

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from York County
Honorable J. Cordell Maddox, Jr., Circuit Court Judge
Appellate Case Tracking No. 2015-000604

The State,

Appellant,

vs.

Tami Baker Sisler,

Respondent.

PETITION FOR REHEARING

On December 6, 2017, this Court affirmed the trial court's decision finding the magistrate properly granted Sisler's motion to dismiss because Deputy Haire lacked probable cause to initiate the stop. This Court misapprehended or overlooked relevant facts, important holdings of the magistrate court, and significant legal decisions. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find Deputy Haire had reasonable suspicion and probable cause to conduct the stop; reverse the decisions of the circuit court and magistrate court; and remand for a new trial.

This Court required "conclusive" proof of a traffic violation as opposed to mere reasonable suspicion or probable cause, and also continued to focus on Deputy Haire's reasoning for the stop in making its determination of whether objective evidence existed which would have given Deputy Haire reasonable suspicion to stop Sisler. The standard applied by this Court is improper under long-existing United States Supreme Court law. Additionally, this Court erred in

not finding the stop entirely reasonable in light of the prior interactions between Deputy Haire and Sisler.

While this Court correctly indicates the subjective intentions of Deputy Haire are not to be considered, citing State v. Bash, 419 S.C. 263, 276, 797 S.E.2d 721, 728 (2017), its opinion indicates it thoroughly considered Deputy Haire's subjective intent and allowed the Deputy's determinations to alter the analysis of reasonable suspicion. This Court's opinion notes: "Deputy Haire insisted numerous times the only reason he signaled Sisler was because she missed the turn he instructed her to take during their initial encounter." The Court also stated: "Thereafter, Deputy Haire admitted he 'stopped' Sisler for missing the turn but continued to argue he did not initiate a traffic stop." The Court relied heavily on Deputy Haire's subjective determination that his stop of Sisler was not a traffic stop.

As a result of its focus on Deputy Haire's subjective intent to not stop Sisler based on reasonable suspicion of crossing the centerline, this Court improperly analyzed whether Sisler missing her turn allowed for a proper basis to stop her vehicle. This Court found: "Because missing a turn is not a violation of any South Carolina statute, we find no error in the circuit court's finding that the stop was unlawful." The proper consideration was not whether, as Deputy Haire subjectively believed, that the stop was initiated because Sisler missed her turn, but instead is whether at the time of the stop Deputy Haire had an objective basis founded on reasonable suspicion to believe she had crossed the centerline.

If this Court removes consideration of Deputy Haire's subjective intentions from its consideration, it should find an objective basis for the stop occurred when Sisler appeared to cross the center line with her vehicle moments before he flashed his blue lights. Deputy Haire

indicated he witnessed the violation, and the video recording indicates his belief a crossing of the line occurred was entirely reasonable.

This Court can consider whether Deputy Haire would have had reasonable suspicion of the moving violation even if he did not base his stop on that fact. See e.g., Devenpeck v. Alford, 543 U.S. 146, 154-155 (2004) (“[The] subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause.”). “A fair reading of Whren and other car stop cases leads to the conclusion that an observed traffic violation legitimates a stop even if the detectives do not rely on the traffic violation.” U.S. v. Dhinsa, 171 F.3d 721, 725 (2nd Cir. 1998). Further, the fact an officer does not intend to issue a citation or ticket for a violation does not render the traffic stop unreasonable and invalid. See e.g., People v. Ferraiola, 309 A.D.2d 981, 982 (N.Y. 2003) (“The fact that [the officer] did not intend to issue defendant a ticket for that violation does not render the stop unlawful.”); State v. Goodwin, 351 S.C. 105, 111, 567 S.E.2d 912, 914-915 (Ct. App. 2002) (“Just as an underlying arrest need not be prosecuted in order to successfully prosecute for resisting arrest, neither should the absence of a charge on the underlying arrest bar evidence seized subsequent to a proper resisting arrest charge.”).

The United States Supreme Court has explained the process of determining whether reasonable suspicion or probable cause exists from an objective standpoint. The Court articulated:

The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause. The first part of the analysis involves only a determination of historical facts, but the second is a mixed question of law and fact: “[T]he historical facts are admitted

or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.” Pullman-Standard v. Swint, 456 U.S. 273, 289, n. 19, 102 S.Ct. 1781, 1791, n. 19, 72 L.Ed.2d 66 (1982).

Ornelas v. United States, 517 U.S. 690, 696–97 (1996). Additionally, the United States Supreme Court has explained the requisite proof required to demonstrate reasonable suspicion or probable cause, and explicitly differentiated it from reasonable doubt or “conclusive” proof as required by this Court in its opinion. At least as long ago as 1813, the United States Supreme Court recognized requiring proof sufficient to justify conviction would render the Fourth Amendment unworkable. The Court stated:

It is contended, that probable cause means *prima facie* evidence, or, in other words, such evidence as, in the absence of exculpatory proof, would justify condemnation.

This argument has been very satisfactorily answered on the part of the United States by the observation, that this would render the provision totally inoperative. It may be added, that the term ‘probable cause,’ according to its usual acceptation, means less than evidence which would justify condemnation; and, in all cases of seizure, has a fixed and well known meaning. It imports a seizure made under circumstances which warrant suspicion.

Locke v. United States, 11 U.S. 339, 348 (1813). More recently the United States Supreme Court has explained: “Articulating precisely what ‘reasonable suspicion’ and ‘probable cause’ mean is not possible. They are commonsense, nontechnical conceptions that deal with ‘the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’” Illinois v. Gates, 462 U.S. 213, 231 (1983) (quoting Brinegar v. United States, 338 U.S. 160, 175 (1949)). The United States Supreme Court has indicated:

We have described reasonable suspicion simply as “a particularized and objective basis” for suspecting the person stopped of criminal activity, and probable cause to search as

existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found. We have cautioned that these two legal principles are not “finely-tuned standards,” comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. They are instead fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed.

Ornelas, 517 U.S. at 696. The South Carolina Supreme Court has articulated a similar description of reasonable suspicion:

Reasonable suspicion requires a particularized and objective basis that would lead a person to suspect another of criminal activity. In determining whether reasonable suspicion exists, the totality of the circumstances must be considered. While such a detention does not require probable cause, it does require something more than an inchoate and unparticularized suspicion or hunch.

State v. Anderson, 415 S.C. 441, 447, 783 S.E.2d 51, 54 (2016) (internal citations and quotations omitted). The South Carolina Supreme Court has explained:

The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974).

The central theme of the definitions of reasonable suspicion and probable cause are that the officers do not have to have certainty. As the United States Supreme Court explained: “the requirement of reasonable suspicion is not a requirement of absolute certainty: sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment.”

New Jersey v. T.L.O., 469 U.S. 325, 346 (1985) (internal citations omitted).

The Fourth Amendment requires “some minimal level of objective justification” for making the stop. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of

the evidence. We have held that probable cause means “a fair probability that contraband or evidence of a crime will be found,” and the level of suspicion required for a Terry stop is obviously less demanding than that for probable cause.

United States v. Sokolow, 490 U.S. 1, 7 (1989). In another case, the United States Supreme Court explained: “Although an officer’s reliance on a mere “hunch” is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls **considerably** short of satisfying a preponderance of the evidence standard.” United States v. Arvizu, 534 U.S. 266, 274 (2002) (internal citations and quotations omitted).

Additionally, the officer’s determination of whether a violation occurred or is occurring need only be reasonable, it does not have to be correct. The United States Supreme Court recently determined reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition. In other words, reasonable suspicion can even be based on an error of law. See Heien v. North Carolina, 135 S. Ct. 530, 536 (U.S. 2014). “Reasonable suspicion arises from the combination of an officer’s understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground.” Id. The Supreme Court has “not held that the Fourth Amendment requires factual accuracy.” Illinois v. Rodriguez, 497 U.S. 177, 185 (1990). Further, the Court has upheld searches and seizures based on mistakes of fact, such as upholding a search incident to arrest when officers arrested the wrong individual. See Hill v. California, 401 U.S. 797, 803-804 (1971). Under the Fourth Amendment, a reasonable mistake, whether of law or fact, does not render a seizure unconstitutional.

In light of the longstanding case law from both the United States Supreme Court and the South Carolina Supreme Court, this Court clearly erred in requiring a “conclusive objective basis” or otherwise “conclusive” proof of the traffic violation. This Court should reexamine the

facts of the case, without consideration of the subjective intent of Deputy Haire, and in light of the minimal requirements to establish reasonable suspicion and probable cause.

In the instant case, the “historical facts” are undisputed because a video captured exactly what transpired. Further, Deputy Haire indicated prior to watching the video: “She had traffic violations.” (R.49). He continues explaining: “Then when she pulls off again, **she’s riding on the middle line**, she’s going 25 miles an hour, and she misses the turn.” (R.50)(emphasis added). The following colloquy then occurs:

Q. And the reason you stopped her was to check on her why she did that.

A. That, along with -- I mean, she’s doing weird stuff.

Q. She’s nervous.

A. Yeah, **she’s riding the line, she’s crossing the centerline.**

(R.53) (Emphasis added). The colloquy continues:

A. There is a traffic violation, but I may not have initiated a stop for that; because, she pulled over on her own when she passed the point of where she was supposed to turn.

Q. Well, what was -- What was the traffic violation?

A. **Crossing the centerline.**

Q. She crossed over the centerline.

A. **I believe she was driving on the centerline, over the centerline**, however you want. So we’ll see that on the video.

(R.55) (emphasis added). After this colloquy, in which the Deputy Haire makes it abundantly clear he witnessed traffic violations, and those violations consisted of Sisler “riding the line . . . crossing the centerline,” the parties watch the video. (R.56).

