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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case Tracking No. 2013-002307

The State,

Scott Eugene Williams,

vs.

Appellant,

Respondent.

RECORD ON APPEAL

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ATTORNEYS FOR APPELLANT

G. DAVID SEAY, JR., ESQUIRE

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ATTORNEY FOR RESPONDENT

RECEIVED

JAN 30 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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ATTORNEY FOR RESPONDENT

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The State of South Carolina
In the Court of Common Pleas

Appeal from Greenville County
Cleveland Township Magistrate

Jesse A. McCall, Jr.

Case No.

Uniform Traffic Citation F062451

2013-CP-23-2731

State of South Carolina

Appellant,

v.

Scott Williams

Respondent

FILED
CLERK OF COURT
SCOTT WILLIAMS
MAY 29 AM 8:59

Magistrate's Return

On March 14, 2013 State vs. Scott Williams was scheduled for trial. Prior to swearing in the jury the Defense Attorney David Seay moved to require the State to show the constitutionality of the Highway Patrol Drivers' License check point which was allegedly involved in this case. The State called Trooper David Robertson who was duly sworn and testified that the check point was established at Hwy 183 and White Horse Road at the bottom of a hill on Hwy 183. The State proffered a checkpoint summary, DUI citation reports, and other documents to support reasonable grounds for the location of the check point. Officer Robertson had not been at the checkpoint at the beginning but was ordered to go to the checkpoint while it was in progress. It was obvious that while Trooper Robertson could identify the documents, he could not attest to their consideration for the decision to establish the location of the checkpoint. The Defense council objected to the documents being admitted and the objection was taken under advisement. Two other officers were on the scene before Trooper Robertson arrived. The defendant did not go through the checkpoint but made a U-turn on the hill above the check point. Trooper Robertson called his supervisor, told him of the maneuver and the supervisor advised Robertson to stop the vehicle. Apparently there were no signs of impaired driving. The officer saw the vehicle parked in a parking lot at the top of the hill and upon approaching the driver's side of the vehicle and speaking to the driver Trooper Robertson detected an odor of alcohol. The officer testified that he had only been at the checkpoint approximately 30 minutes and could only guess how long the checkpoint had been in place and did not know how long it remained in place after he left or if other officers arrived. There was no direct testimony as to how many vehicles went through the checkpoint or how long they were detained and the officer's guess did not take into account the time spent waiting in line. The officer was not involved in any decision about where to place the checkpoint and did not know if the documents that the State was

attempting to introduce were considered by his superior. He also had no part in compiling the data for the documents. A review of the documents revealed that they contained data for March 2011 including the date the checkpoint was conducted and couldn't have been considered in the decision of where to place the checkpoint. None of the documents were specific as to where other stops had been made on Hwy 183 or if any of them were made at this intersection. The State's attorney argued that if the constitutionality of the check point is not allowed, this defendant did not go through the checkpoint, and offered alternative grounds for stopping the defendant. Code section 56-5-140 was cited for prohibiting a U-turn within 500 feet of the crest of a hill. I permitted the officer to be recalled to the stand to address the State's attempt to show the U-turn was unlawful. The officer stated he believed that the U-turn was made within 200 feet of the crest of the hill. Upon cross examination he revealed that no measurement was ever taken but he was "guesstimating" where the crest was from his view at the bottom of a hill. The court took judicial notice that it is not possible to see the crest of a hill from the bottom of the hill. An apparent horizon is created where the slope of the hill begins to diminish as it approaches the crest¹. The officer also testified that the defendant had turned through a center turn lane which would have allowed the safe passage of another vehicle approaching from either direction. The court found insufficient foundation for the data which, even if the State had called other witnesses, the documents would not have established a proper foundation for the location of the checkpoint. The court also found insufficient evidence of probable cause for a stop of the defendant's vehicle since there was no credible evidence that the turn was made within 500 feet of the crest of the hill nor was there any evidence of impaired driving. Finding that the stop of this defendant was without probable cause and that the State had presented no admissible evidence concerning the constitutionality of the checkpoint, the case was dismissed.

¹ This conscientious officer stopped by a week later to let me know that he has since measured the distance and that it was over 1,000 feet!

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE CLEVELAND TOWNSHIP
MAGISTRATE COURT

TICKET NO.(s) F062451

State of South Carolina

-VS-

ORDER

Scott Eugene Williams,
Defendant

On April 10, 2013 a hearing was held on the State's motion for reconsideration and a new trial in the above captioned case. After due consideration of the arguments made by both counsel for the State and for the Defendant, and notwithstanding the holding of the case of *State vs. Ramsey*, 381 S.C.375, 673 S.E.2d 428 (2009). This court finds that the fundamental flaws in the State's case can not be corrected upon retrial. Therefore, on grounds of judicial economy, the State's motion is respectfully denied.

AND IT IS SO ORDERED this 17th day of April 2013.

Judge Jesse A. McCall, Jr.

ORDER INFORMATION

4

Before the Court is the State of South Carolina's Appeal from the magistrate court's dismissal of the case of *South Carolina v. Scott Eugene Williams*. Appearing for the State was Assistant Solicitor Mitchell Byrd; appearing for the Defendant was G. David Seay. The Court has carefully reviewed the erudite arguments of counsel, the briefs of the parties, the transcript from the trial and proceedings before the magistrate, the magistrate's return and orders, and the relevant statutes and case law.

"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. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011). The circuit court 'may either confirm the sentence appealed from, reverse or modify it, or grant a new trial.' S.C. Code Ann. § 18-3-70." *State v. Hoyle*, 397 S.C. 622, 625, 725 S.E.2d 720, 721-22 (Ct. App. 2012).

The Defendant was charged with DUI. The magistrate dismissed the State's case against the Defendant, finding the State failed to provide evidence to support the constitutionality of the checkpoint and failed to articulate probable cause for the stop. The Appellant, State of South Carolina, has raised two issues before this Court: (1) whether the State had a pre-trial burden to prove the constitutionality of its checkpoint, and (2) whether the State had a pre-trial burden to show probable cause for the Defendant's arrest.

Regarding the validity of the checkpoint, the magistrate reviewed the testimony and evidence presented by the State and concluded the State had not established a proper foundation. *See Magistrate's Return*, p. 2 ("The court found insufficient foundation for the data which, even if the State had called other witnesses, the documents would not have established a proper foundation for the location of the checkpoint."). This Court finds no error.

The State also contends the magistrate improperly used the probable cause standard rather than reasonable suspicion regarding the Defendant's stop and arrest. The State's argument, however, fails because even if reasonable suspicion applies, the State cannot meet its burden since the reasonable suspicion is premised in the validity of the checkpoint, which the magistrate correctly determined was without proper foundation. The State was unable to prove the u-turn by the Defendant was illegal, but instead only that it appeared to be an evasive maneuver as a result of the checkpoint. The Defendant contends the State failed to preserve this issue, which argument has merit. However, assuming the issue is preserved, this Court nevertheless finds no error. This Court further notes that when ruling on the State's motion for reconsideration, the magistrate judge properly considered *State v. Ramsey*, 381 S.C. 375, 673 S.E.2d 428 (2009). *See Magistrate's Order*, April 17, 2013. Having fully reviewed the record and carefully considered the arguments of counsel, the Court denies the State's Appeal.

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)

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.**

[Signature]
Circuit Court Judge

2137

Judge Code

Date

8/9/13

For Clerk of Court Office Use Only

This judgment was entered on *4-15-13*, and a copy mailed first class or placed in the appropriate attorney's box on *8-15-13*, to attorneys of record or to parties (when appearing pro se) as follows:

Stanford Lee Overby Jr. 305 E. North Street, Suite 325
Greenville, SC 29601

G. David Seay Jr. PO Box 8699 Greenville, SC 29604

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter

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 GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED CLERK OF COURT
JAN 15 2014
GREENVILLE, SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2302731

South Carolina State Of

773 00 15 2014

Scott Eugene Williams

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), 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

Before the Court is the State of South Carolina's Motion to Reconsider. This Court entered its Order on August 9, 2013, denying the State's Appeal of a magistrate's order of dismissal. The Court has reviewed the Appellant's Motion, the previous order, and the relevant rules of procedure. Accordingly, the Appellant's Motion to Reconsider is respectfully **DENIED**.

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. 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.

[Handwritten Signature]

Circuit Court Judge

2137

Judge Code

9/24/2013

Date

For Clerk of Court Office Use Only

9/25/13

9/25/13

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

Stanford Lee Overby Jr. 305 E. North Street, Suite 325
Greenville, SC 29601

Mitchell K. Byrd Sr. 216 Pimlico Road Greenville, SC
29607

G. David Seay Jr. PO Box 8699 Greenville, SC 29604

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - 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 GREENVILLE

IN THE MAGISTRATE'S COURT
THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina

v.

Ticket No.: F062451

Scott Eugene Williams

MOTION FOR RECONSIDERATION
OF JUDGMENT AND FOR A NEW TRIAL

TO THE DEFENDANT AND HIS COUNSEL DAVID SEAY, JR., ESQ.

PLEASE TAKE NOTICE that the undersigned, on behalf of the State of South Carolina, hereby moves the Court for reconsideration of its ruling of March 14, 2013 and for a new trial pursuant to Rule 19, SCRMC upon the following grounds, to wit:

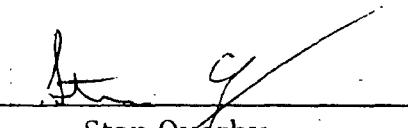
1. The Court erred in ruling prior to trial that the State carried the burden of proof to establish the constitutionality of the checkpoint in a pre-trial hearing.
2. The Court erred in ruling pre-trial that the action should be dismissed or evidence supporting the action should be suppressed because the State failed to present sufficient evidence to satisfy the three-prong test established in Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d. 357 (1979).
3. The Court erred in ruling pre-trial that the State's proffer of Trooper Robertson's testimony and of a "DUI Citation Report for March 1, 2013 to March 31, 2013" was insufficient to establish the purpose of the checkpoint location.
4. The Court erred in ruling pre-trial that the testimony of a supervisor from the South Carolina Highway Patrol or an individual with knowledge of the decision for setting up the checkpoint was required to testify pre-trial to establish the foundation for the "DUI Citation Report".

5. The Court erred in ruling pre-trial that the State was required to present any evidence of empirical data relating to the "effectiveness" of the checkpoint under Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d. 357 (1979).
6. The Court erred in ruling pre-trial that the "SC Vehicle Inspection Report" presented to the Court was insufficient data to meet the "effectiveness" prong of Brown v. Texas, 443 U.S. 47, 99 S. Ct. 2637, 61 L. Ed. 2d. 357 (1979).
7. The Court erred in ruling pre-trial that the action should be dismissed or evidence supporting the action should be suppressed because the State failed to meet its burden to establish a prima facie case of the constitutionality of the checkpoint under State v. Vickery, 399 S.C. 507, 732 S.E.2d 318 (S.C. Ct. App. 2012) and all other relevant authorities.
8. The Court erred in ruling pre-trial that the action should be dismissed or evidence supporting the action should be suppressed because the State was not required to establish the constitutionality of a driver's license checkpoint where the Defendant committed an unlawful U-Turn in the presence of the arresting officer who arrested the Defendant upon probable cause for a violation of S.C. Code § 56-5-2140.
9. The Court erred in ruling pre-trial that the action should be dismissed or evidence supporting the action should be suppressed because the testimony of Trooper Robertson established sufficient probable cause or reasonable suspicion that the Defendant violated S.C. Code § 56-5-2140 to justify his lawful stop, which subsequently led to the Defendant's arrest for driving under the influence.
10. The Court erred in ruling pre-trial that the action should be dismissed before the State had an opportunity to present its case in chief.
11. The Court erred in holding what amounted to a preliminary hearing on the existence of probable cause for the Defendant's stop and for

the subsequent arrest of the Defendant for Driving under the Influence.

12. The Court erred in ruling at the preliminary hearing that the State lacked probable cause for the Defendant's stop based on the foregoing and therefore dismissing the action and/or suppressing the evidence in the case before the State had an opportunity to present its case in chief.

March 19, 2013



Stan Overby
Assistant Solicitor
13th Circuit

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE MAGISTRATE'S COURT
THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina

v.

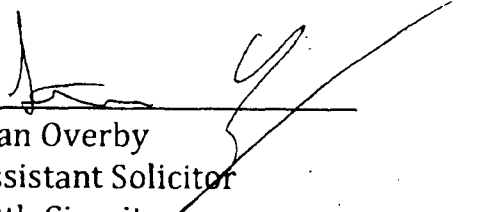
Ticket No.: F062451

Scott Eugene Williams

CERTIFICATE OF SERVICE

The undersigned hereby affirms that he caused the State's Motion for Reconsideration of Judgment and for a New Trial to be served on counsel for defendant by forwarding a copy to counsel for the defendant by facsimile to (864) 235-6027; by email attachment to dseaylaw@bellsouth.net and by regular mail with proper postage attached to the address listed below on March 18, 2013.

David Seay, Jr. LLC
16 Williams Street
Greenville, SC 29601



Stan Overby
Assistant Solicitor
13th Circuit

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

RECEIVED
GREENVILLE COUNTY S.C.
PAUL E. WICKES, CLERK

12
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2013 AUG 28

CASE NO.: 2013-CP-23-02731

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

SCOTT EUGENE WILLIAMS

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Mitchell Byrd, Bar No. 1067

Address:

305 E. North St. Ste. 325 Greenville SC 29601

Phone: 467-8701 Fax 467-8640

E-mail: mbyrd@greenvillecounty.org Other: _____

Defendant's Attorney:

David Seay, Bar No. _____

Address:

Boz 8699 Greenville SC 29601

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Reconsideration of Appeal

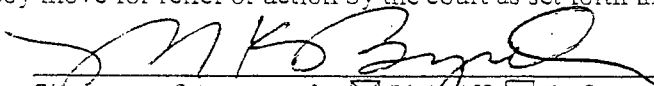
Estimated Time Needed: n/a

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendant

August 28, 2013

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☒ Other: reconsideration of appeal

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE AUG 28 A THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina

Appellant

vs.

CA# 2013-CP-23-02731

Scott Eugene Williams

Defendant

NOTICE OF MOTION AND
MOTION TO RECONSIDER

TO THE DEFENDANT, HIS COUNSEL AND THIS HONORABLE COURT

PLEASE TAKE NOTICE that the undersigned, on behalf of the Appellant, will move and does hereby move the Court to reconsider and vacate its order dated August 9, 2013 affirming the Magistrate's dismissal of the above referenced case. This order was received on August 19, 2013. The grounds for this motion include the following:

1. The State argued before the trial court at the pre-trial hearing that the State did not need to prove the constitutionality of the license checkpoint because the Defendant did not go through the checkpoint but instead evaded it.

Transcript of Hearing March 14, 2013 at page 8 Mr. Overby: "um, therefore, my position, State's position is that we established constitutionality of checkpoint but that even if we have not established the constitutionality of the checkpoint, your Honor, the defendant did not go through the checkpoint, he chose to take a u-turn and pull around the opposite side."

2. The State timely moved the trial court to reconsider its dismissal of the case on the ground that the State failed to prove the constitutionality of the checkpoint.

Motion to Reconsider March 19, 2013

3. At the hearing on the State's motion to reconsider the State argued that dismissal of the case for lack of a constitutional basis for the checkpoint was error.

Transcript of hearing April 10, 2013 pp. 2-3 Mr. Overby : " The State's argument was simply this, uh that the, that in spite of the checkpoint, Mr., Mr. Williams is not seized by the checkpoint, under 4th Amendment, under 4th Amendment analysis." And at page 5. "He never went through it and in order and in order for the defendant to actually be seized by the checkpoint he had to actually been stopped at that checkpoint, he chose to go the other way."

4. The State timely appealed to the Circuit Court arguing that the State had no burden to prove the constitutionality of the license checkpoint when the undisputed facts showed that the Defendant evaded the checkpoint and was not stopped until he pulled into a parking lot and cut off his lights.

Notice of Appeal May 14, 2013.

5. The State had no burden to prove a constitutional basis for the license checkpoint because the Defendant did not proceed through the check point but instead made a u-turn and evaded the checkpoint. U.S. v Smith 396 F3d 579 (4th Cir. 2005),

State v Griffin Op. No. 451PA12 (NC 2013)

6. The issue of whether or not the State had any burden to prove the constitutionality of the checkpoint was raised to and ruled upon by the trial court and was properly preserved for appellate review by the Circuit Court.
7. The State objected to the trial court's dismissal of the case on the ground that there was no probable cause. Transcript March 14, 2013.

8. The State timely moved the trial court to reconsider its dismissal of the case based upon lack of probable cause. Motion to Reconsider March 19, 2013.

9. The State argued before the trial court at the hearing on the State's motion to reconsider that dismissal for lack of probable cause was improper.

Transcript April 10, 2013.

10. The State timely appealed to the Circuit Court arguing that the State had no pre-trial burden to show probable cause. Notice of Appeal May 14, 2013.

11. The State has no pre-trial burden to prove probable cause. State v Ramsey 321 S.C. 375, 673 SE2d 429 (2009).

12. The issue of whether or not it was proper for the trial court to dismiss this case prior to trial for lack of probable cause was raised to and ruled upon by the trial court and was properly preserved for review by the Circuit Court.

13. The State met any pre-trial or trial burden upon it to show a reasonable articulable suspicion sufficient to warrant pursuit, investigation and seizure of the Defendant.

14. The arresting officer had a reasonable articulable suspicion to stop the defendant based upon the defendant's evasion of the checkpoint at approximately 3 a.m. in the morning.

15. The arresting officer had a reasonable suspicion to stop the defendant based upon the officer's observation of the defendant making what appeared to be an unlawful u-turn on a hill.

16. It is not necessary for the State to prove the defendant guilty of a traffic offense to justify a traffic stop. State v Padgett 354 S.C. 268, 580 SE2d 159 (Ct. App.2003)

17. The arresting officer had a reasonable suspicion to stop the defendant based upon

his observation of the defendant evading the checkpoint, leaving the scene, pulling into the backside of a parking lot and turning off his lights at approximately 3 a.m. in the morning.

18. The State should have been permitted to present all of its evidence to the fact finder to show the totality of the circumstances justifying reasonable suspicion to stop as well as probable cause to arrest. State v Williams 321 S.C. 381, 468 S.E.2d 656 (1996).

19. Under a totality of the circumstances standard of review, the State presented more than sufficient evidence of reasonable suspicion to stop the defendant and investigate further.

20. Evidence an apparent unlawful u-turn to evade a license checkpoint at approximately 3 a.m., leaving the scene and pulling into a parking lot on the backside and turning off headlights, with all reasonable inferences there from viewed in the light most favorable to the State, supports a finding of reasonable suspicion to stop the defendant.

21. The defendant did not move to dismiss on the ground of lack of probable cause to arrest nor did the trial court dismiss based upon such. The trial court dismissed based upon lack of probable cause to stop the defendant because the trial court held there was no sufficient showing of a constitutional basis for the checkpoint.

22. The Circuit Court erred on appeal by failing to rule that it was not necessary for the State to prove the constitutionality of the checkpoint because the defendant evaded the checkpoint.

23. The Circuit Court erred on appeal by holding that the State failed to show

probable cause for arrest as no such ground was urged to the trial court or ruled upon by the trial court. The challenge by the defendant was for lack of probable cause to stop the defendant.

24. The State has a right to present all of its evidence, including the totality of the circumstances justifying a traffic stop and arrest, at trial in summary court.

25. The State preserved all errors committed by the trial court during the initial hearing, in its motion to reconsider and during the hearing on the motion to reconsider.

26. The defendant did not file or serve any written motion specifying the relief sought nor did the defendant specify orally what remedy he was seeking pre-trial. The trial court, sua sponte dismissed the case based upon grounds found by the trial court.

August 27, 2013


Mitchell Byrd
Asst. Solicitor 13th Circuit #1067

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
)
) THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

2013 AUG 28 A 9:13

State of South Carolina)

CA# 2013CP23-02731

Plaintiff,)

vs.)

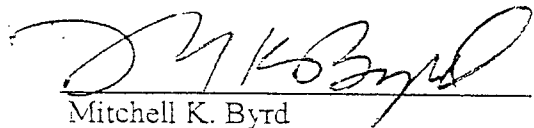
CERTIFICATE OF SERVICE BY MAIL

Scott Eugene Williams)

Defendant.)

