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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

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SC Court of Appeals

The State, Appellant,

vs.

Tami Baker Sisler, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The Magistrate erred in dismissing the case based on a lack of probable cause to stop Respondent. First, Deputy Haire had probable cause to stop Respondent based on her traffic violation of crossing the lane line and his subjective beliefs are irrelevant to a determination of whether the traffic stop was lawful. Additionally, even if the officer's subjective intentions are considered and the "stop" is not considered a traffic stop, then Respondent was not unconstitutionally seized and the "stop" was more in the nature of a consensual encounter.

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 magistrate dismissed the charges finding a lack of probable cause. The State filed a Motion for Rehearing and/or Reconsideration on January 16, 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 timely filed its Notice of Appeal on February 24, 2015. This appeal follows.

STATEMENT OF FACTS

Deputy Haire came upon Respondent and her two kids in the grass median facing the wrong direction on Anderson Road in York County. She claimed her GPS caused her to travel down the wrong side of the road into oncoming traffic. After pulling off to avoid oncoming vehicles, she became stuck in the grass median.

At the very beginning of the encounter with Deputy Haire, Respondent stated "I'm not from here." (Video From Deputy Haire at 22:24:25). Respondent and Deputy Haire then have a congenial conversation regarding her GPS directions and the fact she thought she was on a two lane road, but instead was travelling into traffic. Respondent even asked Deputy Haire if he could drive her vehicle out of the median. Deputy Haire and another individual worked to free her vehicle from the median. (Video from Deputy Haire).

Deputy Haire determined where Respondent was headed and provided her with directions to the location. He indicated she needed to take the first right to go where she intended. He even explained she needed to pay attention to make sure she makes the turn to the right, stating "as soon as you get across don't miss the turn." (Video from Deputy Haire's Vehicle 22:30:01).

After making a three point turn, Respondent began travelling the correct direction on Highway 5. Deputy Haire followed her. He observed her cross the lane line and then miss the turn he instructed her to take. (Video from Deputy Haire at 22:32:00-22:32:16) As a result, Deputy Haire flashed his lights and his blue lights. He did not leave his blue lights activated. Respondent pulled over to the side of the road roughly thirty seconds later and then Deputy Haire activated his blue lights. Respondent exited her vehicle to

talk with Deputy Haire. As she is getting out, she stumbled, which was noticed by Deputy Haire. As a result, Deputy Haire performed the HGN test and asked for her driver's license. Deputy Haire called in another officer to perform field sobriety tests prior to releasing her to drive with the two children in the back seat. (Video from Deputy Haire).

At a pre-trial hearing, Respondent moved to dismiss the charges based on an unlawful traffic stop. (1/15T. 23-24; R.33-34). During the hearing, Respondent's counsel asked Deputy Haire if he initiated a traffic stop. He indicated he did not intend to conduct a traffic stop even though he could have because she committed a traffic violation. (1/15T.44-45; R.54-55). Deputy Haire indicated she pulled over on her own after she passed her turn. Deputy Haire explained he thought he just flashed his headlights at her to get her to turn, and instead realized after watching the video he flashed both headlights and blue lights. He did not leave the blue lights on, however. (1/15T.54-55; R. 64-65). Deputy Haire reiterated he saw her cross the center line of the lanes prior to flicking his blue lights and Respondent pulling over. (1/15T.58; R.68).

He explained officers do not blink their blue lights for a traffic stop. He stated Respondent never asked why she was being stopped because she "knew what blinking the light meant, 'You missed your turn.'" He testified "a normal, rational person, if you blink a light, wouldn't have pulled over." (1/15T.67; R.77).

ARGUMENT

I. The Magistrate erred in dismissing the case based on a lack of probable cause to stop Respondent. First, Deputy Haire had probable cause to stop Respondent based on her traffic violation of crossing the lane line and his subjective beliefs are irrelevant to a determination of whether the traffic stop was lawful. Additionally, even if the officer's subjective intentions are considered and the "stop" is not considered a traffic stop, then Respondent was not unconstitutionally seized and the "stop" was more in the nature of a consensual encounter.

