

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 20 2016

CERTIORARI TO THE COURT OF APPEALS
Appeal from Berkeley County
Court of Common Pleas

S.C. SUPREME COURT

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

Appellate Case No. 2014-001919
Unpublished Opinion No. 2016-UP-377
Heard March 9, 2016 – Filed July 27, 2016; rehearing denied September 20, 2016

The State.....Petitioner,

v.

Jennifer Lynn Alexander.....Respondent.

APPENDIX

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 Petitioner

Norbert E. Cummings, Jr., Esq.
Henry Schlein, Esq.
P.O. Box 1318
Summerville, SC 29484-1318
Telephone: (843) 821-9999
Attorneys for Respondent

Appendix Index

Record on Appeal.....	1
Appellant's Final Brief.....	72
Respondent's Final Brief.....	80
Appellant's Final Reply Brief.....	91
Court of Appeals Decision.....	99
Petition for Rehearing.....	102
Order Denying Petition for Rehearing.....	107

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

RECEIVED

MAR 23 2015

Case No. 2014-CP-08-0688

SC Court of Appeals

The State of South Carolina.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

RECORD ON APPEAL

Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P.O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

Norbert E. Cummings, Jr., Esq.
Henry Schlein, Esq.
Email: cummingslawfirm@bellsouth.net
P. O. Box 1318
Summerville, SC 29484-1318
Telephone: (843) 821-9999
Attorneys for Respondent

INDEX

PAGE

Form 4 Order of The Honorable R. Markeley Dennis dated August 20, 2014, filed on August 26, 2014, in Berkeley County bearing case number 2014-CP-08-0688.....	2
Order of Dismissal of The Honorable Edward L. Sessions dated February 25, 2014, filed on February 25, 2014, in Berkeley County Magistrate's Court bearing case numbers G445153, G445154, G445155 and G445156.....	4
Notice of Appeal dated September 9, 2014, filed by Appellant on September 11, 2014, with the Court of Appeals.....	8
Transcript of Record of the July 28, 2014 hearing before The Honorable R. Markeley Dennis in the Berkeley County Circuit Court case bearing number 2014-CP-08-0688.....	16
Notice of Appeal and Appeal filed by Appellant on April 2, 2014, in the Berkeley County Circuit Court bearing case number 2014-CP-08-0688.....	36
Respondent's Reply to State's Appeal filed by Respondent on May 1, 2014, in the Berkeley County Circuit Court bearing case number 2014-CP-08-0688.....	43
Magistrate's Return/Transmittal of Criminal Appeal filed on May 12, 2014, in the Berkeley County Circuit Court bearing case number 2014-CP-08-0688.....	52
Audio recording of the Berkeley County Magistrates Court proceedings of February 11, 2014 entered as Court's Exhibit No. 1 before the Honorable Markley Dennis, Jr. on July 28, 2014 in the Berkeley County Circuit Court case no. 2014-CP-08-0688.....	68
Berkeley County Summary Court Summons dated December 20, 2013.....	69
Uniform Traffic Ticket Number G445153.....	70
Uniform Traffic Ticket Number G445154.....	70
Certificate of Counsel.....	71

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-0688

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

JENNIFER LYNN ALEXANDER

DEFENDANT(S)

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: After reviewing the entire file and fully considering the decision of the Magistrate, Edward L. Sessions, is affirmed.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

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 (List amount(s) below)
		\$
		\$
		\$
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

2060

Judge Code

8/20/2014

Date

SCRPC Form 4C (12/2011)

For Clerk of Court Office Use Only

This judgment was entered on the 26 day of Aug, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of Aug, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Mary A. Brown/DW
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
STATE OF SOUTH CAROLINA,)
Vs.)
JENNIFER LYNN ALEXANDER,)
DEFENDANT)

IN THE MAGISTRATE'S COURT
FOR BERKELEY COUNTY
TICKET NOS: G445153, G445154,
G445155, G445156

**ORDER OF DISMISSAL
WITH PREJUDICE**

TRIAL JUDGE: HON. EDWARD L. SESSIONS
DATE OF TRIAL: FEBRUARY 10, 2014
COURT REPORTER: N/A
PROSECUTING ATTORNEY: CATHERINE FANT
PROSECUTING OFFICER: TROOPER YACABOZZI
DEFENDANT'S ATTORNEY: NORBERT E. CUMMINGS, Jr.,
HENRY RICHARD SCHLEIN,
MITCHELL FARLEY

PROCEDURE

This matter came before the Court for a jury trial in the above captioned matter, charging the Defendant with violation of Driving Under the Influence(DUI) §56-5-2930, Ticket Number G445153; Seatbelt Violation §56-5-6520, Ticket Number G445154; No Proof of Insurance §56-10-225, Ticket Number G445155; and Failure to Change Address §56-1-230, Ticket Number G4451536. Defendant requested a jury trial and was present in the courtroom and on behalf of the state was Trooper Yacabozzi, South Carolina Highway Patrol as arresting and prosecuting officer and witness, and Prosecuting Attorney Catherine Fant, of the Department of Public Safety. Present for the Defense were the Defendant, above named, along with her attorneys, Norbert E. Cummings, Jr., Henry Richard Schlein, and Mitchell Farley, of the Dorchester County Bar. The case was noticed for a jury trial and all Notices and Motions were timely and properly filed and served. The jury venire was present and awaiting voir dire. The Court took Judicial Notice of the severe weather and the

resultant State of Emergency declared by the Governor and for this reason, and because the rulings on the motions may be outcome determinative, the State and Defendant agreed to have Defendant's pretrial motions heard and decided at today's hearing, and to release the jury venire, and reschedule the start of the trial at another time.

RULING

The Defendant's pretrial motions consisted of 1) Motion to Dismiss for Failure to Comply with Rule 5 and this Court's order for compliance; 2) Motion to Dismiss under State v. Martin, infra, and State v. McAteer, infra; a Motion to Suppress the Breath Test Results; and a Motion to Suppress the Field Sobriety Tests. The Court heard oral arguments, took sworn testimony of the witnesses and received exhibits as evidence for consideration.

The Defendant has moved to dismiss under State v. Martin, 275 S.C. 141 (1980) and State v. McAteer, 340 S.C. 644 (2000). The Defendant presented testimony by the first officer on the scene, who was then employed with the Goose Creek Police Department, determined that the Defendant was not within the city limits of Goose Creek upon his arrival. The Officer testified that he confirmed this with his supervisor. The Officer testified that he intended to detain the Defendant, and in fact, detained the Defendant, until the arrival of the Highway Patrol. The officer testified that the Defendant was not free to leave, and that had she attempted to do so, he would have arrested her for public drunkenness. The officer testified that he sought information from the Defendant regarding her driver's license, registration, and identification information. The testimony was that the detention lasted for approximately sixteen minutes until the arrival of the South Carolina Highway Patrol Trooper, who then conducted an investigation. There was no testimony or evidence presented regarding how long the Defendant had been there, and there was no testimony that anyone

FILED

FEB 25 2014
CM
Goose Creek Magistrate Office

had observed Defendant drive her vehicle. However, there was testimony that the vehicle was inoperable and stuck in the mud and off the road, when the officer arrived.

The Court is most persuaded by our Supreme Court's holding in State v. McAteer, supra. In McAteer, an off-duty, but still uniformed, municipal police officer observes the defendant drive a vehicle outside the city limits. The officer approached the car and the defendant rolled down his window. The officer smelled alcohol and saw open alcoholic beverage containers in the vehicle. The officer detained the defendant until the arrival of the Highway Patrol. The Highway Patrolman administered several field sobriety tests and arrested the defendant, who subsequently blew a .18 on the breath test. State v. McAteer, 340 S.C. at 645. See also, State v. Boswell, 391 S.C. 592 (2011).

Here, as in McAteer, supra, since the initial Goose Creek officer was outside the municipality's city limits when he first observed the Defendant, and since no violation of the law had been observed within the city limits, the officer had no police authority to detain the Defendant, or to arrest her. Therefore, the arrest of Defendant was unlawful and her case and all charges should therefore be dismissed, with prejudice.

The State has stipulated that the Horizontal Gaze Nystagmus (HGN) test was not properly done and therefore, the Court grants Defendant's Motion to Suppress this particular field sobriety test, and any associated video thereof. Because the Court finds that the Defendant's arrest was unlawful and that the case should be dismissed, there is no need to rule on the Defendant's remaining motions.

NOW THEREFORE IT IS ORDERED THAT:

- A. The case and all charges against the Defendant shall be, and hereby are, dismissed with prejudice;

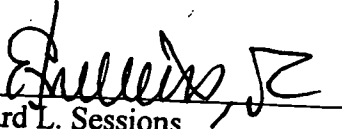
FILED

FEB 25 2014

CM
Goose Creek Magistrate Office

B. The Clerk of Court shall, within thirty (30) days, prepare an order for the destruction of arrest records, expunging all of these charges from Defendant's record;

AND IT IS SO ORDERED.



Hon. Edward L. Sessions
Magistrate's Court Judge

At Goose Creek, South Carolina

This 25 day of February, 2014

FILED

FEB 25 2014
CM

Goose Creek Magistrate Office

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

The State.....Appellant,

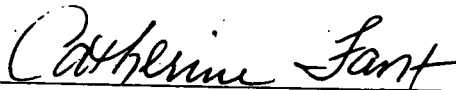
v.

Jennifer Lynn Alexander.....Respondent.

NOTICE OF APPEAL

The Appellant, The State of South Carolina, hereby appeals from the Order of the Honorable R. Markley Dennis, Jr., Judge of the Ninth Judicial Circuit, dated August 20, 2014, and filed for record on August 26, 2014, in the matter of The State of South Carolina vs. Jennifer Lynn Alexander, Case Number 2014-CP-08-0688, with the Berkeley County Common Pleas Court.

Appellant received the written Order from the Clerk on August 21, 2014. A copy of the Order is attached hereto.



Catherine Fant, Assistant General Counsel

Email: CatherineFant@scdps.gov

Marcus K. Gore, Assistant General Counsel

Email: MarcusGore@scdps.gov

South Carolina Department of Public Safety
Office of General Counsel

P. O. Box 1993

Blythewood, SC 29016

Telephone: (803) 896-7964

Blythewood, S.C.

Date: September 9, 2014

RECEIVED

SEP 11 2014

SC Court of Appeals

Other Counsel of Record:

Norbert E. Cummings, Jr., Esq.

Henry Schlien, Esq.

P. O. Box 1318

Summerville, SC 29484-1318

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

FORM 4

JUDGMENT IN A CIVIL CASE

RECEIVED

CASE NO. 2014 CP-08-0688

SEP 11 2014

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

JENNIFER LYNN ALEXANDER

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: After reviewing the entire file and fully considering the decision of the Magistrate, Edward L. Sessions, is affirmed.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if an 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 (List amount(s) below)
		\$
		\$
		\$
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

2060
Judge Code

8/20/2014
Date

SCRPC Form 4C (12/2011)

For Clerk of Court Office Use Only

This judgment was entered on the 26 day of Aug, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of Aug, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Mary A. Brown/Dw
CLERK OF COURT

Court Reporter:

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

RECEIVED

SEP 11 2014

SC Court of Appeals

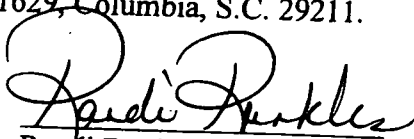
The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

PROOF OF SERVICE

I do hereby certify that I have served the Notice of Appeal in the above captioned action, by depositing it in the United States Mail, postage prepaid, on this 9th day of September 2014, addressed to the Honorable Jenny Abbott Kitchings, Clerk of the Court of Appeals of South Carolina, P. O. Box 11629, Columbia, S.C. 29211.



Randi Runkles
Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: September 9, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

RECEIVED

SEP 11 2014

SC Court of Appeals

The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

PROOF OF SERVICE

I do hereby certify that I have served the Notice of Appeal in the above captioned action, by depositing it in the United States Mail, postage prepaid, on this 9th day of September, 2014, addressed to Respondent's counsel, Norbert E. Cummings, Jr., Esq. and Henry Schlein, Esq. at Post Office Box 1318, Summerville, South Carolina, 29484-1318.



Randi Runkles
Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: September 9, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

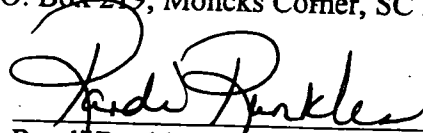
The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

PROOF OF SERVICE

I do hereby certify that I have served the Notice of Appeal in the above captioned action, by depositing it in the United States Mail, postage prepaid, on this 9th day of September, 2014, addressed to the Honorable Mary P. Brown, Clerk of Court of Berkeley County, Berkeley County Circuit Court, P. O. Box 219, Moncks Corner, SC 29461.



Randi Runkles
Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: September 9, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

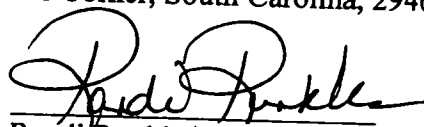
The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

PROOF OF SERVICE

I do hereby certify that I have served the Notice of Appeal in the above captioned action, by depositing it in the United States Mail, postage prepaid, on this 9th day of September, 2014, addressed to the Honorable R. Markley Dennis, Jr., Circuit Judge of the Ninth Judicial Circuit, P. O. Box 1800, Moncks Corner, South Carolina, 29461.



Randi Runkles

Paralegal

Office of General Counsel

S. C. Department of Public Safety

Dated: September 9, 2014

RECEIVED
SEP 11 2014
SC Court of Appeals

1 STATE OF SOUTH CAROLINA
2 COUNTY OF BERKELEY

COURT OF COMMON PLEAS
2014-CP-08-00688

3
4 STATE OF SOUTH CAROLINA)

5 VS.)

TRANSCRIPT OF RECORD

6 JENNIFER LYNN ALEXANDER)

7 JULY 28, 2014)
8 MONCKS CORNER, SC)
9)

10 B E F O R E:

11 HONORABLE R. MARKLEY DENNIS, JR.
12

13 A P P E A R A N C E S:

14 CATHERINE FANT, ESQUIRE
15 Attorney for the State

16 HENRY R. SCHLEIN, ESQUIRE
17 MITCHELL FARLEY, ESQUIRE
18 Attorneys for the Defendant

19 Ruth L. Mott, RPR, CRR
20 Official Court Reporter
21
22
23
24
25

I N D E X

CERTIFICATE OF REPORTER 14

E X H I B I T S

NO.	DESCRIPTION	ID	EVD
C-1	AUDIO RECORDING	4	

- - -

1 THE COURT: This is an appeal from Magistrate's Court,
2 and there is a return filed by the magistrate. The
3 magistrate lower court dismissed the case, signed by Judge
4 Sessions. If you would, identify yourselves and the parties
5 that you represent. Ms. Fant?

6 MS. FANT: Yes, Your Honor, my name is Catherine Fant,
7 and I'm Assistant Attorney General with the Department of
8 Public Safety. I represent the State in the appeal.

9 MR. SCHLEIN: Thank you, Your Honor, Henry Schlein,
10 S-C-H-L-E-I-N, with Norb Cummings' office in Summerville. We
11 represent the respondent, who is the defendant in this case,
12 Ms. Jennifer Alexander, and this is my co-counsel, Mitchell
13 Farley.

14 THE COURT: Thank you. All right. Ms. Fant, it's your
15 appeal. I'll be delighted to hear from you.

16 MS. FANT: Yes, sir, Your Honor. On July 20th of 2013
17 at approximately 11:30 p.m. Goose Creek Police Department
18 received a 911 call from a passerby on US 176.

19 THE COURT: Let me help you, Ms. Fant. I've had the
20 opportunity to review the file, the return of the magistrate
21 and also the submissions by each side, so the factual part
22 I'm somewhat familiar with.

23 MS. FANT: Thank you, Your Honor.

24 THE COURT: Thank you. Excuse me for interrupting you.

25 MS. FANT: No problem, Your Honor. The ultimate issue

1 that we have in this case, Your Honor, is whether or not
2 Officer Chad Hadden with the Goose Creek Police Department
3 was acting within his legal authority when he detained the
4 defendant in this case. The magistrate's return and the
5 reply by the defendant indicate that these -- that this
6 situation is controlled by State v. McAteer and State v.
7 Boswell. The State, however, Your Honor, believes those
8 cases are factually distinct. We would agree with the
9 general proposition that if you're not in your jurisdiction,
10 you cannot detain or arrest someone. The key legal question
11 in this issue is was he actually within his jurisdiction.
12 That's the first point that we argued below, and the
13 Magistrate's Court return, Your Honor, did not actually
14 include the entire State's argument. I would at this point
15 move to make this Court's Exhibit 1, which is a recording of
16 the argument that was made during the motion.

