

3

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

CASE NUMBER 2015-00101

RECEIVED

State of South Carolina

Cedric Xavier Heyward

FEB 23 2016

PLAINTIFF(S)

DEFENDANT(S)

SC Court of Appeals

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- 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

This order ends does not end the case.

Additional Information for the Clerk : _____

JEANETTE M. MCBRIDE
2016 JAN 13 AM 9:29
RICHLAND COUNTY
FILED

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
		\$
		\$
		\$

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of Jan, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Kristen Ann Bales

Jessica Mangum

Jonathan Scott Comish

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette M. McBride

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No. 2015-CP-40-01601

State of South Carolina,)
v.)
Cedric Xavier Heyward,)
Appellant.)

ORDER DENYING APPEAL

RECEIVED
FEB 23 2016
SC Court of Appeals

JEANETTE W. MCGRIDE
CLERK OF COURT
& G.S.S.
2016 JAN 13 AM 9:26
RICHLAND COUNTY
FILED

THIS MATTER came before the Court as a Municipal Court Appeal on August 14, 2015. Present at the hearing were Jonathan Comish, representing the Appellant, and Jessica Mangum, representing the City of Columbia.

On March 4, 2015, a jury trial was held in the City of Columbia Municipal Court. Appellant, Cedric Xavier Hewyard, was found guilty of ticket number 81734FP and sentenced by the Honorable Dana D. Turner. Appellant, through his counsel, appealed claiming of an illegal search under the Fourth Amendment. Appellant contends that that trial judge erred in overruling objections made by Appellant and finding that the search of Appellant's vehicle was lawful and that the City complied with chain of custody requirements.

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. A seizure for a traffic violation justifies a police investigation of that violation. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). A dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. *Illinois v. Caballes*, 543 U.S. 405 (2005). An officer may conduct certain unrelated checks during

SCANNED

an otherwise lawful traffic stop. *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). The United States Supreme Court held in *Rodriguez* that a dog sniff conducted after the completion of a traffic stop, which exceeded the time needed to handle the matter for which the stop was made, violated the Constitution.

In this case, the Officer who made the initial traffic stop testified that he was still in the process of issuing the warning ticket when the K-9 Unit arrived at the scene. The traffic stop itself lasted for fifteen minutes during which the Officer checked Appellant's driver's license, registration, and proof of insurance in addition to inquiring about other safety related issues. Based on a review of the record, there is no evidence of a demonstrable delay in the traffic stop beyond a reasonable duration that would constitute a constitutional violation.

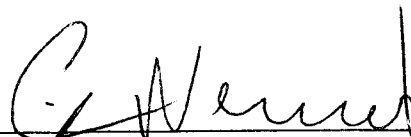
Furthermore, the law allows a drug dog a "free air sniff" around the exterior of a vehicle. Appellant contends that the dog did not alert to a narcotic odor until he was inside of the vehicle. However, the Officer in charge of the K-9 Unit testified that the dog was trained only to go where narcotics odors existed, which the dog did as an alert leading to the discovery of drugs in this case.

As for Appellant's assertion that the City did not properly comply with the chain of custody requirements, this is unsupported by the record. Rather, it appears that the lower court properly found that every person in the chain of custody need not be present to testify at trial, and that one only has to prove chain of custody to the extent practicable.

Having carefully considered the arguments, submissions of counsel, and applicable law, the Court finds no constitutional errors by the trial judge justifying the granting of this Appeal.

THEREFORE, IT IS ORDERED that the Appeal is DENIED.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina

This 12th day of January, 2016



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 19, 2016

Mr. Jonathan Scott Comish, Esquire
1701 Main St Ste 103
Columbia SC 29202

Re: The City of Columbia v. Cedric Xavier Heyward
Appellate Case No. 2016-000295

RECEIVED

FEB 23 2016

SC Court of Appeals

Dear Counsel:

Upon reviewing your Notice of Appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Jessica Mangum, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire