

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY MAGISTRATE COURT
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2015-CP-18-1916

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SEP 21 2016

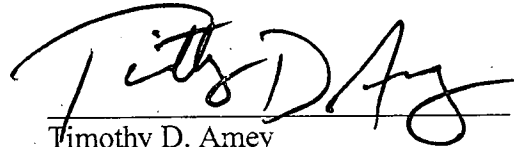
SC Court of Appeals

The State of South Carolina, Respondent,
v.

Breanna Flannery, Appellant.

NOTICE OF APPEAL

Breanna Flannery appeals the order of the Honorable Maité Murphy dated August 5, 2016, which affirmed, in part, her conviction in the Summerville Magistrate Court. Appellant received written notice of the order on August 10, 2016.



Timothy D. Amey
1495 Remount Road
North Charleston, SC 29406
(843) 425-2269
Attorney for Appellant

September 9, 2016

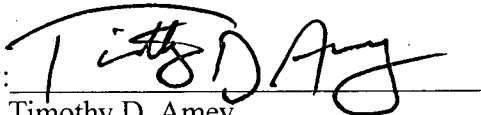
Other Counsel of Record:

Kyle Ward
Assistant Solicitor
140 N. Main St. #102
Summerville, SC 29483
(843) 871-2640
Attorney for Respondent

CERTIFICATION OF SERVICE

I, Timothy D. Amey, do hereby certify that I, on September 9, 2016, by US Mail or by courier, filed to Kyle Ward, at Dorchester County Solicitor's Office, address of 140 N. Main St. #102, Summerville, SC 29483 the original copy of Notice of Appeal.

Tim Amey - Attorney at Law

By: 

Timothy D. Amey
Attorney at Law
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Attorney for Defendant

North Charleston, South Carolina
September 19, 2016

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SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE MAGISTRATE'S COURT
CIVIL CASE # 66331GU

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SC Court of Appeals

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

BREANNA FLANNERY,

Defendant

NOTICE OF DECISION

This matter came before me on Defendant's motion to set aside the conviction and to grant a directed verdict or new trial. After considering the arguments set forth by Defendant's counsel, this Court denies Defendant's motions.

Defendant argues that Deputy Tuck should not have been allowed to be in the Court room while Deputy Hayes testified. However, Defendant recognizes that Deputy Tuck was the Deputy charged with prosecuting the case. As the prosecuting deputy it was necessary and appropriate for Tuck to remain in the Court room despite witnesses being sequestered.

As for reasonable suspicion for the stop, the Court reviewed the video taken by Deputy Hayes and observed Defendant's vehicle crossing the lines. Further Hayes testified that he pulled the Defendant over because he was earlier flagged down by a concerned citizen and because he saw Defendant cross over the lines. Based on that the Court found that there was probably cause for the stop.

As for statements by the prosecution or its witnesses that the deputy was "flagged down", the Court gave a curative instruction to the jury that they should disregard any comments made by the witnesses towards that end. The Court has no reason to believe that the jury did not

follow the Court's instructions on disregarding said comments and considering only the evidence presented to the jury by the sworn testimony and evidence admitted at trial.

The Court granted Defendant's motion to suppress a portion of the audio portion of the video, but required Defendant to be responsible to mute the video. Defendant's counsel agreed to this without objection and has not heretofore raised that as a grounds for any motion. Notwithstanding that, since it was the Defendant that wished to suppress the audio portion of the video, it was incumbent on the Defendant to make arrangements to do so.

The Court found that the video was properly admitted into evidence. Deputy Hayes testified as to it being his video taken while he was driving.

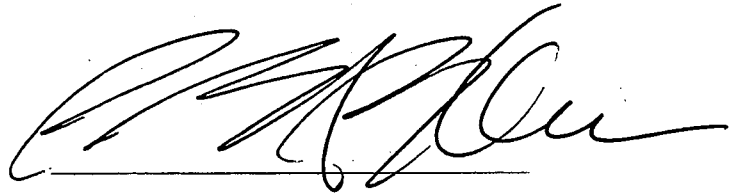
As for Deputy Tuck testifying with "open ended" statements, Tuck was the prosecuting authority as well as the arresting deputy and as such it was appropriate for Tuck to testify. The Court is cognizant that in so testifying it is possible for statements to be made without the opportunity to object before the statement is made. Defendant's counsel had the right to object and ask for any inappropriate statements to be stricken. The Court either did so if the objection was sustained.

Defendant objects to the introduction of the breath test results contending that the breathalyzer machine was not working properly and was not reliable. Defendant requested that the Court make a determination that SLED policy and procedures were violated and that there was a material question about the reliability of the machine's reading warranting the exclusion of the results. The Court denied this request finding that the alleged unreliability goes to the weight of the evidence. At no time did Defendant attempt to introduce any evidence or testimony that the machine was unreliable or that the results were unreliable or that there were any other challenges to the test data.

As for evidence of a violation of SC Code Section 56-1-510, the Deputies testified that Defendant had a false identification on her at the time of arrest.

Based on the testimony at trial and the evidence introduced, this Court finds there the Defendant's arguments to be non-persuasive and denies the same.

Dated this 17th day of August, 2015.



P. Brandt Shelbourne, Magistrate



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