17 THE COURT: Okay. Any objection?

18 MR. SCHLEIN: No objection if it's the recording.

19 THE COURT: Very well, it will be retained with all
20 other pleadings in the Clerk's file. It will be Court's
21 Exhibit 1.

22 (The Court's Exhibit 1 marked for identification.)

23 MS. FANT: Because, Your Honor, while the magistrate's
24 return is correct, we did agree that the street is in the
25 City of Goose Creek, and the front yard of the house where

1 the car ended up was in the county. I guess it had never
2 been incorporated into the city. The State's argument below
3 and the argument here is that common sense tells you, when
4 someone is driving on the road, committing a crime, the fact
5 that they wreck and run off the road and end up in a ditch in
6 someone's front yard does not divest the jurisdiction that
7 the police department had on the actual road where she was
8 traveling. She told both Trooper Yacovazzi and Officer
9 Hadden she had apparently been going away from Goose Creek
10 when she attempted to make a U-turn. Obviously that didn't
11 go very well because she did end up on the normal opposite
12 side of the road, heading back the other direction. She
13 actually turned left into this person's front yard. So our
14 first argument was he clearly did have jurisdiction because
15 176, which is the road that the car was traveling on before
16 she wrecked, crashed, whatever you want to call it, and left
17 the roadway, is in fact in the City of Goose Creek, and there
18 was I don't believe any argument about that below that that
19 road is in fact in the City of Goose Creek. That is how, in
20 fact, Goose Creek got dispatched to the location was due to
21 that.

22 The second argument that the State made is even if the
23 Court were to find that he -- the front yard was not a
24 continuation of the roadway and for purposes of a crime
25 there's a statute that governs this very issue which is

1 17-13-45. It was pointed out in our appeal. I also have a
2 copy of the statute to hand up if you need it. And that
3 statute says, "When a law enforcement officer responds to a
4 distress call or a request for assistance in an adjacent
5 jurisdiction, the authority, rights" --

6 THE COURT: You don't need to read it. I appreciate
7 that.

8 MS. FANT: Okay. And so the argument there would be
9 that even if, in fact, our first argument, which we believe
10 he was on the roadway, and that is in his jurisdiction to
11 investigate that crime, that that statute would cover him and
12 provide him jurisdiction in the front yard, which is where he
13 ultimately ended up responding. I believe that the defendant
14 pointed out in their reply that this was not a call, a
15 distress call or a call for assistance; but I don't know what
16 you call it when it is a welfare check, someone calls in and
17 says, "I see a car on the side of the road that has its
18 headlights on and its inside lights on. I don't see a
19 person. I'm concerned. Can you send someone out." And that
20 was the reason the Goose Creek officer responded, so we
21 believe that that would be the second reason that the judge's
22 order should be overturned.

23 The third reason would be just, again, in abundance of
24 caution, if the Court were to rule against the State in the
25 first two matters, it would be that that's not the end of the

1 issue. You don't dismiss the case in circumstances where
2 there is an illegal arrest. The State has cited several
3 cases, in particular, Town of Mount Pleasant v. Jones, where
4 the Court held, okay, even if you did unlawfully stop
5 somebody, and that was the case where it was an illegal
6 citizen's arrest, you still can go forward, just without the
7 absence -- excuse me, without the evidence that you would
8 have obtained therefrom. The reply from the defendant also
9 mentions and tries to address that argument by saying that
10 McAteer and Boswell affirmed the dismissal or dismissed the
11 lower court cases, and that is not the case. Both of those
12 opinions remanded the case back to the Magistrate's Court.
13 What happened after that, I'm not sure; but they certainly
14 had an entitlement to try to prove their case whatever way
15 they could at that point.

16 The ultimate issue here, Your Honor, is we believe that
17 trooper or, excuse me, Officer Hadden was; in fact, clearly
18 within Goose Creek's jurisdiction. The road 176 is in the
19 City of Goose Creek. Her car, when she missed the road and
20 ran off into the front yard, was some 20 to 30 feet off the
21 main roadway. Clearly it was not a roadway. She should not
22 have been driving through someone's front yard. She was on
23 US 176 before she ran off it. So for those reasons, Your
24 Honor, we believe that Magistrate's Court ruling should be
25 reversed.

1 I would also like to point out that in their reply the
2 defendant makes several references to State v. Martin and
3 other issues surrounding the case, but I don't think those
4 are properly before the Court. In fact, I believe they're
5 procedurally barred from bringing those issues up again. The
6 magistrate very clearly ruled, even though he started out
7 saying this was a motion based on McAteer and Martin, clearly
8 ruled on the McAteer issue and found that the State did not
9 have jurisdiction, and that's the sole ground, I believe, for
10 his ruling and why we're up here on appeal.

11 THE COURT: Okay. Mr. Schlein.

12 MR. SCHLEIN: Thank you, Your Honor, may it please the
13 Court. Of course we respectfully disagree with counsel. The
14 defendant -- nobody saw the defendant drive. She was stuck
15 in a ditch. The car was not operable. The officer testified
16 that --

17 THE COURT: I understand that. My concern there is
18 we're getting to -- I don't know what the crime is, but your
19 basis is whether or not they had jurisdiction to do what they
20 did, and it seems to me the stronger motion to dismiss was
21 what crime was there to investigate. Just because a car is
22 off the road doesn't imply a crime, doesn't imply anything,
23 so I don't know where they go from there; but the problem
24 that I have now is we're stopping them from trying to go
25 there. That's the issue. The issue is you're right, but

1 your judge ruled that they didn't have jurisdiction, and
2 therefore the case is dismissed. I don't know why you argued
3 that in the first place because I think your stronger point
4 is, where do you go after you come to court because what
5 crime were you investigating and what was the crime. I don't
6 even know right now. What was the charge?

7 MR. SCHLEIN: She was charged with DUI, Your Honor.

8 THE COURT: Based on what? That's the problem. I
9 think, I just wonder, isn't this a 10 percent -- you're not
10 going to win; I mean, you just flat aren't going to win.

11 MS. FANT: Your Honor, we disagree. We think
12 circumstantially --

13 THE COURT: Based on what, circumstances of what? You
14 don't know what her condition was at the time she was
15 driving. That's the problem. How long was she there?

16 MS. FANT: Well, that would be evidence for them to put
17 up.

18 THE COURT: No, that's evidence for you to prove. You
19 can't get to first base. That's the problem. I'd throw this
20 out in a heartbeat. You can appeal that. I don't think
21 you'll get to first base there either, but this is silly,
22 frankly.

23 MS. FANT: Your Honor, there were statements that
24 were --

25 THE COURT: You don't have a right to get statements

1 from her. She's in the yard. Whose house was it, hers?

2 MS. FANT: No. No, it was a private citizen who, in
3 fact, was dead. It had actually passed on to somebody
4 else's -- there was nobody at the house, put it that way.

5 THE COURT: Okay. Thank you. All right. Keep going.

6 MR. SCHLEIN: I think you kind of summed it up. We just
7 contest that they had jurisdiction to stop her, to hold her
8 and get to any of this -- these charges.

9 THE COURT: I couldn't agree with you -- in fact, to be
10 honest with you, I don't know what right they had to
11 detain -- I notice there was a detention for somebody to
12 arrive -- highway patrolman, I think, to arrive, but why did
13 the highway patrol have to come, because it was not in
14 jurisdiction?

15 MS. FANT: Because he mistakenly thought he didn't have
16 authority. In fact, the first thing --

17 THE COURT: So therefore he's detaining a person on the
18 basis of what?

19 MS. FANT: On the basis of there was no way he could let
20 her drive at that point.

21 THE COURT: Go read -- and I don't know, I can't
22 remember, I don't think it was published, thank goodness,
23 because I was reversed because they detained a guy who was
24 coming, and they had a tip. It was in Charleston. I just
25 remember Mr. Brown was the lawyer, and they moved to suppress

1 everything because they didn't have a right to detain. They
2 wanted to detain him for the dog to come, and the dog came
3 and alerted, and they kept him from moving. And I found that
4 they had a right to do that based on the probable cause this
5 was the guy, and he was the guy. Supreme Court reversed
6 that, said you don't have a right to detain him to make a
7 crime, and you didn't either. That's the problem. But,
8 again, the problem I'm faced with is those are all motions at
9 trial. Now we get into a situation, the appeal comes back to
10 me and says, you should have dismissed this. You're right.
11 But my problem is you can't get there because he said you
12 don't have jurisdiction.

13 MR. SCHLEIN: Yes, Your Honor.

14 THE COURT: Be careful what you ask for sometimes as a
15 lawyer, you know. I remember in this very same courtroom I
16 moved to strike permanent injury because the doctor
17 equivocated, said he wasn't permanently injured, and then he
18 said he was, and the judge agreed with me. It was hard to
19 convince Judge Bell, who was in on the Court of Appeals, that
20 that wasn't a jury -- that was a matter of law and not a jury
21 issue because he quickly presented that, and we retried it
22 and settled it. And I always thought as a lawyer -- Lisa,
23 remember this -- this young lady is from Switzerland and has
24 been kind enough to agree to come sit with me. She's going
25 to law school there. Be careful what you ask for. You may

1 get it, and then you've got to defend it.

2 I really think this needs to be remanded for those
3 issues to be really brought because I can't get there, I'm
4 afraid, based on the jurisdictional issue. I'm going to look
5 at this. You think the sole issue for me is whether or not
6 you had jurisdiction.

7 MS. FANT: I do believe so, Your Honor.

8 THE COURT: And it doesn't even get to all the merits of
9 everything else.

10 MS. FANT: Correct, Your Honor, and that's based on the
11 trial court's order, which, I believe it was on page 3, very
12 clearly said, "the initial Goose Creek officer was outside
13 the municipal city limits when he first observed" --

14 THE COURT: When you read, you've got to remember this.
15 lady's taking it down, and I can't think that fast either.

16 MS. FANT: His finding was ultimately here, as in
17 McAteer, "since the initial Goose Creek officer was outside
18 of the municipality city limits when he first observed the
19 defendant, and since no violation of law had been observed
20 inside the city limits" --

21 THE COURT: Slow down. We're not racing. You've got
22 all day, or at least until 1:00.

23 MS. FANT: I'm sorry. "And since no violation of the
24 law had been observed within the city limits, the officer had
25 no police authority to detain the defendant or to arrest her;

1 therefore, the arrest was unlawful in her case, and all
2 charges should be dismissed."

3 THE COURT: I don't know that that's jurisdictional.
4 I'm going to need to look at it and see because I may be able
5 to -- may be able to circumvent that. All right. Your
6 position, basically you both have briefed it, and you've
7 argued your position. I'll look at it, and I'll let you
8 know. Thank you all very much, and thank you, Ms. Fant, I
9 appreciate that.

10 --- END OF TRANSCRIPT OF RECORD ---
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

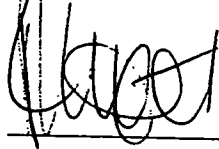
2 STATE OF SOUTH CAROLINA

3 COUNTY OF BERKELEY

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Berkeley County, South
11 Carolina, on the 28th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 October 29, 2014

