

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM ANDERSON COUNTY
R. Scott Sprouse, Circuit Court Judge

APR 24 2017

SC Court of Appeals

Appellate Case No. 2015-002459

THE STATE,RESPONDENT,

v.

DEBRA LYNNE SHERIDAN,APPELLANT.

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly declined to dismiss Appellant's charges based on an allegedly invalid search because Appellant never argued the search violated her rights under either the United States Constitution or the South Carolina Constitution, the search was legal, and the relief sought is improper.

II.

Regardless of the admissibility of the photographs, Appellant was not prejudiced by their admission because she was not convicted of ill-treatment of animals.

III.

The trial court properly denied Appellant's motion for directed verdict on the rabies tag violation because evidence existed Appellant failed to place the tags on her dogs.

IV.

Appellant incorrectly alleges the trial court's sentence prevents her from ever operating an animal shelter as it was actually mandated as a term of probation within the trial court's discretion.

STATEMENT OF THE CASE

Debra Lynne Sheridan (Appellant) was indicted for sixty counts of ill-treatment of animals, fifty-four counts of violating Section 47-5-60 of the South Carolina Code (2017) requiring rabies tags to be worn at all times, and one count of possession of methamphetamine. (Tr.20–21.) She proceeded to a jury trial before the Honorable R. Scott Sprouse. She was convicted on all counts of the rabies tag violations and for possession of methamphetamine, but acquitted on all ill-treatment of animals charges. Judge Sprouse sentenced her to three years' imprisonment suspended on service of three days with five years' probation and 100 hours of public service for the methamphetamine conviction and 1,620 days' imprisonment, suspended on service of three days with five years' probation and 100 hours of public service for the rabies tag violation convictions. The terms of her probation included substance abuse counseling, random drug and alcohol testing, and a prohibition against Appellant operating a rescue shelter.

STATEMENT OF FACTS

Lieutenant Joel Powell arrived at Appellant's home for a well-being check on some animals. (Tr.26.) Upon arrival, he observed animals in kennels between two mobile homes and went to both homes until he encountered Appellant. (Tr.27–28.) He and the other officers who arrived on the scene then began inspecting the animals and their living conditions. (Tr.28.) After assessing the situation, the officers informed Appellant they would seize all the animals and placed her under arrest. (Tr.39.) The officers seized fifty-three dogs and seven cats. (Tr.91.) None of the dogs wore rabies tags. (Tr.93.) Appellant was searched after being placed under arrest and the officer discovered a white crystal-like substance, later determined to be methamphetamine, in her pocket. (Tr.120, 133.)

Appellant was charged with possession of methamphetamine, fifty-four counts of failing to have proper rabies identification tags, and sixty counts of ill treatment of animals. (Tr.20–21.) She proceeded to a jury trial before the Honorable R. Scott Sprouse. Prior to trial, Appellant moved to dismiss the indictments, arguing the officers did not have a search warrant. (Tr.11.) In support of her argument, she claimed the search was made pursuant to an alleged agreement (the Agreement) entered into in magistrate's court, which was signed by the assistant solicitor and the magistrate—but not Appellant and therefore it was not binding upon her. (Tr.13–14.) The trial court denied the motion to dismiss, noting the facial validity of the Agreement and clarifying Appellant was not being prosecuted for a violation of those conditions. (Tr.17.) It also stated that those conditions were set pursuant to a hearing and resulted in the charges Appellant faced in magistrate court being taken off the docket. (Tr.16.)

Extensive evidence was adduced as to the living conditions of the animals, including several photographs of the interior of a mobile home on the property. (Tr.31.) Appellant objected to their admission, arguing the photos were not relevant because there was no evidence

the animals were kept in that home. (Tr.31.) The trial court disagreed and overruled the objection. (Tr.33.) In addition to the testimony of the officers who arrived at the scene, the State presented the testimony of Meredith Lanford, a forensic chemist who analyzed the white crystal-like substance found on Appellant. (Tr.131.) The substance was entered into evidence without objection and Lanford opined it contained 0.06 gram methamphetamine. (Tr.133.) At the close of the State's case, the Appellant moved for a directed verdict only as to the ill-treatment charge, arguing the applicable standard of care was unclear and to the extent it was clear, Appellant satisfied it. (Tr.211–17.) The trial court denied the motion.

Appellant testified in her own defense. She stated all the animals had rabies certificates, but admitted none of the dogs actually had tags on them. (Tr.255, 258.) In regard to the methamphetamine, she stated it was just something she picked up around her driveway and put in her pocket without thinking. (Tr.291.) At the close of Appellant's case, she argued the charges on the rabies tag violation should not go to the jury because it was common practice for shelters to not keep tags on their dogs and to convict her would be unfair. (Tr.320.)

