

21765

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 :

2014 AUG 26 PM 4:55
 HENRY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

FILED
 570

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.

[Signature]
 Circuit Court Judge

2060
 Judge Code

8/20/2014
 Date

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

FILED

FEB 25 2014
CM
Goose Creek Magistrate Office

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

2

FFB 2 5 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

4

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

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) 896-7961

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 :

2014 AUG 26 PM 4:15
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

FILED
 (Signature)

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.

(Signature)
 Circuit Court Judge

2060 Judge Code 8/20/2014 Date

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

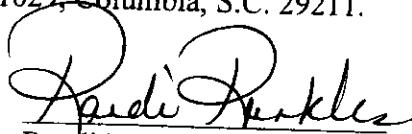
The State.....Appellant,

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

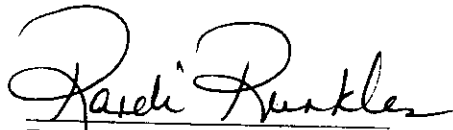
The State.....Appellant,

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

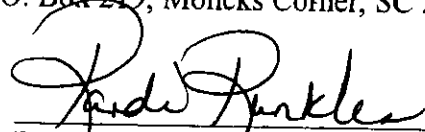
The State.....Appellant,

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

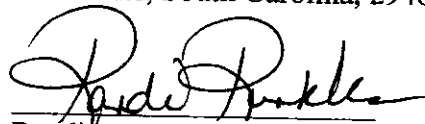
The State.....Appellant,

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

4 STATE OF SOUTH CAROLINA)

5 VS.)

TRANSCRIPT OF RECORD

7 JENNIFER LYNN ALEXANDER)

JULY 28, 2014
MONCKS CORNER, SC

10 B E F O R E :

12 HONORABLE R. MARKLEY DENNIS, JR.

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

15 CATHERINE FANT, ESQUIRE
Attorney for the State

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

19 Ruth L. Mott, RPR, CRR
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
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.

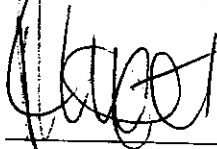
10 --- END OF TRANSCRIPT OF RECORD ---
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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	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 [6] - 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 [5] - 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	B		
3	3 [1] - 12:11 30 [1] - 7:20	barred [1] - 8:5 base [2] - 9:19, 9:21 based [6] - 8:7, 9:8, 9:13, 11:4, 12:4, 12:10 basis [3] - 8:19, 10:18, 10:19 believes [1] - 4:7 Bell [1] - 11:19 below [3] - 4:12, 5:2, 5:18 BERKELEY [2] - 1:2, 14:3 Berkeley [1] - 14:10 Boswell [2] - 4:7, 7:10 briefed [1] - 13:6 bringing [1] - 8:5 brought [1] - 12:3 Brown [1] - 10:25		
4	4 [1] - 2:7	C		
9	911 [1] - 3:18 9th [1] - 14:10	C-1 [1] - 2:7 cannot [1] - 4:10 captioned [1] - 14:9 car [6] - 5:1, 5:15, 6:17, 7:19, 8:15, 8:21 careful [2] - 11:14, 11:25 CAROLINA [3] - 1:1, 1:4, 14:2 Carolina [2] - 14:6,		
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,	clearly [6] - 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	D	
			D	
			dead [1] - 10:3 defend [1] - 12:1 Defendant [1] - 1:17 defendant [10] - 3:11, 4:4, 4:5, 6:13, 7:8, 8:2, 8:14, 12:19, 12:25 delighted [1] - 3:15 DENNIS [1] - 1:11 Department [3] - 3:7, 3:17, 4:2	E
				either [3] - 9:21, 11:7, 12:15 end [3] - 5:5, 5:11, 6:25 END [1] - 13:10 ended [2] - 5:1, 6:13 enforcement [1] - 6:3 entire [1] - 4:14 entitlement [1] - 7:14 equivocated [1] - 11:17 ESQUIRE [3] - 1:14, 1:16, 1:16 EVD [1] - 2:6 events [1] - 14:14 evidence [4] - 7:7, 9:16, 9:18, 14:8 excuse [3] - 3:24,

