STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From York County
Hon. J. Cordell Maddox, Circuit Court Judge
Appellate Case Tracking No. 2015-000604

The State, Petitioner,

v.

Tami Baker Sisler, Respondent.

Opinion No. 2017-UP-458 (S.C. Ct. App. filed December 6, 2017)

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on December 15, 2017. The Petition for Rehearing was denied by Order filed January 23, 2018.

STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals erred in affirming the dismissal of this case based on a lack of probable cause to stop Respondent. Deputy Haire had probable cause to stop Respondent based on her traffic violation of crossing the lane line and his subjective beliefs are irrelevant to a determination of whether the traffic stop was lawful. The Court of Appeals and lower courts all imposed a requirement of conclusive proof the violation occurred and did not rely on the proper standard for determining probable cause. Additionally, even if the officer's subjective intentions are considered and the "stop" is not considered a valid traffic stop, then Respondent was not unconstitutionally seized and the "stop" was more in the nature of a consensual encounter.

STATEMENT OF THE CASE

Procedural History

Respondent was charged with DUI and child endangerment. Prior to trial in Magistrate's Court, Respondent moved to dismiss the charges alleging the officer had no probable cause to stop Respondent. On January 15, 2014, the magistrate dismissed the charges finding a lack of probable cause. The State filed a Motion for Rehearing and/or Reconsideration on January 16, which was denied by written order of the magistrate on January 30, 2014.

The State filed its Notice of Appeal on January 30, 2014. The magistrate issued his Return in February 2014. A hearing was held before the Honorable J. Cordell Maddox, Jr. on June 3, 2014. By Order dated February 5 and filed February 20, 2015, the circuit court affirmed the dismissal by the magistrate. The State timely filed its Notice of Appeal on February 24, 2015.

After briefing and oral argument, the Court of Appeals affirmed the dismissal of the case in State v. Sisler, Op. No. 2017-UP-458 (S.C. Ct. App. Filed December 6, 2017). The State served and filed a Petition for Rehearing on December 15, 2017. The Court of Appeals denied the Petition for Rehearing by Order filed January 23, 2018. This Petition for Writ of Certiorari follows.

Factual Background

Deputy Haire came upon Respondent and her two kids in the grass median facing the wrong direction on Anderson Road in York County. She claimed her GPS caused her to travel down the wrong side of the road into oncoming traffic. After pulling off to avoid oncoming vehicles, she became stuck in the grass median.

At the very beginning of the encounter with Deputy Haire, Respondent stated "I'm not from here." (Video From Deputy Haire at 22:24:25). Respondent and Deputy Haire then have a

congenial conversation regarding her GPS directions and the fact she thought she was on a two lane road, but instead was travelling into traffic. Respondent even asked Deputy Haire if he could drive her vehicle out of the median. Deputy Haire and another individual worked to free her vehicle from the median. (Video from Deputy Haire).

Deputy Haire determined where Respondent was headed and provided her with directions to the location. He indicated she needed to take the first right to go where she intended. He even explained she needed to pay attention to make sure she makes the turn to the right, stating "as soon as you get across don't miss the turn." (Video from Deputy Haire's Vehicle 22:30:01).

After making a three point turn, Respondent began travelling the correct direction on Highway 5. Deputy Haire followed her. He observed her cross the lane line and then miss the turn he instructed her to take. (Video from Deputy Haire at 22:32:00-22:32:16) As a result, Deputy Haire flashed his lights and his blue lights. He did not leave his blue lights activated. Respondent pulled over to the side of the road roughly thirty seconds later and then Deputy Haire activated his blue lights. Respondent exited her vehicle to talk with Deputy Haire. As she is getting out, she stumbled, which was noticed by Deputy Haire. As a result, Deputy Haire performed the HGN test and asked for her driver's license. Deputy Haire called in another officer to perform field sobriety tests prior to releasing her to drive with the two children in the back seat. (Video from Deputy Haire).

At a pre-trial hearing, Respondent moved to dismiss the charges based on an unlawful traffic stop. (App.35-36). Prior to watching the video, Deputy Haire indicated: "She had traffic violations." (App.51). 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." (App.52). During the hearing, Respondent's counsel asked Deputy Haire if he initiated a traffic stop. He indicated he

did not intend to conduct a traffic stop even though he could have because she committed a traffic violation. (App.56-57). Deputy Haire indicated she pulled over on her own after she passed her turn. Deputy Haire explained he thought he just flashed his headlights at her to get her to turn, and instead realized after watching the video he flashed both headlights and blue lights. He did not leave the blue lights on, however. (App.66-67). Deputy Haire reiterated he saw her cross the center line of the lanes prior to flicking his blue lights and Respondent pulling over. (App.70).