The magistrate court erred in dismissing the case based on its finding there was no probable cause for a traffic stop. The magistrate improperly considered Deputy Haire's subjective intentions as opposed to the objective totality of the circumstances which justified the stop. Deputy Haire had probable cause to initiate a traffic stop based on Respondent's crossing of the line. Whether he intended to initiate the traffic stop and write a citation is irrelevant to the determination of whether the stop was lawful. Further, even if the stop is found not to be a traffic stop, then it is in the nature of a consensual encounter and no reasonable person in Respondent's position would have felt seized based on her prior interactions with Deputy Haire. Accordingly, this Court should reverse the dismissal of the case and remand for trial.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other

factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..." U.S. Const. amend. IV. The purpose of the Fourth Amendment is "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976). However, it is not designed "to eliminate all contact between the police and the citizenry." United States v. Mendenhall, 446 U.S. 544, 553-554 (1980). "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, only unreasonable searches and seizures are constitutionally prohibited. See Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

Traffic Stop

If Respondent's pulling over was as a result of the flashing of Deputy Haire's blue lights and can be construed as a traffic stop, then it was a valid traffic stop supported by probable cause and the magistrate and circuit court committed an error of law in relying on the subjective intent of the officer to determine whether the stop was reasonable and constitutional. For Fourth Amendment purposes, the traffic stop of a vehicle is a seizure. See State v. Nelson, 336 S.C. 186, 192–93, 519 S.E.2d 786, 789 (1999). In addition, the

"[t]emporary detention of individuals during the stop of an automobile ... constitutes [a] 'seizure' of persons within the meaning of [the] Fourth Amendment." Whren v. United States, 517 U.S. 806, 809-10 (1996). "A seizure for a traffic violation justifies a police investigation of that violation. A relatively brief encounter, a routine traffic stop is more analogous to a so-called Terry stop . . . than to a formal arrest." Rodriguez v. U.S., ___ U.S. ___, 135 S.Ct. 1609, 1614 (2015) (internal citations and quotation marks omitted).

"An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Whren, 517 U.S. at 810. A determination of whether there is reasonable suspicion or probable cause to believe a traffic violation has occurred, and therefore justification for a traffic stop, is an objective one. It does not rely on the subjective intent of any party, but merely a determination, objectively, of whether a violation occurred thereby making the stop reasonable. As explained in Whren: "Not only have we never held . . . that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary." Id. at 812. The Court continued: "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." Id. at 813 (citing Scott v. United States, 436 U.S. 128, 136, 138 (1978)).

The Ninth Circuit Court of Appeals summarizes the holding in Whren:

> The Supreme Court held that the officers had probable cause to believe that various provisions of the traffic code

> had been violated. The Court specifically declined to hold that the Fourth Amendment test for traffic stops should be "whether a police officer, acting reasonably, would have made the stop for the reason given." Rather, the Court explained that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis," and that "we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers." Whren stands for the proposition that **if the officers have probable cause to believe that a traffic violation occurred, the officers may conduct a traffic stop even if the stop serves some other purpose.** See also Devenpeck v. Alford, 543 U.S. 146, 125 S.Ct. 588, 593–94, 160 L.Ed.2d 537 (2004) ("[The] subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause.").

U.S. v. Willis, 431 F.3d 709 (9th Cir. 2005) (some internal citations omitted)(emphasis added).

Our South Carolina Supreme Court has stated: "The test whether reasonable suspicion exists is an objective assessment of the circumstances; the officer's subjective motivations are irrelevant." State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) (citing Ohio v. Robinette, 519 U.S. 33, 38 (1996) ("[T]he fact that an officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.")). "Violation of motor vehicle codes provides an officer reasonable suspicion to initiate a traffic stop." Id.