16 
17

18 Ruth L. Mott

19 Official Court Reporter
20
21
22
23
24
25

1 1 [3] - 4:15, 4:21, 4:22 10 [1] - 9:9 11:30 [1] - 3:17 14 [1] - 2:2 17-13-45 [1] - 6:1 176 [4] - 3:18, 5:15, 7:18, 7:23 1:00 [1] - 12:22	3:15, 6:1, 8:10, 9:20, 11:9, 14:9 Appeals [1] - 11:19 appreciate [2] - 6:6, 13:9 argued [3] - 4:12, 9:2, 13:7 argument [10] - 4:14, 4:16, 5:2, 5:3, 5:14, 5:18, 5:22, 6:8, 6:9, 7:9 arrest [5] - 4:10, 7:2, 7:6, 12:25, 13:1 arrive [2] - 10:12 assistance [2] - 6:4, 6:15 Assistant [1] - 3:7 attempted [1] - 5:10 Attorney [2] - 1:15, 3:7 Attorneys [1] - 1:17 AUDIO [1] - 2:7 authority [4] - 4:3, 6:5, 10:16, 12:25	14:11 case [13] - 3:3, 3:11, 4:1, 4:4, 7:1, 7:5, 7:11, 7:12, 7:14, 8:3, 9:2, 13:1, 14:9 cases [3] - 4:8, 7:3, 7:11 CATHERINE [1] - 1:14 Catherine [1] - 3:6 caution [1] - 6:24 certainly [1] - 7:13 CERTIFICATE [2] - 2:2, 14:1 certify [2] - 14:6, 14:12 Chad [1] - 4:2 charge [1] - 9:6 charged [1] - 9:7 charges [2] - 10:8, 13:2 Charleston [1] - 10:24 check [1] - 6:16 Circuit [1] - 14:10 circumstances [2] - 7:1, 9:13 circumstantially [1] - 9:12 circumvent [1] - 13:5 cited [1] - 7:2 citizen [1] - 10:2 citizen's [1] - 7:6 City [4] - 4:25, 5:17, 5:19, 7:19 city [5] - 5:2, 12:13, 12:18, 12:20, 12:24 clearly [5] - 5:14, 7:17, 7:21, 8:6, 8:7, 12:12 Clerk's [1] - 4:20 co [1] - 3:12 co-counsel [1] - 3:12 coming [1] - 10:24 committing [1] - 5:4 common [1] - 5:3 COMMON [1] - 1:1 complete [1] - 14:7 concern [1] - 8:17 concerned [1] - 6:19 condition [1] - 9:14 contest [1] - 10:7 continuation [1] - 5:24 controlled [1] - 4:6 convince [1] - 11:19 copy [1] - 6:2	CORNER [1] - 1:7 correct [2] - 4:24, 12:10 counsel [3] - 3:12, 8:13, 14:13 county [1] - 5:1 County [1] - 14:10 COUNTY [2] - 1:2, 14:3 course [1] - 8:13 COURT [23] - 1:1, 3:1, 3:14, 3:19, 3:24, 4:17, 4:19, 6:6, 8:11, 8:17, 9:8, 9:13, 9:18, 9:25, 10:5, 10:9, 10:17, 10:21, 11:14, 12:8, 12:14, 12:21, 13:3 Court [15] - 1:19, 3:1, 4:13, 5:23, 6:24, 7:4, 7:12, 7:24, 8:4, 8:13, 11:5, 11:19, 14:5, 14:10, 14:19 court [3] - 3:3, 7:11, 9:4 court's [1] - 12:11 Court's [3] - 4:15, 4:20, 4:22 courtroom [1] - 11:15 cover [1] - 6:11 crashed [1] - 5:16 Creek [11] - 3:17, 4:2, 4:25, 5:9, 5:17, 5:19, 5:20, 6:20, 7:19, 12:12, 12:17 Creek's [1] - 7:18 crime [9] - 5:4, 5:24, 6:11, 8:18, 8:21, 8:22, 9:5, 11:7 CRR [1] - 1:18 Cummings' [1] - 3:10	department [1] - 5:7 DESCRIPTION [1] - 2:6 detain [6] - 4:10, 10:11, 11:1, 11:2, 11:6, 12:25 detained [2] - 4:3, 10:23 detaining [1] - 10:17 detention [1] - 10:11 direction [1] - 5:12 disagree [2] - 8:13, 9:11 dismiss [2] - 7:1, 8:20 dismissal [1] - 7:10 dismissed [5] - 3:3, 7:10, 9:2, 11:10, 13:2 dispatched [1] - 5:20 distinct [1] - 4:8 distress [2] - 6:4, 6:15 ditch [2] - 5:5, 8:15 divest [1] - 5:6 doctor [1] - 11:16 dog [2] - 11:2 down [2] - 12:15, 12:21 drive [2] - 8:14, 10:20 driving [3] - 5:4, 7:22, 9:15 due [1] - 5:20 DUI [1] - 9:7 during [1] - 4:16
2 20 [1] - 7:20 2013 [1] - 3:16 2014 [3] - 1:7, 14:11, 14:15 2014-CP-08-00688 [1] - 1:2 20th [1] - 3:16 28 [1] - 1:7 28th [1] - 14:11 29 [1] - 14:15	2 20 [1] - 7:20 2013 [1] - 3:16 2014 [3] - 1:7, 14:11, 14:15 2014-CP-08-00688 [1] - 1:2 20th [1] - 3:16 28 [1] - 1:7 28th [1] - 14:11 29 [1] - 14:15	2 20 [1] - 7:20 2013 [1] - 3:16 2014 [3] - 1:7, 14:11, 14:15 2014-CP-08-00688 [1] - 1:2 20th [1] - 3:16 28 [1] - 1:7 28th [1] - 14:11 29 [1] - 14:15	2 20 [1] - 7:20 2013 [1] - 3:16 2014 [3] - 1:7, 14:11, 14:15 2014-CP-08-00688 [1] - 1:2 20th [1] - 3:16 28 [1] - 1:7 28th [1] - 14:11 29 [1] - 14:15	2 20 [1] - 7:20 2013 [1] - 3:16 2014 [3] - 1:7, 14:11, 14:15 2014-CP-08-00688 [1] - 1:2 20th [1] - 3:16 28 [1] - 1:7 28th [1] - 14:11 29 [1] - 14:15
3 3 [1] - 12:11 30 [1] - 7:20	3 3 [1] - 12:11 30 [1] - 7:20	3 3 [1] - 12:11 30 [1] - 7:20	3 3 [1] - 12:11 30 [1] - 7:20	3 3 [1] - 12:11 30 [1] - 7:20
4 4 [1] - 2:7	4 4 [1] - 2:7	4 4 [1] - 2:7	4 4 [1] - 2:7	4 4 [1] - 2:7
9 911 [1] - 3:18 9th [1] - 14:10	9 911 [1] - 3:18 9th [1] - 14:10	9 911 [1] - 3:18 9th [1] - 14:10	9 911 [1] - 3:18 9th [1] - 14:10	9 911 [1] - 3:18 9th [1] - 14:10
A able [2] - 13:4, 13:5 above-captioned [1] - 14:9 absence [1] - 7:7 abundance [1] - 6:23 accurate [1] - 14:7 acting [1] - 4:3 actual [1] - 5:7 address [1] - 7:9 adjacent [1] - 6:4 affirmed [1] - 7:10 afraid [1] - 12:4 agree [4] - 4:8, 4:24, 10:9, 11:24 agreed [1] - 11:18 alerted [1] - 11:3 ALEXANDER [1] - 1:6 Alexander [1] - 3:12 appeal [8] - 3:1, 3:8,	A able [2] - 13:4, 13:5 above-captioned [1] - 14:9 absence [1] - 7:7 abundance [1] - 6:23 accurate [1] - 14:7 acting [1] - 4:3 actual [1] - 5:7 address [1] - 7:9 adjacent [1] - 6:4 affirmed [1] - 7:10 afraid [1] - 12:4 agree [4] - 4:8, 4:24, 10:9, 11:24 agreed [1] - 11:18 alerted [1] - 11:3 ALEXANDER [1] - 1:6 Alexander [1] - 3:12 appeal [8] - 3:1, 3:8,	A able [2] - 13:4, 13:5 above-captioned [1] - 14:9 absence [1] - 7:7 abundance [1] - 6:23 accurate [1] - 14:7 acting [1] - 4:3 actual [1] - 5:7 address [1] - 7:9 adjacent [1] - 6:4 affirmed [1] - 7:10 afraid [1] - 12:4 agree [4] - 4:8, 4:24, 10:9, 11:24 agreed [1] - 11:18 alerted [1] - 11:3 ALEXANDER [1] - 1:6 Alexander [1] - 3:12 appeal [8] - 3:1, 3:8,	A able [2] - 13:4, 13:5 above-captioned [1] - 14:9 absence [1] - 7:7 abundance [1] - 6:23 accurate [1] - 14:7 acting [1] - 4:3 actual [1] - 5:7 address [1] - 7:9 adjacent [1] - 6:4 affirmed [1] - 7:10 afraid [1] - 12:4 agree [4] - 4:8, 4:24, 10:9, 11:24 agreed [1] - 11:18 alerted [1] - 11:3 ALEXANDER [1] - 1:6 Alexander [1] - 3:12 appeal [8] - 3:1, 3:8,	A able [2] - 13:4, 13:5 above-captioned [1] - 14:9 absence [1] - 7:7 abundance [1] - 6:23 accurate [1] - 14:7 acting [1] - 4:3 actual [1] - 5:7 address [1] - 7:9 adjacent [1] - 6:4 affirmed [1] - 7:10 afraid [1] - 12:4 agree [4] - 4:8, 4:24, 10:9, 11:24 agreed [1] - 11:18 alerted [1] - 11:3 ALEXANDER [1] - 1:6 Alexander [1] - 3:12 appeal [8] - 3:1, 3:8,
1 1 [3] - 4:15, 4:21, 4:22 10 [1] - 9:9 11:30 [1] - 3:17 14 [1] - 2:2 17-13-45 [1] - 6:1 176 [4] - 3:18, 5:15, 7:18, 7:23 1:00 [1] - 12:22	1 1 [3] - 4:15, 4:21, 4:22 10 [1] - 9:9 11:30 [1] - 3:17 14 [1] - 2:2 17-13-45 [1] - 6:1 176 [4] - 3:18, 5:15, 7:18, 7:23 1:00 [1] - 12:22	1 1 [3] - 4:15, 4:21, 4:22 10 [1] - 9:9 11:30 [1] - 3:17 14 [1] - 2:2 17-13-45 [1] - 6:1 176 [4] - 3:18, 5:15, 7:18, 7:23 1:00 [1] - 12:22	1 1 [3] - 4:15, 4:21, 4:22 10 [1] - 9:9 11:30 [1] - 3:17 14 [1] - 2:2 17-13-45 [1] - 6:1 176 [4] - 3:18, 5:15, 7:18, 7:23 1:00 [1] - 12:22	1 1 [3] - 4:15, 4:21, 4:22 10 [1] - 9:9 11:30 [1] - 3:17 14 [1] - 2:2 17-13-45 [1] - 6:1 176 [4] - 3:18, 5:15, 7:18, 7:23 1:00 [1] - 12:22

7:7, 7:17 Exhibit [3] - 4:15, 4:21, 4:22	hand [1] - 6:2 hard [1] - 11:18 heading [1] - 5:12 headlights [1] - 6:18 hear [1] - 3:15 heartbeat [1] - 9:20 held [1] - 7:4 help [1] - 3:19 HENRY [1] - 1:16 Henry [1] - 3:9 hereby [1] - 14:6 highway [2] - 10:12, 10:13 hold [1] - 10:7 honest [1] - 10:10 Honor [18] - 3:6, 3:9, 3:16, 3:23, 3:25, 4:1, 4:7, 4:13, 4:23, 7:16, 7:24, 8:12, 9:7, 9:11, 9:23, 11:13, 12:7, 12:10 HONORABLE [1] - 1:11 house [3] - 4:25, 10:1, 10:4	J JENNIFER [1] - 1:6 Jennifer [1] - 3:12 Jones [1] - 7:3 JR [1] - 1:11 judge [2] - 9:1, 11:18 Judge [2] - 3:3, 11:19 judge's [1] - 6:21 Judicial [1] - 14:10 JULY [1] - 1:7 July [2] - 3:16, 14:11 jurisdiction [15] - 4:9, 4:11, 5:6, 5:14, 6:5, 6:10, 6:12, 7:18, 8:9, 8:19, 9:1, 10:7, 10:14, 11:12, 12:6 jurisdictional [2] - 12:4, 13:3 jury [2] - 11:20	7:24 main [1] - 7:21 marked [1] - 4:22 MARKLEY [1] - 1:11 Martin [2] - 8:2, 8:7 matter [2] - 11:20, 14:9 matters [1] - 6:25 McAteer [5] - 4:6, 7:10, 8:7, 8:8, 12:17 mean [1] - 9:10 mentions [1] - 7:9 merits [1] - 12:8 missed [1] - 7:19 mistakenly [1] - 10:15 Mitchell [1] - 3:12 MITCHELL [1] - 1:16 MONCKS [1] - 1:7 motion [3] - 4:16, 8:7, 8:20 motions [1] - 11:8 Mott [3] - 1:18, 14:5, 14:18 Mount [1] - 7:3 move [1] - 4:15 moved [2] - 10:25, 11:16 moving [1] - 11:3 MR [6] - 3:9, 4:18, 8:12, 9:7, 10:6, 11:13 MS [16] - 3:6, 3:16, 3:23, 3:25, 4:23, 6:8, 9:11, 9:16, 9:23, 10:2, 10:15, 10:19, 12:7, 12:10, 12:16, 12:23 municipal [1] - 12:13 municipality [1] - 12:18	observed [4] - 12:13, 12:18, 12:19, 12:24 obtained [1] - 7:8 obviously [1] - 5:10 October [1] - 14:15 OF [11] - 1:1, 1:2, 1:1, 1:4, 1:5, 2:2, 13:10, 14:1, 14:2, 14:3 office [1] - 3:10 Officer [3] - 4:2, 5:8, 7:17 officer [6] - 6:3, 6:20, 8:15, 12:12, 12:17, 12:24 Official [3] - 1:19, 14:5, 14:19 operable [1] - 8:15 opinions [1] - 7:12 opportunity [1] - 3:20 opposite [1] - 5:11 order [2] - 6:22, 12:11 outside [2] - 12:12, 12:17 overturned [1] - 6:22	
F faced [1] - 11:8 fact [10] - 5:4, 5:17, 5:19, 5:20, 6:9, 7:17, 8:4, 10:3, 10:9, 10:16 factual [1] - 3:21 factually [1] - 4:8 familiar [1] - 3:22 FANT [17] - 1:14, 3:6, 3:16, 3:23, 3:25, 4:23, 6:8, 9:11, 9:16, 9:23, 10:2, 10:15, 10:19, 12:7, 12:10, 12:16, 12:23 Fant [5] - 3:5, 3:6, 3:14, 3:19, 13:8 FARLEY [1] - 1:16 Farley [1] - 3:13 fast [1] - 12:15 feet [1] - 7:20 file [2] - 3:20, 4:20 filed [1] - 3:2 first [10] - 4:12, 5:14, 6:9, 6:25, 9:3, 9:19, 9:21, 10:16, 12:13, 12:18 flat [1] - 9:10 foregoing [1] - 14:7 forward [1] - 7:6 frankly [1] - 9:22 front [7] - 4:25, 5:6, 5:13, 5:23, 6:12, 7:20, 7:22	I ID [1] - 2:6 identification [1] - 4:22 identify [1] - 3:4 illegal [2] - 7:2, 7:5 imply [2] - 8:22 include [1] - 4:14 incorporated [1] - 5:2 indicate [1] - 4:5 initial [2] - 12:12, 12:17 injured [1] - 11:17 injury [1] - 11:16 inside [2] - 6:18, 12:20 interested [1] - 14:13 interrupting [1] - 3:24 introduced [1] - 14:8 investigate [2] - 6:11, 8:21 investigating [1] - 9:5 issue [11] - 3:25, 4:11, 5:25, 7:1, 7:16, 8:8, 8:25, 11:21, 12:4, 12:5 issues [3] - 8:3, 8:5, 12:3	K keep [1] - 10:5 kept [1] - 11:3 key [1] - 4:10 kind [2] - 10:6, 11:24	L lady [1] - 11:23 lady's [1] - 12:15 law [5] - 6:3, 11:20, 11:25, 12:19, 12:24 lawyer [3] - 10:25, 11:15, 11:22 least [1] - 12:22 left [2] - 5:13, 5:16 legal [2] - 4:3, 4:10 lights [1] - 6:18 limits [4] - 12:13, 12:18, 12:20, 12:24 Lisa [1] - 11:22 location [1] - 5:20 look [3] - 12:4, 13:4, 13:7 lower [2] - 3:3, 7:11 LYNN [1] - 1:6	N name [1] - 3:6 need [3] - 6:2, 6:6, 13:4 needs [1] - 12:2 never [1] - 5:1 NO [1] - 2:6 nobody [2] - 8:14, 10:4 Norb [1] - 3:10 normal [1] - 5:11 notice [1] - 10:11	P p.m [1] - 3:17 page [1] - 12:11 part [1] - 3:21 particular [1] - 7:3 parties [1] - 3:4 party [1] - 14:13 passed [1] - 10:3 passerby [1] - 3:18 patrol [1] - 10:13 patrolman [1] - 10:12 pending [1] - 14:13 percent [1] - 9:9 permanent [1] - 11:16 permanently [1] - 11:17 person [2] - 6:19, 10:17 person's [1] - 5:13 place [1] - 9:3 pleadings [1] - 4:20 PLEAS [1] - 1:1 Pleasant [1] - 7:3 point [6] - 4:12, 4:14, 7:15, 8:1, 9:3, 10:20 pointed [2] - 6:1, 6:14
G General [1] - 3:7 general [1] - 4:9 goodness [1] - 10:22 Goose [12] - 3:17, 4:2, 4:25, 5:9, 5:17, 5:19, 5:20, 6:20, 7:18, 7:19, 12:12, 12:17 governs [1] - 5:25 ground [1] - 8:9 guess [1] - 5:1 guy [3] - 10:23, 11:5	M magistrate [4] - 3:2, 3:3, 3:20, 8:6 magistrate's [2] - 4:4, 4:23 Magistrate's [4] - 3:1, 4:13, 7:12,	O objection [2] - 4:17, 4:18			
H Hadden [3] - 4:2, 5:9, 7:17					

Police [2] - 3:17, 4:2 police [2] - 5:7, 12:25 position [2] - 13:6, 13:7 presented [1] - 11:21 private [1] - 10:2 probable [1] - 11:4 problem [8] - 3:25, 8:23, 9:8, 9:15, 9:19, 11:7, 11:8, 11:11 procedurally [1] - 8:5 proceedings [1] - 14:8 property [1] - 8:4 proposition [1] - 4:9 prove [2] - 7:14, 9:18 provide [1] - 6:12 Public [1] - 3:8 published [1] - 10:22 purposes [1] - 5:24 put [2] - 9:16, 10:4	14:5, 14:19 REPORTER [2] - 2:2, 14:1 represent [3] - 3:5, 3:8, 3:11 request [1] - 6:4 respectfully [1] - 8:13 responded [1] - 6:20 respondent [1] - 3:11 responding [1] - 6:13 responds [1] - 6:3 retained [1] - 4:19 retried [1] - 11:21 return [5] - 3:2, 3:20, 4:4, 4:13, 4:24 reversed [3] - 7:25, 10:23, 11:5 review [1] - 3:20 rights [1] - 6:5 road [10] - 5:4, 5:5, 5:7, 5:12, 5:15, 5:19, 6:17, 7:18, 7:19, 8:22 roadway [5] - 5:17, 5:24, 6:10, 7:21 RPR [1] - 1:18 rule [1] - 6:24 ruled [3] - 8:6, 8:8, 9:1 ruling [2] - 7:24, 8:10 run [1] - 5:5 Ruth [3] - 1:18, 14:5, 14:18	6:17 signed [1] - 3:3 silly [1] - 9:21 sit [1] - 11:24 situation [2] - 4:6, 11:9 slow [1] - 12:21 sole [2] - 8:9, 12:5 someone [4] - 4:10, 5:4, 6:16, 6:19 sometimes [1] - 11:14 somewhat [1] - 3:22 sorry [1] - 12:23 SOUTH [3] - 1:1, 1:4, 14:2 South [2] - 14:6, 14:10 started [1] - 8:6 STATE [3] - 1:1, 1:4, 14:2 State [11] - 1:15, 3:8, 4:6, 4:7, 5:22, 6:24, 7:2, 8:2, 8:8, 14:6 State's [2] - 4:14, 5:2 statements [2] - 9:23, 9:25 statute [4] - 5:25, 6:2, 6:3, 6:11 still [1] - 7:6 stop [2] - 7:4, 10:7 stopping [1] - 8:24 street [1] - 4:24 strike [1] - 11:16 stronger [2] - 8:20, 9:3 stuck [1] - 8:14 submissions [1] - 3:21 summed [1] - 10:6 Summerville [1] - 3:10 suppress [1] - 10:25 Supreme [1] - 11:5 surrounding [1] - 8:3 Switzerland [1] - 11:23	12:21, 13:3 therefore [3] - 9:2, 10:17, 13:1 therefrom [1] - 7:8 thereof [1] - 14:14 third [1] - 6:23 throw [1] - 9:19 tip [1] - 10:24 Town [1] - 7:3 transcript [1] - 14:7 TRANSCRIPT [2] - 1:5, 13:10 traveling [2] - 5:8, 5:15 trial [2] - 11:9, 12:11 tries [1] - 7:9 Trooper [1] - 5:8 trooper [1] - 7:17 true [1] - 14:7 try [1] - 7:14 trying [1] - 8:24 turn [1] - 5:10 turned [1] - 5:13 two [1] - 6:25	young [1] - 11:23 yourselves [1] - 3:4
Q				
quickly [1] - 11:21				
R				
racing [1] - 12:21 ran [2] - 7:20, 7:23 read [3] - 6:6, 10:21, 12:14 really [2] - 12:2, 12:3 reason [3] - 6:20, 6:21, 6:23 reasons [1] - 7:23 received [1] - 3:18 record [1] - 14:8 RECORD [2] - 1:5, 13:10 recording [2] - 4:15, 4:18 RECORDING [1] - 2:7 references [1] - 8:2 related [1] - 14:12 relative [1] - 14:9 remanded [2] - 7:12, 12:2 remember [5] - 10:22, 10:25, 11:15, 11:23, 12:14 reply [4] - 4:5, 6:14, 7:8, 8:1 Reporter [3] - 1:19,	Safety [1] - 3:8 saw [1] - 8:14 SC [1] - 1:7 Schlein [2] - 3:9, 8:11 SCHLEIN [8] - 1:16, 3:9, 3:10, 4:18, 8:12, 9:7, 10:6, 11:13 school [1] - 11:25 second [2] - 5:22, 6:21 see [3] - 6:17, 6:18, 13:4 send [1] - 6:19 sense [1] - 5:3 Sessions [1] - 3:4 settled [1] - 11:22 several [2] - 7:2, 8:2 side [3] - 3:21, 5:12,	testified [1] - 8:15 THE [22] - 3:1, 3:14, 3:19, 3:24, 4:17, 4:19, 6:6, 8:11, 8:17, 9:8, 9:13, 9:18, 9:25, 10:5, 10:9, 10:17, 10:21, 11:14, 12:8, 12:14,	U-turn [1] - 5:10 ultimate [2] - 3:25, 7:16 ultimately [2] - 6:13, 12:16 undersigned [1] - 14:5 unlawful [1] - 13:1 unlawfully [1] - 7:4 up [9] - 5:1, 5:5, 5:11, 6:2, 6:13, 8:5, 8:10, 9:17, 10:6 US [2] - 3:18, 7:23	
			U	
			U-turn [1] - 5:10 ultimate [2] - 3:25, 7:16 ultimately [2] - 6:13, 12:16 undersigned [1] - 14:5 unlawful [1] - 13:1 unlawfully [1] - 7:4 up [9] - 5:1, 5:5, 5:11, 6:2, 6:13, 8:5, 8:10, 9:17, 10:6 US [2] - 3:18, 7:23	
			V	
			violation [2] - 12:19, 12:23 VS [1] - 1:5	
			W	
			welfare [1] - 6:16 win [2] - 9:10 wonder [1] - 9:9 wreck [1] - 5:5 wrecked [1] - 5:16	
			Y	
			Yacovazzi [1] - 5:8 yard [8] - 4:25, 5:6, 5:13, 5:23, 6:12, 7:20, 7:22, 10:1	