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 obviously [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	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,	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	H Hadden [3] - 4:2, 5:9, 7:17	O objection [2] - 4:17, 4:18				

<p>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 properly [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</p>	<p>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</p>	<p>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</p>	<p>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</p>	<p>young [1] - 11:23 yourselves [1] - 3:4</p>
Q				
quickly [1] - 11:21				
R				
<p>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,</p>	<p style="text-align: center;">S</p> <p>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,</p>	<p style="text-align: center;">T</p> <p>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,</p>	U	<p>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</p>
			V	
			<p>violation [2] - 12:19, 12:23 VS [1] - 1:5</p>	
			W	
			<p>welfare [1] - 6:16 win [2] - 9:10 wonder [1] - 9:9 wreck [1] - 5:5 wrecked [1] - 5:16</p>	
			Y	
			<p>Yacovazzi [1] - 5:8 yard [8] - 4:25, 5:6, 5:13, 5:23, 6:12, 7:20, 7:22, 10:1</p>	

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. DEP'T 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)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-CP-____- <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Label (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (420) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input checked="" type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

FILED
 APR 2 2014
 CLERK OF COURT
 BERKELEY COUNTY, SC
 MARY P. BROOKS

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 :

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, :
Plaintiff, :

vs. :

CERTIFICATE OF EXEMPTION
FROM MEDIATION

JENNIFER LYNN ALEXANDER, :

: C/A # 2014-CP-08- 688

Defendant/Respondent. :

I certify that this action is exempt from mediation because:

- This is a special proceeding or action seeking extraordinary relief such as
- 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

FILED
 15/ APR -2 AM 11:51
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

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.

CERTIFICATE OF SERVICE

JENNIFER LYNN ALEXANDER :

Defendant/Respondent. :

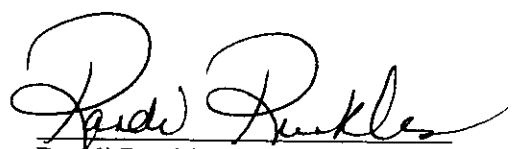
Ticket Nos. G445153, G445154,
G445155 and G445156

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

FILED
2014 APR -2 AM 11:51
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.


Rardi 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**

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

RESPONDENT'S REPLY TO STATE'S APPEAL

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

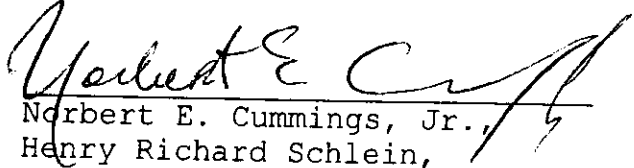
municipal police officer, outside of his jurisdiction, directly led to her arrest, any evidence obtained, subsequent prosecution by the Highway Patrol. Judge Sessions properly dismissed the case and in the alternative, would have properly suppressed the evidence, as "fruit of the poisonous tree." Id.

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

MARY BERKMAN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 MAY 12 PM 4: 35

Jw
FILED

2014-CP-08-688

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. G-445153, 54, 55, & 56

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

FILED
2014 MAY 12 PM 4:36
MAY 12 2014
CLERK OF SUPERIOR COURT
BERKELEY COUNTY, GA

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 Yacobozzi, 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

F
NC
H S
MF

9W 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 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 too 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-

688

COPY

(Please Print)

Submitted By: Catherine Fant, Esq.

Address: Office of General Counsel

S.C. DEP'T 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 #, 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)

FILED

APR 04 2014

BERKELEY COUNTY CLERK OF COURT

Submitting Party Signature: Catherine Fant

Date: 4

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
ch
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
Om
APR 04 2014

BERKELEY COUNTY
SUMMARY COURT

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-_____

NOTICE OF APPEAL
AND APPEAL

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.

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
CA
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 :

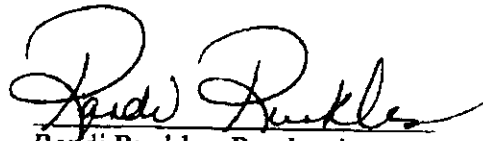
Defendant/Respondent.