Additionally, as explained by the Eighth Circuit Court of Appeals, "an officer's subjective motivation—whether revealed at the time of the traffic stop or at the time of a suppression hearing—is irrelevant to the probable-cause inquiry." U.S. v. Demilia, 771 F.3d 1051, 1055 (8th Cir. 2014). The Court concluded even though the officer intended to

base his traffic stop on an invalid basis, the fact he could have justified the stop on another basis could still provide the requisite "objective legal justification needed to support probable cause for the stop." Id.

Moreover, a traffic stop supported by probable cause "is valid even if the police would have ignored the traffic violation but for their suspicion that greater crimes are afoot." United States v. Thomas, 93 F.3d 479, 485 (8th Cir.1996). "A fair reading of Whren and other car stop cases leads to the conclusion that an observed traffic violation legitimates a stop even if the detectives do not rely on the traffic violation." U.S. v. Dhinsa, 171 F.3d 721, 725 (2nd Cir. 1998). Further, the fact an officer does not intend to issue a citation or ticket for a violation does not render the traffic stop unreasonable and invalid. See e.g., People v. Ferraiola, 309 A.D.2d 981, 982 (N.Y. 2003) ("The fact that [the officer] did not intend to issue defendant a ticket for that violation does not render the stop unlawful."); State v. Goodwin, 351 S.C. 105, 111, 567 S.E.2d 912, 914-915 (Ct. App. 2002) ("Just as an underlying arrest need not be prosecuted in order to successfully prosecute for resisting arrest, neither should the absence of a charge on the underlying arrest bar evidence seized subsequent to a proper resisting arrest charge.").

In the instant case, Deputy Haire testified he witnessed Respondent commit traffic violations. (1/15T.39; R. 49). He witnessed her "riding on the middle line." (1/15T.40; R. 50). Later Deputy Haire explains: "There is a traffic violation, but I may not have initiated a stop for that; because she pulled over on her own when she passed the point of where she was supposed to turn." He states the traffic violation was "[c]rossing the centerline" and continues "I believe she was driving on the centerline, over the centerline . . . . So we'll see that on the video." (1/15T.45; R. 55). Further, the video supports

Deputy Haire's testimony Respondent drove on and over the lane line. (Video From Deputy Haire at 22:32:00-22:32:10).

Section 56-5-1900 states, in pertinent part:

> Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply ... [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

S.C. Code Ann. § 56-5-1900(a) (2006). This Court analyzed the statute in State v. Vinson, 400 S.C. 347, 734 S.E.2d 182 (Ct. App. 2012). This Court upheld the circuit court's interpretation of the statute finding, "the driver may only leave his lane 'if it's impossible to stay in that lane because of an obstruction on the road or the road conditions or something of that nature.'" Id. at 352, 734 S.E.2d at 185. This Court then found a traffic stop was lawful based on "a perceived violation of section 56-5-1900." Id. at 353.

Deputy Haire perceived a violation of section 56-5-1900, and this violation is sufficient to support a traffic stop and the seizure of Respondent. Further, as discussed above, the fact Deputy Haire had the subjective intent to assist Respondent as opposed to issue a traffic ticket for the violation is irrelevant in a determination of whether the totality of the circumstances support an objective basis for the traffic stop. As a result, the magistrate court and circuit court clearly erred in finding the traffic stop was not lawful and in dismissing the case based on the subjective intent of the officer.

Reasonable Seizure

Additionally, even if the traffic stop was not valid[1], Deputy Haire did not unreasonably seize Respondent as is required for a violation of the Fourth Amendment. Pursuant to the Fourth Amendment, an individual's constitutional rights are not infringed by an encounter with a law enforcement officer **unless** the individual is seized or detained by the officer and the officer does not possess reasonable, objective grounds for effectuating the seizure. Florida v. Royer, 460 U.S. 491, 497-498 (1983). Critically, "a seizure does not occur simply because a police officer approaches an individual and asks a few questions." Florida v. Bostick, 501 U.S. 429, 434 (1991). Likewise, an officer does not effectuate a seizure merely by identifying himself or herself to an individual as a law enforcement officer. Royer, 460 U.S. at 497. Instead, a seizure occurs "[o]nly when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]" Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968). As a result, a law enforcement officer generally may approach a citizen in an effort to speak with or question that person without implicating the Fourth Amendment and without effectuating a seizure so long as **a reasonable person under the same circumstances as the citizen would feel free to disregard the officer and leave if he or she chooses to do so.** Bostick, 501 U.S. at 434 (emphasis added).