The undersigned certifies that he has served upon opposing counsel the State's Motion to Reconsider by depositing same in the United States Mail, to the address listed below, with sufficient postage affixed thereto, this 28th day of August, 2013:

G. David Seay, Jr. Esq.
 Box 8699
 Greenville SC 29604



Mitchell K. Byrd
 Assistant Solicitor, 13th Judicial Circuit
 305 E. North St., Suite 325
 Greenville, SC 29601

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 THE STATE)
)
 VS.)
 Scott Williams,)
)
 DEFENDANT)
 _____)

IN THE MAGISTRATE COURT
 OF THE
 THIRTEENTH JUDICIAL CIRCUIT

Transcript of Hearing
Warrant Number: F062451

Judge: Jesse A. McCall, Jr.
 Assistant Solicitor: Stan Overby
 Defense Attorney: David Seay
 Date of Hearing: March 14, 2013

Time: 0:00

Judge McCall: Today is March 14, 2013.

The next matter before the court is State of South Carolina versus Scott Williams charged with driving under the influence. The uh state is represented by Stan Overby of the Thirteenth Circuit Solicitor's Office the defendant is represented by David Seay of the Greenville County Bar.

And uh Mr. Seay uh I understand you uh have pre-trial motions.

Mr. Seay: Yes, your honor, this stop arose out of a uh law enforcement checkpoint on Cedar Lane Road, highway 183 um and I am asking the state for proper evidence to support that the checkpoint meets constitutional mustar. Um because there are situations in which they are not constitutionally valid

Judge McCall: all right, solicitor

Overby: Very well your honor uh, state calls Trooper Robinson to the stand.

Judge McCall: Come up and be sworn

Bailiff: Do you solemnly swear that the testimony you will give in this case will be the truth the whole truth and nothing but the truth so help you GOD

Trooper Robinson: I do

Bailiff: Have a seat

Overby: Morning Trooper Robinson

Trooper Robinson: Good Morning

Overby: Um, on the incident date, I am going to jump straight to the point. On the incident date in question, where were you operating at that particular time?

Trooper Robinson: In Greenville South Carolina on SC 183, um the only way I can describe it is that at the bottom of the hill where uh old Cedar Lane Road comes out and actually force you around we were at the bottom in there

Overby: And were you...uh.. what were the operations?

Trooper Robinson: Uh we were on a driver's license check point my my supervisor had call several of us over and had asked us to do a check point there

Overby: Ok um we will present this to you

Judge McCall: Mr. Seay, you need to see that?
00:28

Overby: this was provided...

Mr. Seay: yeah I have a copy of that

Judge McCall: Alright

Overby: What is that Trooper Robinson?

Trooper Robinson: Ah, it is a driving vehicle inspection report for South Carolina Highway Patrol uh dated on March 26, 2011

Overby: and what is uh what are the rest of the documents in this what

Trooper Robinson: uh.. DUI citation reports uh.. different types of DUI citation reports, non collision um continues on to offer other information of dates uh days uh and right...

Mr. Seay: your honor, I am gonna dig through the DUI citations reports through this officer

00:35

MUDDLED TALKING BY ALL THREE PARTIES

00:36

Judge McCall: On what

Mr. Seay: sorry?

Judge McCall: On what Basis?

Mr. Seay: on the basis that he testified that he was simply notified to show up to this location to conduct a check point um so I don't believe he has sufficient knowledge to say what those DUI citation reports had to establishing these checkpoints

Judge McCall: Well your motion is specifically on the constitutionality of this checkpoint and uh uh I think the uh records generated to respond to that motion are certainly admissible um if you don't want him to testify about it, I will just have them submitted to the court for review. Now which way would you rather have it?

00:49

Both JUDGE McCALL AND MR. SEAY SPEAK AT SAME TIME

Judge McCall: Explain the statistical reports so, that's my understanding, is that right?

Seay: Yes sir

Overby: Yes your honor

Judge McCall: Alright

Judge McCall: Where's that going? Have to considered one way or the other

Seay: we, well, I ask that further foundation be laid with regard to his knowledge to these reports

Judge McCall: That will be fine.

Overby: Trooper Robinson if you would please read the caption for, would you please flip to page four of the documents that I presented, would you please read the caption for the top portion to the court

Trooper Robinson: Um, South Carolina Highway Patrol DUI Citation ordered for dates from 3/1/2011 through 3/31/2011 County of Greenville non- collision

Overby: Ok and would you actually um do you see on that paper of the location where this check point had been established

Trooper Robinson: now there are several dates on here

Overby: I am going to direct your attention to the right hand column

Trooper Robinson: That's uh

Overby: I'm sorry

0:66

MUFFLED TALKING BY ALL PARTIES

0:68

Judge McCall: Lets establish first how he knows what these things are

Overby: Very well, Your Honor

Judge McCall: and where did they come from?

0:69

Overby: What's your knowledge of that document?

Trooper Robinson: The documents were used to just show DUI's within a certain area uh within the county or within certain roads and that's what this does it lists um DUI's made um on certain roadways on one page and then on another page it lists it for the county to include this roadway itself.

Overby: Thank you um you can take that (mumbled talking)

Your Honor, I would like to present this to the court for review

Seay: Your honor, I object I don't know if there has been sufficient foundation with regards to the relevance of these documents to supply the empirical data required.

00:78

Judge McCall: I uh I'll make that determination when I review. Are these marked in evidence?

Overby: No your honor, this is specifically for the sta...for the establishment of the constitutionality of the checkpoint.

Overby: Um, your testimony was there was a driver's license checkpoint right

Trooper Robinson: Yes sir

Overby: and we have this report here um now how long...now I am actually going to just direct your attention (inaudible) to the bottom left. How long were you all out there?

Trooper Robinson: Um... I don't recall as far as...I wasn't out there too long before I ended up having to deal with Mr. Williams. I don't remember exactly the Corporal(?) and the other officers were out there um they had to have been out there for at least uh two hours that I am aware of.

Overby: Okay, that's sufficient

Overby: Now let me ask you a question about your involvement in this checkpoint and this specific defendant.

Overby: Did Mr. Williams specifically drive through the checkpoint?

Trooper Robinson: No Sir

Overby: Ok. What drew your attention to Mr. Williams?

Trooper Robinson: Um Him making a u-turn on the hill.

Overby: ok so he never traveled through the checkpoint at all?

Trooper Robinson: No

Overby: at which point...what did you do when you saw him travel through the hill?

Trooper Robinson: I notified my supervisor that I observed a vehicle make a u-turn on the hill and my supervisor advised me to conduct a stop on that vehicle

Overby: and when you reached that particular point uh when you stopped that particular vehicle, uh what did you do next?

Trooper Robinson: Um, I actually traveled up the hill um and (inaudible) comes back out on the top side of that hill and I looked over and I actually observed the vehicle that Mr. Williams was operating was actually stopped over at the parking lot on the backside of it with the lights off. Uh, then I went over to the vehicle with my patrol car, stopped, got out made contact with him.

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Overby: Ok. And did you notice anything about Mr. Williams when you made contact with him?

Trooper Robinson: Ah, Just could smell odor of alcohol um noticed his eyes were somewhat glassy um he had some slurred speech.

Overby: No further questions Your Honor

Judge McCall: Mr. Seay, you wish to cross examine?

Mr. Seay: Yes, your honor

Mr. Seay: Trooper Robinson, you had no role in this in in any of decision making as to where this checkpoint was established or anything like that correct?

Trooper Robinson: No sir

Mr. Seay: um you were just told where to report on your shift to conduct the checkpoint, is that correct?

Trooper Robinson: yes, yes sir

Mr. Seay: okay, and so you have no knowledge as to what was used or what information or data um or assessments were made by your superiors uh in setting up a check point at this particular location did you?

Trooper Robinson: uh no sir

Mr. Seay: and you can't say that the Dui citation report that has been submitted to the court um for review, you can't say that that was even considered by your superiors when they made that decision, is that correct?

Trooper Robinson: I can't speak for my supervisors

Mr. Seay: did you um you don't have any personal knowledge of any of the citations or any of the events that are listed under this DUI citation report, is that correct

Trooper Robinson: I don't specifically get involved with them gathering the data.

Mr. Seay: um ok.

Mr. Seay: And this DUI citation report doesn't indicate any specificity that actual tickets were issued does it? Do you need to see it? You have ticket numbers listed on the (inaudible)

Trooper Robinson: No the ticket numbers themselves are not listed, just the location that a DUI was charged on that (inaudible)

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Mr. Seay: I don't believe I have any further questions at this time for this motion, Your Honor.

Judge McCall: All right, I have a couple.

Judge McCall: Trooper Robinson, uh how long was checkpoint in place?

Trooper Robinson: um when I got there, are you asking as far as from the time that I arrived to the time I dealt with Mr. Williams or how long it had been set up prior to me arriving?

Judge McCall: I want to know how long total...was this check point in place

Trooper Robinson: I, I don't know the specific as far as the time frame because I only ended up being there maybe thirty minutes before I ended up dealing with Mr. Williams and I had to depart with the DUI arrest. Um, I would imagine it was about two hours that's general time frame how long they do them they don't normally stay on those too long.

Judge McCall: All right, do you know how many um vehicles were stopped at that checkpoint?

Trooper Robinson: No sir, I don't.

Judge McCall: Do you know how long a typical stop at that check point lasted?

Trooper Robinson: um, most people stopping there it's a matter of seconds, long enough for us to check their identification cards, speak to them for a moment, walk to the back of their vehicle, look at the plate, insure that the vehicle that the stickers on the plate are correct and hand them their license back if we don't suspect any other illegal activity and send them on their way

Judge McCall: Thank you

Trooper Robinson: Yes sir

Judge McCall: You may step down

Trooper Robinson: Yes sir

Judge McCall: Anything else Solicitor?

Overby: Yes Your Honor, um brief bit of argument here um as Your Honor is well aware there is a three part test established for the...in order to determine the constitutionality of a check point that comes from that per U.S. Supreme Court cases. Um, Michigan Department of State Police v. Six, Delaware v. Prowse, I. M. Brown v. Texas, these have been adopted to the South Carolina Supreme Court case law uh by State v. Groom. Uh, that three part balancing test involves the gravity of the public interest served by the seizure, the degree to which the seizure serves the public interest and the severity of the interference of individual liberty. Uh, this particular, in the case of State v. Vickery, which is one...which is the most recent South Carolina Supreme Court Case on point. I'm gonna just show this...

INAUDIBLE

Overby: The Supreme Court basically adopted this information uh it indicated more clearly what would be necessary for the state to establish the constitutionality of the checkpoint. Um, the proffered, the basic summary of that is that the state has to present a reason for having the checkpoint, in that particular location, uh the state has to produce empirical evidence as to the effectiveness although the case law does not indicate

specifically how much is required in order to establish it. It kind of strays from that point but uh but it uh does require empirical evidence be presented. And further it needs to discuss the interference with the individual liberty. Um, in this case, we presented obviously the testimony of Trooper Robinson and we presented a vehicle inspection report which provides the effectiveness of the check point. Uh, it highlights the number of man hours that were actually used in the investigation or this checkpoint. It highlights the number of arrest or stops that were conducted as matter of this check point. And it says who was there at that particular checkpoint. And then furthermore, the additional information, the DUI citation report they highlight the number of DUI arrests that had been made on SC 123...on SC 183 during the month March, so, throughout the entire month of March. That establishes there was a reason to have this check point here... Uh, furthermore, this was a driver's license checkpoint. The constitutionality of driver's license checkpoints has been established specifically in the U. S. Supreme Court case of *Edmond v. Indianapolis* as long as there isn't too much of the burden on the individual liberty interests. Uh, as you can see, the man hours being only 30 presumably involves 3 officers at the checkpoint so the checkpoint was only up at the most two hours in this particular case. That would be the strong balance in favor, this shifts the weight, and this is a balancing test with these three. So I would argue that this shifts the weight of the balancing towards the State's favor in terms of the Constitutionality of the checkpoint. Um, therefore, my position, our position, State's position is that we established constitutionality of the checkpoint but that even if we have not established the constitutionality of the checkpoint, your Honor, the Defendant did not go through the checkpoint, he chose to take a u-turn and pull around the opposite side. At that point, and I am going to present one more case for you consideration, it is the case of *State v. Nelson*. *State v. Nelson* clearly provides that clearly provides that, if, if the Constit, if law enforcement acts unconstitutionally in some manner, performs some sort of lawfulness stop, they can still, the rest of the case is not necessarily suppressed by the fruit of the poisonous tree, where there is not additional basis additional probable cause, additional reasonable suspicion to justify stopping the Defendant. At that particular point, once the U-Turn was made, first of all Trooper Robinson had probable cause under SC 56 5 2140 which provides the lawful methods providing a U-Turn ah he had reached probable cause or (inaudible) he had probable cause or the very least reasonable suspicion to suspect a traffic violation had occurred. But furthermore, the act of simply turning around upon visual sight of the checkpoint should constitute reasonable suspicion to reasonable suspicion that there might be a reason why Mr. Williams didn't want to go through the checkpoint. And in the case of *State v. Benson*, it is on point, on the is is not on point the record factually but establishes that principle...establishes that principle regarding what the state has to have to conduct a lawful traffic stop.

Judge McCall: Mr. Seay

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Mr. Seay: Thank you Your Honor, may it please the court

Mr. Seay: Um, a, a excellent rendition I think of what the case law is out there in this case. In this particular case your honor, factually speaking from the witness stand testimony and evidence presented there is no showing by the state that that DUI citation report was considered or used in determining uh to set up a check point. Um, there was no evidence in the record that that that was referenced or how it was used in making a determination as to whether or not there was sufficient empirical data um or that was used to determine (inaudible) that this particular location at Old Cedar Lane and 183 uh was a good location. The DUI citation report itself is rather nebulous it just simply list 183 um and in looking at State v. Vickery I note that procedurally and evidentiary wise um actually State v. Vickery an administrative official from the Greenwood Police Department appeared testified at the hearing as to what was pulled why they made that decision for that location specifically um and what tickets they used and how they made their determination he also referenced how they had used check points in the past and whether or not they had been productive. There's no evidence in this record uh that's even comparable to that. And I think the State's just putting in the DUI citation report through an officer who can't testify to his relevance in establishing this particular check point is simply insufficient um and lacks evidentiary merit in the State's burden to show that they have met the three requirements of showing the gravity of the public interest served by the seizure, the checkpoints, the degree of which the seizure serves the public interest, and the severity of the interference of the individual liberty. And I would submit that while the trooper attempted to answer what they generally might do, he admitted that he was on the scene for a short time. There were at least two other officers out there according to the report you have seen, regarding this checkpoint. Um and he did not lay out the specific policy procedure as to um the time of the detentions, what they specifically what they would ask for whether it would be simply drivers license, drivers license registration, whether or not there was a drug dog on scene um whether or not there were any other units from any other law enforcement. He failed to testify of any notice of this checkpoint. Uh, with any signs or public announcements through the radio, set up at the bottom of a hill in which there where people come over the of the hill, they they find the the checkpoint. So on that, I think at that point they haven't met the burden of proof evidentiary wise with regards to this checkpoint in anyway based on the reading of Vickery in the more, in the, in the, great specificity that was provided by the Major in that case, as well as his personal knowledge of the basis, and in fact they tried to just use an officer, the officer that was at the scene, the officer that was at the scene. It wasn't until the the Major testified as that what this court seems to support there is what the Major provided. And the court also, I think in this case, my, my lang...I may not be quoting the language just right um but it, it was these people in charge, supervisors, administrative officials who who established this and that's who, I think, without that kind of testimony, the DUI citation report is meaningless as an empirical data for, to determine the constitutional mustard of this particular check point. Um, then I would be happy to address the issue of, um, um the U-turn as well.

Judge McCall: Let's go ahead and get into that too.

Mr. Seay: Well, Your Honor, I am not aware that there is any obligation in the United States of America for anyone to go through a check point, we are free to travel wherever.

Um, and there is no... and uh, I did not present any case law to support it cause I don't think there is any, that anyone is

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required to participate in a government-sanctioned checkpoint. And the only testimony provided in this hearing with the basis of stopping my client is really his avoidance of the checkpoint. Because the officer simply in his testimony, his sworn testimony, is, is that he observed him doing a u U-turn. And I would submit to you that 56-5-2140 says "that no person shall turn the vehicle in the opposite direction unless such movement can be made in safety without interfering with other traffic." There is no testimony as to anything about the u-turn being um, a u-turn is based on the statute is a presumption of a lawful move barring other circumstances. There's no testimony in this case um that there was anything unlawful about the u-turn, he simply said he made a u-turn.

Judge McCall: um hum

Mr. Seay: um, and under the statute that is insufficient to show an unlawful act. And avoiding a checkpoint is not a basis procedural of a person. I would take the court to um, if you give me one second, most interesting case, I don't know um, um, if your honor um has had an opportunity to read it, it was just decided December 25th of this year. United States of America vs. Nathaniel Black, it is United States Court of Appeals Fourth Circuit Court of Appeals, I may or may not have a copy, but I will get you one. Um get you one, um think you one, but its, it's a lot, rather lengthy opinion your honor, um but it talks about its essentially, its, it's a case where the cops see some people at a gas station, they then go over to these apartments they see some guys standing around they want to have a voluntary contact with them, and the Fourth Circuit basically talks about how they have repeatedly admonished over the last years some four times, law enforcement, for taking innocent facts and to create an (inaudible) reasonable suspicion to seize a person and make a stop, or, or, or seize um make a um temporary detention of that person. They found in this case, um that there was simply, insuf, the fact that the man wanted to walk away from law enforcement in a volu...wh which essentially started as a voluntary uh encounter. One person in the group turned over a gun to law enforcement; uh, they took his ID, everybody's ID to check them, they were patting down different people, he got tired of sitting around, and he said, "I'm going home." And they said, No, you and so they grabbed him and so they take re and so the court is saying is you can't just create situations to where an innocent act is done and simply avoiding police or , or choosing not to interact with law enforcement is not sufficient grounds to stop him and there is no evidence in the record that this U-turn was unlawful. He simply said he made a U-turn.

Judge McCall: All right, all right

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Overby: Your honor, may I have a brief response or

Judge McCall: Yes

Overby: Ok, ahh as to the lawfulness of the U-turn. Ah, Mr. Seay pointed out 21-40-5652140 subsection a, ah subsection b provides that no vehicle shall be turned so as to proceed in the opposite directions upon any curb or upon the approach to or near the crest of a grade where such vehicle can not be seen by the driver of any other vehicle approaching by either direction within 500 feet. This particular case we have a situation where it's a hill...

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Judge McCall: Well, hold on, there hasn't been any testimony as to that yet, but uh if you put Trooper Robinson on the stand uh to answer questions about the checkpoint, I'm gonna let him recall unto the stand, these storm roads and he can answer questions about what made the U-turn unlawful if anything. That issue had not been addressed at the time he was put on the stand and answered questions about the checkpoint..

Overby: But, but your Honor, he did testify as to the bas, he, but he did go, he did elicit testimony regarding the stop why he stopped him,

Judge McCall: But the fact..

Overby: He made it clear as to his testimony about that

Judge McCall: The fact that he made a u-turn um he did not explain why that u-turn was unlawful. And, and I think it was simply because y'all were concentrating at the time on whether or not this checkpoint was constitutional. So, so lets take a look at that. Mr. Robinson, your storm road.

Trooper Robinson: Yes sir

Judge McCall: Your issue is solely, what if anything was unlawful about that particular u-turn, without regard to whether there was a checkpoint there or not.

Overby: (inaudible)... Your Honor

Overby: Trooper Robinson, what was unlawful about Mr. Williams' u-turn?

Trooper Robinson: Cause as I was looking up the roadway, um it just comes over as a grade and as he came over, as soon as I saw the vehicle, uh he abruptly slowed, made the u-turn in to well in within that 500 uh it couldn't have been no more than 200 feet from the crest from where it starts to grade down.

Overby: And you have experience in traffic enforcement and are knowledgeable in the laws correct?

Trooper Robinson: Yes sir.

Overby: Thank you

Mr. Seay: Trooper Robinson, this, this checkpoint set up at the bottom of Cedar Lane?

Trooper Robinson: Yes Sir

Mr. Seay: Ok. And did you measure prior to the checkpoint, the distance from the checkpoint to the crest of this hill you referred to?

Trooper Robinson: No sir.
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Mr. Seay: You have never measured it have you?

Trooper Robinson: No Sir

Mr. Seay: And did you measure behind on going the other direction?

Trooper Robinson: No Sir.

Mr. Seay: Ok, and so at best you have guestimations you don't you didn't know to begin with the distances for field of view.

Trooper Robinson: Well, as soon as he came over the hill, I saw him do a u-turn, he's pretty close once he started

Mr. Seay: Well how far is it from the u-tu...how, how do you know how far it is from the crest of the hill?

Trooper Robinson: I'm. like you said, I'm guestimating.

Mr. Seay: How far from the crest of the hill can you see to the check point and on past it?

Trooper Robinson: You can see if...once you come over the hill you can see the check point and you can see up Cedar Lane Road back up...I don't know if you are familiar with Cedar Lane Road as far as where Center West is?

