

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 22 2015
SC Court of Appeals

Appeal from York County
Honorable J. Cordell Maddox, Jr., Circuit Court Judge
Appellate Case Tracking No. 2015-000604

The State,

Appellant,

vs.

Tami Baker Sisler,

Respondent.

INITIAL BRIEF OF RESPONDENT

EDWARD L. PHIPPS
Attorney at Law

Phipps Law Firm LLC
155 King St., 2nd Floor
Charleston, SC 29401
843-216-9797

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS.....3

ARGUMENT.....5

 I. The decision of the Magistrate should be affirmed based upon a lack of probable cause to stop Respondent. The State’s initial position was that Respondent voluntarily pulled over and Deputy Haire was merely conducting essentially a ‘welfare check’. Then the State changed its position claiming the encounter was a result of a lawful traffic stop after subjective review of the video and after the fact at the motion hearing to dismiss, but Deputy Haire continued to testify that it was not a traffic stop. Deputy Haire testified that he did not, and later, was not activating his lights for any traffic violation and that they were only turned on to alert Respondent to a missed turn. Respondent testified that she saw blue lights, believed she was being pulled over, and dutifully stopped. Now the State wants this Court to justify the stop by adopting a third position under the ‘community caretaker’ doctrine. The State simply cannot create excuses post arrest that did not exist at the time to justify the lack of probable cause to stop Respondent... ..5

CONCLUSION.....10

Cases

State v. Johnson, 396 S.C. 182, 186 (S.C. App. 2011).....5

State v. Flowers, 360 S.C. 1, 5 (2004)5

State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct.App. 2005)5

Whren v. United States, 517 U.S. 806, 809-10 (1996)5

State v. Burgess, 394 S.C. 407, 4126

Delaware v. Prouse, 440 U.S. 648, 6616

Terry v. Ohio, 392 U.S. 1 (1968)6

Other Authorities

U.S. Const. amend. IV5

S.C. Code Ann. § 56-5-7507

STATEMENT OF ISSUES ON APPEAL

The decision of the Magistrate should be affirmed based upon a lack of probable cause to stop Respondent. The State's initial position was that Respondent voluntarily pulled over and Deputy Haire was merely conducting essentially a 'welfare check'. Then the State changed its position claiming the encounter was a result of a lawful traffic stop after subjective review of the video and after the fact at the motion hearing to dismiss, but Deputy Haire continued to testify that it was not a traffic stop. Deputy Haire testified that he did not, and later, was not activating his lights for any traffic violation and that they were only turned on to alert Respondent to a missed turn. Respondent testified that she saw blue lights, believed she was being pulled over, and dutifully stopped. Now the State wants this Court to justify the stop by adopting a third position under the 'community caretaker' doctrine. The State simply cannot create excuses post arrest that did not exist at the time to justify the lack of probable cause to stop Respondent.

STATEMENT OF THE CASE

Respondent was charged with DUI and Child Endangerment. Prior to trial in Magistrate's Court, Respondent moved to dismiss the charges alleging the officer had no probable cause to stop Respondent. On January 15, 2014, the Honorable Magistrate Clayburn S. Barnette Jr. dismissed the charges finding a lack of probable cause for the traffic stop. The State filed a Motion for Rehearing and/or Reconsideration on January 16, 2014, which was denied by written order of the Magistrate on January 30, 2014.

The State filed its Notice of Appeal on January 30, 2014. The Magistrate issued his Return in February 2014. A hearing was held before the Honorable J. Cordell Maddox, Jr. on June 3, 2014. By Order dated February 5 and filed February 20, 2015, the Circuit Court affirmed the dismissal by the Magistrate. The State thereafter filed their Notice of appeal and submitted their Initial Brief on July 30, 2015.

STATEMENT OF FACTS

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

Deputy Haire, along with two witnesses, who never mentioned any concern that they thought Respondent was intoxicated, were with her in close contact for approximately eight (8) minutes while trying to help her get back onto the road. After making contact with Respondent, Deputy Haire is asked over the radio by another officer if she is intoxicated, to which he responds that she was not. (1/15T.49, 12). Respondent then performed a three (3) point turn, began driving away, and Deputy Haire followed behind her.