Appellant was ultimately convicted on all counts of violating the rabies control statute and on the possession of methamphetamine charge. (Tr.359.) She was acquitted on all charges of ill-treatment of animals. (Tr.359.) Appellant thereupon moved for a new trial and judgment notwithstanding the verdict based on the fact that other shelters do not keep rabies tags on their animals at all times. (Tr.361.) Judge Sprouse denied her motions and sentenced her to three years' imprisonment suspended on service of three days with five years' probation and 100 hours of public service for the methamphetamine conviction and 1,620 days' imprisonment, suspended on service of three days with five years' probation and 100 of hours public service for the rabies tag violation convictions. (Tr.366–67.) The terms of her probation were to include substance

abuse counseling, random drug and alcohol testing, and a prohibition against Appellant operating a rescue shelter. (Tr.366-37, *sentencing sheets).

ARGUMENTS

I.

The trial court properly declined to dismiss Appellant's charges based on an invalid search because Appellant never argued the search violated her rights under either the United States Constitution or the South Carolina Constitution, the search was legal, and the relief sought is improper.¹

Appellant argues law enforcement violated her right to be free from unreasonable searches and seizures and her right to privacy by performing a warrantless search of her property. Appellant's arguments are unpreserved and without merit.

At the outset, Appellant faces a number of procedural prohibitions to her argument. Primarily, this argument is unpreserved. Appellant makes no reference to either constitution in her motion prior to trial, instead focusing on the validity of the Agreement. A defendant may not assert one ground at trial and another on appeal. *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). Because this argument was not expounded at trial, the trial court never ruled on the constitutionality of the search and therefore there is nothing for this Court to review. *See State v. Woodruff*, 300 S.C. 265, 266 n.1, 387 S.E.2d 453, 454 n.1 (1989) ("Matters not passed upon by the trial court will not be reviewed.").

Furthermore, Appellant's requested relief is not cognizable under any jurisprudence she cites, and certainly not under case law addressing unreasonable searches or seizures. The judicially constructed remedy for law enforcement's encroachment of that constitutional right is the exclusion of evidence—not the dismissal of charges. *State v. Brown*, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012) ("The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is

¹ For concision, the State addresses Appellant's first four arguments collectively.

barred from introducing evidence obtained in violation of the Fourth Amendment.”) (citations omitted). Accordingly, even if Appellant were to prevail on the merits, she is not entitled to the requested relief.

Finally, even generously converting this argument to a suppression request, Appellant fails to articulate the specific evidence she wishes to suppress or how admission of that evidence prejudiced her. To the extent Appellant objects to the admission of the methamphetamine, this evidence was ultimately admitted at trial without objection. (Tr.132.) Absent a contemporaneous objection at the time of admission, this argument is unpreserved. *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (“To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court.”). Further, Appellant testified the dogs did not wear their rabies tags in direct violation of the statute. Therefore, any other evidence adduced which would be relevant to those convictions is merely cumulative.

Moreover, Appellant’s argument fails substantively. Although Appellant makes much of whether the Agreement complies with contract law, it is evident that the officers were acting under the belief that the search was authorized by court order. The ultimate inquiry is not the veracity of this belief, but the reasonableness of the belief. Here, it was patently reasonable for the officers to believe they had permission to search Appellant’s property and, therefore, the search was not violative of either constitution.

“On appeal from a motion to suppress on Fourth Amendment grounds, this Court applies a deferential standard of review and will reverse only if there is clear error.” *Robinson v. State*, 407 S.C. 168, 180–81, 754 S.E.2d 863, 868 (2014). “The ‘clear error’ standard means that an appellate court will not reverse a trial court’s finding of fact simply because it would have decided the case differently.” *State v. Pichardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App.

2005). Instead, the Court will “affirm if there is any evidence to support the ruling.” *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

The Fourth Amendment to the United States Constitution secures the right of the people to be secure against unreasonable search and seizure. U.S. Const. amend. IV. “In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures.” *State v. Counts*, 413 S.C. 153, 164, 776 S.E.2d 59, 65 (2015). “The touchstone of [an] analysis under the Fourth Amendment is always ‘the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.’” *Pennsylvania v. Mimms*, 434 U.S. 106, 108–09 (1977) (per curiam) (quoting *Terry v. Ohio*, 392 U.S.1, 19 (1968)). Warrantless searches and seizures are per se unreasonable absent a recognized exception. *State v. Bruce*, 412 S.C. 504, 510, 772 S.E.2d 753, 756 (2015). “[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

“[T]o satisfy the ‘reasonableness’ requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government—whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement—is not that they always be correct, but that they always be reasonable.” *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990). The rationale underpinning this conclusion is that “to be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community’s protection.” *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014) (internal quotation marks omitted).