Mr. Seay: Ok.

Trooper Robinson: Up there? You can see up through there.

Mr. Seay: What would you guestimate that distance to be?

Trooper Robinson: I, I don't know, I, I, would guess um

Mr. Seay: Far in excess of 500 feet in your estimation?

Trooper Robinson: Yes sir.

Mr. Seay: And, Cedar Lane Road is four lanes of travel with a center lane?

Trooper Robinson: Yes Sir.

Mr. Seay: Ok. And um, so you have to go into the center lane and then execute the u-turn, is that correct?

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Trooper Robinson: Yes

Mr. Seay: Can't execute it without it.

Trooper Robinson: Yes sir.

Mr. Seay: I don't have any more questions at this time, Your Honor.

Judge McCall: Alright. You can step down. Alright, any further motions

Mr. Seay: No, your honor, I would argue, I don't think the u-turn is anything illegal, he said the center lane is something you have to go into. Clearly the oncoming traffic where he was executing the u-turn, he indicated you could see far in excess of 500 feet. He has no idea of the other direction, he has never measured it. Uh, he doesn't uh it, it, uh, there would be an impediment to any other traffic behind him with the center turn lane being used to execute the u-turn, uh and there is no evidence that there was any other traffic coming in either direction at the time this u-turn was executed that would have impaired anybody's safety.

Judge McCall: I'm going to take a look at that statute, um regarding the proximity to the crest of the hill. Solicitor, um I'm, I do think that the report that you submitted certainly um constitute empirical data that um could be used to justify the location of this particular check point. However, uh I do not think that you have presented sufficient foundation as to how these reports were prepared and whether they were considered prior to setting up the checkpoint, you know as part of the uh reason for putting it there. Um, the um the case, the case is going to turn on whether or not the uh, the u-turn itself was sufficient cause for the stop to be made. There are conflicting cases ah, ah on persons obviously fleeing and a potential encounter with the police. Um, those are mostly drug cases, where the police pull up to a location where the suspected drug activity is going on and somebody just takes off down the road, and that has been held in many cases be probable cause to um make an investigative detention. Um, the um, I think, um certainly the case from the 4th Circuit and I notice there is um a, um an opinion, a concurring opinion um that um, that was written by Bill Traxler that certainly instructive, but um,

that question um I think has not been fully resolved at this point. Problem is the legality of that u-turn turns solely on the proximity to the crest of the hill. Um, the purpose of that statute is that as a car um comes over the crest of the hill, um is it, um say supposing the person is making a u-turn in the way this one was made where he is going down the hill, turn around and go back up. Um, the car coming over the crest of the hill uh, should have enough time to see um, whether or not, um that car is slowing to make the u-turn, cause he's not turning around to come back (inaudible), um on the other hand, if he were going up the hill and makes a u-turn, (inaudible) crest of hill, may not have time to avoid what is essentially a left turn in front of him. Ah, the combination of where the crest of the hill is has not been made in this case. Um, when you are standing at the bottom of the hill, you can't necessarily tell where the crest of the hill is. Um, and we've got nothing but an eyeball estimate from the bottom of the hill as to not only where the crest of the hill is, but how close the crest of the hill that turn is made. And without actual measurements being made, um I realize that that goes to the weight of that testimony and not admissibility of the fact that he made a u-turn, but it certainly, um I think is insufficient to establish that the u-turn was made within 500 feet of

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the crest of the hill. Um, I do notice, I do know that um the empirical evidence standard um has not necessarily required empirical um, empirical evidence collected prior to the establishment of the checkpoint. But it has been accepted that the results of the checkpoint can suffice as empirical evidence to show that it was a reasonable place to put a check point. Um in this case, over a period of five, uh a period of uh three hours, uh, three man hours, which as you said not everybody got there at the same time, so we're talking about probably in the neighborhood of a couple of hours, um they found one driver's license violation at what was essentially set up as a driver's license checkpoint. They uh they did find two illegal alcohol cases, which I assume somebody with a beer in the car, um and um they made two DUI cases, one of which, was this vehicle that did not go through the checkpoint. So, um, uh as I said, as far as the prior data goes, there is insufficient foundation to uh, to consider that, um. Solicitor, you have done an excellent job of ah preparing your argument and presenting your case law, um I think the uh, I think the Defense succeeds on the uh uh, lack of first hand testimony to establish some critical elements here. I am going to grant the Defense motions.

Overby: Very well Your Honor, Thank you.

Judge McCall: Alright

Mr. Seay: Thank you Your Honor.

Judge McCall: Thank you Mr. Seay.

Judge McCall: You have done an excellent job, I hope you charged a sufficient fee to justify it.

Mr. Seay: Yes, Your Honor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 THE STATE)
)
 VS.)
 Scott Williams,)
)
 DEFENDANT)

IN THE MAGISTRATE COURT
 OF THE
 THIRTEENTH JUDICIAL CIRCUIT

Transcript of Hearing
Warrant Number: F062451

Judge: Jesse A. McCall, Jr
 Assistant Solicitor: Stan Overby
 Defense Attorney: David Seay
 Date of Hearing: April 10, 2013

Judge McCall: Today is Wednesday April 10, 2013. The next matter is a motion for reconsideration of judgment and for a new trial in the State of South Carolina versus Scott Eugene Williams ticket number F062451. The state is represented by Stan Overby of the Greenville County Solicitor's Office, uh the Defendant is represented by David Seay of the uh, Greenville County Bar. Mr. Overby.

Mr. Overby: Thank you, Your Honor, may it please the court. Ah, we are here today on State's motion for reconsideration of judgment and for a new trial under Rule 19 of South Carolina rules of Magistrate Court. Um, state, first of all, initially, couple of initial matters, ah state is in receipt of Mr. Seay's reply to the state's motion to reconsider ah the state has no objection if the Court feels it would be necessary as far as obtaining transcript of the original proceeding, however, uh, the state does feel we could proceed today without that uh based off the arguments that I intend to present today, however if that is something the court

Judge McCall: Let's take a moment to address that...

Overby: Ok

Judge McCall: Now I understand the state is ready to proceed, Mr. Seay, um um, I'll um hear you on that if you still feel you need a transcript at this time.

Mr. Seay: I believe I can proceed forward at this time without a transcript.

Judge McCall: Alright, very well, Mr. Overby.

Mr. Overby: Thank you, Your Honor, um and in addition, I'm just gonna address one other point Mr. Seay brought up in his reply about about the state's motion not being timely: Um, state's motion, there's no dispute I don't believe between defense counsel and state on this matter. The motion was filed on March 20th uh of 2013 about six actual days after the ruling which was March 14. Under Rule 3, well, under rule 3 of South Carolina Magistrate Court Rules um time computations does not include the day in which the holding actually took place and in addition if the ruling is less than 7 per the time period as provided for in the rules, uh it is less than 7 days Saturdays and Sundays are excluded. So I would like for the court to take notice that uh that ruling was issued on Thursday or motion was filed on a uh Wednesday with Saturday and Sunday varying in between. Uh so the State's motion is timely in this regard. Um, as to the motion to reconsider, ah, State's motion is based primarily in some on four points. Uh, the first two are primarily preservation arguments. Uh the initial motion, obviously, Your Honor has ruled in testimony was proper on the check point at the issue in this case. Uh, State takes exception to that ruling based on State v. Vickery, uh however you know I am not here to re-litigate that issue, uh today in from of the Court, that part of it is part, primarily a preservation argument. And the same goes with the U-turn, uh the violation of the u-turn statute is basis for probable cause for stopping Mr. Williams in this case. Uh, again, the testimony was proper uh the State would contend that that is uh, the state would contend, there is sufficient evidence to establish probable cause under that statute, uh however not here to re-litigate that point either, uh that is primarily a preservation argument.

The two points uh, that the State has in its motion to reconsider which are, which are the primary crux of our hearing here today, uh, one is a substantive matter and the other is a procedural matter. The state is in receipt of Your Honor's return in this particular case. Uh, and at the initial hearing, an argument was raised by the State which was never actually ruled upon by the court. And that has to do with this idea of the reasonable, of reasonable suspicion arising to justify the stop of the defendant outside of the checkpoint and outside of the u-turn violation. Uh, Mr. Seay brought uh, a case to the Court's Attention uh United States v. Nathaniel Black upon this point. The State's argument was simply this, uh that the, that in spite of the checkpoint, Mr., Mr. Williams is not seized by the checkpoint, under 4th Amendment, under 4th

Amendment analysis. Uh, he was seized at the point where the officer finally stopped him which was at a parking lot which was down the corner. That's what the officer testified to in the initial hearing. Uh, the case of State v. Nathaniel Black, which Mr. Seay relied upon, is actually, is not actually not factually on point with the issue here in the case. Mr. Seay's primary argument was that evasion in itself cannot constitute reasonable suspicion to justify the stop. That is true and that comes from the holding of the United States Supreme Court holding California v. Hodori D., however, there have been multiple other holdings which have said that evasion may be considered in coming to a, in the totality of the circumstances in coming to a reasonable suspicion analysis. In finding there was an objective and articulable suspicion to criminal activity might be what would be the standard in that particular case. Um, I would highlight one thing about State.v. Black then I am going to present to the Court one other case, uh, the State v. Black or U.S. v Black, I apologize, uh held in actuality not that evasion by itself, not that evasion by itself could constitute uh, could not constitute by itself reasonable suspicion, it didn't address that issue on point. In U.S. v. Black, the defendant in that case was actually amongst a group of individuals that police officers suspected may be acting in narcotics dealings, dealing in narcotics. Uh, they come to find this group of individuals based off a series of observations in a high crime area of other people, not this individual, some of his compatriots. At the time they all approached, the officers did finally approached the individuals uh and the defendant offered his id card and did a number of things which the officers testified were unusual to them. Um however, uh what the court held, because the defendant actually started to walk away from the scene and he was cut off by officers. What the court held in that particular case is that, there's a footnote, as it is highlighted in the footnote of that particular case is that the defendant was actually seized prior to any of the actual flight in the case, in other words, prior to his leaving. So that is the distinction, between this case and our case here today, State v. Williams, and that particular case in that the court didn't even consider the flight as whether, in order to justify the initial stop, he had already been stopped by the officers at that point, he was already not free to leave. So the walking away aspect of it was actually dismissed by the court in terms of its analysis

I want to bring to the court's attention, this case, United States v. Dennis Deion Smith, I have a copy for Mr. Seay. And you will find that this case is substantially, substantially almost, almost to the point Your Honor, if you don't, if you, you, it is very rare when you find a case that is just 100% on point even more and pretty rare that you find one that's 99% on point, but I feel pretty

confident that is 99% on point in this case. There's a 2005 opinion from 4th Circuit Court of Appeals uh its uh Judge Billy Wilkins, whose the author of it. Judge Wilkins highlights in this case well involves a checkpoint, which would had arose at between 2 and 3 o'clock in the morning, uh involving officers. The defendant in this case, the officers testified that they were positioning a check point at the bottom of a hill, much like this particular case. Ah, they testified that the, they observed a vehicle approach over the crest of the hill about 985 feet away, much like this particular case, uh, and the officers further testified they saw the defendant, the vehicle itself, actually pull over the crest of the hill, hit its breaks abruptly and take a sharp left turn into a driveway, uh, away from this particular checkpoint. Now the officers at that time began up the hill I in order to actually stop the defendant and investigate what was going on. Now there's some model testimony about whether their blue lights were activated at that point, however, the Court acknowledges, notes, in a footnote in that opinion, uh that that actually is not completely relevant to the analysis, so they kind of dismissed that based off the footnote. However, the next thing that they observed in that particular case is that the vehicle had pulled into a driveway, uh off of the side of the road and had turned its lights off. Uh, when they arrived, they saw this vehicle and that is when they, the blue lights were activated. Uh, and the vehicle actually kind of pulled around the bend a little bit more seeming to create this notion that the person was trying to evade the checkpoint. Ah, the defense made a motion to suppress the evidence based off the fruit of the poisonous tree doctrine, based off an unlawful seizure uh and the court denied that, the District Court denied that motion. On appeal, the defense tried to argue or argued uh that was, that the District Court erred in failing to suppress that evidence. Judge Billy Wilkins in this opinion points out and uses Illinois v. Wardlaw as his primary analysis. Uh, Judge Wilkins points out in his opinion that uh while, while it is true that the state or that people have an interest in maintaining or privacy interest in not being, in being free from interference from police for random (inaudible) while stopped and that they do have a right to go about their own business as the court points out in a number of its cases. There's certain facts that it, its unreasonable for officers to be expected to ignore certain facts based off of the totality or the circumstances, uh in coming to a decision to actually stop an individual and investigate whether criminal activity is afoot. (INAUDIBLE) was prime example of this and in that particular case, the defendant saw a police officer and he just ran. And based off the officer's knowledge of the crime area, the time, the day all these various factors the court said that is something you can consider in coming to a reasonable suspicion that criminal

activity might be afoot. And then Judge Trax or Judge Wilkins, I apologize points out, well in the key analysis in that Wardlaw decision is that, that there is a distinction between somebody going about their own business, in other words, I am walking on the street and I see a police officer, I don't necessarily have to go up and talk to the police officer, I can walk down the street and be free of his interference and he can't come up and stop me just because I am walking down the street. And there is a distinction between that and actually fleeing in the opposite direction. Now that fleeing in the opposite direction as the court points out in U.S. v. Black, or actually in Hogari D, I apologize, California v. Hogari D. that doesn't necessarily mean that it is unreasonable that people just want to go the opposite way when a police officer is here, but when you take the totality of the circumstances and you evaluate it, that comes to the conclusion, that's what brings you into that realm of reasonable suspicion. And, and in this case this almost factually on point with what we have here today Your Honor. Uh, the defendant in this case who's Trooper Robinson testified in the initial hearing, came over the crest of the hill, they had a checkpoint that was set up. At that point, the defendant chose to make a u-turn. We have made argument about its unlawful nature that's not what we are here today about, that's, that's completely irrelevant to the actual analysis under the reasonable suspicion we are dealing with. And Trooper Robinson observed this u-turn he thought it was unusual, he went to pursue. The defendant was found in a parking lot, the defendant was found with his lights being turned off as he was pulling into that parking lot. It's almost exactly on point with this particular case your honor in that there are objectives, in that there are facts in this case which create an objective and articulable(sp) suspicion that this defendant was trying to evade this checkpoint. And the distinction here between this case and U.S. v. Black is that he was not seized by that checkpoint. He never went through it and in order for the defendant to actually be seized by that checkpoint he had to actually been stopped at that checkpoint, he chose to go the other way. Based off these facts your honor, the State feels that there is, there was reasonable suspicion to justify the defendant's stop and that therefore the Court should allow us to present our case on that point. And I have another point, but I'll allow, if it is more convenient, I will allow Mr. Seay to address that and move on to the next one.

Mr. Seay:

First of all, I don't since I put in my return to motion and stand by it, I don't believe the record will reflect the State made the necessary exceptions and objections um at the time of the ruling to preserve, preserve most of their arguments. Um, and I, and I

stand by that um, but despite that (inaudible) the Smith case is one I've just seen, it is a 2005 case apparently uh, and while I have great respect for Chief Justice Wilkins' record on the bench, I also believe that based on current case law coming out of the Fourth Circuit as well as the U.S. Supreme Court that a lot of the rulings regarding Fourth Amendment seizures that was the end of a particular era uh under Chief Justice Wilkins, uh leadership uh on the bench. It is one of the clearest things about State v. Black is that facts of this case gives us cause to pause and ponder the slow systematic erosion of Fourth Amendment protections. And the, there were numerous cases we could go back to prior to black that would be factually similar to black in which a different court, a different era ruled very differently and found all of the suspicions that the police put together for their totality of circumstances for reasonable suspicion to seize the person or stop them. Um, and although just for, for point of references in a newer case, Florida v. Jardins or Jardens, that came out of the U.S. Supreme Court uh last month, that, uh, Justice Scalia, Justice Thomas ruled, that they actually ruled that the state, the police had no right to take a drug sniffing dog up to the door to establish reasonable suspicion or probable cause for a search warrant.

Judge McCall:

I read that case.

Mr. Seay:

Um, so I say this in light of the fact that, I'm, I'm thankful cause I have seen the steady systematic erosion of Fourth Amendment protections. Um, and while it may be unsettling to the State, and it may require them to reassess their um, procedures, it is comforting to, to everyday citizens, I heard a trial lawyer say that um, if, if defendants and their lawyers aren't trying some cases, our liberty will be lost. Um, and I think that's um why we are here. That being said, the checkpoint, I think the record will reflect and I don't think the state can defend it, that the checkpoint in of itself there was insufficient evidence presented by the state to show that that checkpoint was properly established. And if it not properly in place with all the guidelines and set up with the policy considerations that we addressed in that line of cases regarding checkpoints, then it is essentially an unlawful checkpoint or detention area established by law enforcement. So, I don't think that there is any question that this checkpoint that the State in their, in their case could not support the justification for the checkpoint. Therefore, it is not a lawful act or lawful uh lawful act by the police. So by their unlawful ...laughs... they created an unlawful checkpoint that my client had no obligation to go through to create a scenario in which they now say oh he left and now that is our reasonable suspicion. Because he avoided something that we

didn't have properly set up under the law. Um, I don't know (laughs) how you wrap your head around that. That, we didn't do it right, we don't have any evidence that we did it right, but he avoided us, so that's our reasonable suspicion. And I still do not believe that there's any obligation of any one to go through a checkpoint and I think it was clear from the testimony and facts that were presented um that they cannot say that this was an unlawful u-turn. It was a u-turn which is not in of itself unlawful under the statute. Um, and that was it, that was their basis for, that was the only basis they offered for seizing his person and stopping and having contact with him. And, and I would argue that you know whatever State v. Smith is that the court is, that, that Black wa, was factually a different scenario. The Court principles and Fourth Amendment seizure totality circumstances all those issues that the Court has taken a dramatic, um, turn in protecting Fourth Amendment rights and I ask the Court to support that.

Judge McCall:

All right, I will go ahead, and and um, I going to take this particular issue under advisement. I, I want leave the record open for both attorneys to submit any additional cases you would like to submit um, I do ask that you um, accomplish that by next Wednesday. Um, and really, the sooner the better if I could maul this over over the weekend, it would be nice to have any cases that you might want to submit um in hand um for me to do that. Um, and Mr. Overby, I uh, have no doubt that you shepardized this particular case, um but uh it should be interesting to see if there is anything else that um may um support the defense argument in this because um we, we, its interesting to me, we've, I've got um cases, opinions from Fourth Circuit Court of Appeals on this case, each of which has been written by an old friend, so I um, um, my um one of my sons and um Justice Wilkins son played on the same soccer team together for many years. And um, I saw him frequently and personally in that regard, um and um Bill Traxler um was my boss for many years and is also is a friend of mine and has dropped by on occasion on his way to his mountain cabin. Um, so we've got and I do think the defense argument um has reflected in Judge Traxler's recent opinion is an interesting argument. But this will take some time for me to uh decide whether it is prevailing argument. Um so, um I would suggest that neither of you get you hopes up quite yet. All Laugh...What's your other point.

Mr. Overby:

Um the other argument Your Honor is more is a procedural point um this is something that I've collected um and and really, this is more of a matter of record clarification as far as the Court, as far as Your Honor's ruling and I think based off your return in this

particular case, it actually involves, it actually involves what I'm, what I'm concerned about. Um, Mr. Seay in the outset uh of motion hearing, the initial motion hearing ah, I believe his exact words were, I call upon the State to satisfy its burden to establish the constitutionality of the check point. Now I would like to point out to the Court that that was oral motion, ah, that was not a written motion, it was a written motion. Ah, so somewhat unclear is to the remedy that Mr. Seay was seeking at the initial hearing

Judge McCall: I apologize for interrupting you

Mr. Overby: Yes, Your Honor

Judge McCall: But, um Mr. Seay had um made this motion, um very clearly uh at least a year before this case actually came to trial. Um, sitting in my chambers with a representative from the Solicitor's Office present. I made very clear what the basis of his motion was going to be and that was going to have be addressed before we tried the case. Um, I even on two occasions um asked that time be scheduled separately to uh deal with that motion uh before we swore in a jury. Um, that was one reason there was so much time allocated to try that case so that we could dispose of that motion beforehand. Um, I realize uh I'm sure Mr. Seay realizes as well that that message may not have gotten to you uh in a very clear fashion. Um, we, we have both been your position before and uh, uh, I've seen documents get, get lost and being handed from attorney to attorney in the Solicitor's office there is a lot of turnover in the Solicitor's office which aggravates the problem um so I don't fault you, um in, in not anticipating exactly what you were going to be facing, but I do believe that um Mr. Seay gave adequate notice as to what he was going to be requesting.