When the Respondent did not take the turn he had informed her she should take, Deputy Haire turned on his marked cruiser's blue lights, causing Respondent to pull over. At a pre-trial hearing, Deputy Haire testified that he "wasn't initiating a traffic stop for any other purpose than to say 'Lady, you're going the wrong way.'" (1/15T.36, 8-10) Deputy Haire stated multiple times that he did not turn on his blue lights. Upon review of the dashcam video and seeing that he obviously did activate his blue lights, only then did he change his testimony. Deputy Haire repeatedly testified at the hearing that it was not his intent to conduct a traffic stop on Respondent.

Also at that hearing, Respondent testified that, after the first contact with the Deputy, she observed blue lights behind her and immediately pulled her vehicle to the side of the road, as she

is legally obligated to do. (1/15T.72, 12-20) A reasonable person in Respondent's position, having just been ordered to pull over by a police officer displaying blue lights, would reasonably and justifiably feel seized and not free to leave.

During this secondary encounter, Deputy Haire requested Deputy Fowler to respond to the scene and investigate Respondent for Driving Under the Influence. After approximately six (6) minutes of investigation, Respondent was arrested for DUI and Child Endangerment.

ARGUMENT

The decision of the Magistrate should be affirmed based upon a lack of probable cause to stop Respondent. The State's initial position was that Respondent voluntarily pulled over and Deputy Haire was merely conducting essentially a 'welfare check'. Then the State changed its position claiming the encounter was a result of a lawful traffic stop after subjective review of the video and after the fact at the motion hearing to dismiss, but Deputy Haire continued to testify that it was not a traffic stop. Deputy Haire testified that he did not; and later, was not activating his lights for any traffic violation and that they were only turned on to alert Respondent to a missed turn. Respondent testified that she saw blue lights, believed she was being pulled over, and dutifully stopped. Now the State wants this Court to justify the stop by adopting a third position under the 'community caretaker' doctrine. The State simply cannot create excuses post arrest that did not exist at the time to justify the lack of probable cause to stop Respondent.

In criminal cases, appellate courts sit to review errors of law only. *State v. Johnson*, 396 S.C. 182, 186 (S.C.App. 2011) In Fourth Amendment search and seizure cases, the appellate court may only reverse the lower court's rulings due to "clear error." *State v. Flowers*, 360 S.C. 1, 5 (2004). Restated, "[a]n appellate court must affirm the [circuit] court's ruling if there is any evidence to support the ruling." *State v. Pinchardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct.App. 2005)(emphasis in original).

It is undisputed that traffic stops implicate the "seizure" provisions of the Fourth Amendment, and therefore such stops must not be "unreasonable" under the circumstances. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). Additionally, an officer may only pull a vehicle over when he has probable cause to believe that a traffic violation has occurred or has

reasonable suspicion to believe that any of the vehicle's occupants are involved in criminal activity. *State v. Burgess*, 394 S.C. 407, 412.

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

The State initially had taken two positions regarding the traffic stop by Deputy Haire: *First*, that the second contact by Deputy Haire with Respondent was a lawful contact because he was performing a welfare check, as the State's position was that she voluntarily pulled over. At the pre-trial motion hearing, Deputy Haire testified that his second contact with the Respondent was not a traffic stop and denied even turning on his blue lights prior to her pulling over to support the State's first position of lawful contact with Respondent under the auspice of a 'welfare check.' His justification for the encounter was that he was conducting a safety check of the Respondent due to her pulling over on her own. (1/15T.36, 11-25).

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

- "I wasn't initiating a traffic stop for any other purpose than to, 'Lady, you're going the wrong way.'" (1/15T.36, 8-10);
- "... the blue lights were not initiated to stop her on a traffic offense" (1/15T.37, 4-5);
- "I didn't turn the blue lights on" (*Id.* at line 10);

- Question from counsel for Sisler (hereinafter "Phipps"): "And so you're saying you didn't turn on your blue lights until after she pulled over?" Deputy Haire responded, "If I had stopped her, that would be my reason for the stop: because I didn't want her to get lost again," (*Id.* at line 17-19);
- Question from Phipps: "There is no statute for missing a turn?" Deputy Haire responded, "I just had to get her stopped, or had to get her basically reminding her to turn" (1/15T.40, 14-15); "I was trying to get her back towards Rock Hill" (*Id.* at line 22).