Here, the officers conducted their search pursuant to what they believed was the previously given consent of Appellant. Regardless of the contractual validity of the Agreement, it states the findings by the magistrate, including that the document was entered into “[b]y agreement of all parties.” (*Agreement.) Within the language of the Agreement, law enforcement is authorized to conduct “routine and random welfare checks” on Appellant’s property. (*Agreement.) That officers believed this document—signed by a magistrate judge and attesting to the agreement of both parties—provided consent for the intrusion, is objectively reasonable. For the purposes of constitutional inquiry, it does not matter whether this conclusion was ultimately incorrect and Appellant never intended to convey consent.² As the trial court observed in denying Appellant’s motion to dismiss: “[Y]ou’ve got a document signed by a magistrate. It’s titled agreement. But it appears to me that this was a hearing. And it appears to me the case was taken off the docket because of the provisions that were signed by the magistrate.” (Tr.16.) The trial court therefore based its ruling on its conclusion that this appeared to be a legally binding document. It would be absurd to hold an officer to a different standard of reasonableness. The Fourth Amendment requires nothing more and there is no indication our state constitution ignores apparent consent as a valid exception to the warrant requirement.³

² Appellant also argues on appeal that the trial court erred in finding the Agreement was valid and alternatively erred in failing to find the State breached the Agreement by not affording Appellant the time indicated in the agreement to comply with its terms. (*See* Appellant’s III & IV Issue on Appeal.) These arguments are unpreserved. The trial court never held the Agreement was a valid contract and clarified that Appellant was “not on trial for violating the magistrate court’s conditions.” Further, the underlying validity is immaterial. The question is whether the police officers were reasonable in relying on it as a basis for their search.

³ Although the *Counts* decision did not expressly recognize consent as an exception to Article I, Section 10 to the South Carolina Constitution, in concluding the intrusion was not consensual, it tacitly acknowledged that had the encounter been consensual, no constitutional violation would occur. *See Counts*, 413 S.C. at 172, 776 S.E.2d at 69–70 (“Although the State maintains these

II.

Regardless of the admissibility of the photographs, Appellant was not prejudiced by their admission because she was not convicted of ill-treatment of animals.

At the outset, it is curious Appellant would appeal the admission of the photographs because they could only be germane to the charges on the ill-treatment of animals—charges for which she was ultimately acquitted. The photos have no bearing on whether the animals were properly tagged or whether she was in possession of methamphetamines. Accordingly, she can demonstrate no prejudice. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (noting error only requires reversal where defendant can prove prejudice). Furthermore, her challenge fails on the merits.

“The trial judge is given broad discretion in ruling on questions concerning the relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion.” *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991). “Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears.” *State v. Schmidt*, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). Additionally, “[a] trial court has particularly wide discretion in ruling on Rule 403 objections.” *State v. Gray*, 408 S.C. 601, 608, 759 S.E.2d 160, 164 (Ct. App. 2014). Under Rule 403, SCRE, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice”

The photos were relevant to the charge of ill-treatment of animals. The basis for Appellant’s challenge is that the State failed to prove the animals were ever in the mobile home,

encounters are entirely consensual, we cannot ignore the nature of the ‘knock and talk’ procedure. In contrast to a routine sales call, the ‘knock and talk’ technique is inherently coercive as it is conducted by law enforcement and not a private citizen.”)

and even though animal feces was observed inside, the State failed to demonstrate the feces was not from wild animals. These perceived flaws in the value of the evidence are excellent fodder for cross-examination but do not render the evidence irrelevant. It is absurd to suggest the State needed to prove the species which contributed fecal matter inside the mobile home to manifest probative value. It would be a reasonable inference that the animals were permitted to enter the mobile home and Appellant testifying to the contrary merely makes that a question of fact. It does not negate the inference as a matter of law. Additionally, the photos are not so inflammatory that the prejudice substantially outweighed the probative value. Many of the unchallenged photographs are similarly unpleasant. More importantly, Appellant was ultimately acquitted of ill-treatment of animals, so the claim the photos were highly prejudicial falls short. Accordingly, the trial court did not err in allowing the photographs of the mobile home into evidence.

III.

The trial court properly denied Appellant's motion for directed verdict on the rabies tag violations because evidence existed Appellant failed to place the tags on her dogs.

Appellant asserts the trial court should have directed a verdict in her favor on the rabies tag violations because she maintained the rabies certificates and her decision not to keep tags on the animals was made for their safety. Essentially, she contends her violation is merely technical and widespread, and therefore forgivable. This claim is not a cognizable tenet of criminal law. Appellant cites to no law supporting her contention and instead merely notes the directed verdict standard of review and the statute she violated. Her argument is therefore abandoned and not preserved for review. *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (“Appellant fails to provide arguments or supporting authority for his assertion. Thus, he is deemed to have abandoned this issue.”). Regardless, Appellant's argument fails on the merits.