Mr. Overby: And I have no dispute about the notice aspect of it. Obviously my case preparation one of my requirements as solicitor is to insure that I am prepared for anything um so there is no dispute about the notice. My issue is about the specific remedy in question in this particular case. Um, Mr. Seay, my understanding is that the Court's ruling is that the case was dismissed for a lack of probable cause in the case

Mr. Seay: That is correct.

Mr. Overby: Well, and and Your Honor, with complete respect to the Court, uh, Mr. Seay, dismissal is a remedy that is authorized by statute. An example of that is the video taping statute, 56 -5 - 2953 which clearly provides that dismissal is appropriate when the State fails to

comply to subsection A of that provision. That's authorized explicitly by statute. Mr. Seay's remedy in this particular case is not dismissal because there is not authorizing provision to allow for dismissal in the case. Mr. Seay convey the motion to suppress the evidence in the case as a matter of the fruit of the poisonous tree as a unlawful seizure. However, it is my understanding that motion has never been made to this particular Court. And based off my understanding of Your Honor's ruling, uh that is actually, the remedy was actually dismissal of the case not suppression of the case. Uh, the case of State v. Ramsey, which I'm going to present to the defense counsel and to the Court, if I may is of the similar is a similar circumstance. In that particular case, the defense made a motion to dismiss a criminal domestic violence charge for a lack of probable cause. Um, the Magistrate's Court uh in that particular case dismissed the case, dismissed the charge. The Supreme Court reversed that decision, reversed that decision on the grounds that in effect, by dismissing a case based on a lack of probable cause, the Magistrate's court held a preliminary hearing on the probable cause issue for particular charge. Now, the Magistrate's court jurisdiction is authorized to, Magistrates Courts are authorized to hold preliminary hearings on matters that are outside of their trial jurisdiction on the basis it has an authorizing provision and they are allowed to dismiss cases for a lack of probable cause for those matters. However, that does not encompass the Magistrate's court jurisdiction as a whole. And one of the aspects of this is that the Court points out is Summary Court, summary nature. Um so when there's not that particular authorizing provision, uh doesn't allow for dismissal of cases based off probable cause based within their jurisdiction. Clearly suppression is allowed, there's no question about that, case law will support that. Clearly, dismissal under the video taping statute and of cases outside of the Magistrate Court jurisdiction are allowed as well, those are also issues, those are clearly established by case law and statute. The issue is that this particular case does fall within the Magistrate's court jurisdiction. Uh, and Mr. Seay would have had a remedy for suppression of the evidence in the case based off that point. However, I don't believe he asked for a dismissal and I believe, Your Honor, granted him dismissal on that point. So the State's only, the State's argument is is that, while suppression would have been a proper remedy in this particular case, dismissal is not proper based off State v. Ransom.

Judge McCall:

Alright, Let me ask you a question

Mr. Overby:

Yes, Your Honor

Judge McCall: Um, if I, if I were to rule that you were correct on that issue, and as a result of this hearing, modify my ruling to suppression, um, would that make any difference in your ability to go forward with the case?

Mr. Overby: Your Honor, I believe the appropriate procedural aspect of this is that you would grant our motion to reconsider and that you would grant our motion for a new trial which is which is what the motion is for and therefore bring that back into this issue we go back through the whole rigmarole all over again. I believe that's the correct, that's the correct aspect of it because further the defense hasn't asked for that or hasn't made a motion for suppression in the particular case. He may certainly may do that upon the new hearing.

Judge McCall: Um, um, this was um (inaudible) be careful what you wish for kind of a question but um that um your conclusion as to what would result is exactly what I was sitting here thinking, so, um we'll address that issue if necessary at a later time. Um, Mr. Seay, I will give you an opportunity to respond.

Mr. Seay: Your Honor, I wouldn't concede....

PAUSE IN TAPE

Mr. Seay: I believe the State's hung up on procedure here um in this case at this point (inaudible) motion, that being the case um um while I don't have to see the transcript of the court in its wisdom decided what to review it. I don't believe your going to find sufficient contemporaneous objections or exceptions by this State with regards to any motions I have made or any rulings made by the Court. And as such, I don't have any case law with me, but I believe the court that it is well settled that these matters are not reserved for review its not commonly contemporaneously made during the original court hearing

Mr. Overby: Your Honor, may I address that

Judge McCall: You may

Mr. Overby:
INAUDIBLE

Mr. Seay: And I will state right now as a defense attorney, (inaudible) a valuable lesson. And while we were trying to resolve a case um that had a um serious legal issue, um I don't believe that the defendant and Greenville County Thirteenth Circuit can any longer

take a stance on not requesting that the jury come in and be sworn. Um before any motions are heard or disposed of because the State is wishing to use these as an opportunity to throw it up once and then if it doesn't work out...oh we get another bite at the apple and we're going to bring in a whole, you know we're going to bring in a whole separate, we're going to try present a whole different case and get our second shot at it because we didn't have it the first time.

Judge McCall: I wondered why you, what's your double jeopardy opportunity swept by initially but uh, your points well taken.

Mr. Seay: I wasn't, maybe it just, I won't let it happen again.

Mr. Overby: Contemporaneous objection, Your Honor, I mean, I, by being here we argued this motion in front of the court. I have no burden of proof at that point as far as as far as the days is concerned and meeting my elements, I, that, what I was doing is responding to Mr. Seay's motion so that the fact that I denied it I preserved my objection by filing this motion to reconsider. And I am clarifying my obviously my objections on that point. So I admit the necessary, based off the law I have made the necessary objections in order to reserve the record. Um, as to Mr. Seay's argument, I am only going to briefly address that matter. If Mr. Seay has made a motion to suppress a particular portion of my video in the case or he had made a particular in an something had to be done as far as redacting the video goes, you know swearing the jury initially before conducting these motions that a great prejudicial mistake because it obviously cuts off our right to appeal any particular rulings. That could have been material, that could have something that he argued which I'm sure he will argue if Your Honor grants our motion um once we get to the next point. This, this is going to hinder our ability to conduct a case. Um sir, I believe that that there's any necessarily for the (inaudible) swearing the jury before these motions, but, that's neither here nor there about what we're here for, my arguments have been made and I will contend that my objections have been preserved properly.

Judge McCall: Alright, I will take this under

PAUSE IN TAPE

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 SCOTT E. WILLIAMS,)
)
)
 DEFENDANT.)
 _____)

2013-CP-23-02731

TRANSCRIPT OF RECORD

AUGUST 5, 2013
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE G. EDWARD WELMAKER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

MITCHELL BYRD, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DAVID SEAY, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were presented during this hearing)

1 **THE COURT:** The State of South Carolina versus
2 Williams. All right. I believe the State's the moving
3 party, is that correct?

4 **MR. BYRD:** That's correct, Your Honor. I'm Mitchell
5 Byrd with the Solicitor's Office representing ---

6 **THE COURT:** Okay.

7 **MR. BYRD:** --- the State today.

8 **MR. SEAY:** Your Honor, I did have one issue to address
9 with regard to the record, ---

10 **THE COURT:** All right.

11 **MR. SEAY:** --- to the court file. I was given notice
12 last week that the State was submitting what was
13 represented, I guess, as a transcript of the tape recordings
14 from the magistrate's office.

15 However, I'd object to their inclusion and ask that
16 they be stricken in light of the fact that there's no
17 verification -- I was not -- I'm not aware of any
18 verification or otherwise as to who produced the transcript
19 or any oath or having done -- taken the task on under oath
20 to properly and truly transcribe the tapes. And so I'd ask
21 that both of those transcriptions be withheld and stricken
22 from the record due to the lack of ---

23 **THE COURT:** There's two transcripts? You said both of
24 those?

25 **MR. SEAY:** There's two. There's one from the original

1 hearing, original trial date of March 14th, 2013. And
2 there's another transcript that was offered for the date of
3 the hearing on the new trial request by the State. I
4 believe that was -- I guess that was in April, April 10th of
5 2013.

6 **THE COURT:** Do they run continuously or ...

7 **MR. SEAY:** I'm sorry?

8 **THE COURT:** Do they run continuously on this ---

9 **MR. SEAY:** The transcripts? There were two different
10 submissions. There was one July 31st and one July 29th, or
11 at least those are the ---

12 **THE COURT:** Okay. I don't believe I have the 31st one.

13 **MR. SEAY:** It may have not made it to the file.

14 **THE COURT:** Yeah.

15 **MR. SEAY:** I guess that was Thursday.

16 **THE COURT:** Right. I've got the 29th one of March the
17 14th, but I don't have the other one. It's probably
18 downstairs. All right. Mr. Byrd, what about these
19 submissions, did you send those to Mr. Seay earlier?

20 **MR. BYRD:** I sent the transcriptions to him yesterday,
21 Your Honor, as they came off the press. And these were
22 transcriptions made from the tapes submitted by the
23 magistrate, which are also in the file. And we'll be glad
24 to have them verified if that's the objection.

25 I don't think they make a whole lot of difference to

1 the case. I don't think the facts are in dispute. We only
2 cited to the transcripts on really one issue. And I don't
3 believe that issue's in dispute.

4 However, if Your Honor would like us to have the tapes
5 that the magistrate submitted and our transcriptions
6 verified, we'll be more than happy to do that. I just don't
7 think it's significant in the case. But if the counselor
8 would prefer that, I'll be glad to do that.

9 **MR. SEAY:** Well, I just think, Your Honor, to be here
10 on appeal and to rely upon a transcript for which we have no
11 idea who transcribed it or if they did so under oath to
12 transcribe it accurately and completely ---

13 **THE COURT:** You've listened to the tapes, I guess?

14 **MR. SEAY:** I was there for the hearings. I've not
15 listened to the tapes, Your Honor.

16 **THE COURT:** Okay.

17 **MR. BYRD:** The tapes, I believe, are in the file.
18 That's where ---

19 **THE COURT:** Right. So you ---

20 **MR. SEAY:** I mean, we don't even know who transcribed
21 them. So I can't say. And I've not had the chance to
22 compare for accuracy. I just hate to rely on those in this
23 setting, that it wouldn't be proper to rely upon what
24 appears to be the State's notes with regards to the ---

25 **THE COURT:** Well, but then ---

1 **MR. SEAY:** --- to the tape.

2 **THE COURT:** --- I'd need to rely upon the tapes
3 themselves, I guess.

4 **MR. SEAY:** I believe that's the ---

5 **THE COURT:** But you haven't compared the tape to the
6 transcript to see if it's accurate?

7 **MR. SEAY:** No, sir. I just got these last week.

8 **THE COURT:** Okay.

9 **MR. BYRD:** And I'll be glad to get a verification if
10 the Court would prefer that or we can listen to the tapes.
11 I honestly ---

12 **THE COURT:** Is the issue -- is there something in the
13 transcript that gives you pause, Mr. Seay?

14 **MR. SEAY:** No, just concerns me that at this point I'm
15 -- if I consent to their admission, to be relied upon the
16 written transcripts, I'm conceding to their authenticity and
17 veracity without having ---

18 **THE COURT:** All right.

19 **MR. SEAY:** I mean, normally I would have expected that
20 they would have gotten a court reporter and paid a court
21 reporter, the State would have, and submitted a true
22 transcript of the tape. Otherwise, I think the tape is the
23 best evidence to rely upon.

24 **THE COURT:** All right. Okay. I'll give Mr. Byrd time
25 to get them verified. I'll withhold a ruling today on

1 anything that may address that until they're verified. Mr.
2 Byrd, I'll be glad to hear from you.

3 **MR. BYRD:** Thank you very much, Your Honor. I had one
4 minor housekeeping matter that I wanted to bring to the
5 Court's attention. And it's that the State filed a motion
6 to reconsider the magistrate's dismissal of the case. I
7 believe the magistrate interpreted that motion as a notice
8 of appeal as he immediately filed a return to the motion
9 with the court. And that is in civil action 2013 1763.

10 And that civil file contains some documents. I don't
11 -- again, I don't know that there are any documents in that
12 file that are relevant or material to the Court's decision
13 today, but I did want to point it out.

14 Once the magistrate realized that the motion was not a
15 notice of appeal, a motion to reconsider was heard and I
16 believe Judge Hill dismissed 1763 by consent of the parties.
17 And I just wanted to bring that to the Court's attention in
18 case there's some question about dates of filing or what
19 transpired.

20 And in reference to the case before the Court today,
21 number 2731, as Mr. Seay has already pointed out, there are
22 two transcripts, one from the March 14th, 2013 original
23 motion hearing, pretrial motion hearing, and the one on
24 April the 10th, 2013, which was the hearing on the motion to
25 reconsider before the magistrate.

1 You have a return filed by the Defendant dated,
2 according to my notes, March 27, '13. That was a return to
3 the State's motion for a reconsideration. And you have in
4 addition to the magistrate's original return of March 27th,
5 2013, you have an order affirming his dismissal dated April
6 the 22nd of 2013. And, Your Honor, we've provided Mr. Seay
7 with a copy of our brief and provided one to the Court.
8 There are essentially no disputes as to the facts that I'm
9 aware of.

10 **THE COURT:** All right. I'm not sure I have Mr. Seay's
11 return. You said I had it, but maybe I do and I just don't
12 see it right now.

13 **MR. SEAY:** The return to motion?

14 **THE COURT:** Right.

15 **MR. SEAY:** It's probably in that other ---

16 **MR. BYRD:** It may well be in the ---

17 **THE COURT:** With the other transcript, okay. All
18 right. It'll show up in the file eventually.

19 **MR. BYRD:** The facts, I believe, are largely, if not
20 completely, undisputed. The highway patrol set up a
21 driver's license checkpoint on ---

22 **MR. SEAY:** Your Honor, before we get into the facts, I
23 would like a clarification from the State with regards to
24 what the issue is before the Court. Because ---

25 **THE COURT:** I presume it's a dismissal of the ---

1 **MR. SEAY:** Well, I mean, ---

2 **THE COURT:** Is the two grounds the probable cause and
3 the unconstitutionality or is that the only ---

4 **MR. SEAY:** Well, there's -- I guess so, but then
5 they've put in a bunch of different stuff in their motion
6 for a new trial. The notice of appeal referenced certain
7 grounds regarding a preliminary hearing and other things.
8 But then the brief they submitted appeared to be -- and I
9 assume that these are the two issues that they intend to
10 present, is the State -- whether the State had any pretrial
11 burden to prove the constitutionality of the checkpoint and
12 did the State have any pretrial burden to show probable
13 cause for the Defendant's arrest.

14 Is that the two final issues that we're here on ---

15 **MR. BYRD:** Yes, sir.

16 **MR. SEAY:** --- that the State has chosen?

17 **THE COURT:** All right.

18 **MR. SEAY:** Okay. Well, Your Honor, I'm not even sure a
19 recitation of the facts that were presented at the trial
20 have bearing on these two issues. I think it's one of
21 preservation, Your Honor.

22 And the record will reflect that at the time of the
23 hearing, prior to, during, and subsequent to the State made
24 no objection on the record on March 14th with regard to the
25 propriety of the motion, of the hearing, or the Court's

1 authority to hear and make a ruling. And, therefore, I
2 think that these two issues are simply not preserved for
3 appeal.

4 They weren't raised at the trial, at the hearing on
5 March 14th. There was no ---

6 **THE COURT:** I thought you raised those.

7 **MR. SEAY:** I raised the motion.

8 **THE COURT:** All right. And the judge ---

9 **MR. SEAY:** But the State made no objection to my -- to
10 the propriety of my motion, the timing of it, nor to the --
11 nor did they object to the Court's authority to hear the
12 motion ---

13 **THE COURT:** Okay.

14 **MR. SEAY:** --- and make a ruling on it at the time.
15 And I think under a preservation issue, that issue is not
16 preserved. If they made no timely, contemporaneous
17 objections ---

18 **THE COURT:** So are you saying they have no ---

19 **MR. SEAY:** They ---

20 **THE COURT:** --- right to ---

21 **MR. SEAY:** --- consented to the hearing.

22 **THE COURT:** They consented to the hearing, but they
23 didn't like the result?

24 **MR. SEAY:** They didn't like the result.

25 **THE COURT:** So ---

1 **MR. SEAY:** So now ---

2 **THE COURT:** --- you think they've waived their right to
3 appeal the result then just because they didn't object to
4 you making ---

5 **MR. SEAY:** On these two issues. They didn't raise this
6 issue. They ---

7 **THE COURT:** You raised those issues, I thought.

8 **MR. SEAY:** Well, I mean, I think they did waive any
9 right to appeal when they made no objections to the evidence
10 presented.

11 **THE COURT:** All right. You ---

12 **MR. SEAY:** They simply made a legal argument about the
13 sufficiency of the facts of their case. They didn't make
14 any objections to the fact that I had raised the motion,
15 they didn't object or seek or ask the court to object to the
16 timeliness of the hearing.

17 At the conclusion when the judge said it was being
18 dismissed, the State simply said, very well, thank you, Your
19 Honor. There were no exceptions ---

20 **THE COURT:** But then they appealed it.

21 **MR. SEAY:** --- to the timing of it. But ---

22 **THE COURT:** Are you telling me they had to object to
23 you making a motion to ---

24 **MR. SEAY:** If they ---

25 **THE COURT:** --- dismiss?

1 **MR. SEAY:** --- thought it was improper, I believe so.
2 They had to establish that at the time that they felt that
3 the ---

4 **THE COURT:** They didn't argue against your motion? Did
5 they join you in your motion?

6 **MR. SEAY:** They did not join my motion regarding the --
7 but they only dealt with it factually, Your Honor. They did
8 not address and made no objection that they didn't have some
9 pretrial burden and that they should not be required to
10 participate in that motion.

11 That's their two issues before the Court right now.
12 And those two issues were not raised on March 14th, 2013.
13 And I don't see how they can be held for appeal. Those
14 issues was not addressed by the court at that time. I don't
15 know how that issue was preserved if it wasn't raised by the
16 State.

17 **THE COURT:** That makes me feel like I need to read the
18 transcript, don't I?

19 **MR. SEAY:** Or listen to the tapes.

20 **THE COURT:** Well, okay. Let me hear ---

21 **MR. SEAY:** I mean, if you reference, I believe, the
22 State's notes, as I've referred to them currently, until
23 they're verified, I believe, the reference to their notes
24 don't indicate any objection based on these two issues that
25 are before us ---

1 **THE COURT:** Okay.

2 **MR. SEAY:** --- today, which are did the State have any
3 pretrial burden to prove the constitutionality of the
4 checkpoint and did they have any pretrial burden to show
5 probable cause for Defendant's arrest. They made no such
6 objections, they raised no issues before the court at the
7 time.

8 And I think it's pretty clear appellate-wise that
9 issues must be preserved on the record and contemporaneously
10 made. They cannot be brought up later.

11 **THE COURT:** All right. Mr. Byrd.

12 **MR. BYRD:** Your Honor, apparently there is some factual
13 dispute. I was not aware of it until today. So, again, I
14 would defer to the Court's reviewing the transcripts,
15 reviewing the tapes. And we'll be glad to have them sent to
16 a transcriber, if necessary.

17 But the State clearly objected on the record to the
18 Defendant's grounds that the State had to prove the
19 constitutionality of the checkpoint prior to trial in this
20 case. I'm showing that on page 8 of the transcript of 3/14
21 Assistant Solicitor Overby clearly stated, Your Honor, we
22 don't agree with counsel for the Defense that we have not
23 shown the constitutionality of the checkpoint, but it
24 doesn't matter in this case because the Defendant did not go
25 to the checkpoint.

1 Now, that's as clear an objection to the motion to
2 dismiss the case as counsel could make. There isn't
3 anything else that he could have said at that point.

4 And, again, what our issue is today is whether or not
5 we had to prove the constitutionality of a checkpoint that a
6 person doesn't go through. And clearly we have no burden to
7 show that. And so that's that issue.

8 Now, the second issue is probable cause. The
9 transcript, again, clearly shows in His Honor's return as
10 well as his order dismissing the motion to reconsider showed
11 that he ruled that there was no probable cause for the
12 Defendant's arrest.

13 And that's just clearly error as we point out on two
14 bases. One being that pretrial the State has no burden to
15 prove probable cause. The State's burden is to show that
16 there was a reasonable suspicion which warranted the stop of
17 the Defendant. And we contend that there's more than
18 sufficient evidence, objective facts to support a reasonable
19 suspicion.

20 First, the Defendant came over the crest of the hill
21 and did a u-turn and left the scene. Now, there is a
22 dispute about whether or not that u-turn was a traffic
23 violation. Again, the State has no burden to prove that
24 there was a traffic violation prior to the stop. It's
25 enough if the Defendant turns and seeks to evade the

1 checkpoint.

2 There are allegations or disputes in the record about
3 whether or not the u-turn was a lawful u-turn on a hill or
4 not. But again, the Defendant was not stopped on the hill.
5 The Defendant fled the scene and drove into a parking lot
6 away from the scene, pulled to the back side of the parking
7 lot and turned his lights off. That's where that stop
8 occurred.