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA

Plaintiff(s)

vs.

JENNIFER LYNN ALEXANDER

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 08- 688

(Please Print)

Submitted By: Catherine Fant, Esq.

Address: Office of General Counsel

S.C. DEPT OF PUBLIC SAFETY

POST OFFICE BOX 1993

BLYTHEWOOD, SC 29016

SC Bar #: 14021

Telephone #: 803. 896. 7965

Fax #: 803. 896. 7967

Other:

E-mail: CatherineFant@scdps.gov

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-__ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
-
- | | | | |
|--|---|---|---|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☒ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
-
- | | | |
|--|--|---|
| Special/Complex /Other | Pharmaceuticals (630) | Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | ☐ Other (999) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | |
| ☐ Other (699) | ☐ Sexual Predator (510) | |

Submitting Party Signature:

Catherine Fant

Date:

4-1-2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

MANDATED ADR COUNTIES OF
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA,
Plaintiff,

vs.

JENNIFER LYNN ALEXANDER,
Defendant/Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
FROM MEDIATION

C/A # 2014-CP-08-

688

I certify that this action is exempt from mediation because:

- ☐ This is a special proceeding or action seeking extraordinary relief such as
- X ☒ This action is appellate in nature
- ☐ This is a post-conviction relief matter
- ☐ This is a forfeiture proceeding brought by the State
- ☐ This is a contempt of court proceeding; or
- ☐ The parties submitted the case to voluntary mediation with a certified mediator

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

APR -2 AM 11:51

FILED

Respectfully Submitted,

Catherine Fant

Catherine Fant
Assistant General Counsel
S. C. Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Email: CatherineFant@scdps.gov

Date: 4-1-2014

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

State of South Carolina,)

Appellant,)

vs.)

Jennifer Lynn Alexander,)

Respondent.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

C/A # 2014-CP-08- 688

NOTICE OF APPEAL
AND APPEAL

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
15 APR -2 AM 11:51

NOTICE OF APPEAL
AND APPEAL

TO: The Honorable Edward L. Sessions, Berkeley County Magistrate Judge,
and Norbert E. Cummings, Jr., Henry Richard Schlein, and Mitchell Farley,
Counsel for Respondent Jennifer Lynn Alexander

The State of South Carolina, by and through the undersigned counsel, hereby gives notice of its appeal and appeals from an order of the Hon. Edward L. Sessions issued February 25, 2014 and dismissing the above-referenced case. The State received notice of said order on March 3, 2014.

On July 29, 2013, Senior Trooper Paul Yacobozzi of the South Carolina Highway Patrol cited Jennifer Alexander for Driving Under the Influence in violation of S.C. Code § 56-5-2930 (Supp. 2013). Alexander was also ticketed for failure to change her driver's license address, not having proof of insurance on her vehicle, and a seatbelt violation. At

the defendant's request, the matter was scheduled for a jury trial and set by the court on Tuesday, February 11, 2014. On that date, the parties appeared and argued several pre-trial motions advanced by the defendant. The court took the motions under advisement and subsequently issued an order dismissing the case, finding the police officer who originally detained the defendant was without authority to do so and thus the ensuing arrest by Trooper Yacobozzi was unlawful. This appeal followed.

The State's appeal is based on the fact that the magistrate judge erred as a matter of law in dismissing this case for the reasons set forth below.

The incident occurred on July 29, 2013 near U.S. 176 and Myers Road in Goose Creek. Shortly after 11:30 p.m., the Goose Creek Police Department received a 911 call describing a vehicle that appeared to be stuck in a ditch with the driver's door open and the inside and outside lights on. At approximately 11:45 p.m., Goose Creek Police Officer Chad Hadden responded to conduct a welfare check and found the defendant's vehicle had left the U.S. 176 roadway and crossed a front yard at 949 U.S. 176 (St. James Avenue), coming to rest in a small ditch bordering the residence's driveway. On arrival, Officer Hadden observed the defendant crouching at the back of her vehicle with her pants down. As he pulled into the driveway, the defendant crawled back around the vehicle and into the driver's seat. Officer Hadden spoke with the defendant, who admitted she had been driving the vehicle, and determined she was under the influence and impaired. Mistakenly believing he lacked jurisdiction to make an arrest, Officer Hadden radioed for assistance from the Highway Patrol.

Trooper Yacobozzi arrived on scene at four minutes past midnight on July 30 and immediately questioned why the Patrol had been called. When Hadden confirmed the

defendant's vehicle had run off the road while traveling on U.S. 176, Trooper Yacobozzi replied that "Y'all can work that, because this is all yours." After a short discussion during which he explained why Hadden should be investigating the accident, Yacobozzi told Officer Hadden that he would work the scene since he was already there. Hadden apologized for the mistake and remained on scene while Trooper Yacobozzi conducted the investigation that led to the defendant's arrest.

At a pre-trial hearing on February 11, the defendant argued the case should be dismissed pursuant to State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), because the accident occurred outside the City of Goose Creek's jurisdictional limits. In his eventual ruling the magistrate judge agreed, finding Officer Hadden was outside Goose Creek's city limits when he first observed the defendant and "since no violation of the law had been observed within the city limits, [Hadden] had no police authority to detain the Defendant[] or to arrest her." The court then concluded that because it found the arrest of the defendant unlawful, all of the charges should be dismissed with prejudice.

In so doing the court specifically relied on McAteer and State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). The court's reliance on these cases is misplaced as they are factually inapposite to the case at bar. McAteer is inapplicable to the instant case because there the parties did not dispute the fact that the entire incident occurred outside the municipality's jurisdiction. Instead, the issue in McAteer was whether an off-duty municipal police officer could detain a suspect while acting as a private citizen. Similarly, Boswell is unavailing because the officers involved were clearly operating entirely outside of their jurisdiction; the question in that case concerned the validity of a multi-jurisdictional agreement between law enforcement agencies.

Here, it is undisputed that U.S. 176 as it passes the residence in question is within the territorial jurisdiction of the City of Goose Creek; the residence at 949 U.S. 176 apparently has not been incorporated into the city limits. The defendant was driving on U.S. 176 when she attempted to turn around and instead ended up in a residential yard. Although Officer Hadden (and apparently his supervisor) erroneously believed he could not arrest the defendant based on the fact her vehicle came to rest in the front yard of the residence at 949 U.S. 176, Trooper Yacobozzi's assertion at the scene and in his pre-trial testimony correctly noted that because the defendant had driven her car on U.S. 176 immediately prior to running off the road, the Goose Creek Police Department and Officer Hadden had jurisdiction. Accordingly, the magistrate erred as a matter of law in finding Officer Hadden lacked the authority to detain the defendant until Trooper Yacobozzi arrived.

Furthermore, Section 17-13-45 of the South Carolina Code expands the jurisdiction of a law enforcement officer when responding to a distress call or request for assistance in an adjacent jurisdiction. This section reads, in pertinent part, as follows: "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 (2003). Because Officer Hadden was responding to a request for assistance to conduct a welfare check when he encountered the defendant, he had statutory authority to act as a Goose Creek police officer in the yard of a residence in the adjacent jurisdiction of Berkeley County.

Finally, even assuming without conceding that Officer Hadden might have been acting without authority beyond the municipal jurisdiction of Goose Creek, the alleged unlawful detention of the defendant does not operate as a bar to the prosecution of this case. In Town of Mt. Pleasant v. Jones, 335 S.C. 295, 516 S.E.2d 468 (Ct. App. 1999), the lower court dismissed a case where a volunteer fireman had unlawfully detained a driver suspected of DUI until an officer with the Town of Mount Pleasant arrived. On appeal, the Town argued the dismissal was improper because the illegal detention had no effect on the admissibility of evidence discovered by the Town's police officers after their arrival at the incident location. The Court of Appeals agreed, finding "Jones's charge of driving under the influence should not have been dismissed," and reversed and remanded the case for trial. Jones, 335 S.C. at 299, 516 S.E.2d at 471. In so doing, the court cited with approval multiple cases standing for the proposition that an unlawful detention or arrest imposes no jurisdictional bar to the subsequent prosecution and conviction of a defendant for the crime charged. Thus, at most, if Officer Hadden's actions in detaining the defendant are found to be unlawful, the appropriate remedy would be the suppression of evidence related to the unlawful detention, not outright dismissal of the case. As was the case with the Mt. Pleasant police officers in Jones, Trooper Yacobozzi's lawfully executed separate investigation and ultimate arrest of the defendant may properly serve as the basis for proceeding to try the defendant as charged. The magistrate therefore erred in dismissing the case.

CONCLUSION

For the reasons stated above, the magistrate judge erred as a matter of law in dismissing this case. WHEREFORE, the State respectfully requests that this Honorable

Court reverse the decision of the magistrate, and remand this case to the lower court for trial and for such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



Catherine Fant
Assistant General Counsel
S. C. Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016
Telephone: (803) 896-7965
Fax: (803) 896-7967
Email: CatherineFant@scdps.gov
Attorney for Appellant

April 1, 2014

Blythewood, South Carolina

OTHER COUNSEL OF RECORD:

Norbert E. Cummings, Jr.
Henry Richard Schlein
Mitchell Farley
The Cummings Law Firm, LLC
100 South Main Street, Suite B
P.O. Box 1318
Summerville, SC 29484-1318

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

C/A # 2014-CP-08-688

Appellant,

vs.

JENNIFER LYNN ALEXANDER

Defendant/Respondent.

CERTIFICATE OF SERVICE

Ticket Nos. G445153, G445154,
G445155 and G445156

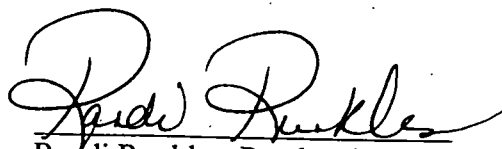
I HEREBY CERTIFY that on this 2nd day of April, 2014, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Edward L. Sessions
Berkeley County Magistrate Judge
303-B North Goose Creek Boulevard
Goose Creek, SC 29445-2969

Norbert Cummings, Jr., Esq.
Henry Schlein, Esq.
The Cummings Law Firm
P. O. Box 1318
Summerville, SC 29484

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED
APR-2 AM 11:51


Randi Runkles, Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: April 2, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

STATE OF SOUTH CAROLINA)
Plaintiff/Appellant,)

Vs.)

JENNIFER LYNN ALEXANDER,)
Defendant/Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2014-CP-08-688
(See Also Ticket Nos. G-445153,
G-445154, G-445155, and G-445156)

**RESPONDENT'S REPLY
TO STATE'S APPEAL**

RESPONDENT'S REPLY TO STATE'S APPEAL

2014 MAY -1 PM 3:23
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

TO THE HONORABLE EDWARD L. SESSIONS, BERKELEY COUNTY MAGISTRATE
JUDGE, AND CATHERINE FANT, SCDPS ASST. GENERAL COUNSEL.

NOW COMES the above-named Defendant/Respondent, by and through
her undersigned attorney, who hereby makes her Reply to the Notice
of Appeal and Appeal filed by the State, and states as follows:

FACTS

On July 29, 2013, the Respondent was outside of her vehicle,
responding to the call of nature, when an officer with the Goose
Creek Police Department arrived. At that time, Respondent's
vehicle was stuck in the mud, in a ditch, completely off the road,
and inoperable. The police officer had responded to a call for a
vehicle in a ditch. No one saw Respondent drive. It was never
determined how long the vehicle had been in the ditch. The

location of the vehicle was outside the Goose Creek city limits, as verified by the police officer and confirmed by him, with his supervisor.

That the vehicle's location was outside the city limits is not in dispute. The police officer requested that the Highway Patrol respond. Meanwhile, the Goose Creek officer detained Respondent, as specifically testified to by the officer, and held her in her vehicle until the arrival of the Highway Patrol. Moreover, the officer testified that Respondent was not free to leave, and that if Respondent had attempted to leave on foot, he would have arrested her for public intoxication, even though he was outside of his jurisdictional limits.

It is also not disputed that the vehicle was stuck and was inoperable upon the Goose Creek police officer's arrival. The Respondent was subsequently arrested by the Highway Patrol and charged with DUI, along with several other traffic charges. The Defendant filed several motions, including a motion to dismiss on the grounds of an unlawful arrest based on State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) and State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000).

The case came before the magistrate's court for a jury trial on February 10, 2014. However, due to the impending Ice Storm and the State of Emergency, the parties agreed that the Defendant/Respondent's motions should be heard and have the trial on another day. The Defendant/Respondent's motion to dismiss on

State v. Martin and State v. McAteer was subsequently granted and case was dismissed with the court also citing State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). The State's appeal followed.

LAW

The Respondent was unlawfully detained by the initial responding officer, a Goose Creek municipal police officer. State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000). In McAteer, a municipal police officer observed the defendant drive his vehicle in a questionable manner, which led the officer to suspect the defendant of DUI. Id. The officer stopped and detained the defendant until the arrival of the Highway Patrol, who subsequently arrested the defendant. Id. The defendant appealed his arrest and conviction. Id. Our Supreme Court overturned our Court of Appeals and reversed the conviction, holding that "[s]ince the officer was outside the municipality's city limits when he first observed petitioner, he had no police authority to detain him." Id., 340 S.C. at 646. The Court then analyzed in great detail, the authority for making a citizen's arrest and concluded that the DUI arrest did not pass muster. McAteer, id.

Here, with some exceptions more favorable to Respondent, we have similar circumstances. The Respondent was first observed and detained outside of the municipal police officer's jurisdiction. No one saw the Defendant drive; she wasn't even in her vehicle until after she was detained, and her vehicle was inoperable. There was no evidence presented regarding how long the Respondent's

vehicle had been stuck in the ditch, nor of any crime having been committed inside the city limits of Goose Creek. Therefore, as in the McAteer, there were no lawful grounds to justify Respondent's detention by a Goose Creek municipal police officer outside of his jurisdiction.