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

- "...I did blink it for the turn. I thought I was blinking my headlights. What I did, I blinked blue lights trying to get her to turn. She missed the turn." (1/15T.54, 23-25 through p. 55, line 1);

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

- "I never initiated a traffic stop. I'll stick with that" (1/15T.56, 7); and
- "You can turn it around all you want. I didn't initiate a traffic stop. I just blinked the lights to, 'Hey woman, don't miss your turn'" (1/15T.57, 9-11).

Per South Carolina Code of Laws § 56-5-750, a driver is required to stop when signaled via either siren or flashing light by a law enforcement vehicle. At the pre-trial motion hearing, Respondent testified that she observed blue lights behind her and immediately pulled her vehicle to the side of the road as she was legally obligated to do. (1/15T.72, 12-20). Deputy Haire admitted to the legal requirement to pull over when blue lights are observed. (1/15T.38, 19).

Deputy Haire testifies over and over that he did not stop her, that it was not a traffic stop, and that the only reason he would have stopped the Respondent is because she missed her turn. Missing a turn is not a violation of any statute in the State of South Carolina, and it does not

provide reasonable suspicion or probable cause to justify stopping the Respondent, as confirmed by both Deputies. Police are not authorized to use their blue lights to stop someone for merely missing their turn, and anything gained from that unlawful stop is inadmissible as a matter of law.

The State's new position was then that Respondent committed some violation prior to the activation of Deputy Haire's blue lights – a violation that was subjectively discovered, remotely testified to, and arguably not accurate, and not accounted for until only after the Deputy allegedly saw it on the published video during the hearing. Even after allegedly seeing a violation on the video, it was not conclusive.

Second, the State took the position that this stop was still lawful because the Deputy had probable cause to stop. Deputy Haire continued to deny that it was the reason he pulled her over. Assistant Solicitor Hayes asks Deputy Haire if he had noticed the Respondent driving left of center prior to flashing his blue lights, to which Haire responds, "I'm not going to argue that that's why I pulled her. I blinked my lights for the turn. I didn't pull her over on a traffic stop." (1/15T.70, 9-12). Even after Solicitor Hayes tried to legitimize the stop, the Deputy continued to deny that was why he stopped her.

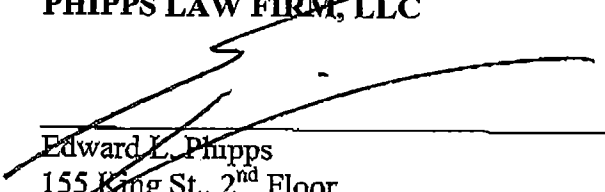
The State "now" proposes that this Court adopt a "community caretaker doctrine" in this case. This argument is without merit, because the instant case involves the enforcement action of a traffic stop. The State, after flip-flopping positions, is now resorting to going back to a welfare check justification for the contact, and are merely calling it by a different name.

The State cannot make up new subjective reasoning to justify a traffic stop when said reasoning did not exist at the time of the stop. The State has continued to go back and forth,

changing their position/reasoning in this case to try to justify the unlawful stop. There are/were no specific and/or articulable facts of unlawful conduct by Respondent to justify same.

CONCLUSION

For the foregoing reasons, Respondent asserts that the Circuit Court was correct in their decision to affirm the Magistrate's decision to dismiss this case for lack of probable cause to initiate the traffic stop. The Respondent would respectfully request an Order affirming the Circuit Court's decision.

RESPECTFULLY SUBMITTED,**PHIPPS LAW FIRM, LLC**

Edward L. Phipps
155 King St., 2nd Floor
Charleston, SC 29401
843-216-9797

Attorney for Respondent

Charleston, South Carolina
October 19, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 22 2015

SC Court of Appeals

Appeal from York County
Honorable J. Cordell Maddox, Jr., Circuit Court Judge
Appellate Case Tracking No. 2015-000604

The State,

Appellant,

vs.

Tami Baker Sisler,

Respondent.

PROOF OF SERVICE

I, Cori Chandler, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States Mail, postage prepaid, addressed to:

Office of the Attorney General
Attn: William M. Blich, Jr., Esq.
PO Box 11549
Columbia, SC 29211

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

PHIPPS LAW FIRM, LLC



Cori Chandler
155 King St., 2nd Floor
Charleston, SC 29401
843-216-9797

Charleston, South Carolina
October 19, 2015