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

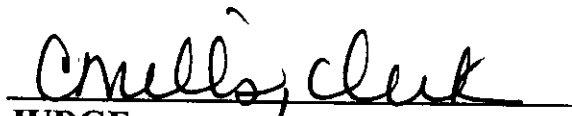
STATE OF SOUTH CAROLINA
COUNTY/CITY OF BERKELEY

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

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS
FIRST NAME MIDDLE NAME LAST NAME
Jennifer Lynn Alexander
STREET AND NO. CITY STATE ZIP CODE

STATE LICENSED SC
VEH. LIC. NO. 31210X
STATE SC
MAKE OF VEH. Year 2000
COMB. VEH. (AUTO) (TRUCK) (MOTORCYCL) (OTHER)
HAZ. MT. MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT
NAME OF TRIAL COURT CTC
STREET AND NO. 233 N. Live Oak Dr.

DATE OF TRIAL 9/18/13
TIME OF TRIAL 1000
CITY Moncks Corner
STATE SC
ZIP CODE 29401

VIOLATION - COURT APPEARANCE RECEIVED YES NO
Scarbett Violation
VIOLATION SECTION NO. SC-5.2900

OWNER OF VEHICLE Same
DATE OF ARREST 7/29/13
ADDRESS OF OWNER Same
DATE OF VIOLATION 7/29/13

RAIL DEPOSITED None
NAME OF ARRESTING OFFICER P.J. Jacobson
RANK TFC
DESCRIPTION OF ACCUSED
COUNTY Berkeley
NUMBER 0

DATE BAIL REC'D. BY
MAGISTRATE MIN. COURT
CIRCUIT COURT FAMILY COURT FEDERAL COURT

NAME OF TRIAL COURT 233 N
IF DIFFERENT FROM ABOVE
DEFENDANT: DID NOT APPEAR APPEARED

NOLLE PROSSED DISPOSITION
FORFEITED BOND PLED: NOLLO CONTENDERE

TRIAL BY: TRIAL JUDGE JURY
VERDICT OF TRIAL IF ANY
GUILTY NOT GUILTY

COMMITTED TO: Vehicle 100
Arrested as Suspect 525
OFFENSE CODE 94
B.A. LEVEL NAC

CERTIFIED CORRECT DATE 10/1/13
G 445154

DRIVER'S RECORD COPY

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS
FIRST NAME MIDDLE NAME LAST NAME
Jennifer Lynn Alexander
STREET AND NO. CITY STATE ZIP CODE

STATE LICENSED SC
VEH. LIC. NO. 31210X
STATE SC
MAKE OF VEH. Year 2000
COMB. VEH. (AUTO) (TRUCK) (MOTORCYCL) (OTHER)
HAZ. MT. MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT
NAME OF TRIAL COURT CTC
STREET AND NO. 233 N. Live Oak Dr.

DATE OF TRIAL 9/18/13
TIME OF TRIAL 1000
CITY Moncks Corner
STATE SC
ZIP CODE 29401

VIOLATION - COURT APPEARANCE RECEIVED YES NO
DUI
VIOLATION SECTION NO. SC-5.2900

OWNER OF VEHICLE Same
DATE OF ARREST 7/29/13
ADDRESS OF OWNER Same
DATE OF VIOLATION 7/29/13

RAIL DEPOSITED Jail
NAME OF ARRESTING OFFICER P.J. Jacobson
RANK TFC
DESCRIPTION OF ACCUSED
COUNTY Berkeley
NUMBER 0

DATE BAIL REC'D. BY
MAGISTRATE MIN. COURT
CIRCUIT COURT FAMILY COURT FEDERAL COURT

NAME OF TRIAL COURT 233 N
IF DIFFERENT FROM ABOVE
DEFENDANT: DID NOT APPEAR APPEARED

NOLLE PROSSED DISPOSITION
FORFEITED BOND PLED: NOLLO CONTENDERE

TRIAL BY: TRIAL JUDGE JURY
VERDICT OF TRIAL IF ANY
GUILTY NOT GUILTY

COMMITTED TO: Vehicle 100
Arrested as Suspect 525
OFFENSE CODE 99
B.A. LEVEL 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, 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