In the instant case, Respondent and Deputy Haire had more than one encounter. Deputy Haire pulled up alongside Respondent's stuck vehicle to ascertain whether she needed assistance. Respondent immediately indicates she is "not from here" and seeks assistance after explaining her GPS lead her down the wrong side of the road. After

[1] The State maintains if the stop of Respondent is construed a traffic stop, then it was supported by probable cause based on her riding on or over the lane line as can be seen clearly in the video provided by Deputy Haire. However, if the stop is not a traffic stop, then it was consensual as will be discussed.

getting her vehicle unstuck, Deputy Haire instructs Respondent on how to get where she indicates she is intending to go. He mentions several times the importance of taking the first right and of paying attention as she crosses the bridge so she does not miss the first right. Finally, he indicated he would blink his lights to signal to Respondent that she can go ahead and do the three point turn; so they have established his blinking lights as a signal for her to do what he has instructed her to do. (Video from Deputy Haire at 22:30:40). This encounter sets the stage for the second encounter after Respondent misses the turn she has been instructed to take.

After following Respondent at approximately 25 miles per hour, Deputy Haire witnessed Respondent miss the turn he instructed her to take in order for her to safely travel to Rock Hill as she indicated in their prior discussion. As a result, Deputy Haire attempted to get Respondent's attention as she passed the turn by blinking both his headlights and blue lights. (Video from Deputy Haire at approximately 22:32:15). Deputy Haire blinked the lights right at the turn, which Respondent knows is the turn he believed she would take. The lights did not remain on, but are only blinked on as a clear indication to her that she is missing her turn.

Respondent did not immediately stop after the lights were turned on, but eventually pulled over well past the turn Deputy Haire believed she would be taking. Respondent immediately exited the vehicle to speak with Deputy Haire and did not act in any way as a person would if they believed they were being stopped for a traffic violation. It is clear when she pulled over, Respondent understands Deputy Haire intended to continue offering assistance and was not likely stopping her for a violation. Based on all the circumstances, including their prior interactions and the fact Deputy

Haire merely blinked his blue lights as she passed her turn, a reasonable person would not have felt seized, but would instead have believed Deputy Haire was merely seeking to assist them in going in the proper direction.

The second interaction between Respondent and Deputy Haire is much more analogous to a consensual encounter than it is a seizure. "A consensual encounter has been defined as simply the voluntary cooperation of a private citizen . . . . Because an individual is free to leave at any time during such an encounter, he is not 'seized' within the meaning of the Fourth Amendment." State v. Pichardo, 367 S.C. 84, 100, 623 S.E.2d 840, 848-849 (Ct. App. 2005).

A reasonable person, who had participated in all the interaction with Deputy Haire prior to the second stop, would have believed they were free to leave, and would not have felt compelled to stop. Further, as Deputy Haire testified, "a normal rational person, if you blink a light, wouldn't have pulled over." (1/15 T. 67; R. 77). She only pulled over because she knew Deputy Haire was attempting to assist her and she consented to the encounter with him to gain that assistance or explain why she did not need his further assistance. Accordingly, there was no unreasonable seizure in this case and, therefore, no violation of the Fourth Amendment justifying excluding any evidence resulting after Respondent pulled over or the dismissal of the case.