Our Supreme Court revisited and reaffirmed the McAteer case in State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). In Boswell, the defendant was convicted of first degree burglary and sentenced to life without parole. Boswell, id. The defendant appealed his conviction, alleging inter alia, an unlawful arrest in Calhoun County, by deputy sheriffs from Lexington County, who were investigating a burglary that had occurred there. Id. Although counsel tries to couch the Boswell case as inapplicable and merely involving a multijurisdictional agreement, State's Appeal, at 4, to the contrary, it is the absence of any valid such agreement that makes Boswell and McAteer very pertinent to the case, sub judice. As our Supreme Court noted,...

In view of our finding that the 1999 agreement did not authorize the Lexington County officers to arrest Boswell outside of their territorial jurisdiction, the question becomes whether the officers acting as "private citizens" could have effectuated the arrest.

The key case in this determination is State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000).

Boswell, 707 S.E.2d at 271.

Although some distinctions can be drawn between the facts of Boswell and those of McAteer, the overall similarities are much

more compelling. The Boswell Court, citing McAteer with approval, found that the only offense observed by the Lexington County officers to have been committed was a misdemeanor and that since these officers were outside of their jurisdiction, they had no authority to detain and arrest the defendant. Boswell, id. The Court held that it was therefore error on the part of the trial court not to have suppressed the evidence that came from the unlawful arrest and the Court reversed the conviction. Id. at 272. Here, as in Boswell and McAteer, there was an arrest and detention outside the jurisdictional limits of the officer, for a misdemeanor not committed in the officer's presence.

There was no danger to the community or special circumstances in the present case because Respondent's vehicle was stuck in a ditch and could not be driven. In State v. State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980), the defendant's vehicle was still operable and there was a risk that the defendant could continue to drive, if not detained. Id. There were also multiple witnesses to the accident. Id. Here, not only was there no opportunity for Respondent get in her car and drive away, but there were no witnesses to Respondent having driven the vehicle, the vehicle was inoperable, stuck in a ditch, and there was no evidence regarding how long it had been there.

The State attempts to dispose of the issue of jurisdiction by concluding that the highway adjacent to the ditch in which Respondent's automobile was stuck, was within Goose Creek city

limits and that Respondent must have driven her vehicle on that roadway in order to get stuck in the ditch. State's Appeal, at 4. The Respondent respectfully disputes these conclusions and is informed and believes that these assertions were not necessarily established.

The State also attempts to characterize the call to the Goose Creek Police as "a distress call or request for assistance in an adjacent jurisdiction." Appeal at 4, id. Counsel goes on to cite S.C. Code section 17-13-45 for the proposition that an officer responding to such a call, outside his or her jurisdiction, would have the same authority as an officer of that jurisdiction. Id. However, the call to the Goose Creek Police was one concerning a vehicle in a ditch. There was no request for assistance by the local law enforcement agency having jurisdiction. The statute cited by the case in the state's brief, id., is therefore inapplicable to the case at bar. Moreover, such an overly broad interpretation of 17-13-45 could very well have the effect of the exception swallowing up the rule.

The State cites Town of Mt. Pleasant v. Jones, 335 S.C. 295, 516 S.E.2d 468 (S.C.App. 1999), in support of its position that, contrary to the McAteer case, a mere citizen's arrest, however unlawful, does not bar prosecution of the Respondent for DUI. State's Appeal, at 5. First, it is significant that our Supreme Court decided the McAteer case the year after Town of Mt. Pleasant v. Jones was decided by the Court of Appeals. Second, the Jones

case involved a volunteer fireman in his own car while the McAteer case, much like the case sub judice, involved a police officer in a police car, who was out of his jurisdiction. Third, the Court of Appeals, in deciding Town of Mt. Pleasant v. Jones, specifically distinguished its own earlier holding in State v. McAteer, 333 S.C. 615, 511 S.E.2d 79 (Ct.App. 1998), finding that state action was in an issue McAteer, while the issue was never raised in Jones. Finally, our Supreme Court has upheld the dismissal of the charges in its two subsequent rulings in State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000) and State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011), both of which are substantially similar to Respondent's case, and much more so than Town of Mt. Pleasant v. Jones.

In the seminal case of Wong Sun v. United States 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), the U. S. Supreme Court ruled that any evidence obtained as a result of an illegal arrest must be suppressed as "fruit of the poisonous tree" and cannot be used against the Defendant. See also, State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct.App. 2005), State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) ("The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of the illegality."). Here, as in the McAteer and Boswell cases, the initial an unlawful detention of Respondent by the Goose Creek

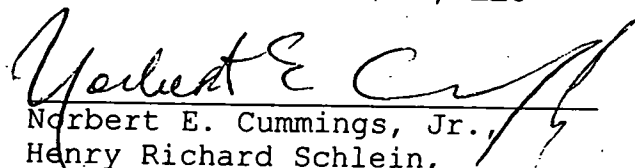
municipal police officer, outside of his jurisdiction, directly led to her arrest, any evidence obtained, subsequent prosecution by the Highway Patrol. Judge Sessions properly dismissed the case and in the alternative, would have properly suppressed the evidence, as "fruit of the poisonous tree." Id.

CONCLUSION

For the foregoing reasons, Respondent is informed and believes that the magistrate judge correctly dismissed the charges against Respondent.

WHEREFORE, Respondent respectfully prays this Honorable Court to uphold the dismissal of Respondent's case and all charges.

THE CUMMINGS LAW FIRM, LLC



Norbert E. Cummings, Jr.,
Henry Richard Schlein,
100 S. Main St., Suite B
P.O. Box 1318
Summerville, SC 29484
Phone (843) 821-9999
Fax (843) 851-0062
cummingslawfirm@bellsouth.net

NEW E-MAIL ADDRESS

ATTORNEYS FOR DEFENDANT

Summerville, South Carolina

This 1st Day of May, 2014

STATE OF SOUTH CAROLINA
COUNTY/CITY OF BERKELEY

STATE OF SOUTH CAROLINA

VS

Jennifer Lynn Alexander

DEFENDANT

G445153 - G445156
CASE NUMBER

IN THE SUMMARY COURT

TRANSMITTAL OF
CRIMINAL APPEAL

As required by Sec. 18-3-40, SC Code of Laws, this information is transmitted to the Court of
Common Pleas as the result of an appeal.

Date of Transmittal: May 7, 2014
Transmitted to: Berkeley County Clerk of Court
Transmitted by: Berkeley County/City Goose Creek Magistrate
Case Caption: State of South Carolina vs. Jennifer Lynn Alexander
Case Number: G445153 / G445154 / G445155 / G445156

2014 - CP - 08 - 688

Received and verified by _____ on _____

Enclosures: Magistrate's Return Original
Appeal - Copy

Berkeley County/City
Goose Creek Magistrate
303-B North Goose Creek Blvd.
Goose Creek, SC 29445
Phone: (843) 553-7080 Fax: (843) 553-7074

MAILED
CLERK OF COURT
BERKELEY COUNTY, S.C.

2014 MAY 12 PM 4:35

FILED

2014-CP-08-688

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE'S COURT
COUNTY OF BERKELEY) FOR BERKELEY COUNTY
TICKET NOS. G-445153, 54, 55, & 56
STATE OF SOUTH CAROLINA,)
Vs.)
JENNIFER LYNN ALEXANDER,)
DEFENDANT)

MAGISTRATE COURT'S RETURN TO
STATE'S APPEAL OF DISMISSAL
OF CASE

FILED
2014 MAY 12 PM 4:34
MAKIN TROOPMAN
CLERK OF COURT
BERKELEY COUNTY SC

This matter came before the Court on February 10, 2014 for a jury trial in the above captioned matter, charging the Defendant with violation of S.C. Code sections 56-5-2930, Driving Under the Influence (DUI), Ticket Number G-445153; 56-5-6520, Seatbelt Violation, Ticket Number G-445154; 56-10-225, No Proof of Insurance, Ticket Number G-445155; and 56-1-230, Failure to Change Address, Ticket Number G-4451536. Defendant requested a jury trial. Present in the courtroom on behalf of the state were Trooper Yacabozzi, South Carolina Highway Patrol as arresting and prosecuting officer and witness, and prosecuting attorney Catherine Fant, of the Department of Public Safety. Present for the Defense were the Defendant, along with her attorneys, Norbert E. Cummings, Jr., Henry Richard Schlein, and Mitchell Farley, of the Cummings Law Firm. The case was scheduled for a jury trial and all notices and motions were timely and properly filed and served. The jury venire was present and awaiting voir dire. The Court took Judicial Notice of the severe weather and the resultant State of Emergency declared by the Governor and for this reason, and because the

NC
HS
MF

52

rulings on the motions might be outcome determinative, the State and Defendant agreed to have Defendant's pretrial motions heard and decided at today's hearing, and to release the jury venire, and reschedule the start of the trial at another time, if the case was not dismissed.

The attorneys gave initial oral arguments to outline their motions and rebuttals. The attorneys then called witnesses in support of, or rebuttal to, the motions. The Defendant's pretrial motions were as follows:

1. A Motion to Dismiss for Failure to Comply with Rule 5 and this Court's order for compliance.
2. A Motion to Dismiss under State v. Martin and State v. McAteer.
3. A Motion to Suppress the Breath Test Results.
4. A Motion to Suppress the Field Sobriety Tests.

The Court heard oral arguments, took sworn testimony of the witnesses and received exhibits as evidence for consideration. At the conclusion of the motion hearing, the Court took the matter under advisement. The Court only ruled on Defendant's Motion to Dismiss, which was granted. Because the other motions were not decided, the testimony and evidence about the other motions is moot for purposes of this appeal and this return.

Defendant first called Officer Hadden, of the Goose Creek Police Department, who was the first officer to arrive on the scene. The officer testified that he responded to a call from an

unknown complainant regarding a car stuck in a ditch. He testified that upon his arrival, the Defendant was outside of the car, relieving herself, and that the car was stuck in the mud, in a ditch, off the side of the road, and was inoperable. The Officer testified that this location was outside the Goose Creek City Limits and confirmed this with his supervisor. The Officer requested that the Highway Patrol respond to handle the accident investigation. The officer testified that he detained Defendant in her vehicle until the arrival of the Highway Patrol, that Defendant was not free to leave, and that if the Defendant had attempted to leave on foot, he would have arrested her for public intoxication. The officer testified that he did not know how long the vehicle had actually been there.

The Defendant next called a private investigator, John Clayton, who is a retired police officer, whom the Court qualified as an expert, to testify regarding the arrest and breath test procedures. The testimony is not pertinent for purposes of this appeal, since it concerned Defendant's other motions which were not ruled on.

The State then called Trooper Yacabozzi, who was the arresting officer. The Trooper did not see the Defendant drive or try to operate the vehicle. He only testified regarding his observations of the Defendant at the scene, the conduct of his investigation and field sobriety tests, and his arrest of the Defendant. The Trooper testified that he had stepped in an ant bed and sought medical

treatment. The Trooper's testimony did not contradict that of the initial Goose Creek police officer, that the location was not in the city limits of Goose Creek and that the car was stuck in the mud in a ditch and unable to be driven. The remainder of the testimony does not pertain to the issues of this appeal.

The State next called the last witness, Trooper Thompson, who was the Datamaster operator, and who was a rebuttal witness to the Defendant's expert. The testimony of this witness concerned the Datamaster and is not pertinent to this appeal.

There was no testimony regarding how long the vehicle had been at the scene except that this fact could not be established. No one testified to having seen the Defendant drive or operate the vehicle.

The Defendant moved to dismiss under State v. Martin, 275 S.C. 141 (1980) and State v. McAteer, 340 S.C. 644 (2000). The Defendant presented testimony by Officer Hadden, the first officer on the scene, who was then with the Goose Creek Police Department, that the Defendant was not within the city limits of Goose Creek upon his arrival. The Officer testified that he confirmed this with his supervisor. The Officer testified that he intended to detain the Defendant, and in fact, detained the Defendant, until the arrival of the Highway Patrol. The officer testified that the Defendant was not free to leave, that had Defendant attempted to leave, he would have arrested her.

Officer Hadden testified that he asked for and got information

from the Defendant regarding her driver's license, registration, and identification information. The testimony was that the detention lasted for approximately 16 minutes until the arrival of the Highway Patrol, who then conducted an investigation. There was no testimony or evidence presented regarding how long the Defendant had been there, and there was no testimony that anyone had observed Defendant drive her vehicle. However, there was testimony that the vehicle was inoperable, stuck in mud, and off the road, and in a ditch when the officer arrived.

The Court was most persuaded by our Supreme Court's holding in State v. McAteer, supra. In McAteer, an off-duty, but still uniformed, municipal police officer observed the defendant drive a vehicle outside the city limits. The officer approached the car and the defendant rolled down his window. The officer smelled alcohol and saw open alcoholic beverage containers in the vehicle. The officer detained the defendant until the arrival of the Highway Patrol. The Highway Patrolman administered several field sobriety tests and arrested the defendant, who subsequently blew a .18 on the breath test. State v. McAteer, 340 S.C. at 645. See also, State v. Boswell, 391 S.C. 592 (2011).

Here, as in McAteer, supra, since the initial Goose Creek officer was outside the municipality's city limits when he first observed the Defendant, and since no violation of the law had been observed within the city limits, the officer had no police authority to detain Defendant, nor to arrest her. In addition,

there were no "special circumstances" that created a "clear and present danger to the community," as in State v. Martin, because the Defendant's vehicle was stuck in the mud in a ditch and was inoperable. Therefore, the arrest of Defendant was unlawful. Since the initial arrest was unlawful, all charges and evidence resulting from such arrest were also unlawful. Therefore, the Defendant's motion to dismiss this case and all charges was granted.

Because the Court ruled that the Defendant's arrest was unlawful and that the case should be dismissed, there is no need to rule on the Defendant's remaining motions.



Hon. Edward L. Sessions
Magistrate's Court Judge

At Goose Creek, South Carolina

This 24 Day of April, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA

Plaintiff(s)

vs.

JENNIFER LYNN ALEXANDER

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 08-

COPY

(Please Print)

Submitted By: Catherine Fant, Esq.

Address: Office of General Counsel

S.C. DEPT OF PUBLIC SAFETY

POST OFFICE BOX 1993

BLYTHEWOOD, SC 29016

SC Bar #: 14021

Telephone #: 803. 896. 7965

Fax #: 803. 896. 7967

Other:

E-mail: CatherineFant@scdps.gov

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|---|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20__-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | ☐ Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☒ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Catherine Fant

Date:

4-1-2014 **FILED**
CM
APR 04 2014
BERKELEY COUNTY
CLERK OF COURT

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

FILED
cm
APR 04 2014
BERKELEY COUNTY
SUMMARY COURT

STATE OF SOUTH CAROLINA :
COUNTY OF BERKELEY :

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, :
Plaintiff, :

vs. :

CERTIFICATE OF EXEMPTION
FROM MEDIATION

JENNIFER LYNN ALEXANDER, :
Defendant/Respondent. :

C/A # 2014-CP-08-_____

I certify that this action is exempt from mediation because:

- ☐ This is a special proceeding or action seeking extraordinary relief such as
- X ☒ This action is appellate in nature
- ☐ This is a post-conviction relief matter
- ☐ This is a forfeiture proceeding brought by the State
- ☐ This is a contempt of court proceeding; or
- ☐ The parties submitted the case to voluntary mediation with a certified mediator

Respectfully Submitted,



Catherine Fant
Assistant General Counsel
S. C. Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Email: CatherineFant@scdps.gov

Date: 4-1-2014

FILED

APR 04 2014
BERKELEY COUNTY
SUMMARY COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

NINTH JUDICIAL CIRCUIT

State of South Carolina,)

C/A # 2014-CP-08-_____

Appellant,)

vs.)

NOTICE OF APPEAL

Jennifer Lynn Alexander,)

AND APPEAL

Respondent.)

COPY

NOTICE OF APPEAL
AND APPEAL

TO: The Honorable Edward L. Sessions, Berkeley County Magistrate Judge,
and Norbert E. Cummings, Jr., Henry Richard Schlein, and Mitchell Farley,
Counsel for Respondent Jennifer Lynn Alexander

The State of South Carolina, by and through the undersigned counsel, hereby gives notice of its appeal and appeals from an order of the Hon. Edward L. Sessions issued February 25, 2014 and dismissing the above-referenced case. The State received notice of said order on March 3, 2014.

On July 29, 2013, Senior Trooper Paul Yacobozzi of the South Carolina Highway Patrol cited Jennifer Alexander for Driving Under the Influence in violation of S.C. Code § 56-5-2930 (Supp. 2013). Alexander was also ticketed for failure to change her driver's license address, not having proof of insurance on her vehicle, and a seatbelt violation.