9 And at that point those facts, which are in the record,
10 support the officer's objective suspicion that the Defendant
11 was avoiding, evading the checkpoint and seeking to hide
12 from the police. And he had a right to investigate at that
13 point. He did and, of course, discovered that the Defendant
14 was under the influence of alcohol and so charged him.

15 So pretrial is the -- is one of the critical factors
16 here and one of the reasons this case is so important to the
17 State of South Carolina because the Supreme Court has held
18 that it's not proper for a magistrate to hold a preliminary
19 hearing for probable cause purposes. And we cite State
20 versus Ramsey.

21 I'll also point out State versus Williams, which is
22 also cited in our brief. The court basically said that the
23 State has a right to put its case up. And this is
24 particularly true in summary court where we don't have quite
25 as extensive pretrial motion hearings as we do in the

1 circuit court.

2 And I would refer Your Honor to those cases, Ramsey and
3 Williams, which are cited in the brief because we think the
4 State had a right to present its case, put it on the record.
5 And at the end of the State's case the Defense could move
6 for a directed verdict on the grounds that there was no
7 reasonable suspicion or there was no probable cause for the
8 arrest or any other ground that they sought to have the
9 dismissal of the case based upon.

10 It's just not proper in magistrate's court for the
11 judge to be the finder of facts on factual matters. Now, I
12 know probable cause is ultimately a legal issue, but where
13 the facts are disputed as they clearly were in this case, we
14 feel like the judge should have at the very least deferred a
15 decision on these pretrial matters in order to have the
16 evidence presented formally in the courtroom so that the
17 record would be complete in that regard.

18 So we're asking that the case be reversed, the court's
19 dismissal be reversed and the case be remanded to the trial
20 court for a trial on the matter where all these issues can
21 be hashed out finally.

22 **MR. SEAY:** And, Your Honor, ---

23 **THE COURT:** Yes, sir.

24 **MR. SEAY:** --- with regards to this -- they state that
25 it was an improper hearing, that seems to be the basis, this

1 was an improper hearing. Well, they didn't make any
2 contemporaneous objection to the -- to whether or not that
3 was a proper form and time for a hearing.

4 They then state, well, it should have waited because we
5 would have presented more evidence. They concede that the
6 probable cause or the lawfulness of the stop was a legal
7 matter for the judge to determine. I don't think the jury
8 was to even address whether it was a legal and lawful
9 arrest. That was for the court, I believe, properly. And I
10 think the State has just conceded that.

11 The State brought one witness, the arresting officer,
12 who also did the DataMaster. They were on notice previously
13 and knew that we intended to question the DUI checkpoint and
14 the stop months ahead of this.

15 They brought one witness to court. They had one -- the
16 same witness who testified in that hearing would have been
17 the one sole officer who would have testified moments later
18 had the court ruled in the State's favor rather than the
19 Defense's favor. We had a jury sitting in the waiting room
20 to begin the trial. So it wouldn't have changed anything
21 regarding the State's evidence.

22 And so I think it's a little disingenuous to proceed,
23 have no objections to the proceedings at the time. None of
24 these objections were made that day on March 14th by the
25 State. None with regards to the timeliness of the -- or

1 whether, in fact, the hearing should be conducted at all.

2 And the fact that they made no contemporary --
3 contemporaneous motion or objection to the providence of
4 holding that hearing and the reliability that the litigants
5 could put on the court's decision once that hearing was
6 held, I don't think they now can come appeal because they're
7 disastisfied with the results.

8 **THE COURT:** All right.

9 **MR. SEAY:** And I'd point out, Your Honor, just with
10 regard -- if there's any -- I think that's the crux issue of
11 this appeal. But with regards -- I think there's the
12 magistrate's return as well as the record would reflect that
13 the constitution or the properness of the checkpoint, that
14 the State failed in presenting sufficient evidence to show
15 that it was a proper checkpoint, but yet at the same time
16 they want to use the quote evading or the improperly
17 established checkpoint as the basis for creating suspicion
18 in my client.

19 And I think the court -- the magistrate's return and
20 record reflects that the court considered at the time all
21 those facts and found the u-turn was not illegal under the
22 facts. And, in fact, there's a note in the magistrate's
23 return that the arresting officer in this case noted later
24 that he'd actually gone and measured the hill in question
25 and determined what the distance was and whether it was in

1 violation of the u-turn statute. And the distance and
2 visability was actually in excess of a thousand feet
3 according to the officer, what the officer reported to the
4 magistrate subsequent to that hearing.

5 So I don't think the facts support their claim ---

6 **THE COURT:** Was the basis for the pursuit the improper
7 u-turn or a u-turn at a checkpoint?

8 **MR. SEAY:** They said because he did the u-turn. He
9 said his supervisor told him to go pull him over when he
10 committed the u-turn.

11 **THE COURT:** So it's because of the checkpoint then? He
12 made the u-turn prior to the ---

13 **MR. SEAY:** I don't think he gave any testimony that
14 that was the -- he did the -- he said the basis was for --
15 way he put it was an unlawful u-turn, but then when
16 questioned regarding the actual facts of that u-turn he --
17 they did not -- the State did not present sufficient
18 evidence ---

19 **THE COURT:** Was it unlawful because it was ---

20 **MR. SEAY:** He said ---

21 **THE COURT:** --- in violation of the ---

22 **MR. SEAY:** --- on a hill -- the statute.

23 **THE COURT:** Not unlawful because it was near a
24 checkpoint?

25 **MR. SEAY:** Correct. I don't believe that was raised at

1 that hearing.

2 **THE COURT:** Okay. When -- I gather from what you told
3 me I don't have the second transcript and I don't have your
4 return. You can make me a copy of your return. And I guess
5 y'all have a copy of the second ---

6 **MR. BYRD:** Yes, sir.

7 **THE COURT:** I'm sure it's downstairs somewhere, but if
8 y'all could get those to me. And then what are we going to
9 do about verifying the transcript?

10 **MR. BYRD:** I can have it verified today, Judge. The
11 Solicitor's Office prepared it.

12 **THE COURT:** If you've got questions with that, Mr.
13 Seay, about the proper authentication that you think there's
14 error, you can listen to the tape and compare it to the
15 transcript and see. Obviously I'm going to have to read the
16 transcript or listen to the tapes one. I'd rather read than
17 I would listen. But if you find there are errors, then I
18 need to know that.

19 **MR. BYRD:** And I'll be glad to provide him with our
20 copies of the copies of the tapes so that he can ---

21 **THE COURT:** Okay.

22 **MR. BYRD:** --- can listen to them also if he would like
23 to.

24 **THE COURT:** All right. Just let me know when y'all can
25 get that to me. I'd like to get this put to bed this week

1 since I'm losing my clerk, but if I can't, I can't. So ...

2 MR. BYRD: Very well.

3 THE COURT: So as soon as you can, get it to me, ---

4 MR. SEAY: Thank you.

5 THE COURT: --- okay?

6 MR. BYRD: Um-hum (affirmative).

7 (Hearing ended at 11:46 am)

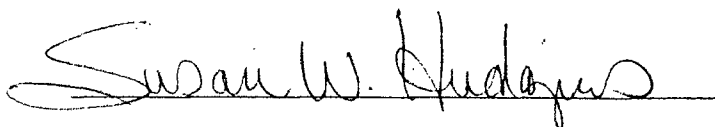
8 (End of requested transcript of record)

1 Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenville County, South Carolina, on the 5th day
9 of August 2013.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12 January 15, 2014

13
14 
15

16 Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

67

APPEAL FROM GREENVILLE COUNTY
Summary Court

Jesse A. McCall, Jr., Magistrate Court Judge

Case No. F062451

The State, ...Appellant

v.

Scott Eugene Williams Respondent

NOTICE OF APPEAL

2013-CP-23- 02731

The State of South Carolina hereby appeals the order of the Honorable Jesse A. McCall denying the State's Motion to Reconsider the Court's ruling dismissing the State's Case, dated April 17th, 2013 and received April 22nd, 2013.

This appeal is made on all grounds raised and preserved below, but specifically on the following grounds:

1. The Court erred in holding what amounted to a preliminary hearing on a charge within its jurisdiction where the Court dismissed the State's case based on a lack of probable cause. *See State v. Ramsey*, 381 S.C. 375, 673 S.E.2d 428 (2009).
2. The Court erred in ruling that reasonable suspicion did not exist to justify the defendant's stop based on the totality of the circumstances, which involved Defendant's attempt to evade a driver's license checkpoint. *See United States v. Dennis Deon Smith*, 396 F. 3d 579 (4th Cir. 2005). *See State v. Griffin*, Op. No. 451PA12 (N.C. 2013).
3. The Court erred in ruling that the action should be dismissed because the testimony of Trooper Robertson established sufficient probable cause or reasonable suspicion that the Defendant violated S.C. Code § 56-5-2140 to justify his lawful stop, which subsequently led to the Defendant's arrest for driving under the influence.

FILED IN COURT
GREENVILLE CO. SC
PAUL B. WILKINSON
2013 MAY 15 P 2:03

4. The Court erred in ruling that the State failed to present sufficient evidence and competent witnesses to establish the Constitutionality of a driver's license checkpoint under State v. Vickery, 399 S.C. 507, 732 S.E.2d 318 (S.C. Ct. App. 2012).

Dated: May 14, 2013



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Attorney for the State

Other Counsel of Record:
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69

Form 430
Rev. 3/87SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
John	Michael	Williams
STREET AND NO.		CITY STATE ZIP CODE
11111		Greenville SC 29615

STATE LICENSED	DRIVER'S LICENSE NO.	CDL	CRI. LIC. CLASS
SC	123456789	☐ YES ☒ NO	2
VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR
123456789	SC	Chrysler	87
HAZ. MT.		MOPED	ATV/CYL
☐		☐	☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT	STREET AND NO.	CITY	STATE	ZIP CODE
Greenville County Court	11111	Greenville	SC	29615
DATE OF TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
04/12/88	10:00	Greenville	SC	29615

VIOLATION - COURT APPEARANCE REQUIRED	YES	NO	VIOLATION SECTION NO.
☒	☐	☐	51-52-2930

OWNER OF VEHICLE	DATE OF ARREST
John Michael Williams	04/12/88
ADDRESS OF OWNER	DATE OF VIOLATION
11111	04/12/88

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK
\$1000	Robert A. Williams	Det.

DESCRIPTION OF ACCUSED	COUNTY	NUMBER
John Michael Williams, 28, 5'10", 175 lbs, Brown hair, Blue eyes	Greenville	32
DATE BAIL RECD	BY	BAOGE
04/12/88	Williams	442

CASE BEFORE	MAGISTRATE	MUN. COURT	CIRCUIT COURT	FAMILY COURT	FEDERAL COURT
☒	☐	☐	☐	☐	☐
NAME OF TRIAL COURT	TIME OF VIOLATION	WEATHER			
Greenville County Court	04/12/88	116			

DEFENDANT: DID NOT APPEAR	APPEARED	MILES	N	E	S	W
☐	☒	1.41	☐	☐	☐	☐
NOLLE PROSSED	DISPOSITION	CITY	CODE			
☐	☐	Greenville	1			

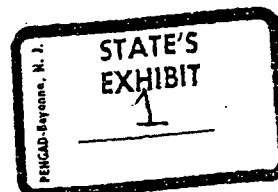
TRIAL BY	TRIAL JUDGE	JURY	DATE OF TRIAL IF ANY
☒	Williams	☐	04/12/88
VERDICT OF TRIAL IF ANY	GUILTY	NOT GUILTY	
☐	☐	☒	

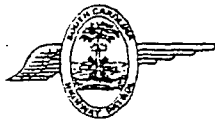
JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED
COMMITTED TO:		Offense	Arrest as	Result of
No		99	No	Collision

CERTIFIED CORRECT	DATE	OFFENSE CODE	B.A. LEVEL
	04/12/88	99	1

TRIAL COURT'S COPY

F 062451





SOUTH CAROLINA HIGHWAY PATROL ⁷⁰

DRIVER/VEHICLE INSPECTION REPORT

Date: 03/26/2011

County: Greenville

District: Three

This is report # 1 for the month.

Driver's License Violations	1	SC-183 @ Old Cedar Ln. Rd.
Vehicle License Violations	0	Site Location
Equipment Violations	0	List All Troopers Present
Driving Under Suspension	0	Cpl. J.N. Bradley <i>(ynb)</i>
Driving Under The Influence	2	D.P. Robertson
Illegal Alcohol Cases	2	T.J. Moon
Illegal Drug Cases	0	
Unlawful Weapons Cases	0	
Child Restraint Cases	0	
Safety Belt Violations	0	
Other Non-Moving Violations	0	
Other Moving Violations	0	
Total Warnings	1	
Total Cases		Total Man-Hours Involved
5		3

South Carolina Highway Patrol
DUI Citation Report

71

For Dates 03/26/2011 through 03/26/2011
~~County Greenville - Collision~~

3/26/11 0800

Saturday

SC-253

Total

1

South Carolina Highway Patrol
DUI Citation ReportFor Dates 03/26/2011 through 03/26/2011
County Greenville - Non-Collision

3/26/11 0333	Saturday	County MAIN ST
3/26/11 0205	Saturday	SC-183
3/26/11 0206	Saturday	SC-183
3/26/11 0258	Saturday	SC-183
Total	4	

South Carolina Highway Patrol
DUI Citation ReportFor Dates 03/01/2011 through 03/31/2011
County Greenville -- Collision

3/1/11 2010	Tuesday	S-134
3/2/11 0130	Wednesday	I-85
3/2/11 1240	Wednesday	County Taylors Rd.
3/2/11 1834	Wednesday	S-447
3/2/11 1920	Wednesday	S-105
3/3/11 0330	Thursday	SC-20
3/5/11 0055	Saturday	SC-11
3/5/11 0107	Saturday	Other anderson ridge rd
3/5/11 0215	Saturday	S-115
3/5/11 1940	Saturday	County Cody Ln
3/6/11 0155	Sunday	S-157
3/7/11 0212	Monday	Other chrome dr
3/10/11 0630	Thursday	S-154
3/10/11 1900	Thursday	S-55
3/13/11 0324	Sunday	S-348
3/17/11 1143	Thursday	SC-146
3/17/11 2241	Thursday	S-492
3/18/11 1837	Friday	S-84
3/19/11 2202	Saturday	S-920
3/20/11 1345	Sunday	US-276
3/22/11 0650	Tuesday	S-38
3/22/11 1126	Tuesday	US-25
3/26/11 0800	Saturday	SC-253
3/27/11 0215	Sunday	S-94
3/31/11 1908	Thursday	County chesley dr
3/31/11 2036	Thursday	US-25

Total 26

South Carolina Highway Patrol
DUI Citation ReportFor Dates 03/01/2011 through 03/31/2011
County-Greenville--Non-Collision

3/18/11 0045	Friday	I-385
3/18/11 0050	Friday	I-385
3/18/11 0410	Friday	I-85
3/19/11 0220	Saturday	US-29
3/8/11 2200	Tuesday	SC-183
3/12/11 0100	Saturday	SC-253
3/17/11 2345	Thursday	I-385
3/19/11 0150	Saturday	SC-183
3/16/11 2045	Wednesday	County jubilee ch rd
3/16/11 0248	Wednesday	S-94
3/21/11 2347	Monday	S-94
3/3/11 0319	Thursday	SC-253
3/4/11 2312	Friday	S-782
3/10/11 2229	Thursday	US-123
3/11/11 0252	Friday	SC-291
3/12/11 2256	Saturday	SC-291
3/18/11 2108	Friday	S-473
3/19/11 0243	Saturday	S-47
3/24/11 0056	Thursday	SC-183
3/25/11 0147	Friday	S-38
3/1/11 0230	Tuesday	Other pinckney st.
3/5/11 0230	Saturday	County scenic
3/6/11 0300	Sunday	Other private
3/6/11 2049	Sunday	US-29
3/9/11 2024	Wednesday	Other Brown Rd
3/10/11 1905	Thursday	US-25
3/12/11 0004	Saturday	US-29
3/18/11 0110	Friday	I-385
3/3/11 0145	Thursday	I-85
3/30/11 1740	Wednesday	SC-183
3/11/11 2240	Friday	I-385
3/26/11 0333	Saturday	County MAIN ST
3/18/11 2104	Friday	US-29
3/19/11 1737	Saturday	S-13
3/19/11 0134	Saturday	US-29
3/13/11 0445	Sunday	SC-183
3/13/11 2036	Sunday	US-25
3/14/11 0008	Monday	US-25
3/4/11 2200	Friday	S-85
3/6/11 0450	Sunday	I-85
3/20/11 0650	Sunday	US-25
3/4/11 2203	Friday	SC-253
3/10/11 2000	Thursday	County ROE RORD RD
3/18/11 0410	Friday	S-273
3/4/11 0025	Friday	S-21
3/4/11 0206	Friday	SC-183
3/5/11 0230	Saturday	US-276
3/19/11 0402	Saturday	US-25
3/20/11 0330	Sunday	S-273
3/26/11 0206	Saturday	SC-183

3/26/11 0206	Saturday	SC-183
3/30/11 0023	Wednesday	SC-183
3/15/11 1840	Tuesday	Other PP
3/13/11 0700	Sunday	SC-290
3/1/11 2354	Tuesday	SC-291
3/5/11 0432	Saturday	SC-183
3/6/11 0019	Sunday	US-25
3/15/11 1455	Tuesday	SC-183
3/18/11 0230	Friday	SC-291
3/16/11 0039	Wednesday	I-385
3/6/11 2059	Sunday	SC-183
3/5/11 0047	Saturday	SC-183
3/5/11 2046	Saturday	US-29
3/19/11 0346	Saturday	SC-290
3/20/11 0130	Sunday	SC-183
3/11/11 0450	Friday	US-276
3/12/11 0055	Saturday	SC-183
3/17/11 0035	Thursday	US-276
3/25/11 0325	Friday	SC-183
3/15/11 2107	Tuesday	US-29
3/23/11 1535	Wednesday	S-1092
3/18/11 0100	Friday	I-385
3/17/11 0126	Thursday	US-29
3/18/11 0420	Friday	S-564
3/18/11 0420	Friday	US-76
3/19/11 0115	Saturday	US-29
3/18/11 0454	Friday	S-104
3/19/11 0115	Saturday	SC-183
3/14/11 2223	Monday	S-347
3/15/11 0622	Tuesday	US-25
3/15/11 0301	Tuesday	I-85
3/18/11 0120	Friday	Other Studio 54 parking lot
3/11/11 1955	Friday	County LENORE AVE
3/11/11 0027	Friday	SC-183
3/23/11 1300	Wednesday	I-385
3/26/11 0258	Saturday	SC-183
3/20/11 0429	Sunday	SC-81
3/25/11 2118	Friday	I-385
3/25/11 0344	Friday	US-29
3/30/11 2010	Wednesday	Other 700 bridge rd
3/31/11 1655	Thursday	S-329
3/18/11 0131	Friday	I-385
3/20/11 0406	Sunday	S-279
3/20/11 0000	Sunday	S-3
3/20/11 0146	Sunday	SC-291
3/12/11 2256	Saturday	SC-291
3/4/11 0206	Friday	SC-183
3/4/11 0025	Friday	S-21

Total

98

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

76

APPEAL FROM GREENVILLE COUNTY
Summary Court

Jesse A. McCall, Jr., Magistrate Court Judge

Case No. F062451

The State, ...Appellant

v.

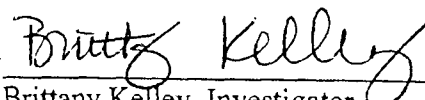
Scott Eugene Williams, ...Respondent

FILED
GREENVILLE COUNTY
PAUL B. WICKENS, CLERK
2013 MAY 15 A 2:08

PROOF OF SERVICE

2013-CP-23- 02731

I certify that I have served this Notice of Appeal in the above-captioned matter by mailing the same addressed to David Seay, Jr., Esq., 16 Williams Street, Greenville, SC 29601.


Brittany Kelley, Investigator
On behalf of Stanford L. Overby, Jr.
Assistant Solicitor
Thirteenth Judicial Circuit
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May 14, 2013

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
APPELLANT

VS.

C.A.# 2013-CP-23-02731

SCOTT EUGENE WILLIAMS
RESPONDENT

BRIEF OF APPELLANT

FACTS

On March 26, 2011, Senior South Carolina Highway Patrol Trooper David P. Robertson participated in a drivers' license checkpoint on S.C. Hwy. 183 at Cedar Lane Road in Greenville County South Carolina. At approximately 2:58 a.m. Trooper Robertson observed a vehicle stop on the hill short of the checkpoint, then make a u-turn and leave the scene. (Transcript 3/14/13 pp. 5, 11)

On advice of his on site supervisor Robertson gave chase and located the vehicle with his lights off on the backside of a parking lot. Id. Robertson approached the driver, identified as the Defendant Scott Eugene Williams, and noticed the smell of alcohol. Following some field sobriety tests Mr. Williams was charged with driving under the influence.