Community Caretaker

Finally, this case presents the opportunity for this Court to adopt the community caretaker exception, which has been adopted in numerous other jurisdictions. The "community caretaking function" was first announced by the United States Supreme Court in Cady v. Dombrowski, 413 U.S. 433, 441 (1973), in which the Court opined that

police officers, acting as "community caretakers," did not violate the Fourth Amendment when they searched and seized the vehicle of a Chicago police officer without probable cause who had been pulled over for drunk driving. The police conducting the search were aware that Chicago police officers were required to carry a service revolver, and thus, had searched the vehicle in an attempt to locate the revolver. In upholding the search, the Court opined that the search was reasonable because it was "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute" and because the search was aimed at ensuring the safety of the general public, rather than uncovering evidence related to crime detection. Cady, 413 U.S. at 441. The Court explained:

> Local police officers ... frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute ... Often [that] noncriminal contact with automobiles will bring ... officials in "plain view" of evidence, fruits, or instrumentalities of a crime.

Id. at 441–42. If, in the course of performing their community caretaker function, officers come across evidence of a crime, there is no unreasonable search and seizure and the evidence will not be suppressed. Id. at 447–48.

"Since Cady, a majority of states have acknowledged this community safety and welfare role of police officers and have adopted in some form or another a 'community caretaker' exception to the general warrant requirement present in such states." Ullom v. Miller, 705 S.E.2d 111, 120 (W.Va. 2010).[2] Further, many federal circuits, including the

[2] It should be noted South Carolina is the only state in the Fourth Circuit that has not expressly adopted the community caretaker exception. See Wilson v. State, 975 A.2d 877 (Md. 2009); State v. Smathers, 753

Fourth Circuit Court of Appeals, have adopted the exception. See e.g., U.S. v. Garcia-Rivas, 86 F.3d 1153 (Table) (4th Cir. 1996); United States v. Pollard, 595 Fed. Appx. 204 (4th Cir. 2014).

The West Virginia Supreme Court elucidated:

> The policeman, as a jack-of-all-emergencies, has "complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses;" by default or design he is also expected to "aid individuals who are in danger of physical harm," "assist those who cannot care for themselves," and "provide other services on an emergency basis." If a reasonable and good faith search is made of a person for such a purpose, then the better view is that evidence of crime discovered thereby is admissible in court.

Ullom, 705 S.E.2d at 121 (citing Wagner v. Hedrick, 181 W.Va. 482, 383 S.E.2d 286 (1989)).

Virginia's Court of Appeals explains the community caretaker exception:

> Police officers have an obligation to aide citizens who are ill or in distress, as well as a duty to protect citizens from criminal activity. The two functions are unrelated but not exclusive of one another. Objective reasonableness remains the linchpin of determining the validity of action taken under the community caretaker doctrine.

Commonwealth v. Waters, 456 S.E.2d 527, 530 (Va. App. 1995). The court then provided an analytical framework for determining whether the community caretaker exception applies to a given situation:

> The appropriateness of applying the community caretaker doctrine to a given factual scenario is determined by whether:
>
> (1) The officer's initial contact or investigation is reasonable;

S.E.2d 380, 386 (N.C. App. 2014); Commonwealth v. Waters, 456 S.E.2d 527, 530 (Va. App. 1995); Ullom v. Miller, 705 S.E.2d 111 (W.Va. 2010).

> (2) The intrusion is limited; and
>
> (3) The officer is not investigating criminal conduct under the pretext of exercising his community caretaker function.

Id. at 530.

The North Carolina Court of Appeals, after finding the community caretaker exception should be adopted, provided its own framework, which was modeled after Wisconsin:

> [T]he State has the burden of proving that: (1) a search or seizure within the meaning of the Fourth Amendment has occurred; (2) if so, that under the totality of the circumstances an objectively reasonable basis for a community caretaking function is shown; and (3) if so, that the public need or interest outweighs the intrusion upon the privacy of the individual.

State v. Smathers, 753 S.E.2d 380, 386 (N.C. App. 2014).