FILED
APR 04 2014
BERKELEY COUNTY
SUMMARY COURT

the defendant's request, the matter was scheduled for a jury trial and set by the court on Tuesday, February 11, 2014. On that date, the parties appeared and argued several pre-trial motions advanced by the defendant. The court took the motions under advisement and subsequently issued an order dismissing the case, finding the police officer who originally detained the defendant was without authority to do so and thus the ensuing arrest by Trooper Yacobozzi was unlawful. This appeal followed.

The State's appeal is based on the fact that the magistrate judge erred as a matter of law in dismissing this case for the reasons set forth below.

The incident occurred on July 29, 2013 near U.S. 176 and Myers Road in Goose Creek. Shortly after 11:30 p.m., the Goose Creek Police Department received a 911 call describing a vehicle that appeared to be stuck in a ditch with the driver's door open and the inside and outside lights on. At approximately 11:45 p.m., Goose Creek Police Officer Chad Hadden responded to conduct a welfare check and found the defendant's vehicle had left the U.S. 176 roadway and crossed a front yard at 949 U.S. 176 (St. James Avenue), coming to rest in a small ditch bordering the residence's driveway. On arrival, Officer Hadden observed the defendant crouching at the back of her vehicle with her pants down. As he pulled into the driveway, the defendant crawled back around the vehicle and into the driver's seat. Officer Hadden spoke with the defendant, who admitted she had been driving the vehicle, and determined she was under the influence and impaired. Mistakenly believing he lacked jurisdiction to make an arrest, Officer Hadden radioed for assistance from the Highway Patrol.

Trooper Yacobozzi arrived on scene at four minutes past midnight on July 30 and immediately questioned why the Patrol had been called. When Hadden confirmed the

defendant's vehicle had run off the road while traveling on U.S. 176, Trooper Yacobozzi replied that "Y'all can work that, because this is all yours." After a short discussion during which he explained why Hadden should be investigating the accident, Yacobozzi told Officer Hadden that he would work the scene since he was already there. Hadden apologized for the mistake and remained on scene while Trooper Yacobozzi conducted the investigation that led to the defendant's arrest.

At a pre-trial hearing on February 11, the defendant argued the case should be dismissed pursuant to State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), because the accident occurred outside the City of Goose Creek's jurisdictional limits. In his eventual ruling the magistrate judge agreed, finding Officer Hadden was outside Goose Creek's city limits when he first observed the defendant and "since no violation of the law had been observed within the city limits, [Hadden] had no police authority to detain the Defendant[] or to arrest her." The court then concluded that because it found the arrest of the defendant unlawful, all of the charges should be dismissed with prejudice.

In so doing the court specifically relied on McAteer and State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). The court's reliance on these cases is misplaced as they are factually inapposite to the case at bar. McAteer is inapplicable to the instant case because there the parties did not dispute the fact that the entire incident occurred outside the municipality's jurisdiction. Instead, the issue in McAteer was whether an off-duty municipal police officer could detain a suspect while acting as a private citizen. Similarly, Boswell is unavailing because the officers involved were clearly operating entirely outside of their jurisdiction; the question in that case concerned the validity of a multi-jurisdictional agreement between law enforcement agencies.

FILED
Ch
APR 04 2014
BERKELEY COUNTY
SUMMARY COURT

Here, it is undisputed that U.S. 176 as it passes the residence in question is within the territorial jurisdiction of the City of Goose Creek; the residence at 949 U.S. 176 apparently has not been incorporated into the city limits. The defendant was driving on U.S. 176 when she attempted to turn around and instead ended up in a residential yard. Although Officer Hadden (and apparently his supervisor) erroneously believed he could not arrest the defendant based on the fact her vehicle came to rest in the front yard of the residence at 949 U.S. 176, Trooper Yacobozzi's assertion at the scene and in his pre-trial testimony correctly noted that because the defendant had driven her car on U.S. 176 immediately prior to running off the road, the Goose Creek Police Department and Officer Hadden had jurisdiction. Accordingly, the magistrate erred as a matter of law in finding Officer Hadden lacked the authority to detain the defendant until Trooper Yacobozzi arrived.

Furthermore, Section 17-13-45 of the South Carolina Code expands the jurisdiction of a law enforcement officer when responding to a distress call or request for assistance in an adjacent jurisdiction. This section reads, in pertinent part, as follows: "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 (2003). Because Officer Hadden was responding to a request for assistance to conduct a welfare check when he encountered the defendant, he had statutory authority to act as a Goose Creek police officer in the yard of a residence in the adjacent jurisdiction of Berkeley County.

Finally, even assuming without conceding that Officer Hadden might have been acting without authority beyond the municipal jurisdiction of Goose Creek, the alleged unlawful detention of the defendant does not operate as a bar to the prosecution of this case. In Town of Mt. Pleasant v. Jones, 335 S.C. 295, 516 S.E.2d 468 (Ct. App. 1999), the lower court dismissed a case where a volunteer fireman had unlawfully detained a driver suspected of DUI until an officer with the Town of Mount Pleasant arrived. On appeal, the Town argued the dismissal was improper because the illegal detention had no effect on the admissibility of evidence discovered by the Town's police officers after their arrival at the incident location. The Court of Appeals agreed, finding "Jones's charge of driving under the influence should not have been dismissed," and reversed and remanded the case for trial. Jones, 335 S.C. at 299, 516 S.E.2d at 471. In so doing, the court cited with approval multiple cases standing for the proposition that an unlawful detention or arrest imposes no jurisdictional bar to the subsequent prosecution and conviction of a defendant for the crime charged. Thus, at most, if Officer Hadden's actions in detaining the defendant are found to be unlawful, the appropriate remedy would be the suppression of evidence related to the unlawful detention, not outright dismissal of the case. As was the case with the Mt. Pleasant police officers in Jones, Trooper Yacobozzi's lawfully executed separate investigation and ultimate arrest of the defendant may properly serve as the basis for proceeding to try the defendant as charged. The magistrate therefore erred in dismissing the case.

CONCLUSION

For the reasons stated above, the magistrate judge erred as a matter of law in dismissing this case. WHEREFORE, the State respectfully requests that this Honorable

FILED

Court reverse the decision of the magistrate, and remand this case to the lower court for trial and for such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



Catherine Fant
Assistant General Counsel
S. C. Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016
Telephone: (803) 896-7965
Fax: (803) 896-7967
Email: CatherineFant@scdps.gov
Attorney for Appellant

April 1, 2014

Blythewood, South Carolina

OTHER COUNSEL OF RECORD:

Norbert E. Cummings, Jr.
Henry Richard Schlein
Mitchell Farley
The Cummings Law Firm, LLC
100 South Main Street, Suite B
P.O. Box 1318
Summerville, SC 29484-1318

FILED
APR 04 2014
CN
BERKELEY COUNTY
SUMMARY COURT

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

C/A # 2014-CP-08-_____

Appellant,

vs.

CERTIFICATE OF SERVICE

JENNIFER LYNN ALEXANDER

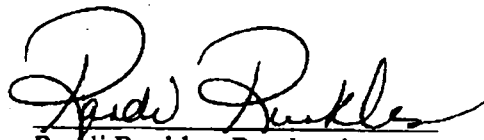
Defendant/Respondent.

Ticket Nos. G445153, G445154,
G445155 and G445156

I HEREBY CERTIFY that on this 2nd day of April, 2014, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Edward L. Sessions
Berkeley County Magistrate Judge
303-B North Goose Creek Boulevard
Goose Creek, SC 29445-2969

Norbert Cummings, Jr., Esq.
Henry Schlein, Esq.
The Cummings Law Firm
P. O. Box 1318
Summerville, SC 29484



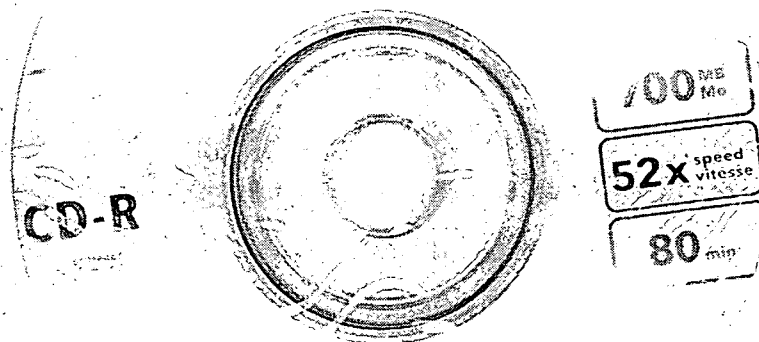
Randi Runkles, Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: April 2, 2014

FILED

APR 04 2014
BERKELEY COUNTY
SUMMARY COURT

Audio recording of the Berkeley County Magistrates Court proceedings
of February 11, 2014 entered as Court's Exhibit No. 1 before
the Honorable Markley Dennis, Jr. on July 28, 2014 in the Berkeley County
Circuit Court case no. 2014-CP-08-0688



State v. Alexander
Court Audio
2-11-14

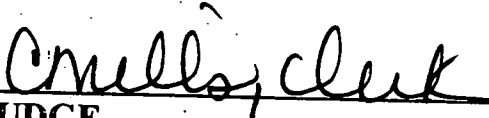
STATE OF SOUTH CAROLINA
COUNTY/CITY OF BERKELEY

Catherine Fant
Office of General Counsel
PO Box 1993
Blythewood, SC 29016

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear in the **Goose Creek Magistrate, 303-B North Goose Creek Blvd., on February 11, 2014 at 9:30 AM**, to serve as a defendant/defense counsel/witness in the Jury Trial of **State vs. Jennifer Lynn Alexander**, Case Number: **G445153**, Charge: **DUI / Driving under the Influence, .16 or higher, 1st Offense**. Case Number: **G445154**, Charge: **Traffic / Seatbelt violation - Non-criminal**. Case Number: **G445155**, Charge: **Traffic / Failure to maintain proof of insurance in motor vehicle**. Case Number: **G445156**, Charge: **Traffic / Failure to Change Address**.

Failure to appear by the defendant, without leave of the Court, may subject the defendant to trial in absentia.


JUDGE

Berkeley County/City
Goose Creek Magistrate
303-B North Goose Creek Blvd.
Goose Creek, SC 29445
Phone: (843) 553-7080 Fax: (843) 553-7074

December 20, 2013

Form 438
Rev. 8/10

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME: Jennifer MIDDLE NAME: Lynn LAST NAME: Alexander
STREET AND NO.: 52 Wilson St CITY: Sumter STATE: SC ZIP CODE: 29150
STATE LICENSED: SC DRIVERS LICENSE NO.: 101659867 COL: YES ☐ NO ☒ DBL LIC. CLASS: 0
VEH. LIC. NO.: 31210X STATE: SC MAKE OF VEH: Chevy COM. YER: (AUTO) HAZ. MT: MOPED MTRCYCL: OTHER
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT
NAME OF TRIAL COURT: C.T.C. STREET AND NO.: 223 N. Live Oak Dr.
DATE OF TRIAL: 9/18/13 TIME OF TRIAL: 1000 CITY: Moncks Corner STATE: SC ZIP CODE: 29446
VIOLATION - COURT APPEARANCE REQUIRED: YES ☒ NO ☐ VIOLATION SECTION NO.: SC-S-620
OWNER OF VEHICLE: Same DATE OF ARREST: 7/29/13
ADDRESS OF OWNER: Same DATE OF VIOLATION: 7/29/13
BAIL DEPOSITED: None NAME OF ARRESTING OFFICER: P. Yacobi RANK: TFC
DESCRIPTION OF ACCUSED: W/F 1.75 BS 60 150 170 200 170 200 170 200
COUNTY: Berkeley BADGE: 265
CASE BEFORE: MAGISTRATE ☐ JURY ☐ MIL. COURT ☐
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
NAME OF TRIAL COURT: 2345
IF DIFFERENT FROM ABOVE: 2345
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐
NOLLE PROSSO: ☐ DEPOSITION: ☐ QUALITY: ☐
FORFEITED BOND: ☐ PLED: NOLLO CONTENDERE ☐
TRIAL BY: TRIAL JUDGE ☐ JURY ☐ Goose Creek
VERDICT OF: GUILTY ☐ DATE OF TRIAL IF ANY: ☐
TRIAL IF ANY: NOT GUILTY ☐
JAIL: SUSPEND: FINE: AMT. COLLECTED: AMT. SUSPENDED: Long
COMMITTED TO: Vehicle: 100 Arrested: 505 OFFENSE CODE: 94 B.A. LEVEL: NAC
CERTIFIED CORRECT: DATE: 10/1/13 G 445154

DRIVER'S RECORD COPY

Form 438
Rev. 8/10

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME: Jennifer MIDDLE NAME: Lynn LAST NAME: Alexander
STREET AND NO.: 52 Wilson St CITY: Sumter STATE: SC ZIP CODE: 29150
STATE LICENSED: SC DRIVERS LICENSE NO.: 101659867 COL: YES ☐ NO ☒ DBL LIC. CLASS: 0
VEH. LIC. NO.: 31210X STATE: SC MAKE OF VEH: Chevy COM. YER: (AUTO) HAZ. MT: MOPED MTRCYCL: OTHER
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT
NAME OF TRIAL COURT: C.T.C. STREET AND NO.: 223 N. Live Oak Dr.
DATE OF TRIAL: 9/18/13 TIME OF TRIAL: 1000 CITY: Moncks Corner STATE: SC ZIP CODE: 29446
VIOLATION - COURT APPEARANCE REQUIRED: YES ☒ NO ☐ VIOLATION SECTION NO.: SC-S-620
OWNER OF VEHICLE: Same DATE OF ARREST: 7/29/13
ADDRESS OF OWNER: Same DATE OF VIOLATION: 7/29/13
BAIL DEPOSITED: Jail NAME OF ARRESTING OFFICER: P. Yacobi RANK: TFC
DESCRIPTION OF ACCUSED: W/F 1.75 BS 60 150 170 200 170 200 170 200
COUNTY: Berkeley BADGE: 265
CASE BEFORE: MAGISTRATE ☐ JURY ☐ MIL. COURT ☐
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
NAME OF TRIAL COURT: 2345
IF DIFFERENT FROM ABOVE: 2345
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐
NOLLE PROSSO: ☐ DEPOSITION: ☐ QUALITY: ☐
FORFEITED BOND: ☐ PLED: NOLLO CONTENDERE ☐
TRIAL BY: TRIAL JUDGE ☐ JURY ☐ Goose Creek
VERDICT OF: GUILTY ☐ DATE OF TRIAL IF ANY: ☐
TRIAL IF ANY: NOT GUILTY ☐
JAIL: SUSPEND: FINE: AMT. COLLECTED: AMT. SUSPENDED: Long
COMMITTED TO: Vehicle: 100 Arrested: 505 OFFENSE CODE: 99 B.A. LEVEL: 1.27
CERTIFIED CORRECT: DATE: 10/1/13 G 445153

DRIVER'S RECORD COPY

1993-104799

In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Catherine Fant

Catherine Fant, Assistant General Counsel

Email: CatherineFant@scdps.gov

Marcus K. Gore, Assistant General Counsel

Email: MarcusGore@scdps.gov

South Carolina Department of Public Safety

Office of General Counsel

P.O. Box 1993

Blythewood, SC 29016

Telephone: (803) 896-7965

Attorneys for Appellant

Date: March 5, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

RECEIVED

MAR 23 2015

SC Court of Appeals

The State

Appellant

v.

Jennifer Lynn Alexander

Respondent

FINAL BRIEF OF APPELLANT

Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	2
ARGUMENT	
THE CIRCUIT COURT ERRED IN FAILING TO REVERSE THE MAGISTRATES COURT'S ORDER BECAUSE RESPONDENT'S INITIAL DETENTION WAS LAWFUL.....	3
CONCLUSION.....	5

TABLE OF AUTHORITIES

CASES

PAGE

<u>City of Camden v. Brassell</u> , 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997).....	4
<u>State v. Boswell</u> , 391 S.C. 592, 707 S.E.2d 265 (2011).....	3, 4
<u>State v. McAteer</u> , 340 S.C. 644, 532 S.E.2d 865 (2000).....	3
<u>State v. Sweat</u> , 379 S.C. 367, 374, 665 S.E.2d 645, 650 (Ct. App. 2008), <i>affirmed as modified on other grounds by State v. Sweat</i> , 386 S.C. 339, 688 S.E.2d 569 (2010).....	4

STATUTES

S.C. Code Ann. § 17-13-45 (2003).....	3, 4, 5
---------------------------------------	---------

OTHER AUTHORITIES

1998 WL 61839 at * 2 (S.C.A.G. Op. filed February 17, 1998).....	4
2004 WL 323937 at *2 (S.C.A.G. Op. filed February 04, 2004).....	4
2009 WL 580559 at *4 (S.C.A.G. Op. filed February 26, 2009).....	4

STATEMENT OF THE CASE

On July 29, 2013, Senior Trooper Paul Yacobozzi of the South Carolina Highway Patrol cited Respondent Jennifer Alexander for Driving Under the Influence in violation of S.C. Code § 56-5-2930. Alexander was also ticketed for failure to change her driver's license address, not having proof of insurance on her vehicle, and a seatbelt violation. (R. pp. 52, 70) At Respondent's request, the matter was scheduled for a jury trial and set by the court on Tuesday, February 11, 2014. (R. p. 52)¹ On that date, the parties appeared and argued several pre-trial motions advanced by Respondent. (R. pp. 5, 53) The magistrate took the motions under advisement and subsequently issued an order dismissing the case, finding the Goose Creek police officer who originally detained Respondent was without authority to do so because he was outside the municipality's city limits when he first encountered Respondent, and thus the ensuing arrest by Trooper Yacobozzi was 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 Hon. Markley Dennis, Jr. (R. pp. 16-32) The case was taken under advisement and Judge Dennis issued a Form 4 Order affirming the magistrate's decision on August 26, 2014. (R. pp. 2-3) Notice of Appeal was timely filed with this Court on September 11, 2014. (R. pp. 8-15) This brief followed.