Prior to trial Mr. Williams challenged the constitutionality of the checkpoint and probable cause for his arrest. Following argument of counsel, the trial court dismissed the case holding that the State failed to prove that the checkpoint was constitutionally valid and there was insufficient probable cause for the arrest. The State's motion for reconsideration was denied and this appeal ensued.

ISSUES

1. DID THE STATE HAVE ANY PRE-TRIAL BURDEN TO PROVE THE CONSTITUTIONALITY OF A LICENSE CHECKPOINT WHEN THE DEFENDANT DID NOT PROCEED THROUGH THE CHECKPOINT?
2. DID THE STATE HAVE ANY PRE-TRIAL BURDEN TO SHOW PROBABLE CAUSE FOR THE DEFENDANT'S ARREST?

ARGUMENT 1

THE STATE HAD NO PRE-TRIAL BURDEN TO PROVE THE CONSTITUTIONALITY OF THE CHECKPOINT BECAUSE THE DEFENDANT EVADED THE CHECKPOINT

A motorist who turns to avoid a checkpoint is not seized by that checkpoint. See United States v. Scheetz, 293 F.3d 175, 183 (4th Cir. 2002) (holding that a motorist who performed a u-turn prior to a checkpoint was not seized by the checkpoint, and, therefore, could not protest its constitutionality). One is not seized for Fourth Amendment purposes “until officers apply physical force or the suspect submits to a show of authority.” United States v. Smith, 396 F.3d 579, 587 (4th Cir. 2005), citing California v. Hodari D., 499 U.S. 621, 626 (1991). A copy of the Smith case is attached. A motorist who turns prior to the checkpoint has not submitted to the authority exerted by the checkpoint; therefore, the motorist is not seized by the checkpoint. See Scheetz, 293 F.3d 175, 183. See also State v. Vickery 399 S.C. 507, 732 S.E.2d 218 (Ct. App. 2012) (“Constitutional challenges to checkpoint seizures turn on whether the initial stop AT the checkpoint was reasonable”). (Emphasis added)

Here, Mr. Williams was seized in a parking lot, not at the checkpoint. He performed a u-turn prior to reaching the checkpoint. He then drove away and turned into

a parking lot, where the officer stopped him. Because he was seized in the parking lot--not at the checkpoint--the constitutionality of the checkpoint is irrelevant.

ARGUMENT 2

THE STATE DID NOT HAVE A PRE-TRIAL BURDEN TO SHOW PROBABLE CAUSE FOR DEFENDANT'S ARREST

The Magistrate erred in dismissing this case prior to trial based upon lack of probable cause, for two reasons.

First, the Magistrate's ruling on probable cause amounted to a preliminary hearing. Magistrate Courts do not have the authority to hold a preliminary hearing in criminal cases. State v. Ramsey, 381 S.C. 375, 377 (2009). The magistrate in Ramsey held a preliminary hearing to determine if probable cause existed for an arrest for criminal domestic violence. Id. at 375. The Supreme Court held "the magistrate did not have the authority to hold a preliminary hearing in this matter." Id. at 377. "[T]here is no authority for the proposition that magistrates are authorized to conduct preliminary hearings on matters within their own trial jurisdiction." See also State v Williams 321 S.C. 381, 468 S.E.2d 656 (1996) (" We agree with the State that the trial Judge abused his discretion by dismissing the charges without first allowing the State to present its case.")

Second, the Magistrate in this case applied the wrong standard to determine whether stopping Mr. Williams was lawful. Reasonable suspicion and not probable cause is the standard. A reasonable suspicion is required to stop a motorist. See United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (holding that stops near the border but not checkpoints required a reasonable suspicion); see also Delaware v. Prouse, 440 U.S. 648 (1979) (holding that random stops without a reasonable suspicion violated the Fourth

Amendment). Reasonable suspicion is based on a totality of the circumstances analysis. State v. Taylor, 401 S.C. 104 (2013); see also United States v. Sokolow, 490 U.S. 1 (1989). Thus, factors that appear individually innocent can combine to create a reasonable suspicion. Id. at 10. To satisfy the reasonable suspicion standard, the State is not required to prove the suspected motor vehicle violation occurred. State v Padgett 354 S.C. 268, 580 S.E.2d 159 (Ct. App. 2003)

When a driver turns around to avoid a checkpoint, the avoidance creates a reasonable suspicion that the driver is engaged in criminal activity. See State v. Griffin, 2013 N.C. Lexis 340 (2013). Copy attached. The driver in Griffin approached a checkpoint, then attempted to perform a turn around. The officer approached the vehicle before it finished the three-point turn. The court found the turn created a reasonable suspicion when viewed in context with the checkpoint because it was reasonable to believe the driver was attempting to evade the checkpoint.

Here, Mr. Williams performed a u-turn while approaching a checkpoint. (Transcript 3/14/13 pp. 5, 11) The context of the u-turn creates a reasonable suspicion that Mr. Williams was engaged in criminal activity and was attempting to evade police. See Griffin, Id. The act of evasion creates reasonable suspicion. Id. Reasonable suspicion exists if a motorist performs a u-turn prior to a checkpoint, then pulls into a parking lot, and turns the headlights off. Because Mr. Williams u-turned and stopped in the parking lot with his lights off, it is reasonable to conclude that he was trying to evade the police. See Smith, 396 F.3d at 587.

Law enforcement officers have authority to effect a limited investigatory detention when they possess “ a reasonable and articulable suspicion that the person seized is

engaged in criminal activity”. U.S v Smith, Id. citing Reid v Georgia 448 U.S. 438, 440 (1980) and Terry v Ohio 392 U.S. 1, 21-22 (1968). In determining whether a detention is supported by reasonable suspicion courts look to the circumstances known to the officer and the “the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. Smith at 583 citing Terry Id.

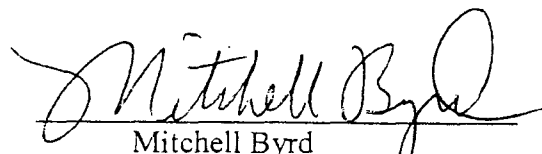
In the Smith case, Smith argued that a motorist’s legal turn to avoid a police roadblock cannot create a reasonable suspicion of criminal activity because the driver may be turning away from the roadblock for innocent reasons. Citing Illinois v Wardlaw 528 U.S. 119 (2000), the Fourth Circuit Court of Appeals disagreed and held that “when law enforcement officers observe conduct suggesting that a driver is attempting to evade a police roadblock- such as unsafe or erratic driving or behavior indicating the driver is trying to hide from officers – police may take that behavior into account in determining there is reasonable suspicion to stop the vehicle and investigate the situation further”. Smith at 585.

In this case it is undisputed that the defendant stopped short of the checkpoint, made a u-turn and left the scene. These facts combined with Mr. Williams’s evasive conduct of pulling into a parking lot on the backside and turning off his lights gave Trooper Robertson a reasonable and articulable suspicion to stop Mr. Williams and investigate the situation further. Griffin, Id., Smith, Id.

CONCLUSION

The magistrate erred when he dismissed this case prior to trial. This court should reverse the dismissal and remand the case for trial.

August 21, 2013



Mitchell Byrd
Asst. Solicitor 13th Circuit

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396 F.3d 579 (4th Cir. 2005)

UNITED STATES of America, Plaintiff-Appellee,

v.

Dennis Deon SMITH, Defendant-Appellant.

No. 04-4311.

United States Court of Appeals, Fourth Circuit

February 10, 2005

Argued: Dec. 3, 2004

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[Copyrighted Material Omitted]

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ARGUED:

William Stirnson Trivette, Assistant Federal Public Defender, Office of the Federal Public Defender, Greensboro, North Carolina, for Appellant.

Michael Francis Joseph, Assistant United States Attorney, Office of the United States Attorney, Greensboro, North Carolina, for Appellee.

ON BRIEF:

Louis C. Allen, III, Federal Public Defender, Greensboro, North Carolina, for Appellant.

Anna Mills Wagoner, United States Attorney, Greensboro, North Carolina, for Appellee.

Before WILKINS, Chief Judge, and NIEMEYER and DUNCAN, Circuit Judges.

Affirmed by published opinion. Chief Judge Wilkins wrote the opinion, in which Judge Niemeyer and Judge Duncan joined.

WILLIAM W. WILKINS, Chief Judge:

Dennis Deon Smith appeals a district court order denying his motion to suppress evidence obtained by police following an investigatory stop of his vehicle. Because the officers possessed reasonable suspicion to stop Smith's vehicle, we affirm.

I.

During the early morning of March 19, 2003, Durham, North Carolina police officers established a driver's license checkpoint on Highway 54. The checkpoint, which was established in response to numerous break-ins and traffic violations in the area, was located at the bottom of a small hill and was operated by five officers, each with a patrol vehicle, from around 2:00 a.m. until shortly after 3:00 a.m. During this time, the police lights on each patrol vehicle were activated, and all motorists traveling in either direction were stopped.

At approximately 3:05 a.m., a vehicle traveling west on Highway 54 crested the hill about 985 feet from the checkpoint. According to the officers, the vehicle "appeared to slam on its brakes," J.A. 24, 55, because its headlights "dipped down toward the ground," *id.* at 55. The officers then observed the vehicle turn left onto a private gravel driveway leading to a single residence. The entrance to the driveway was located about 810 feet from the checkpoint.

Based on these observations, Officer Clyde McCoy drove his patrol vehicle to the driveway to investigate. When McCoy turned into the driveway, he observed that the suspect vehicle, a Lexus sedan, was stopped just before a sharp left curve in the driveway, approximately 240 feet from the highway. Either before or after entering the driveway, McCoy activated his police lights.[1] Rather than remaining

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stopped, however, the Lexus "proceeded slowly around the curve." *Id.* at 26. When McCoy drove around the curve, he saw the Lexus stopped at the end of the driveway with its lights off.[2]

McCoy pulled up behind the Lexus and exited his patrol vehicle. He then approached the Lexus and asked its driver and only occupant, Smith, for his driver's license. Smith responded that he did not have a license. McCoy asked Smith if he lived at the residence; Smith replied that he did not. Smith told McCoy that he had turned off of the highway "because he saw the patrol vehicles down the street and thought there was an accident." *Id.* McCoy asked Smith to step out of his vehicle and handcuffed him. After verifying by radio that Smith's license had been revoked, McCoy placed Smith under arrest.

A second police officer who had followed McCoy to the scene then asked Smith for permission to search the Lexus. Smith replied that "he didn't care, it wasn't his vehicle." *Id.* at 60. Police searched the vehicle and discovered a loaded magazine for a 9-millimeter handgun and a small quantity of cocaine base. After advising Smith of his *Miranda* rights,[3] officers asked him about the weapon to which the magazine belonged. Smith

responded that he had thrown a handgun out of the vehicle near the entrance to the driveway. Although the officers found no handgun in the area Smith described, they eventually recovered a Ruger 9-millimeter pistol near the Lexus at the end of the driveway. Smith was then transported to the police station. After receiving his *Miranda* warnings in writing, Smith stated that the pistol belonged to a friend who had died and that he kept the weapon because he was uncertain what to do with it.

Smith was subsequently charged with possession of a firearm by a convicted felon, *see* 18 U.S.C.A. § 922(g)(1) (West 2000). He pleaded not guilty and moved to suppress the evidence obtained following the vehicle stop, arguing that the officers lacked reasonable suspicion to justify the stop. The district court held that the officers had reasonable suspicion to stop Smith's vehicle because it (1) turned abruptly into a private driveway before reaching the police checkpoint and (2) moved--from a stopped position--around the curve of the driveway "as far as it could go," J.A. 83, in response to McCoy's police lights. The court concluded that based on the totality of the circumstances, the officers reasonably suspected that Smith was attempting to avoid the police checkpoint to conceal his involvement in criminal activity. The district court therefore denied Smith's motion to suppress.

Smith subsequently entered a conditional guilty plea pursuant to a plea agreement. The district court sentenced Smith to 60 months in prison.

II.

Smith contends that the district court erred in denying his motion to suppress, arguing that the stop of his vehicle violated the Fourth Amendment because the officers lacked reasonable suspicion that he was engaged in criminal activity. Whether the stop of Smith's vehicle was based on reasonable suspicion is a mixed

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question of law and fact that we review de novo. *See Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. And, it is well settled that a search conducted without a warrant is per se unreasonable unless it falls within one of the "well-delineated exceptions" to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). One such exception is the authority of law enforcement officers to effect a limited investigatory detention when they possess "a reasonable and articulable suspicion that the person seized is engaged in criminal activity." *Reid v. Georgia*, 443 U.S. 438, 440, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980) (per curiam); *see Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). A reasonable, articulable suspicion is "a particularized and objective basis for

suspecting the person stopped of criminal activity." *Ornelas*, 517 U.S. at 696, 116 S.Ct. 1657 (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)). In determining whether a detention is supported by reasonable suspicion, we look to the circumstances known to the officer and "the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry*, 392 U.S. at 27, 88 S.Ct. 1868. In so doing, we must consider "the totality of the circumstances--the whole picture." *Cortez*, 449 U.S. at 417, 101 S.Ct. 690.

A.

Emphasizing the general principle that individuals have a right to avoid encounters with the police. *see, e.g., United States v. Burton*, 228 F.3d 524, 527, 528-29 (4th Cir. 2000), Smith asserts that a motorist "should be free to avoid a police encounter at [a] roadblock by stopping and turning around, so long as he does so legally." Br. of Appellant at 21. Smith argues that a motorist's legal turn to avoid a police roadblock cannot create reasonable suspicion of criminal activity because the driver may be turning away from the roadblock for innocent reasons. By contrast, the Government maintains that when police reasonably suspect that a driver is attempting to avoid a roadblock, they may stop the driver to ascertain the reason for that avoidance.

We find instructive the decision of the Supreme Court in *Illinois v. Wardlow*, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). In *Wardlow*, two Chicago police officers were part of a police caravan patrolling a high-crime area investigating drug transactions. *See Wardlow*, 528 U.S. at 121, 120 S.Ct. 673. One officer observed Wardlow standing next to a building holding an opaque bag. *See id.* at 121-22, 120 S.Ct. 673. Wardlow looked in the officers' direction and fled. *See id.* at 122, 120 S.Ct. 673. The officers followed Wardlow in their patrol vehicle and eventually stopped him. *See id.* Upon conducting a protective patdown search of Wardlow, the officers discovered a loaded handgun in Wardlow's bag and arrested him. *See id.* After moving unsuccessfully to suppress the handgun, Wardlow was convicted of a weapons charge in Illinois state court. *See id.* The Illinois appellate courts, however, reversed Wardlow's conviction on Fourth Amendment grounds, holding that the weapon should have been suppressed because the officers lacked reasonable suspicion to stop Wardlow. *See id.* at 122-23, 120 S.Ct. 673.

The Supreme Court reversed. The Court initially noted that Wardlow's presence in a high-crime area, while not dispositive, was a relevant factor in the reasonable

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suspicion analysis. *See id.* at 124, 120 S.Ct. 673. The Court explained that "officers are not required to ignore

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the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation." *Id.* More importantly, the Court recognized, the officers became suspicious of Wardlow based on "his unprovoked flight upon noticing the police." *Id.* Noting that "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion," the Court emphasized that "[h]eadlong flight--wherever it occurs--is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id.* The Court thus determined that the officers were "justified in suspecting that Wardlow was involved in criminal activity, and, therefore, in investigating further." *Id.* at 125, 120 S.Ct. 673.

The Supreme Court observed that its holding was consistent with the principle that "when an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business." *Id.* (citing *Florida v. Royer*, 460 U.S. 491, 498, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)). The Court explained that the case before it--involving an individual who fled upon seeing police--was different from cases in which an individual merely chooses not to talk to police and continues his normal activities:

[U]nprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not "going about one's business"; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning.

Id.

Wardlow also rejected the argument that flight from police cannot establish reasonable suspicion of criminal activity because that flight may be motivated by innocent reasons. The Court pointed out that the conduct observed by the officers in *Terry*--two individuals pacing in front of a store, peering into the window, and conferring with each other--"was ambiguous and susceptible of an innocent explanation." *Id.* Nevertheless, because this conduct "also suggested that the individuals were casing the store for a planned robbery," *Terry* held that the officers could stop the individuals "to resolve the ambiguity." *Id.* "In allowing such detentions," the Court explained, "*Terry* accepts the risk that officers may stop innocent people." *Id.* at 126, 120 S.Ct. 673.

We believe that the principles of *Wardlow* apply to evasive conduct by drivers approaching a police roadblock. As with an individual who encounters police on foot, "[h]eadlong flight" or other "nervous, evasive behavior" in response to a roadblock may contribute to reasonable suspicion that the driver is engaged in criminal activity. *Id.* at 124, 120 S.Ct. 673. Such evasive behavior is "not going about one's business." *Id.* at 125,

120 S.Ct. 673 (internal quotation marks omitted), but instead suggests that the driver is avoiding the roadblock for other than innocent reasons, *see id.* at 124-25, 120 S.Ct. 673. Indeed, we have repeatedly recognized that evasive reactions to the presence of police may be considered in determining whether reasonable suspicion exists for an investigatory stop. *See United States v. Sims*, 296 F.3d 284, 287 (4th Cir. 2002) (holding that defendant's evasive behavior--which reasonably suggested he was hiding from officers and not simply "going about his business"--supported finding of reasonable suspicion for investigatory stop (alteration

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& internal quotation marks omitted)); *United States v. Brugal*, 209 F.3d 353, 360-61 (4th Cir. 2000) (en banc) (plurality opinion) (concluding that officers had reasonable suspicion to stop vehicle that immediately exited interstate after passing "decoy" signs indicating drug checkpoint was ahead, in part because area surrounding exit was deserted when vehicle exited at 3:30 a.m.); *United States v. Sprinkle*, 106 F.3d 613, 618 (4th Cir. 1997) ("Evasive conduct can, of course, assist an officer in forming reasonable suspicion."); *see also United States v. Humphries*, 372 F.3d 653, 657, 660 (4th Cir. 2004) (explaining, in context of probable cause analysis, that officers may consider "evasive conduct that falls short of headlong flight," such as walking away from approaching officers at a quick pace and ignoring commands to stop). We therefore hold that when law enforcement officers observe conduct suggesting that a driver is attempting to evade a police roadblock--such as unsafe or erratic driving or behavior indicating the driver is trying to hide from officers--police may take that behavior into account in determining whether there is reasonable suspicion to stop the vehicle and investigate the situation further. *See United States v. Montero-Camargo*, 208 F.3d 1122, 1138-39 (9th Cir. 2000) (en banc) (holding that U-turn of defendants' vehicles shortly before reaching border checkpoint, combined with other factors, including fact that vehicle subsequently stopped on side of highway in isolated area, provided reasonable suspicion for investigatory stop); *United States v. Duguay*, 93 F.3d 346, 351 (7th Cir. 1996) (holding that defendant's apparent attempt to avoid roadblock by turning into parking lot was a factor supporting reasonable suspicion to stop vehicle); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) (explaining that among other factors officers may consider in determining whether reasonable suspicion exists to stop a vehicle near the border, "[t]he driver's behavior may be relevant, as erratic driving or obvious attempts to evade officers can support a reasonable suspicion").

B.

Having concluded that evasive behavior by a

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motorist approaching a police roadblock may contribute to a reasonable suspicion of criminal activity, we now consider whether, based on the totality of the circumstances here, the officers possessed a reasonable suspicion that Smith was engaged in criminal activity. For the reasons that follow, we conclude that they did.

The officers observed Smith's vehicle brake abruptly and turn suddenly into a private gravel driveway. Smith's erratic driving and the nature of the road onto which he turned could have reasonably suggested to the officers that Smith was attempting to evade the roadblock rather than simply "going about [his] business," *Wardlow*, 528 U.S. at 125, 120 S.Ct. 673 (internal quotation marks omitted). See *Steinbeck v. Commonwealth*, 862 S.W.2d 912, 914 (Ky.Ct.App.1993) (finding reasonable suspicion for investigatory stop when, at 3:15 a.m., defendant's vehicle turned onto unpaved and uninhabited road before reaching roadblock). Upon further investigation, Officer McCoy observed Smith's vehicle stopped in the middle of the driveway, more than 200 feet from the public road but still some distance from the residence. McCoy could have reasonably inferred from this observation that Smith was attempting to evade the police checkpoint by hiding in the driveway and was not simply turning into the driveway because he lived there or because he was turning around to avoid the checkpoint for innocent reasons, such as a belief that an accident was ahead. See *Smith v. State*, 515 So.2d 149, 150, 151 (Ala.Crim.App.1987).