After witnessing the video, the attorneys and the magistrate discuss whether Sisler committed a traffic violation by crossing the centerline. Most significantly, the trial judge indicated immediately after watching the video his belief Sisler crossed the centerline. (R.71).

Additionally, Sisler's counsel admits she drove on the line, which is sufficient to violate section 56-5-1900, which states, in pertinent part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply ... [a] vehicle shall be driven as nearly as practicable **entirely within a single lane** and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

S.C. Code Ann. § 56-5-1900(a) (2006)(emphasis added). This Court analyzed the statute in State v. Vinson, 400 S.C. 347, 734 S.E.2d 182 (Ct. App. 2012). This Court upheld the circuit court's interpretation of the statute finding, "the driver may only leave his lane 'if it's impossible to stay in that lane because of an obstruction on the road or the road conditions or something of that nature.'" Id. at 352, 734 S.E.2d at 185. This Court then correctly found a traffic stop was lawful based on "a **perceived** violation of section 56-5-1900." Id. at 353 (emphasis added).

The standard to apply is whether, objectively, Deputy Haire had reasonable suspicion to conclude Sisler failed to maintain her lane. This Court incorrectly required "conclusive proof" of a violation instead of determining whether reasonable suspicion would have existed. This Court focused on the magistrate's return and the portion in which he found whether she crossed the centerline to be conclusive. Instead, this Court should have properly focused on the first portion of the statement by the magistrate. He indicated: "Granted, it appeared she crossed over" The appearance that she crossed over, which the magistrate recognized in his Return and, as indicated above, clearly recognized immediately after watching the video meets the definition of objective reasonable suspicion.

This Court should grant the rehearing, utilize the objective standards set forth by the United States Supreme Court, and conclude reasonable suspicion existed at the time of the traffic stop justifying Deputy Haire stopping Sisler. This Court should remand the case for trial.

In addition, Deputy Haire did not unreasonably seize Respondent as is required for a violation of the Fourth Amendment. Critically, “a seizure does not occur simply because a police officer approaches an individual and asks a few questions.” Florida v. Bostick, 501 U.S. 429, 434 (1991). As a result, a law enforcement officer generally may approach a citizen in an effort to speak with or question that person without implicating the Fourth Amendment and without effectuating a seizure so long as a reasonable person under the same circumstances as the citizen would feel free to disregard the officer and leave if he or she chooses to do so. Bostick, 501 U.S. at 434. “A consensual encounter has been defined as simply the voluntary cooperation of a private citizen Because an individual is free to leave at any time during such an encounter, he is not ‘seized’ within the meaning of the Fourth Amendment.” State v. Pichardo, 367 S.C. 84, 100, 623 S.E.2d 840, 848-849 (Ct. App. 2005).

This Court overlooked the relevant facts detailing the encounter between Deputy Haire and Sisler, starting when she was off the side of the road and continuing through all the assistance he offered her including attempting to highlight when she needed to turn by flashing his lights. After following Sisler at approximately 25 miles per hour, Deputy Haire witnessed Sisler miss the turn he instructed her to take in order for her to safely travel to Rock Hill as she indicated in their prior discussion. As a result, Deputy Haire attempted to get Sisler’s attention as she passed the turn by blinking his lights. (Video from Deputy Haire at approximately 22:32:15). Deputy Haire blinked the lights right at the turn, which Sisler knew was the turn he believed she would take. The lights did not remain on, but are only blinked on as a clear indication to her that she is missing her turn.

Sisler did not immediately stop after the lights were turned on, but eventually pulled over well past the turn Deputy Haire believed she would be taking. Sisler, unlike someone being

stopped in a traffic stop, immediately exited the vehicle to speak with Deputy Haire and did not act in any way as a person would if she believed she was being stopped for a traffic violation. It is clear when she pulled over, Sisler understands Deputy Haire intended to continue offering assistance. Immediately after exiting the vehicle, Sisler began explaining her decision to skip the turn and instead heading to a friend's house. (Video from Deputy Haire at approximately 22:33:00). At no point does she ask why he pulled her over or act as if the encounter is a surprising encounter. Based on all the circumstances, including their prior interactions and the fact Deputy Haire merely blinked his blue lights as she passed her turn, a reasonable person would not have felt seized, but would instead have believed Deputy Haire was merely seeking to assist them in going in the proper direction. Accordingly, this Court should find Deputy Haire did not unreasonably seize Sisler in light of the entirety of their interactions.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the magistrate court erred in relying on Deputy Haire's subjective intent to determine the traffic stop leading to Sisler's DUI arrest was invalid, find Deputy Haire either had reasonable suspicion to conduct the traffic stop based on Sisler's crossing the centerline or find the encounter was reasonable and consensual in light of their extended initial encounter, and reverse and remand for a trial.

Respectfully submitted,

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Edward L. Phipps, Esquire
James D. Stanko, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 15th day of December, 2017.


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