¹ Although the magistrate's Order dismissing the case and Return both state the court convened February 10, 2014, the actual date of the pre-trial hearing was February 11, 2014, as evidenced by the Berkeley County Summary Court Summons dated December 20, 2013 and the Audio Recording of Magistrates Court Proceedings on February 11, 2014 at 10:20:17 a.m. Appellant does not believe the date of the pre-trial hearing is disputed.

STATEMENT OF FACTS

On July 29, 2013, shortly after 11:30 p.m., the Goose Creek Police Department dispatched Officer Chad Hadden in response to a 911 call from a concerned citizen describing an unoccupied vehicle that appeared to be in a ditch with its inside and outside lights on and the doors open. (R. p. 68 at 11:19:26-31; 11:29:48 – 11:30:43; 11:35:38-50) Upon arrival, Hadden found Respondent's vehicle, with its lights on, doors open and engine running, in the front yard of a residence located on U.S. Highway 176.² (R. p. 68 at 11:19:36-50; 11:20:28-31; 11:35:38-50) Respondent, who was crawling from the back of the vehicle with her pants down around her ankles, told Officer Hadden she exited the car to urinate. (R. p. 68 at 11:19:51 – 11:20:22) She admitted she had been driving the vehicle, (R. p. 68 at 11:36:10-16) and Officer Hadden further determined that the car was registered to Respondent and that no one else was at the scene. (R. p. 68 at 11:36:18-32; 12:40:57 – 12:41:01) He also observed fresh tire tracks running from the U.S. 176 roadway to where Respondent's vehicle came to rest in the yard. (R. p. 68 at 11:36:33-44; 11:38:09-16; 12:39:17-18; 12:41:57-58)

Believing Respondent to be heavily intoxicated, (R. p. 68 at 11:20:33 – 11:21:12; 11:31:37 – 11:32:01; 11:36:47-52) Hadden radioed dispatch to confirm his location and was told the residence and yard were actually in Berkeley County, not Goose Creek. (R. p. 68 at 11:22:08-12; 11:37:10-31) Mistakenly believing Hadden lacked jurisdiction to make an arrest, Lt. Upchurch, Hadden's supervisor, notified the South Carolina Highway Patrol. (R. p. 68 at 11:22:08-12; 11:37:10-31) Trooper Yacobozzi was dispatched to the

² It is not disputed that the U.S. 176 roadway in front of the residence is in the City of Goose Creek. (R. p. 68 at 11:34:17-20; 11:38:16-21; 12:36:06-09; 12:49:48-55)

scene and, after discussing the jurisdiction issue without resolution,³ decided to assume responsibility for the investigation since he was already present. (R. p. 68 at 12:33:37-45; 12:36:20-37) After speaking with Officer Hadden and Respondent, and administering standardized field sobriety tests to her, Trooper Yacobozzi placed Respondent under arrest for driving under the influence.

ARGUMENT

THE CIRCUIT COURT ERRED IN FAILING TO REVERSE THE MAGISTRATE COURT'S ORDER BECAUSE RESPONDENT'S INITIAL DETENTION WAS LAWFUL PURSUANT TO § 17-13-45 OF THE SOUTH CAROLINA CODE OF LAWS.

The State's appeal is based on the fact that the magistrate judge erred as a matter of law in dismissing this case because the initial detention of Respondent was lawful. At a pre-trial hearing on February 11, 2014, Respondent argued the case should be dismissed pursuant to State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), because the yard where Officer Hadden detained Respondent was outside the City of Goose Creek'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 Officer Hadden was not within Goose Creek's city limits, he had no police authority to detain Respondent. (R. p. 6) 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

³ Indeed, there was a continuing question at the scene concerning whether Officer Hadden had jurisdiction, and following a discussion with Trooper Yacobozzi, Lt. Upchurch can be heard on the roadside video, which was introduced at the hearing, telling Hadden, "next time this case is yours to work." (R. p. 68 at 12:53:44 – 12:54:30)

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.

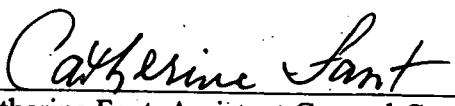
Section 17-13-45 of the South Carolina Code expands the jurisdiction of a law enforcement officer responding to a distress call or request for assistance in an adjacent jurisdiction. This section reads, in pertinent part: "When a law enforcement officer responds to a distress call or a request for assistance 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 (2003). As the statute is facially unambiguous, the only question to be decided is whether it applies to the facts of this case.⁴ See generally State v. Sweat, 379 S.C. 367, 374, 665 S.E.2d 645, 650 (Ct. App. 2008), *affirmed as modified on other grounds by State v. Sweat*, 386 S.C. 339, 688 S.E.2d 569 (2010) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."); City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) ("Where the terms of a statute are clear, the court must apply those terms according to their literal meaning.").

⁴ While no case has interpreted or applied § 17-13-45, multiple opinions from the Attorney General's Office have concluded it operates to expand the territorial jurisdiction of law enforcement into adjacent areas. See, e.g., 2009 WL 580559 at *4 (S.C.A.G. Op. filed February 26, 2009) (stating § 17-13-45 "provides for the response of a law enforcement officer to a distress call or request for assistance in an adjacent jurisdiction" and "serves as a basis for expanded territorial jurisdiction of a law enforcement officer"); 2004 WL 323937 at *2 (S.C.A.G. Op. filed February 04, 2004) (finding that because a law enforcement officer is authorized to respond in an adjacent jurisdiction under § 17-13-45, and "adjacent" is defined as "lying near or close to . . . neighboring," a Barnwell city police officer "would be authorized to go into [Barnwell] county" to answer a call pursuant to the statute); 1998 WL 61839 at * 2 (S.C.A.G. Op. filed February 17, 1998) (declaring that under § 17-13-45, "police jurisdiction extends outside corporate limits . . . to include an adjacent jurisdiction when the officer responds to a distress call or call for assistance").

Appellant asserts the following three facts are undisputed: 1) Chad Hadden was a police officer with the City of Goose Creek on July 29, 2013; 2) Officer Hadden was dispatched to investigate following a 911 call from a passerby reporting a possibly wrecked vehicle with its doors open and interior and exterior lights on; and 3) Officer Hadden responded to the front yard of a residence in the adjacent jurisdiction of Berkeley County. Because Goose Creek Police Officer Chad Hadden 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 magistrate, therefore, erred as a matter of law in finding Officer Hadden lacked the authority to detain the defendant until Trooper Yacobozzi arrived.

CONCLUSION

The State, having asserted its grounds and legal authority in support thereof, hereby asks this Court to reverse the circuit court order and remand the case to the magistrate court for trial, and grant such other relief as the Court deems just and proper under the circumstances.


Catherine Fant, Assistant General Counsel
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
Attorneys for Appellant

March 20, 2015

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM FOR THE DIRECTOR
FROM: SAC, NEW YORK (100-100000)

Re: [REDACTED] (NY 100-100000)

Date: 10-21-60

The following information was received from [REDACTED] on 10-21-60:

[REDACTED] advised that [REDACTED] is a [REDACTED] who [REDACTED]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

DATE 10-21-60 BY [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

TABLE OF CONTENTS

Table of Contents.....	i
Table of Authorities.....	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Statement of Facts.....	2
Arguments	
1. BECAUSE THE CIRCUIT COURT PROPERLY AFFIRMED THE MAGISTRATE COURT'S DISMISSAL OF RESPONDENT'S CHARGES, THIS ACTION SHOULD BE DISMISSED.....	3
Conclusion	7

TABLE OF AUTHORITIES

CASES

<u>State v. Martin</u> , 275 S.C. 141, 268 S.E.2d 105 (1980)	1, 2, 5, 6
<u>State v. McAteer</u> , 340 S.C. 644, 532 S.E.2d 865 (2000)	1-4, 6, 7
<u>State v. Boswell</u> , 391 S.C. 592, 707 S.E.2d 265 (2011)	1, 4, 6, 7
<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)	6
<u>State v. Pichardo</u> , 367 S.C. 84, 623 S.E.2d 840 (Ct.App. 2005)	6
<u>State v. Copeland</u> , 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996)	6

STATUTES

S.C. Code Ann. § 17-13-45 (2003)	5, 6
--	------

STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN AFFIRMING THE MAGISTRATE COURT'S DISMISSAL OF THE RESPONDENT'S CHARGES?

STATEMENT OF THE CASE

On July 29, 2013, the Respondent was detained by the Goose Creek Police Department, outside of their jurisdictional limits. She was later taken into custody by Trooper Paul Yacobozzi, of the South Carolina Highway Patrol, and charged with violation of S.C. Code sections 56-5-2930, Driving Under the Influence (DUI), Ticket Number G445153; 56-5-6520, Seatbelt Violation, Ticket Number G445154; 56-10-225, No Proof of Insurance, Ticket Number G445155; and 56-1-230, Failure to Change Address, Ticket Number G445156. (R. p. 4).

The case came before the magistrate's court for a jury trial, in accordance with the Respondent's request, on February 10, 2014.¹ (Order of Dismissal at 1; Return at 1) However, due to the impending Ice Storm and the ensuing State of Emergency, as declared by our governor, the parties agreed that the Respondent's motions should be heard at that time, and the trial would be held on another day. (R. p. 5)

The Respondent's motion to dismiss under State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) and State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), was subsequently granted and the case was dismissed with the court also citing State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). (Order of Dismissal pp 3-4; Return pp 5-6) The State appealed the dismissal to the Court of Common Pleas. The Hon. R. Markley

¹ According to Appellant, the date was February 11, 2014. Brief of Appellant According to Appellant, the date was February 11, 2014. Brief of Appellant at 1. The date should not be an issue here.

Dennis, Jr., presiding, and the dismissal was affirmed. (Form order affirming decision)
This appeal by the State followed.

STATEMENT OF FACTS

On July 29, 2013, the Respondent was outside of her vehicle, attending to a personal matter, when an officer with the Goose Creek Police Department arrived. At that time, the Respondent's vehicle was stuck in the mud, in a ditch, completely off the road, and inoperable. The aforementioned police officer had responded to a call for a vehicle in a ditch. No one saw the Respondent drive. It was never determined how long the vehicle had been in the ditch. The location of the vehicle was outside the Goose Creek city limits, as verified by the police officer and confirmed by the officer with his supervisor.

The vehicle's location being outside the city limits is not in dispute. The police officer requested that the Highway Patrol respond. Meanwhile, the Goose Creek officer detained the Respondent, as specifically testified to by the officer, and held her in her vehicle until the arrival of the Highway Patrol. Moreover, the officer testified that the Respondent was not free to leave, and that if the Respondent had attempted to leave on foot, he would have arrested her for public intoxication, even though he was outside of his jurisdictional limits.

It is undisputed that the vehicle was stuck and was inoperable upon the Goose Creek police officer's arrival. The Respondent was subsequently arrested by the Highway Patrol and charged with DUI, along with several other traffic charges. The Respondent filed several motions, including a motion to dismiss on the grounds of an

unlawful arrest based on State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) and State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000).

ARGUMENTS

I. THE CIRCUIT COURT PROPERLY AFFIRMED THE MAGISTRATE COURT'S DISMISSAL OF RESPONDENT'S CHARGES.

The Respondent was unlawfully detained by the initial responding officer, a Goose Creek municipal police officer. See State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000). In McAteer, a municipal police officer observed the Respondent drive his vehicle in a questionable manner, which led the officer to suspect the Respondent of DUI. Id. The officer stopped and detained the Respondent until the arrival of the Highway Patrol, who subsequently arrested the Respondent. Id. The Respondent appealed his arrest and conviction. Id. Our Supreme Court overturned our Court of Appeals and reversed the conviction, holding that "[s]ince the officer was outside the municipality's city limits when he first observed petitioner, he had no police authority to detain him." Id., 340 S.C. at 646. The Court then analyzed, in great detail, the authority for making a citizen's arrest and concluded that the DUI arrest did not pass muster. McAteer, id.

Here, with some exceptions more favorable to the Respondent, there are similar circumstances. The Respondent was first observed and detained outside of the municipal police officer's jurisdiction. No one saw the Respondent drive; she wasn't even in her vehicle until after she was detained, and her vehicle was inoperable. There was no evidence presented regarding how long the Respondent's vehicle had been stuck in the ditch, nor of any crime having been committed inside the city limits of Goose Creek. Therefore, as in the McAteer case, there were no lawful grounds to justify the

Respondent's detention by a Goose Creek municipal police officer outside of his jurisdiction.

Our Supreme Court revisited and reaffirmed the McAteer case in State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). In Boswell, the Respondent was convicted of first degree burglary and sentenced to life without parole. Boswell, id. The Respondent appealed his conviction, alleging inter alia, an unlawful arrest in Calhoun County, by deputy sheriffs from Lexington County, who were investigating a burglary that had occurred there. Id. Although the State tries to couch the Boswell case as inapplicable and merely one involving a multijurisdictional agreement, Brief of Appellant, at 4, to the contrary, it is the absence of any such valid agreement that makes Boswell and McAteer very pertinent to the case, sub judice. As our Supreme Court noted,

In view of our finding that the 1999 agreement did not authorize the Lexington County officers to arrest Boswell outside of their territorial jurisdiction, the question becomes whether the officers acting as "private citizens" could have effectuated the arrest.

The key case in this determination is State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000).

Boswell, 707 S.E.2d at 271.

Although some distinctions can be drawn between the facts of Boswell and those of McAteer, the overall similarities are much more compelling. The Boswell Court, citing McAteer with approval, found that the only offense observed by the Lexington County officers to have been committed was a misdemeanor and that since these officers were outside of their jurisdiction, they had no authority to detain and arrest the Respondent. Boswell, id. The Court held that it was therefore error on the part of the trial court not to have suppressed the evidence that came from the unlawful arrest and the

Court reversed the conviction. Id. at 272. Here, as in Boswell and McAteer, there was an arrest and detention outside the jurisdictional limits of the officer, for a misdemeanor not committed in the officer's presence.

There was no danger to the community nor special circumstances in the present case because the Respondent's vehicle was stuck in a ditch and could not be driven. In State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980), the Respondent's vehicle was still operable and there was a risk that the Respondent could continue to drive, if not detained. Id. There were also multiple witnesses to the accident. Id. Here, not only was there no way for the Respondent get in her car and drive away (because the vehicle was inoperable), but there were no witnesses to the Respondent having driven the vehicle; it was stuck in a ditch, and there was no evidence regarding how long it had been there.

The State attempts to dispose of the case by characterizing the call to the Goose Creek Police as "a distress call or request for assistance in an adjacent jurisdiction." Brief of Appellant at 4. The State goes on to cite S.C. Code section 17-13-45 for the proposition that an officer responding to such a call, outside his or her jurisdiction, would have the same authority as an officer of that jurisdiction. Id. The full text of section 17-13-45 reads as follows:

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, **including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provision of Chapter 78, Title 15**, 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 (2003) (emphasis added).

Here, the call to the Goose Creek Police was one merely informing the police of a vehicle in a ditch. There was no request for assistance by another law enforcement agency having jurisdiction, or even of a citizen in distress asking to see an officer. Without more, S.C. Code § 17-13-45 is inapplicable to the case at bar.

Moreover, such an overly broad interpretation of S.C. Code § 17-13-45 could very well have the effect of the exception swallowing up any rule of jurisdictional boundaries altogether. It should also be noted that the portion of the aforementioned law not quoted in the State's Appeal pertains to worker's compensation and tort liability coverage, which suggests an entirely different context for 17-13-45, than that being ascribed to it by the State.