In Leming v. State, 454 S.W.3d 78 (Tex. App. 2014), the Texas Court of Appeals explained: "As a part of his duty to 'serve and protect,' a police officer may stop and assist an individual whom a reasonable person—given the totality of the circumstances—would believe is in need of help." Id. at 84 (citing Wright v. State, 7 S.W.3d 148, 151 (Tex.Crim.App.1999)). The Court continued: "'Whether an officer properly invoked his community-caretaking function requires a two-step inquiry: (1) whether the officer was primarily motivated by a community-caretaking purpose; and (2) whether the officer's belief that the individual needs help was reasonable.'" Id. (quoting Gonzales v. State, 369 S.W.3d 851, 854–55 (Tex. Crim. App. 2012). The Court of Criminal Appeals listed four non-exclusive factors to determine whether an officer was legitimately acting to give assistance:

> (1) the nature and level of the distress exhibited by the individual;
>
> (2) the location of the individual;
>
> (3) whether or not the individual was alone and/or had access to assistance independent of that offered by the officer; and
>
> (4) to what extent the individual—if not assisted—presented a danger to himself or others.

Id. (quoting Wright).

Any of these possible frameworks are justifiable and provide a clear means of determining the reasonableness of Deputy Haire's actions, which is the touchstone of the Fourth Amendment. No matter which framework is used, Deputy Haire's actions clearly fell within the community caretaker function. He clearly expressed his intent to assist Respondent and there is no indication in the record he had any intent to investigate a criminal violation or collect evidence regarding a violation. Further, based on the first interaction with Respondent it was objectively reasonable for him to attempt to assist Respondent, whom Deputy Haire knew had just missed the turn she originally intended to take to head to Rock Hill.

Respondent was alone, at night, with two little children in the car with her. The officer makes clear his intention to assist her for the protection and safety of not only Respondent, but especially for her children. He knew her story of the GPS leading her down the wrong side of the road, and so it was clearly reasonable for him to believe she was in need of assistance. His second stop of Respondent would have only been for a very brief encounter to get her going in the right direction but for her stumbling, which caused him to suspect drinking may have been involved. As a result, the minimal

intrusion into her privacy by stopping her to ensure her safety, and the safety of her children, was not unreasonable under the community caretaker exception.

Officers have a duty to "protect and serve"[3] and much of the actions taken by officers to fulfill this function are clearly separate and distinct from any detection, investigation, or collection of evidence related to violation of a criminal statute. An officer should not be punished for attempting to comply with his duty to assist an individual when that individual is later determined to be violating the law.

South Carolina should "join the majority of jurisdictions who recognize the community caretaker doctrine, formally recognizing the expectation in [South Carolina] that the role of law enforcement personnel is not limited to merely to the detection and prevention of criminal activity, but also encompasses a non-investigatory, non-criminal role of police officers to help to ensure the safety and welfare of our citizens." See Ullom, 705 S.E.2d at 121. This Court should find the "seizure" in this case reasonable and falling within the community caretaker exception no matter which of the above criteria is selected as Deputy Haire clearly held no investigatory or crime related intent in determining whether Respondent had something wrong causing her to miss her turn; acted objectively reasonable; and did not unnecessarily burden Respondent.

[3] The motto of the Los Angeles Police Department, among others, it is a clearly recognizable phrase in law enforcement. See http://www.joinlapd.com/motto.html last viewed July 28, 2015.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court affirming the magistrate court and the magistrate court's dismissal of the case should be reversed and this case remanded for trial.

Respectfully submitted,

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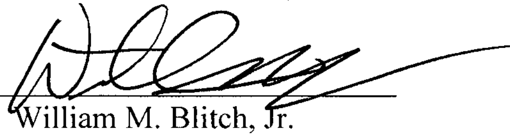
BY: 
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May 12, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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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.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Fillings."

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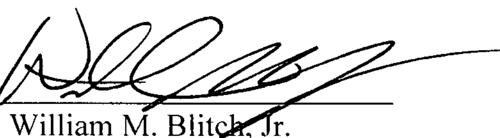
BY: 
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PROOF OF SERVICE

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

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