Page 586 (holding that investigatory stop of defendant's vehicle was justified when officer observed vehicle come around a curve approximately 200 yards from roadblock, turn rapidly into a private driveway, and stop 50 feet from a residence with its lights off but engine running); *State v. D'Angelo*, 605 A.2d 68, 70-71 (Me.1992) (finding reasonable suspicion when defendant's vehicle turned into private driveway 75 yards before checkpoint, officer knew some residents of home but had never seen defendant's vehicle parked there, and occupants of vehicle did not exit after stopping engine and turning off lights but instead turned to observe police activities); *State v. Foreman*, 351 N.C. 627, 527 S.E.2d 921, 922-23 (2000) (concluding that officer possessed reasonable suspicion when defendant's vehicle made abrupt turn before reaching checkpoint, made second abrupt turn, and parked in residential driveway with its lights and engine off).[4] And although McCoy had activated his police lights, Smith's vehicle did not remain stopped--as one would expect of a driver who turned away from the roadblock for innocent reasons--but instead proceeded around the curve in the driveway. As the district court recognized, this additional evasive behavior gave McCoy further reason to believe that Smith might be engaged in criminal activity. See *Watkins v. City of Southfield*, 221 F.3d 883, 889 (6th Cir. 2000) ("[T]he fact that [the defendant] refused to stop when [officers turned on their police lights] contributed to the officers' suspicion that

criminal activity may have been afoot."); *United States v. Lyles*, 946 F.2d 78, 80 (8th Cir. 1991) (considering, in reasonable suspicion analysis, the fact that "[w]hen the officers stopped behind the [defendants'] car and turned on the flashing red lights, the car began to drive away"); *United States v. Walraven*, 892 F.2d 972, 975-76 (10th Cir. 1989) (holding that reasonable suspicion existed for investigatory stop in part because vehicle failed to stop promptly in response to police lights). Thus, by the time Smith finally submitted to McCoy's display of authority by stopping at the end of the driveway, McCoy had observed Smith engage in a series of evasive actions--all inconsistent with innocent reasons for avoiding the roadblock.[5] And, all

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of this conduct occurred at 3:05 a.m., compounding the suspiciousness of Smith's behavior. See *United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993) (explaining that "[t]he lateness of the hour is another fact that may raise the level of suspicion"). We conclude that these facts, viewed in their totality, provided the officers with reasonable suspicion that Smith may have been engaged in criminal activity, thus permitting them to stop his vehicle to investigate that suspicion.

Smith cites *United States v. Ogilvie*, 527 F.2d 330 (9th Cir. 1975), and *United States v. Lester*, 148 F.Supp.2d 597 (D.Md.2001), in arguing that his reaction to the roadblock, involving a legal turn off the highway, could not create reasonable suspicion of criminal activity. But here, the officers observed a series of evasive actions by Smith, while no such facts were present in either *Ogilvie* or *Lester*. The defendant in *Ogilvie* simply exited the interstate before reaching a roadblock, drove over the overpass, and resumed traveling in the opposite direction. See *Ogilvie*, 527 F.2d at 331. The Ninth Circuit emphasized that "Ogilvie's actions in turning off the highway and turning around were not in themselves suspicious" and that no evidence showed that "Ogilvie drove fast, as if running away, disobeyed any traffic laws, or otherwise drove in an unusual or erratic manner." *Id.* at 332; see *Montero-Camargo*, 208 F.3d at 1137 (explaining that "Ogilvie simply holds that a turnaround alone is not enough in and of itself to create reasonable suspicion," but that later Ninth Circuit decisions had made clear that "a turnaround combined with other factors may be considered as part of a reasonable suspicion analysis"). Similarly, in *Lester*, there was no evidence that the defendant--who executed a U-turn before reaching a military checkpoint--drove erratically or unsafely or "display[ed] any other behavior that rose to the level of suspicion necessary to justify a Terry stop." *Lester*, 148 F.Supp.2d at 605.[6]

III.

For the reasons set forth above, we affirm the order of the district court denying Smith's motion to suppress

evidence.

AFFIRMED

Notes:

[1] The record is unclear on this point. Officer McCoy testified that he activated his police lights after he entered the driveway and saw the Lexus stopped there, but a second officer who followed McCoy to the driveway testified that the officers drove from the checkpoint to the driveway with their lights already on. The district court did not resolve this issue, concluding that it did not affect the resolution of Smith's motion to suppress. We agree with this assessment and thus will not address the issue further.

[2] It is not clear from the record how far the Lexus traveled from its original stopped position just before the curve until reaching its final position at the end of the driveway. Nevertheless, it appears that the vehicle moved, at most, approximately 120 feet.

[3] See *Miranda v. Arizona*, 384 U.S. 436, 467-73, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[4] McCoy could not recall whether Smith's vehicle lights were off when he was stopped before the curve in the driveway, but McCoy testified that Smith's lights were off when he finally stopped at the end of the driveway.

[5] The district court concluded that because Smith moved his vehicle around the curve in the driveway in response to McCoy's police lights, Smith was not seized for Fourth Amendment purposes until he finally stopped at the end of the driveway. Smith challenges this finding, asserting that he was seized when McCoy first pulled into the driveway because at that point McCoy displayed his police lights and blocked Smith from exiting the driveway. Smith thus contends that the district court erred in considering the subsequent movement of his vehicle around the curve as an additional factor supporting reasonable suspicion. We reject this argument.

The Supreme Court has held that a suspect is not seized within the meaning of the Fourth Amendment until officers apply physical force or the suspect submits to a show of authority. See *California v. Hodari D.*, 499 U.S. 621, 626, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991). When an officer asserts his authority but the suspect does not yield to that authority, there is no seizure. See *id.*; see also *United States v. Scheerz*, 293 F.3d 175, 183 (4th Cir. 2002) (holding that defendant was not seized in connection with police checkpoint because he executed an illegal U-turn to avoid checkpoint); *United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993) (explaining that an officer's "show of authority in calling for the defendant to stop is not a seizure when the defendant does not yield to that authority"). When McCoy pulled

into the driveway behind Smith with his police lights visible, Smith responded not by keeping his vehicle stopped but instead by driving it around the curve, apparently out of McCoy's view. As the district court recognized, although Smith may have been blocked in when McCoy entered the driveway, there is no indication that, at the moment he began driving the Lexus around the curve, Smith knew that the driveway dead-ended within a short distance. Also, after driving around the curve, Smith likely could have exited the vehicle and attempted to flee on foot. Thus, the district court did not err in concluding that Smith was not seized until he finally submitted to McCoy's show of authority by stopping at the end of the driveway.

[6] Smith also cites a number of state decisions that he claims "have generally followed the rule of *Lester* and *Ogilvie*." Br. of Appellant at 13. We note that most of these decisions turn on their specific facts and generally distinguish between situations in which the record reflects evasive conduct by the defendant and those in which it does not. Moreover, Smith emphasizes two factors that some of these decisions have identified as relevant to determining whether a driver is attempting to evade a roadblock: (1) the distance between the driver's car and the roadblock (here, 810 feet) and (2) whether notice of the roadblock was posted (here, it was not). Although these factors might be important in other cases, we decline to place significant weight on them here. The officers' observations of Smith's multiple evasive actions in response to the presence of police strongly suggested that he was attempting to avoid the roadblock for other than innocent reasons.

IN THE SUPREME COURT OF NORTH CAROLINA

No. 451PA12

FILED 12 APRIL 2013

STATE OF NORTH CAROLINA

v.

KEVIN EARL GRIFFIN

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, __ N.C. App. __, 732 S.E.2d 394 (2012), reversing an order denying defendant's motion to suppress entered on 24 June 2011 by Judge Kenneth F. Crow and vacating a judgment entered on 3 October 2011 by Judge Marvin K. Blount, III, both in Superior Court, Pamlico County. Heard in the Supreme Court on 12 March 2013.

Roy Cooper, Attorney General, by Kathryne E. Hathcock, Assistant Attorney General, for the State-appellant.

Robert G. Raynor, Jr. for defendant-appellee.

NEWBY, Justice.

In this case we must determine whether defendant's constitutional rights were violated by the traffic stop that led to his conviction for driving while impaired. Based on the totality of the circumstances, we conclude that defendant's stopping in the middle of the roadway and turning away from a license checkpoint gave rise to a reasonable suspicion that defendant may have been violating the law. Because the

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subsequent stop of defendant's vehicle is constitutional, we reverse the decision of the Court of Appeals.

On the night of 5 January 2009, Trooper Scott Casner of the North Carolina Highway Patrol was conducting a license checkpoint on Highway 306 close to two intersections. The checkpoint was marked and illustrated by activated blue lights of patrol cars. Trooper Casner and at least one other law enforcement officer were present at the checkpoint at all times. At approximately 9:55 p.m. Trooper Casner observed a vehicle approaching the checkpoint from the west on Seafarer Road. Then the vehicle, although not at an intersection, stopped in the middle of the road and appeared to initiate a three-point turn by beginning to turn left and continuing onto the shoulder of the road. Trooper Casner testified that these actions caused him to suspect that the driver was attempting to avoid the checkpoint. Trooper Casner was able to stop the driver before he could complete the turn and leave the area. Trooper Casner approached the vehicle and asked for the driver's operator's license, at which time the trooper detected the odor of alcohol on defendant, the driver. Trooper Casner subsequently charged defendant with, *inter alia*, driving while impaired.

On 4 June 2010, defendant moved to suppress the evidence from the stop, arguing that his attempt to turn around did not provide reasonable suspicion for Trooper Casner to stop defendant's vehicle because the checkpoint was unconstitutional. The trial court concluded that the checkpoint was valid and that

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"Trooper Casner clearly had reasonable and articulable suspicion to stop the defendant," finding that Trooper Casner observed defendant approach the checkpoint, then "stop in the roadway and turn his vehicle around." As a result, the trial court denied defendant's motion to suppress. Defendant pled "no contest" to driving while impaired, reserving his right to appeal under N.C.G.S. § 15A-979(b). The Court of Appeals reversed the trial court's denial of defendant's motion to suppress and vacated the resulting judgment, holding the checkpoint to be unconstitutional. *State v. Griffin*, ___ N.C. App. ___, 732 S.E.2d 394, 2012 WL 4501653, at *3 (2012) (unpublished). The Court of Appeals, however, did not comment on whether reasonable suspicion for the stop existed.

We allowed the State's petition for discretionary review to determine, *inter alia*, whether there was reasonable suspicion to initiate a stop of defendant's vehicle. *State v. Griffin*, ___ N.C. ___, 734 S.E.2d 861 (2012). The State argues that, regardless of the checkpoint's constitutionality, defendant's attempt to evade the checkpoint gave Trooper Casner the requisite level of suspicion to further investigate the situation. As such, the State contends that the trial court was correct in denying defendant's motion to suppress the evidence from the stop. Defendant, on the other hand, argues that there was nothing unusual about his turn and therefore, there was no independent basis for making the stop.

Both the Fourth Amendment to the United States Constitution and the North Carolina Constitution protect individuals "against unreasonable searches

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and seizures." U.S. Const. amend. IV; accord N.C. Const. art. I, § 20. "A traffic stop is a seizure 'even though the purpose of the stop is limited and the resulting detention quite brief.' " *State v. Barnard*, 362 N.C. 244, 246, 658 S.E.2d 643, 645 (quoting *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 1396, 59 L. Ed. 2d 660, 667 (1979)), cert. denied, 555 U.S. 914, 129 S. Ct. 264, 172 L. Ed. 2d 198 (2008). Our Court has held that "reasonable suspicion is the necessary standard for traffic stops." *State v. Styles*, 362 N.C. 412, 415, 665 S.E.2d 438, 440 (2008) (citations omitted).

Reasonable suspicion is a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." Only " 'some minimal level of objective justification' " is required. This Court has determined that the reasonable suspicion standard requires that "[t]he stop . . . be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." Moreover, "[a] court must consider 'the totality of the circumstances—the whole picture' in determining whether a reasonable suspicion" exists.

Barnard, 362 N.C. at 247, 658 S.E.2d at 645 (alterations in original) (internal citations omitted).

We examined a similar issue in *State v. Foreman*, in which an officer observed a vehicle travelling towards a checkpoint make a "quick left turn" onto a connecting street, after which the officer found the car parked in a residential driveway. 351 N.C. 627, 629, 527 S.E.2d 921, 922 (2000). In *Foreman* the

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defendant driver was charged with DWI, and she moved to suppress the evidence obtained from the stop. *Id.* at 628, 527 S.E.2d at 922. We concluded that, “[a]lthough a legal turn, by itself, is *not* sufficient to establish a reasonable, articulable suspicion, a legal turn in conjunction with other circumstances, such as the time, place and manner in which it is made, *may* constitute a reasonable, articulable suspicion which could justify an investigatory stop.” *Id.* at 631, 527 S.E.2d at 923. This Court noted that, “flight—wherever it occurs—is the consummate act of evasion: [i]t is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.” *Id.* at 631, 527 S.E.2d at 924 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570, 576 (2000)).

Our decision in *Foreman* is in accord with precedent from the Fourth Circuit Court of Appeals. See *United States v. Smith*, 396 F.3d 579 (4th Cir.), *cert. denied*, 545 U.S. 1122, 125 S. Ct. 2925, 162 L. Ed. 2d 309 (2005). In *Smith* law enforcement officers conducting a license checkpoint observed a vehicle driving “about 985 feet from the checkpoint” appear to “‘slam on its brakes,’” and then “turn left onto a private gravel driveway leading to a single residence.” *Id.* at 581. As a result, the police approached the vehicle and eventually charged the defendant driver with possession of a firearm by a convicted felon. *Id.* at 582. The federal district court denied the defendant’s motion to suppress the evidence resulting from the stop. *Id.* The Fourth Circuit affirmed the district court, holding that “when law enforcement officers observe conduct suggesting that a driver is attempting to evade a police

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roadblock—such as . . . behavior indicating the driver is trying to hide from officers—police may take that behavior into account in determining whether there is reasonable suspicion to stop the vehicle and investigate the situation further.” 396 F.3d at 585 (citations omitted).

This case presents a situation comparable to the facts the courts encountered in *Foreman* and *Smith*. Defendant approached a checkpoint marked with blue flashing lights. Once the patrol car lights became visible, defendant stopped in the middle of the road, even though he was not at an intersection, and appeared to attempt a three-point turn by beginning to turn left and continuing onto the shoulder. From the checkpoint Trooper Casner observed defendant's actions and suspected defendant was attempting to evade the checkpoint. Defendant's turn in the middle of the road and onto the shoulder was more suspicious than the defendant's turn onto a connecting street in *Foreman* and the defendant's turn into a private driveway in *Smith*. It is clear that this Court and the Fourth Circuit have held that even a legal turn, when viewed in the totality of the circumstances, may give rise to reasonable suspicion. Given the place and manner of defendant's turn in conjunction with his proximity to the checkpoint, we hold there was reasonable suspicion that defendant was violating the law; thus, the stop was constitutional. Therefore, because the trooper had sufficient grounds to stop defendant's vehicle based on reasonable suspicion, it is unnecessary for this Court to address the

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constitutionality of the driver's license checkpoint. Accordingly, we reverse the decision of the Court of Appeals.

REVERSED.

Justice BEASLEY, dissenting.

Because I disagree with the majority's holding that the stop of defendant's vehicle was justified by reasonable suspicion, I would remand the case to the trial court for further findings of fact regarding the constitutional and statutory validity of the checkpoint. Therefore, I respectfully dissent.

It is first necessary to clarify the facts surrounding defendant's left turn. The majority states several times that defendant "appeared to initiate a three-point turn" and notes that defendant was not at an intersection at the time in what appears to suggest that defendant's actions were illegal. However, a review of the transcript from the hearing on defendant's Motion to Suppress reveals that, upon cross-examination, Trooper Casner himself stated that defendant's actions were not illegal:

Q. But he just made a left turn; is that correct?

A. Onto the shoulder, yes.

Q. That's not an illegal turn; is it?

A. A left turn is not an illegal turn.

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Q. And you never gave him a moving violation for that; did you not?

A. No.

(T. 25) Further, Trooper Casner in no way suggests that defendant was making a three-point turn. The trial court asked Trooper Casner if defendant's turn was "in the form of making a three-point turn like making a 180 degree direction change," and Trooper Casner replied, "It could have been. I'm not exactly sure what his intentions were." (T. 10) And, while it is clear that defendant did not turn at a major intersection of roadways, Trooper Casner's recollection of the point on the road at which defendant turned was inconsistent. On direct examination, he stated that he could not "remember if there was a driveway right there or not." (T. 10) Then on cross-examination, he stated, "I said when he traveled off the road - when he made that left turn into the open field that's when we made the traffic stop to find out why he was turning in there." (T. 26) Thus, defendant's turn was legal, and, by Trooper Casner's own admission, it was unclear whether defendant was indeed attempting to turn around. These facts help to frame a proper analysis of whether Trooper Casner's suspicions were reasonable.

Though *State v. Foreman*, 351 N.C. 627, 527 S.E.2d 921 (2000), is factually distinguishable, *Foreman* provides the rule to resolve this case. We held that "[a]lthough a legal turn, by itself, is not sufficient to establish a reasonable, articulable suspicion, a legal turn in conjunction with other circumstances, such as

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the time, place and manner in which it is made, *may* constitute a reasonable, articulable suspicion which could justify an investigatory stop." *Id.* at 631, 527 S.E.2d at 923. Perhaps, implicitly, the majority believes that the checkpoint itself is relevant to the "time, place, and manner" of defendant's turn. *Id.* I would agree that the existence of the checkpoint can be used in the trial court's determination of whether there is reasonable suspicion; however, the trial court must also determine the validity of the checkpoint if it is to be used in determining whether there was reasonable suspicion to stop a vehicle because it turned away from the checkpoint. See *State v. Barnard*, 362 N.C. 244, 246, 658 S.E.2d 643, 645 (2008) ("The Fourth Amendment protects individuals "against unreasonable searches and seizures." The North Carolina Constitution provides similar protection. A traffic stop is a seizure "even though the purpose of the stop is limited and the resulting detention quite brief." (internal citations omitted)); *State v. McKinney*, 361 N.C. 53, 58, 637 S.E.2d 868, 872 (2006) ("Fourth Amendment rights are enforced primarily through the 'exclusionary rule,' which provides that evidence derived from an unconstitutional search or seizure is generally inadmissible in a criminal prosecution of the individual subjected to the constitutional violation. . . . The 'fruit of the poisonous tree doctrine,' a specific application of the exclusionary rule, provides that "[w]hen evidence is obtained as the result of illegal police conduct, not only should that evidence be suppressed, but all evidence that is the 'fruit' of that unlawful conduct should be suppressed." (internal citations omitted)); *State v.*

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Mitchell, 358 N.C. 63, 66, 592 S.E.2d 543, 545 (2004) ("Police officers effectuate a seizure when they stop a vehicle at a checkpoint."). Without the checkpoint, Trooper Casner would not have been in a position to observe defendant's turn and defendant would not have been in a position to allegedly avoid the checkpoint. Thus, because Trooper Casner, and the State, predicate Trooper Casner's reasonable suspicion to stop defendant upon Trooper Casner's presence at the checkpoint and defendant's suspected avoidance of the checkpoint, it is necessary to first determine whether the existence of that checkpoint was constitutional.

The constitutionality of the checkpoint, however, cannot be decided by this Court in the present appeal. The trial court concluded that the checkpoint was valid under both the North Carolina and United States Constitutions but failed to make findings of fact that would support this conclusion. Thus, this case must be remanded to the trial court for further findings of fact regarding the constitutional and statutory validity of the checkpoint.

This Court has been less than clear on how a trial court should approach a constitutional analysis of a checkpoint. The State contends that *State v. Mitchell*, 358 N.C. 63, 592 S.E.2d 543 (2004), recognized two factors: whether a supervisor approved the checkpoint and whether the officer conducting the checkpoint abided by the supervisor's instructions for the checkpoint. *Id.* at 68, 592 S.E.2d at 546. While *Mitchell* provides some guidance, a proper and comprehensive analysis includes the rule set out in *Foreman*: "[T]he United States Supreme Court held that

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DWI checkpoints are constitutional if vehicles are stopped according to a neutral, articulable standard (e.g., every vehicle) and if the government interest in conducting the checkpoint outweighs the degree of the intrusion." *Foreman*, 351 N.C. at 631, 527 S.E.2d at 924 (2000) (citing *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990)).¹ Based on this Court's reliance on *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990), the trial court should be guided by United States Supreme Court case law on the balancing test to be applied to checkpoints, including *Brown v. Texas*, 443 U.S. 47 (1979); and *Edmond v. City of Indianapolis*, 531 U.S. 32 (2000), as well as the two factors identified in *Mitchell*. I do not read *Mitchell* to overrule *Foreman*'s reliance on United State Supreme Court case law.

