § 56-5-3425 of the South Carolina Code of Laws. Section 56-5-3425 states, in pertinent part:

[HN B] Whenever a bicycle lane has been provided adjacent to a roadway, operators of: [1] motor vehicles may not block the bicycle lane to oncoming bicycle traffic and shall yield to a bicyclist in the bicycle lane before entering or crossing the lane.

Section 56-5-3425 (1) prohibits motor vehicles from blocking bicycle lanes if there is bicycle traffic using the lane and (2) requires motor vehicles to yield bicycle traffic using the lane before entering or crossing the bicycle lane. The plain language of the statute does not prohibit vehicles from driving in bicycle lanes when no bicycles are using the lane—it merely requires motorists to yield to bicycles using the lane and prohibits parked vehicles from blocking the lanes.

The Respondent relies on State v. Vinson, in which a South Carolina Highway patrolman observed Vinson drift between the double yellow lines in clear violation of § 56-5-1900 of the South Carolina Code. State v. Vinson, 400 S.C. 347, 734 S.E.2d 182 (Ct. App. 2012). This statute requires that motor vehicles must be operated within a single lane except when impracticable. Id. at 353, 185. The trooper initiated a traffic stop and Defendant Vinson was later arrested for DUI. The court held the act of Vinson's tire crossing the yellow line is in and of itself a violation of a statute; therefore, the Trooper had requisite reasonable suspicion for the stop. Id. As a result, the Supreme Court affirmed the trial court's denial of Vinson's motion to dismiss, holding the traffic stop resulting from the perceived violation of § 56-5-1900 was justified and not unreasonable. Id.

Analysis

Here, the municipal court held that the officer "saw the defendant weave over the white line into the bike lane." The evidence offered by the officer at the beginning of his pursuit was that he "saw no traffic violation at that time," and not until the officer "closed the gap" with the Appellant did the officer see the Appellant's vehicle cross into the bicycle lane. Pursuant to § 56-5-3425, entering a motor vehicle in a marked bicycle lane is only prohibited if bicycles are using the lane. So only if the officer perceived the Appellant failing to yield to a bicyclist using the bicycle lane would the officer have reasonable suspicion that a crime was being committed.

A review of the officer's patrol car video indicates that there was no evidence of the defendant swerving into the bicycle lane prior to the stop. When the officer first observed the vehicle, he states that he "saw no traffic violation at the time." But once he turned on his in-car video, the officer saw the Appellant "cross the white line into the bike lane." This is not evidenced in the video of the officer's pursuit and stop. When the video begins the Appellant was lawfully maintaining his position in the right hand side of the roadway. It is clear that this section of Charlotte Avenue has no bicycle lane. After several seconds of pursuit, the bicycle lane begins, and the Appellant shifts his position from the center of the right lane to accommodate the bicycle lane. At no point during the video did the Appellant "swerve" into the bicycle lane. Even if § 56-5-3425 prohibited a motor vehicle from entering in a marked bicycle lane at any time, the video failed to indicate that the Appellant did so. Therefore, Officer Maury did not have probable cause from witnessing the Appellant commit a traffic violation.

In Burgess, a traffic stop is not unreasonable if conducted with probable cause to believe a traffic violation has occurred, *or* when the officer has a reasonable suspicion the occupants are involved in criminal activity. State v. Burgess, 394 S.C. at 412, 714 S.E. 2d at 919. Officer Maury testified that he witnessed the Appellant swerve into the bicycle lane. However, under the statute, this does not constitute a traffic offense. It is constitutional under Burgess, however, for an officer to stop a suspect if he reasonably believes that criminal activity is taking place. The municipal court found that, "weaving . . . at 2:00 a.m., after leaving a bar . . . gives the officer reasonable suspicion to believe that a crime is being committed." This court does not agree. The video of the events leading up to the stop clearly show the Appellant driving in a reasonable manner, i.e., in his lane. The time the person leaves a bar, absent some other reasonable evidence of impairment, does not substantiate probable cause that a crime, such as

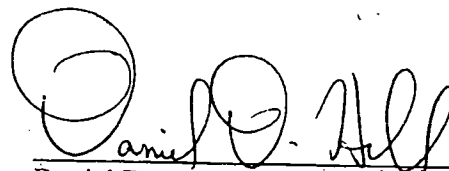
driving under the influence, is being committed. Therefore, Officer Maury observed neither a traffic violation occurring, nor criminal activity occurring.

Despite the Respondent's argument, the issue in this case is outside the scope of Vinson, in which a trooper observed the defendant violate a traffic statute thereby giving the officer probable cause for a stop. This case concerns whether the arresting officer actually perceived acts that gave rise to probable cause or reasonable suspicion to justify a stopping the Appellant, and not whether circumstantial evidence can be used to establish the "corpus delicti" of DUI.

Conclusion

For the above stated reasons, the Court hereby grants the Appellant's motion to dismiss and vacates the municipal court's conviction DUI First Offense on the basis that under the totality of the circumstances, there is (1) no evidence to support probable cause that a traffic violation has occurred, and (2) no reasonable suspicion that the occupants were involved in criminal activity. The Appellant's motion is hereby GRANTED and the municipal court's judgment is VACATED.

IT IS SO ORDERED.



Daniel D. Hall
Sixteenth Judicial Circuit

July 10, 2015
York, South Carolina