

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

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AUG 09 2016
SC Court of Appeals

The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

Appellate Case No. 2014-001919
Unpublished Opinion No. 2016-UP-377
Heard March 9, 2016 – Filed July 27, 2016

PETITION FOR REHEARING BY APPELLANT

Marcus K. Gore, Assistant General Counsel
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965

Attorney for Appellant

Appellant State of South Carolina petitions for rehearing pursuant to Rule 221(a), SCACR, from the opinion in The State v. Jennifer Lynn Alexander, Appellate Case No. 2014-001919, Unpublished Opinion No. 2016-UP-377 (S.C.Ct.App. filed July 27, 2016). In particular, Appellant respectfully submits that the Court of Appeals overlooked or misapprehended the effect of S.C. Code § 17-13-45 on the initial detention of Respondent. Section 17-13-45 expands the jurisdiction for law enforcement officers responding to a distress call or request for assistance in an adjacent jurisdiction. The facts of Respondent's initial detention fall squarely within the parameters of § 17-13-45, and Respondent's detention was therefore proper. For the reasons set forth more fully below, rehearing is appropriate.

APPELLANT'S STATEMENT OF THE CASE AND STATEMENT OF FACTS

On July 29, 2013, an officer with the Goose Creek Police Department responded to a 911 call concerning a vehicle that appeared to have been involved in a wreck. (R. p. 68) The officer responded to the scene and found Respondent there in an intoxicated condition. Id. Believing Respondent to have operated the wrecked vehicle while intoxicated, the officer contacted dispatch to confirm his location and was advised that he was in Berkeley County. Id. Upon a mistaken belief that he lacked jurisdiction to arrest in Berkeley County, the Goose Creek officer requested the Highway Patrol to handle the arrest and detained Respondent while awaiting the arrival of the Highway Patrol. Id. Respondent was ultimately cited for Driving Under the Influence in violation of S.C. Code § 56-5-2930.

On February 11, 2014, the parties argued pre-trial motions advanced by Respondent. (R. pp. 5, 52-53) The magistrate subsequently issued an order dismissing the case, finding the Goose Creek police officer had detained Respondent without authority to do so because he was

outside the municipality's city limits when he detained her and the ensuing arrest was thus unlawful. (R. pp. 6, 56)

Appellant filed a timely notice of appeal and appealed to the circuit court. (R. pp. 36-41) On July 28, 2014, the matter was heard before the Honorable Markley Dennis, Jr., who subsequently issued a Form 4 Order affirming the magistrate's decision on August 26, 2014. (R. pp. 2-3, 16-32) Notice of Appeal was timely filed with this Court on September 11, 2014. (R. pp. 8-15) In the briefing before the Court, Appellant argued that the circuit court erred in failing to reverse the magistrate court order because Respondent's initial detention was lawful pursuant to S.C. Code § 17-13-45. This Court affirmed the decision in an unpublished opinion dated July 27, 2016.

ARGUMENT

At the pre-trial hearing, Respondent argued the case should be dismissed pursuant to State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), because the location where Respondent was detained was outside the officer's jurisdictional limits. The magistrate agreed, citing McAteer and State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011), and found that because the officer was not within his jurisdiction he had no police authority to detain Respondent. (R. p. 6) This Court adopted that reasoning in citing both McAteer and Boswell in affirming the dismissal.

Although both cases address the issue of police authority to arrest outside of their territorial jurisdiction, neither applies to the case at bar. In McAteer, the issue of jurisdiction was conceded, as all parties agreed the incident occurred outside the police officer's municipal jurisdiction and the question became one of the authority to make a citizen's arrest. Similarly, Boswell is unavailing because the dispute in that case concerned the validity of a multi-jurisdictional agreement between law enforcement agencies. Neither case, however, addresses

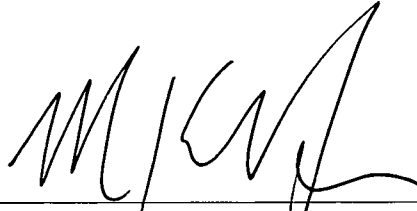
the issue herein regarding § 17-13-45's extension of law enforcement powers into adjacent jurisdictions.

Section 17-13-45 of the South Carolina Code expands the jurisdiction of a law enforcement officer responding to a distress call or request for assistance in an adjacent jurisdiction. This section reads, in pertinent part: "When a law enforcement officer responds to a distress call or a request for assistance in an adjacent jurisdiction, the authority, rights, privileges, and immunities . . . that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction." S.C. Code Ann. § 17-13-45.

The factual circumstances of Respondent's detention are undisputed. The City of Goose Creek officer was dispatched to investigate a 911 call from a passerby who reported that a vehicle may have been involved in a wreck. He responded to the scene of the reported vehicle in the adjacent jurisdiction of Berkeley County. Because the Goose Creek officer was responding to a 911 distress call or request for assistance in Berkeley County, a jurisdiction adjacent to the City of Goose Creek, § 17-13-45 operated to enlarge his territorial jurisdiction such that his detention of Respondent was a lawful exercise of the "authority, rights, privileges and immunities" invested in him as a member of the City of Goose Creek Police Department. The source of the distress call or request for assistance was irrelevant, as § 17-13-45 places no restriction on how the communication must originate. The Court, therefore, erred as a matter of law in finding the Goose Creek officer lacked the authority to detain Respondent until the arresting officer arrived.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Rehearing be granted and the magistrate's decision be reversed accordingly.



Marcus K. Gore, Assistant General Counsel
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorney for Appellant

August 5, 2016

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

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PROOF OF SERVICE

I hereby certify that I have served a copy of the Petition for Rehearing by Appellant on the Respondent, addressed to her attorneys of record, Norbert E. Cummings, Jr., Esq. and Henry Schlein, Esq. at Post Office Box 1318, Summerville, South Carolina, 29484-1318, via United States Mail, postage prepaid, on this 5th day of August, 2016.



Monishia L. Davis, Paralegal
S. C. Department of Public Safety
Office of General Counsel

Dated: 8-5-16



South Carolina Department of Public Safety

OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S.C. 29016
Tel: (803) 896-7965 • Fax: (803) 896-7967

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SC Court of Appeals

Ms. Jenny Abbott Kitchings
Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State of South Carolina vs. Jennifer Lynn Alexander
Appeal from Berkeley County C/A 2014-CP-08-0688
The Honorable R. Markley Dennis, Jr
Appellate Case No. 2014-001919

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Petition for Rehearing by Appellant and Proof of Service in the above referenced matter.

Please clock-in the copy enclosed and return to me in the envelope provided.
Thank you for your attention to this matter.

Yours very truly,

Monishia L. Davis
Paralegal

/mld

Enclosures

cc: Norbert E. Cummings, Jr., Esq.
Henry Schlein, Esq.