The State also correctly points out that we have not adopted the non-exclusive factors identified by *State v. Rose*, 170 N.C. App. 284, 612 S.E.2d 336 (2005), and elaborated upon by *State v. Veazey*, 191 N.C. App. 181, 662 S.E.2d 683 (2008). The *Rose/Veazey* factors may be relevant to the trial court's analysis, but I would emphasize that they are non-exclusive. *Veazey*, 191 N.C. App. at 191, 662 S.E.2d at 690 (citing *Rose*, 170 N.C. App. at 295, 612 S.E.2d at 342-43).

Furthermore, the trial court's order has insufficient findings of fact and conclusions of law regarding the statutory validity of the checkpoint under N.C.G.S. § 20-16.3A (2011). Such findings and conclusions may be unnecessary, though, if

¹ I also acknowledge that the checkpoint at issue here is a driver's license checkpoint rather than a DWI checkpoint. Tp 15.

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the trial court determines that the checkpoint is unconstitutional. Contrary to the State's argument, the General Assembly did not define the standards for the constitutionality of a checkpoint in Section 20-16.3A. The General Assembly cannot interpret the North Carolina Constitution or United States Constitution; that is a power that belongs exclusively to the judicial branch. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."); *Hoke v. Henderson*, 15 N.C. 1, 7-8 (1833) (discussing the supremacy of the constitution over acts of the legislature and the role of the courts), *overruled on other grounds*, *Mial v. Ellington*, 134 N.C. 131 (1903). Thus, mere compliance with Section 20-16.3A does not insulate a checkpoint from constitutional scrutiny. If the checkpoint violates the North Carolina Constitution, the United States Constitution, and/or N.C.G.S. § 20-16.3A, then the trial court should grant the motion to suppress.

It is also important to acknowledge, however, since reasonable suspicion may exist independent of the checkpoint. This was the case in *Mitchell* where we stated that the Court need not decide whether the checkpoint was constitutional because there was independent reasonable suspicion to justify the stop since the defendant disobeyed the officer's order to stop and nearly ran over the officer. 358 N.C. at 69-70, 592 S.E.2d at 547. Despite this alternative basis for affirming the trial court's order, I find this case distinguishable from *Mitchell* since there is no basis for reasonable suspicion independent of the checkpoint.

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The *Mitchell* majority believed the dissent to be giving a "motorist who 'guesses' correctly that a checkpoint is not validly set up . . . *carte blanche* to ignore the checkpoint absent circumstances unrelated to the checkpoint." *Id.* at 70, 592 S.E.2d at 547. The dissenting opinion did not agree that the reasonable suspicion the majority highlighted was, in fact, independent of the checkpoint:

Motorists do not have *carte blanche* to ignore checkpoints that they suspect are invalid and to avoid responsibility if they guess correctly. Police officers may certainly develop reasonable articulable suspicion to stop a car based upon their observations, *unrelated to the checkpoint*, that a crime has been committed. Armed with such suspicion, the officers' seizure of the vehicle is proper regardless of the constitutionality of the checkpoint.

Id. at 71, 592 S.E.2d at 548 (Brady, J., dissenting) (emphasis added).

Here, the majority's holding would give police officers *carte blanche* to set up illegal checkpoints and stop motorists for no other reason than that they simply turned around. This ability is precisely the sort of unchecked power that the Fourth Amendment seeks to prevent.

As the dissenting justices noted in *Mitchell*, Trooper Casner lacked reasonable suspicion independent of the checkpoint. Unlike *Mitchell*, Trooper Casner did not identify a moving violation or other violation of law from observing defendant's turn. Tp 25. Had Trooper Casner been stationed along the highway to check for speeding or other traffic violations, he could not have stopped defendant based solely on his legal turn. Trooper Casner was suspicious only because there

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was a checkpoint. As discussed above, I believe the constitutionality of the checkpoint must be decided.

Additionally, I disagree with the majority's comparison of this case to *Foreman* and *United States v. Smith*, 396 F.3d 579 (2004). Defendant's behavior in the instant case differs from *Foreman* and *Smith*. It was evident in *Foreman* that, in addition to a legal left turn, the defendant deliberately eluded the pursuing trooper on the streets adjacent to the checkpoint and attempted to hide in a residential driveway at 2:00 a.m., giving rise to reasonable suspicion. 351 N.C. at 629, 527 S.E.2d at 922-23; see also *id.* at 633, 527 S.E.2d at 925 (Frye, J., concurring) (stating that "there was more than the left turn which justified the seizure"). The defendant in *Smith* slammed on his brakes at 3:05 a.m., "turn[ed] suddenly into a private gravel driveway," stopped, and then proceeded a bit farther down the driveway even after the officer activated his lights. 396 F.3d at 581, 585-86. The Fourth Circuit described Smith's behavior as "erratic" and "evasive." *Id.* at 585-87. The totality of the circumstances supported the district court's finding that the traffic stop was justified by reasonable suspicion. *Id.* at 586-87.

In contrast to *Foreman* and *Smith*, the trial court's order contains no findings that defendant was driving erratically, slammed on his brakes, or attempted to hide. Defendant was, in fact, not driving erratically, as Trooper Casner testified that defendant's turn was legal. Tp 25. The trial court found that Trooper Casner

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described defendant's driving as "a furtive attempt to avoid the checkpoint," but the order is devoid of facts that support this conclusion.

The time of night at which defendant was stopped also distinguishes the instant case from *Foreman* and *Smith*. An "unusual hour" is one factor in determining whether an officer had reasonable suspicion. See *State v. Rinck*, 303 N.C. 551, 560, 280 S.E.2d 912, 920 (1981). Our courts have used the "unusual hour" in examining reasonable suspicion when there are no businesses open nearby, see, e.g., *State v. Watkins*, 337 N.C. 437, 442, 446 S.E.2d 67, 70 (1994) (finding reasonable suspicion when officer observed activity at 3:00 a.m. in a rural area when nearby businesses were closed); when the defendant is weaving in his lane near bars, see, e.g., *State v. Jacobs*, 162 N.C. App. 251, 255, 590 S.E.2d 437, 441 (2004) ("Officer Smith's observation of defendant's weaving within his lane for three-quarters of a mile at 1:43 a.m. in an area near bars was sufficient to establish a reasonable suspicion of impaired driving."); and when there are recent reports of illegal activity in the area, see, e.g., *State v. Fox*, 58 N.C. App. 692, 692, 694-95, 294 S.E.2d 410, 411-12 (1982) (holding that an officer had reasonable suspicion when he observed the defendant at 12:50 a.m. in a high crime area when nearby businesses were closed), *aff'd*, 307 N.C. 460, 298 S.E.2d 388 (1983); *State v. Tillett*, 50 N.C. App. 520, 523-24, 274 S.E.2d 361, 363-64 (1981) (holding that an officer had reasonable suspicion based on activity at 9:40 p.m. in a seasonally unoccupied area where there had been recent reports of illegal hunting activity). Our courts have

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held that an officer lacked reasonable suspicion when only the hour is late and there are no other suspicious circumstances, such as the ones listed above. See, e.g., *State v. Chlopek*, 209 N.C. App. 358, 364, 704 S.E.2d 563, 567 (2011) (reversing and remanding where the officer had only a "hunch" based on the time of night—12:50 a.m.—and had not received reports of copper thefts in the neighborhood); *State v. Murray*, 192 N.C. App. 684, 685, 666 S.E.2d 205, 206 (2008) (reversing and remanding where the officer "decided to go ahead and do an investigatory traffic stop" when "the vehicle was not violating any traffic laws, was not trespassing, speeding, or making any erratic movements, and was on a public street" at 3:41 a.m.).

Here, defendant was stopped at 9 p.m. Rp 7. Though 9 p.m. is close in time to 9:40 p.m., which the *Tillett* court found suspicious, this case is distinguishable from *Tillett* in that here there were no reports of illegal activity in the area. There is also no indication in the trial court's order or the testimony that this was a high crime area, differentiating the instant case from *Fox*. To the contrary, Trooper Casner testified that there was no particular reason this area of Pamlico County was selected for the checkpoint. Tp 20. This case is also distinguishable from *Watkins* and *Fox* based on Trooper Casner's description of the area as "residential and open country" with perhaps one convenience store in the area. Tp 7. There were multiple closed businesses in the area in *Watkins* and *Fox*, in contrast to the lone convenience store that Trooper Casner thought might be in the area. We do

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not know whether this convenience store, if it is in the area at all, was open or closed for business at 9 p.m. Finally, defendant was not weaving in his lane in an area near bars, unlike the defendant in *Jacobs*.

The majority asserts that defendant's legal turn was "more suspicious" than the defendant's turn in *Foreman* and the defendant's turn in *Smith*, but the majority fails to point to evidence in the record to support this assertion. Giving chase through a residential neighborhood (as in *Foreman*), abruptly stopping (as in *Smith*), and attempting to use a private driveway to hide from police at an unusual hour (as in *Foreman* and *Smith*) is more suspicious than a legal turn that defendant could not even complete before being stopped by Trooper Casner. Though defendant used the shoulder of the road, Trooper Casner did not testify that using the shoulder was illegal or raised his suspicions. In all, there is no evidence to support the trial court's conclusion that the stop was justified by reasonable suspicion independent of the checkpoint.

In summary, I would remand this case to the trial court to make sufficient findings of fact and appropriate conclusions of law regarding the constitutional and statutory validity of the checkpoint. If the trial court were to conclude that the checkpoint was both constitutionally and statutorily valid, then the trial court may use the existence of the checkpoint as part of the "time, place, and manner" analysis to determine whether Trooper Casner possessed reasonable suspicion to stop defendant. *Foreman*, 351 N.C. at 631, 527 S.E.2d at 923. If the trial court were to

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conclude that the checkpoint was either constitutionally invalid or statutorily invalid, then the trial court should grant defendant's motion to suppress, as there are no facts supporting a finding of reasonable suspicion independent of the checkpoint.

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Form 4311
Rev 3/04

**SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET**

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME David MIDDLE NAME William LAST NAME Williams

STREET AND NO. 1155 S. 1st St. CITY Greenville STATE SC ZIP CODE 29615

STATE LICENSED ☒ DRIVER'S LICENSE NO. 124210 COL 1 DRI. LIC. CLASS 1

VEH. LIC NO 124210 STATE SC MAKE OF VEH Chevy YEAR 97 COOH VEH AUTO BPSGR YEH 1 COMB. 1

HAZ. MT. 1 MOPED 1 MTRCYCL 1 OTHER 1

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT SCDC STREET AND NO. 1155 S. 1st St.

DATE 04/12/04 OF TRIAL 04/12/04 TIME OF TRIAL 09:57 CITY Greenville STATE SC ZIP CODE 29615

VIOLATION - COURT APPEARANCE REQUIRED YES NO NO VIOLATION SECTION NO. 31-5-2950

OWNER OF VEHICLE David Williams DATE OF ARREST 04/12/04

ADDRESS OF OWNER 1155 S. 1st St. DATE OF VIOLATION 04/12/04

BAIL DEPOSITED 200 NAME OF ARRESTING OFFICER Robert Thompson RANK 442

RACE M SEX M DESCRIPTION OF ACCUSED DOB 07/19/71 HT 5'10" WT 180 LB HAIR BROWN EYES BROWN COUNTY Greenville NUMBER 32

DATE BAIL REC'D 04/12/04 BY SCDC BADGE 442 TROOP 2

CASE BEFORE
CIRCUIT COURT ☐ MAGISTRATE ☐ MUN. COURT ☐
FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL COURT SCDC
IF DIFFERENT FROM ABOVE.

DEFENDANT, DID NOT APPEAR ☐ APPEARED ☐

NCLE PROSSED ☐ DISPOSITION 11.41 MILES 1.41 N 1 E 2 S 3 W 4

FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐ CITY Greenville CODE 1

TRIAL BY: TRIAL JUDGE ☐ JURY ☐

VERDICT OF TRIAL IF ANY
GUILTY ☐ DATE OF TRIAL IF ANY 04/12/04
NOT GUILTY ☐

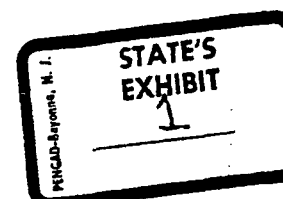
JAIL 0 SUSPENS 0 FINE 0 AMT. COLLECTED 0 AMT. SUSPENDED 0

COMMITTED TO: Verdict 11.41 Arrest as Result of Collision NO

CERTIFIED CORRECT 04/12/04 DATE 04/12/04

F 062451

TRIAL COURT'S COPY



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2013-CP-23-02731

The State.....Appellant

v.

Scott Eugene Williams.....Respondent

NOTICE OF APPEAL

The State of South Carolina hereby appeals the orders of the Honorable G. Edward Welmaker dated August 9, 2013 and September 24, 2013 which affirmed on appeal dismissal of this case by Honorable Jesse A. McCall Jr., Magistrate, by written order dated April 17, 2013 and oral order of March 14, 2013. All written orders are attached. Appellant received written notice of the final order of September 24, 2013 on September 30, 2013.

October 24, 2013

W. Walter Wilkins
Solicitor, Thirteenth Circuit

Mitchell Byrd

Other counsel of record:

G. David Seay, Jr., Esq.
Box 8699
Greenville SC 29604

Salley W. Elliott, Esq.
Box 11549
Columbia SC 29211

By Mitchell Byrd
Asst. Solicitor
305 E. North St. Ste.325
Greenville S.C. 29601
864-467-8701

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JAN 8 0 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE CLEVELAND TOWNSHIP
MAGISTRATE COURT

TICKET NO.(s) F062451

State of South Carolina)

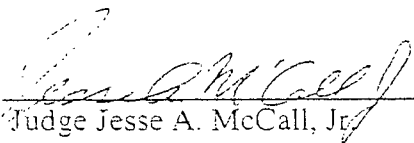
-VS-)

ORDER

Scott Eugene Williams,)
Defendant)
.....)

On April 10, 2013 a hearing was held on the State's motion for reconsideration and a new trial in the above captioned case. After due consideration of the arguments made by both counsel for the State and for the Defendant, and notwithstanding the holding of the case of State vs. Ramsey, 381 S.C.375, 673 S.E.2d 428 (2009). This court finds that the fundamental flaws in the State's case can not be corrected upon retrial. Therefore, on grounds of judicial economy, the State's motion is respectfully denied.

AND IT IS SO ORDERED this 17th day of April 2013.



Judge Jesse A. McCall, Jr.

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APR 17 2013

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

FILED-CLERK OF COURT
GREENVILLE CO S
FALL 3 WICKENDINE

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2302731

South Carolina State Of

2013 AUG 15 P 3:10

Scott Eugene Williams

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. Nonsui)
☐ 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:

Before the Court is the State of South Carolina's Appeal from the magistrate court's dismissal of the case of *South Carolina v. Scott Eugene Williams*. Appearing for the State was Assistant Solicitor Mitchell Byrd; appearing for the Defendant was G. David Seay. The Court has carefully reviewed the erudite arguments of counsel, the briefs of the parties, the transcript from the trial and proceedings before the magistrate, the magistrate's return and orders, and the relevant statutes and case law.

"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. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011). The circuit court 'may either confirm the sentence appealed from, reverse or modify it, or grant a new trial.' S.C. Code Ann. § 18-3-70." *State v. Hoyle*, 397 S.C. 622, 625, 725 S.E.2d 720, 721-22 (Ct. App. 2012).

The Defendant was charged with DUI. The magistrate dismissed the State's case against the Defendant, finding the State failed to provide evidence to support the constitutionality of the checkpoint and failed to articulate probable cause for the stop. The Appellant, State of South Carolina, has raised two issues before this Court: (1) whether the State had a pre-trial burden to prove the constitutionality of its checkpoint, and (2) whether the State had a pre-trial burden to show probable cause for the Defendant's arrest.

Regarding the validity of the checkpoint, the magistrate reviewed the testimony and evidence presented by the State and concluded the State had not established a proper foundation. See Magistrate's Return, p. 2 ("The court found insufficient foundation for the data which, even if the State had called other witnesses, the documents would not have established a proper foundation for the location of the checkpoint."). This Court finds no error.

The State also contends the magistrate improperly used the probable cause standard rather than reasonable suspicion regarding the Defendant's stop and arrest. The State's argument, however, fails because even if reasonable suspicion applies, the State cannot meet its burden since the reasonable suspicion is premised in the validity of the checkpoint which the magistrate correctly determined was without proper foundation. The State was unable to prove the u-turn by the Defendant was illegal, but instead only that it appeared to be an evasive maneuver as a result of the checkpoint. The Defendant contends the State failed to preserve this issue, which argument has merit. However, assuming the issue is preserved, this Court nevertheless finds no error. This Court further notes that when ruling on the State's motion for reconsideration, the magistrate judge properly considered *State v. Ramsey*, 381 S.C. 375, 671 S.E.2d 428 (2009). See Magistrate's Order, April 17, 2013. Having fully reviewed the record and carefully considered the arguments of counsel, the Court denies the State's Appeal.

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)

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.**

Circuit Court Judge

2137

Judge Code

Date _____

For Clerk of Court Office Use Only

This judgment was entered on 5.10.20, and a copy mailed first class or placed in the appropriate attorney's box on 5.10.20, to attorneys of record or to parties (when appearing pro se) as follows:

Stanford Lee Overby Jr. 305 E. North Street, Suite 325
Greenville, SC 29601

G. David Seay Jr. PO Box 8699 Greenville, SC 29604

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B Wickens

Paul B. Wickensimer Greenville County Clerk C
Court - Clerk of Court

Court Reporter

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 GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE, SOUTH CAROLINA
PAUL B. HARRIS, JR.

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2302731

South Carolina State Of

2013 SEP 25 P 4 03

Scott Eugene Williams

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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- ☐ **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

Before the Court is the State of South Carolina's Motion to Reconsider. This Court entered its Order on August 9, 2013, denying the State's Appeal of a magistrate's order of dismissal. The Court has reviewed the Appellant's Motion, the previous order, and the relevant rules of procedure. Accordingly, the Appellant's Motion to Reconsider is respectfully DENIED.

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)

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. **113**

Chen

Circuit Court Judge

2137

Judge Code

9/24/2013

Date

For Clerk of Court Office Use Only

9/25/13

9/25/13

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

Stanford Lee Overby Jr. 305 E. North Street, Suite 325
Greenville, SC 29601

Mitchell K. Byrd Sr. 216 Pimlico Road Greenville, SC
29607

G. David Seay Jr. PO Box 8699 Greenville, SC 29604

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk of Court - 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.

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SEP 25 2013

CLERK OF COURT
SCCA SCRP Form 10-1-000002

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2013-CP-23-02731

The State.....Appellant

v.

Scott Eugene Williams.....Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent Scott Eugene Williams, by depositing a copy of it in the United States Mail postage prepaid, on October 24, 2013, addressed to his attorney of record, G. David Seay, Jr. Esq. Box 8699 Greenville S.C. 29604.

October 24, 2013

W. Walter Wilkins
Solicitor, Thirteenth Circuit

Mitchell Byrd

By Mitchell Byrd
Asst. Solicitor
305 E. North St. Ste. 325
Greenville S.C. 29601
864-467-8701

Other Counsel of Record:

Salley W. Elliott, Esq.
Box 11549
Columbia S.C. 29211

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JAN 30 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By:



WILLIAM M. BLITCH, JR.

Assistant Attorney General

S.C. Bar Number 15608

Office of Attorney General

Post Office Box 11549

Columbia, SC 29211

(803) 734-3727

ATTORNEYS FOR APPELLANT

January 30, 2015

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 30 2015
SC Court of Appeals

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case Tracking No. 2013-002307

The State,

vs.

Scott Eugene Williams,

Appellant,

Respondent.

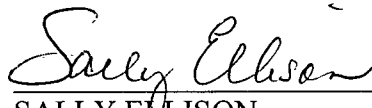
PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Record on Appeal on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

G. David Seay, Jr., Esquire
Post Office Box 8699
Greenville, South Carolina 29604

I further certify that all parties required by Rule to be served have been served.

This 30th day of January, 2015.



SALLY ELLISON
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

January 30, 2015

G. David Seay, Jr., Esquire
Post Office Box 8699
Greenville, South Carolina 29604

Re: The State v. Scott E. Williams
Appellate Case No. 2013-002307

Dear Mr. Seay:

Enclosed please find two (2) copies of the Record on Appeal, along with proof of service, in the above-referenced State's appeal.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General

Enclosures

cc: ✓ The Honorable Jenny A. Kitchings (original & 9 copies enclosed)
Victim Services

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JAN 30 2015

SC Court of Appeals