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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appeal Case No. 2016-000544

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SC Court of Appeals

The City of Rock Hill Respondent,

v.

Theotis E. Dunham Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I. **DID THE LOWER COURT ERR IN RULING THAT THE CHECKPOINT DID NOT VIOLATE THE FOURTH AMENDMENT?**

STATEMENT OF THE CASE

On September 18, 2014, the Appellant was charged with DUI 1st and DUS 4th by the City of Rock Hill, South Carolina. The matter came before the Court pursuant to a Motion to Dismiss and Bench Trial on June 16, 2015. On September 30, 2015, the Honorable Jane Pittman Modla, Judge for the Rock Hill Municipal Court issued an Order finding the Appellant guilty of both charges. The Appellant was sentenced to a fine of \$997.00 or 30 days on the DUI 1st offense and was sentenced to 90 days plus a \$2,105.00 fine on the DUS 4th offense. The Appellant timely filed a Notice of Appeal which was heard by the Honorable John C. Hayes, III on February 16, 2016. Judge Hayes issued his Order affirming the decision of the Municipal Court on February 18, 2016. On March 1, 2016, the Appellant served the Notice of Appeal.

FACTS

Appellant was stopped at a traffic checkpoint at East Main Street and Alright Road in the City of Rock Hill on September 18, 2014. As a result the Appellant was charged with a DUI 1st offense and DUS 4th offense. The City of Rock Hill Police Department decided to conduct a traffic checkpoint on September 18, 2014. The checkpoint plan was approved by Major Parker with the Rock Hill Police Department for September 18, 2014.¹ The location for the checkpoint was U.S. 21/East Main Street at

¹ R., p. 27, Return To Appeal, Attachment 4.

Cowan Farm Road.² No time was given on the checkpoint plan. The City based the location for checkpoints on certain “HOTSPOTS”.³ The City of Rock Hill had a training session and the information about the checkpoints was placed in a document called Sixteenth Circuit Law Enforcement Network/DDACTS Multijurisdictional Event.⁴ On City’s Exhibit 1B the location for the checkpoint was noted to be Elizabeth/Flint Street and East White Street/Woods Street and not the Cowan Farm Road location. The Appellant was stopped at a checkpoint at the location on Main Street and Albright Road. Main Street and Albright Road was not a location that was approved by Major Parker. It was not in the Cowan Farm Road location. It was not a location in the document for the training sessions. The Main Street and Albright Road location is outside all of the locations that had been approved. As a result of being stopped at the checkpoint, the Appellant was arrested for DUI 1st offense and DUS 4th offense.

ARGUMENT

I. BECAUSE THE CHECKPOINT AT WHICH THE APPELLANT WAS STOPPED WAS AT AN UNAPPROVED LOCATION THE STOP VIOLATED THE FOURTH AMENDMENT.

Stopping a vehicle at a checkpoint constitutes a seizure of a person within the meaning of the Fourth Amendment. United States v. Vogel, 209 Fed. 3rd 353 (4th Cir. 2000). The United States Supreme Court has upheld the constitutionality of government checkpoints under certain circumstances including detecting drunken drivers. Michigan Department of State Police v. Sitz, 496 US 444 (1990). Some basis for the location for the checkpoint is required. State v. Vickery, 752 SE 2nd 218, 399 S.C. 507 (S.C. App, 2012). In the present case, there was no basis for the location of the checkpoint at East

² R., p. 27, Return To Appeal, Attachment 4.

³ R., p. 30.

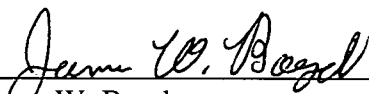
⁴ R., p. 28.

Main Street and Albright Road where the Appellant was stopped. According to testimony the checkpoint location was determined based on data of certain "HOTSPOTS". The HOTSPOTS are located on the Return to Appeal attachment 4, City's Exhibit 1D. The checkpoint plan that had been approved by Major Parker, with the City of Rock Hill Police Department on September 18, 2014, was U.S. 21/East Main Street at Cowan Farm Road. The Cowan Farm Road area is not located in any of the HOTSPOTS. The actual briefing and planning for the checkpoints listed the location of the checkpoints not at Cowan Farm Road but at Elizabeth/Flint Street and East White Street/Woods Street.⁵ The Appellant was stopped at East Main Street and Albright Road which neither location was approved on the initial checkpoint plan, the Attachment 4, City's Exhibit 1B or the checkpoints approved at the briefing.⁶ There was no data to support the location of the checkpoint and the checkpoint was not at an approved location.

CONCLUSION

For all the foregoing reasons the Appellant's conviction should be reversed.

Respectfully Submitted,


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⁵ R., p. 28

⁶ R., p. 28

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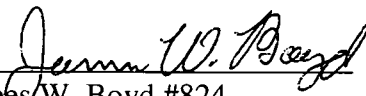
Theotis E. Dunham, Appellant,

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The City of Rock Hill, Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.


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August 11, 2017

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August 16, 2017

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211


RE: Theotis E. Dunham v. City of Rock Hill Municipal Court
Appellate Case No.: 2016-000544

Dear Ms. Kitchings:

Enclosed is an unbound copy and 15 bound copies of the Final Brief of Appellant and a Proof of Service for the above-entitled matter. Thank you for your attention to this matter.

With kind regards, I am

Sincerely,


James W. Boyd
Attorney for Appellant

JWB/klc

Enclosures

cc: Mr. Chris Barton, Senior Solicitor

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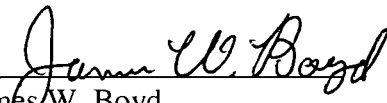
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v.

Theotis E. Dunham,Appellant.

PROOF OF SERVICE

I, James W. Boyd, certify that on August 16, 2017, I served the within Final Brief on Respondent by U.S. Mail and delivering a copy of the same to the attorney of record, Chris Barton, Rock Hill Solicitor's Office, 201 E. Main Street, 3rd Floor, Rock Hill, SC 29730, I further certify that all parties required by Rule 208 to be served have been served.


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