When reviewing the denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the State. *State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). “The Court's review is limited to considering the existence or nonexistence of evidence, not its weight.” *Id.* “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004).

Evidence was adduced, in the form of testimony by officers and Appellant, that the dogs did not have rabies tags on their collars. The statute expressly states:

With the issuance of the certificate, the licensed veterinarian shall furnish a serially numbered metal license tag bearing the same number and year as the certificate with the name and telephone number of the veterinarian, veterinary hospital, or practice. *The metal license tag at all times must be attached to a*

collar or harness worn by the pet for which the certificate and tag have been issued.

S.C. Code Ann. § 47-5-60 (emphasis added). It is immaterial that other shelters may similarly be in violation of the law. While the reasoning undergirding her violation may have been taken into consideration in mitigation after her conviction, others' disregard for a law does not change her culpability under the law. If Appellant dislikes the statutory provisions provided by the Legislature, it is with that body she must lodge her complaint—not with the Court. *See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.”); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”). Accordingly, the trial court properly denied Appellant’s motion for a directed verdict.

IV.

Appellant incorrectly alleges the trial court's sentence prevents her from ever operating an animal shelter as it was actually mandated as a term of probation within the trial court's discretion.

Appellant argues the trial court's including in its sentence a prohibition on operating an animal shelter constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. This argument is unpreserved and predicated on a mistake of fact.

Initially, Appellant never objected to the sentence at trial or in a post-trial motion and therefore this issue is unpreserved. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”). More fundamentally, the trial court did not sentence Appellant to a lifelong ban from running an animal shelter. This is clear from the transcript and the sentencing sheets. (Tr. 366–37, *Sentencing sheets.) The prohibition is a term of the probation and thus will end at the successful completion of her probationary period. To the extent the Court wishes to construe her argument as a challenge to her probation, her argument fails on the merits.

Trial courts “are allowed a wide, but not unlimited, discretion in imposing conditions of suspension or probation” *State v. Brown*, 284 S.C. 407, 410, 326 S.E.2d 410, 411 (1985). “Various conditions of probation generally have been upheld unless (1) the condition is so unreasonable or overly broad that compliance is virtually impossible and the burden imposed on the probationer is greatly disproportionate to any rehabilitative function the condition might serve; (2) the condition has no relationship to the crime of which the offender was convicted; (3) the condition requires or forbids conduct which is not reasonably related to future criminality; (4)

the condition relates to conduct which is not in itself criminal unless the prohibited conduct is reasonably related to the crime of which the offender was convicted or to future criminality; (5) the condition violates due process because it is overly broad or void for vagueness; or (6) the condition unnecessarily or excessively tramples upon First Amendment rights of free association.” *State v. Allen*, 370 S.C. 88, 97–98, 634 S.E.2d 653, 657 (2006).

Here, the prohibition against running an animal shelter was not an abuse of discretion. Although Appellant was acquitted on all charges of ill-treatment, she was in conscious violation of the rabies tag statute and was a user of methamphetamines. Not allowing her to control the care of helpless animals, and accept money for it, is within the scope of concern emanating from her convictions. Further, she was not barred from keeping animals as pets; the prohibition extends only to running an animal shelter. Accordingly, the provision was within the trial court’s broad discretion in fashioning probation terms.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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April 24, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 24 2017

APPEAL FROM ANDERSON COUNTY
R. Scott Sprouse, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2015-002459

THE STATE,RESPONDENT,

v.

DEBRA LYNNE SHERIDAN,APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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

This 24th day of April, 2017.


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SC Court of Appeals

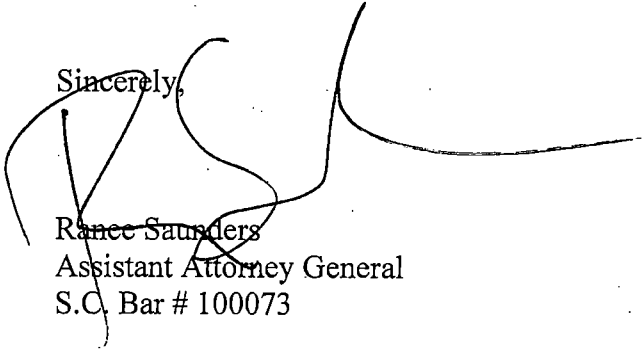
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RE: State v. Debra Lynne Sheridan
Appellate Case No. 2015-002459

Dear Counsel:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,


Rance Saunders
Assistant Attorney General
S.C. Bar # 100073

RS/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original and one enclosed)
Victim Services