Even if the Court finds that S.C. Code section 17-13-45 may be applicable to the case, sub judice, the matter still turns on whether the police had probable cause to detain the Respondent in the first place. See State v. Martin, supra. Upon arrival of the initial, Goose Creek police officer, there was only an unoccupied vehicle in a ditch. The Respondent was outside of her vehicle, not behind the wheel of the vehicle. The vehicle was stuck in a ditch and incapable of being operated. There was no evidence of any timeframe for how long the vehicle had been in the ditch and there was no immediate threat to public safety. Thus, there were no reasonable grounds upon which to detain the Respondent and the subsequent arrest was unlawful.

In the seminal case of Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), the U. S. Supreme Court ruled that any evidence obtained as a result of an illegal arrest must be suppressed as "fruit of the poisonous tree" and cannot be used against the Respondent. See also, State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840

(Ct.App. 2005), State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) ("The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of the illegality."). Here, as in the McAteer and Boswell cases, the initial and unlawful detention of the Respondent by the Goose Creek municipal police officer, outside of his jurisdiction, directly led to Respondent's arrest, as well as to any evidence obtained, and her subsequent prosecution by the Highway Patrol. Thus, the "fruit of the poisonous tree" doctrine applies here. Id.

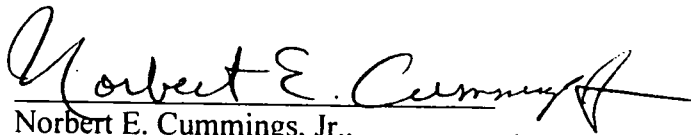
In State v. Pichardo, 367 S.C. 84, 96, citing Easley v. Cromartie, 532 U.S. 234 (2001), our Court of appeals pointed out that "[t]he 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently. Id. Rather, "[a]n appellate court must affirm the trial court's ruling if there is any evidence to support the ruling. Id., citing State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (emphasis in the original). Respondent is informed and believes that the Record contains sufficient evidence to support the trial court's decision to grant her motion to dismiss. The magistrate judge properly dismissed the case and the circuit court judge properly affirmed that dismissal.

CONCLUSION

For the foregoing reasons, the Respondent is informed and believes that the magistrate judge correctly dismissed the charges against the Respondent and that the Circuit properly affirmed the dismissal. The Respondent therefore respectfully prays this Honorable Court to affirm the dismissal of the Respondent's case and all charges.

Respectfully submitted,

THE CUMMINGS LAW FIRM, LLC



Norbert E. Cummings, Jr.,

Henry Richard Schlein,

100 S. Main St., Suite B

P.O. Box 1318

Summerville, SC 29484

Phone (843) 821-9999

Fax (843) 851-0062

cummingslawfirm@bellsouth.net

ATTORNEYS FOR RESPONDENT

At Summerville, South Carolina

This 25th Day of March, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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

Case No. 2014-CP-08-0688

RECEIVED
MAR 23 2015

SC Court of Appeals

The State.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

FINAL REPLY BRIEF OF APPELLANT

Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
ARGUMENTS	
I. SECTION 17-13-45 OF THE SOUTH CAROLINA CODE EXTENDS ALL LAW ENFORCEMENT AUTHORITY THAT AN OFFICER POSSESSES IN ONE JURISDICTION TO THE ADJACENT JURISDICTION WHEN THE OFFICER IS RESPONDING TO A DISTRESS CALL OR REQUEST FOR ASSISTANCE.....	1
II. RESPONDENT MISTATES THE STANDARD OF REVIEW.....	2
III. RESPONDENT'S ALTERNATIVE ARGUMENT REGARDING THE ALLEGED LACK OF PROBABLE CAUSE TO ARREST APPELLANT MUST BE DISREGARDED, AS IT WAS NEITHER RULED UPON BY THE MAGISTRATE NOR CONSIDERED BY THE CIRCUIT COURT.....	3
CONCLUSION.....	5

TABLE OF AUTHORITIES

CASES

PAGE

<u>City of Camden v. Brassell</u> , 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997).....	2
<u>City of Greer v. Humble</u> , 402 S.C. 609, 742 S.E.2d 15 (2013).....	3
<u>State v. Byram</u> , 326 S.C. 107, 485 S.E.2d 360 (1997).....	4
<u>State v. Dennis</u> , 402 S.C. 627, 742 S.E.2d 21 (Ct. App. 2013).....	4
<u>State v. Gordon</u> , 408 S.C. 536, 759 S.E.2d 755 (Ct. App. 2014).....	2, 3
<u>State v. Sweat</u> , 379 S.C. 367 665 S.E.2d 645 (Ct. App. 2008)	1

STATUTES

S.C. Code Ann. § 17-13-45 (2003).....	1, 2
---------------------------------------	------

ARGUMENT

I. SECTION 17-13-45 OF THE SOUTH CAROLINA CODE EXTENDS ALL LAW ENFORCEMENT AUTHORITY THAT AN OFFICER POSSESSES IN ONE JURISDICTION TO THE ADJACENT JURISDICTION WHEN THE OFFICER IS RESPONDING TO A DISTRESS CALL OR REQUEST FOR ASSISTANCE.

Section 17-13-45 provides:

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, including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, 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 (2003). In her Initial Brief, Respondent contends that the language "including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15" places the statute "in an entirely different context" than that asserted by Appellant. (Init. Br. of Respondent at 6) If Respondent is asserting that this language somehow means the statute only gives responding officers corresponding coverage regarding workers' compensation and tort liability, Respondent's argument must fail. The remainder of the statute, which proclaims that such officers have "the authority, rights, privileges, and immunities" as those officers have in the original jurisdiction where they are employed, could not be clearer: the legal authority, rights and responsibilities of every officer responding in an adjacent jurisdiction are identical to those in his home jurisdiction. See State v. Sweat, 379 S.C. 367, 374, 665 S.E.2d 645, 650 (Ct. App. 2008), *affirmed as modified on other grounds by State v. Sweat*, 386 S.C. 339, 688 S.E.2d 569 (2010) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a

court must apply the statute according to its literal meaning.”); City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) (“Where the terms of a statute are clear, the court must apply those terms according to their literal meaning.”).

Furthermore, to the extent Respondent argues § 17-13-45 is inapplicable because the request for assistance was not made “by another law enforcement agency having jurisdiction” or a “citizen in distress asking to see an officer,” her argument is misplaced. (Init. Br. of Respondent at 6) Nothing in the statute indicates that the request must originate from another law enforcement agency or that the person calling must be in actual distress. By its own terms the statute applies when a law enforcement officer is responding “to a distress call or a request for assistance in an adjacent jurisdiction” S.C. Code Ann. § 17-13-45 (2003) (emphasis added). It is undisputed that City of Goose Creek Officer Hadden was dispatched to investigate following a 911 call from a passerby reporting a possibly wrecked vehicle and that the front yard of the residence where Respondent’s vehicle came to rest was in the adjacent jurisdiction of Berkeley County. On its face, the 911 call for service can either be considered a distress call or request for service or both, and the statute, therefore, applies.

II. RESPONDENT MISTATES THE STANDARD OF REVIEW

Near the conclusion of the Initial Brief, Respondent claims an “any evidence” standard of review for this Court. (Init. Br. of Respondent at 7) Appellant, however, respectfully submits that Respondent’s proposed standard applies to factual findings made by the trial court, not legal conclusions. Instead, Appellant believes the proper standard of review here is that the Court of Appeals examines the circuit court’s ruling for errors of law only. See State v. Gordon, 408 S.C. 536, 759 S.E.2d 755 (Ct. App.

2014); City of Greer v. Humble, 402 S.C. 609, 742 S.E.2d 15 (2013). This case centers on a question of statutory interpretation. As this Court has said, questions of statutory interpretation are questions of law subject to *de novo* review; the Court, therefore, is “free to decide without any deference to the court below.” Gordon, 408 S.C. at 540, 759 S.E.2d at 757; Humble, 402 S.C. at 613, 742 S.E.2d at 17.

III. RESPONDENT’S ALTERNATIVE ARGUMENT REGARDING THE ALLEGED LACK OF PROBABLE CAUSE TO ARREST APPELLANT MUST BE DISREGARDED, AS IT WAS NEITHER RULED UPON BY THE MAGISTRATE NOR CONSIDERED BY THE CIRCUIT COURT.

The State’s appeal to this Court is based upon the magistrate’s error of law in dismissing the case because the initial detention of Respondent was lawful. In so doing, the State relies upon Section 17-13-45 of the South Carolina Code and the expanded jurisdiction of a law enforcement officer responding to a distress call or request for assistance in an adjacent locale. In her Initial Brief, however, Respondent makes the following statement: “Even if the Court finds that S.C. Code [Ann.] section 17-13-45 may be applicable to the case . . . the matter still turns on whether the police had probable cause to detain the Respondent in the first place.” (Init. Br. of Respondent at 6) The State strongly disagrees that this issue is before the Court, as the magistrate did not rule upon this ground and the circuit court concurred.

While Respondent is correct that several motions were heard in the magistrates court, including one pursuant to State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980), the sole basis of the magistrate’s ruling was the lack of police authority to detain or arrest Respondent because the yard where her car came to rest was outside the City of Goose Creek. In both his Order of Dismissal and the Return, the magistrate stated that the lower court was “most persuaded by our Supreme Court’s holding in State v. McAteer.” (R.

pp. 6, 56) Each document then continues: “Here, as in McAteer, [] since the initial Goose Creek officer was outside the municipality’s city limits when he first observed the Defendant, and since no violation of the law had been observed within the city limits, **the officer had no police authority** to detain the Defendant, or to arrest her.” (Id.) (emphasis added) Nothing in the Order of Dismissal addresses any issue raised pursuant to Martin, and the only reference to Martin in the Return is that “there were no ‘special circumstances’ that created a ‘clear and present danger to the community’ because the Defendant’s vehicle was stuck in the mud in a ditch and was inoperable.” (R. pp. 56-57) As can be seen, there is absolutely no mention of the words “probable cause” in either the Order of Dismissal or Return, so it is improper for Respondent to attempt to argue an alleged lack of probable cause as a legal basis for dismissal of the case. See State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (finding an issue not preserved for appellate review where the trial court did not rule on it); State v. Dennis, 402 S.C. 627, 742 S.E.2d 21 (Ct. App. 2013) (same).

This concern was also addressed at oral argument before the circuit court, where Appellant asserted the sole ground of the magistrate’s decision was lack of law enforcement jurisdiction. (R. p. 23, lines 1-10) The circuit court agreed, stating that the “judge ruled that they didn’t have jurisdiction, and therefore the case is dismissed.” (R. p. 24, lines 1-2) Later the circuit court rejected any other alleged grounds for dismissal by reiterating that Respondent could not address any other reasons “because [the magistrate] said you don’t have jurisdiction.” (R. p. 26, lines 11-12) Accordingly, because the sole ground relied upon by the magistrate to dismiss the case was that the

officer had no police jurisdiction, any argument based upon other purported grounds must be ignored.

CONCLUSION

Because § 17-13-45, by its own terms, clearly authorizes an officer responding in an adjacent jurisdiction to exercise all the powers he possess in his own jurisdiction, and is not limited in any way to circumstances involving workers' compensation or tort liability. In addition, as the 911 call herein was both a distress call and a request for assistance, § 17-13-45 applies. Furthermore, for the reasons explained above, the Court should review this appeal *de novo*, as it involves purely a question of statutory interpretation. Finally, as Respondent's additional argument regarding lack of probable cause was neither ruled upon by the magistrate nor addressed by the circuit court, that portion of Respondent's Brief should be disregarded by the Court.



Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P.O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965
Attorneys for Appellant

Blythewood, South Carolina

March 20, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Jennifer Lynn Alexander, Respondent.

Appellate Case No. 2014-001919

Appeal From Beaufort County
R. Markley Dennis, Jr., Circuit Court Judge

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

AFFIRMED

Marcus Keith Gore, Department of Public Safety, of
Blythewood, for Appellant.

Norbert E. Cummings, Jr. and Henry Richard Schlein,
both of Summerville, for Respondent.

PER CURIAM: Officer Chad Hadden of the Goose Creek Police Department responded to a call from a citizen-passerby reporting a vehicle stuck in a ditch off U.S. Highway 176. When he arrived at the scene, Jennifer Lynn Alexander was outside the vehicle. The vehicle was stuck in a ditch within the front yard of a

residence, and it was inoperable. Officer Hadden, believing Alexander to be heavily intoxicated, radioed dispatch to confirm his location, at which point dispatch informed him the vehicle was not located within Goose Creek city limits. Officer Hadden's supervisor contacted South Carolina Highway Patrol to request that a trooper respond to the scene. Officer Hadden detained Alexander for approximately sixteen minutes before Trooper Yacobozzi arrived. Trooper Yacobozzi assumed responsibility of the investigation, administered a series of standardized field sobriety tests, and placed Alexander under arrest. Alexander was charged with driving under the influence (DUI), seatbelt violation, no proof of insurance, and failure to change address. The magistrate court dismissed Alexander's charges, finding Officer Hadden was outside his jurisdictional territory and, therefore, did not have the authority to detain Alexander. The circuit court upheld the magistrate court's dismissal of the charges. We affirm.

The State contends the magistrate court erred in dismissing Alexander's charges because her initial detention was lawful under section 17-13-45 of the South Carolina Code (2014). We disagree. *See* S.C. Code Ann. § 17-13-45 (2014) ("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, including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction."); *State v. Harris*, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989) ("The jurisdiction of a municipal police officer, absent statutory authority, generally does not extend beyond the territorial limits of the municipality." (citing 62 C.J.S. *Municipal Corporations* § 574 (1949 & Supp. 1988))); *State v. Boswell*, 391 S.C. 592, 600, 707 S.E.2d 265, 269 (2011) (indicating there are two grounds under which police officers have authority to effectuate extraterritorial arrests: specific statutory authorization or valid multi-jurisdictional agreements); *id.* at 600, 604–05, 707 S.E.2d at 269, 271–72 (explaining specific statutory authority to make extraterritorial arrests arises out of either the hot pursuit statute—section 17-13-40 of the South Carolina Code (2014)—or the private citizen's arrest statutes—sections 17-13-10 and 17-13-20 of the South Carolina Code (2014));¹ *id.* at 605, 707 S.E.2d at 271–72 (finding

¹ In *Boswell*, the court noted that the multi-jurisdiction agreement between Lexington County and Calhoun County incorporated the text of sections 23-1-210 and 17-13-45 of the South Carolina Code, and further stated that those sections

Boswell's arrest was unlawful because Lexington County officers had no specific statutory authorization and there was no valid multi-jurisdictional agreement between Lexington County and Calhoun County); *State v. McAteer*, 340 S.C. 644, 646–47, 532 S.E.2d 865, 866 (2000) (finding an officer outside his municipality's city limits did not have the authority to detain the petitioner until a highway patrolman arrived because (1) he was outside his jurisdiction when he first observed the petitioner violate the law and (2) he did not have the authority to make a private citizen's arrest).

AFFIRMED.

HUFF, KONDUROS, and GEATHERS, JJ., concur.

"govern agreements involving the temporary transfer of law enforcement officers." 391 S.C. at 600, 707 S.E.2d at 269.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
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

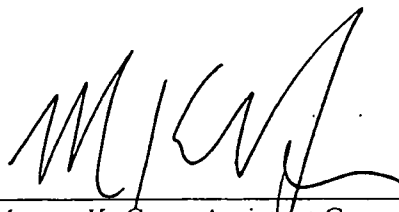
the issue herein regarding § 17-13-45's extension of law enforcement powers into adjacent jurisdictions.

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.

A handwritten signature in black ink, appearing to read 'MK Gore', is positioned above a horizontal line.

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 South Carolina Court of Appeals

The State, Appellant,

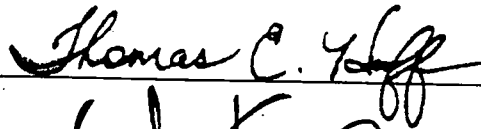
v.

Jennifer Lynn Alexander, Respondent.

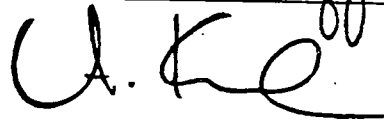
Appellate Case No. 2014-001919

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

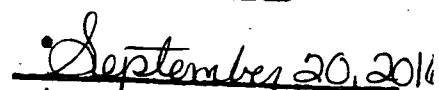
cc: Marcus Keith Gore, Esquire
Norbert E. Cummings, Jr., Esquire
Henry Richard Schlein, Esquire

RECEIVED

SEP 21 2016

SCDPS
Office of General Counsel

FILED


September 20, 2016