He explained officers do not blink their blue lights for a traffic stop. He stated Respondent never asked why she was being stopped because she "knew what blinking the light meant, 'You missed your turn.'" He testified "a normal, rational person, if you blink a light, wouldn't have pulled over." (App.79).

ARGUMENT

I. The Court of Appeals erred in affirming the dismissal of this case based on a lack of probable cause to stop Respondent. Deputy Haire had probable cause to stop Respondent based on her traffic violation of crossing the lane line and his subjective beliefs are irrelevant to a determination of whether the traffic stop was lawful. The Court of Appeals and lower courts all imposed a requirement of conclusive proof the violation occurred and did not rely on the proper standard for determining probable cause. Additionally, even if the officer's subjective intentions are considered and the "stop" is not considered a valid traffic stop, then Respondent was not unconstitutionally seized and the "stop" was more in the nature of a consensual encounter.

The Court of Appeals erred in affirming the dismissal of this case on the basis Deputy Haire lacked probable cause to initiate the stop of Respondent. Deputy Haire did have probable cause and the Court of Appeals' analysis in determining otherwise was flawed because the Court required conclusive proof and did not examine whether, objectively, reasonable suspicion or probable cause existed to determine whether a traffic violation occurred. Further, while specifically indicating the subjective intention of the officer was not to be considered, the Court of Appeals' opinion focuses on the intention of the officer. Additionally, even if the traffic stop was made without reasonable suspicion or probable cause, the stop was not unreasonable in light of the preexisting circumstances between the party and did not constitute an unreasonable seizure in violation of the Fourth Amendment.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666

(2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002).

Analysis

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..." U.S. Const. amend. IV. The purpose of the Fourth Amendment is "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976). However, it is not designed "to eliminate all contact between the police and the citizenry." United States v. Mendenhall, 446 U.S. 544, 553-554 (1980). "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). As a result, only unreasonable searches and seizures are constitutionally prohibited. See Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

Valid Traffic Stop

Both the lower courts and the Court of Appeals committed errors on law in the analysis used to determine whether the traffic stop was properly based upon reasonable suspicion or probable cause. For Fourth Amendment purposes, the traffic stop of a vehicle is a seizure. See State v. Nelson, 336 S.C. 186, 192–93, 519 S.E.2d 786, 789 (1999). In addition, the "[t]emporary detention of individuals during the stop of an automobile ... constitutes [a] 'seizure' of persons

within the meaning of [the] Fourth Amendment." Whren v. United States, 517 U.S. 806, 809-10 (1996). "A seizure for a traffic violation justifies a police investigation of that violation. A relatively brief encounter, a routine traffic stop is more analogous to a so-called Terry stop . . . than to a formal arrest." Rodriguez v. U.S., ___ U.S. ___, 135 S.Ct. 1609, 1614 (2015) (internal citations and quotation marks omitted).

"An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Whren, 517 U.S. at 810. A determination of whether there is reasonable suspicion or probable cause to believe a traffic violation has occurred, and therefore justification for a traffic stop, is an objective one. It does not rely on the subjective intent of any party, but merely a determination, objectively, of whether a violation occurred thereby making the stop reasonable. As explained in Whren: "Not only have we never held . . . that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary." Id. at 812. The Court continued: "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." Id. at 813 (citing Scott v. United States, 436 U.S. 128, 136, 138 (1978)).

The Ninth Circuit Court of Appeals summarizes the holding in Whren:

> The Supreme Court held that the officers had probable cause to believe that various provisions of the traffic code had been violated. The Court specifically declined to hold that the Fourth Amendment test for traffic stops should be "whether a police officer, acting reasonably, would have made the stop for the reason given." Rather, the Court explained that "[s]ubjective intentions

> play no role in ordinary, probable-cause Fourth Amendment analysis," and that "we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers." Whren stands for the proposition that **if the officers have probable cause to believe that a traffic violation occurred, the officers may conduct a traffic stop even if the stop serves some other purpose.** See also Devenpeck v. Alford, 543 U.S. 146, 125 S.Ct. 588, 593–94, 160 L.Ed.2d 537 (2004) ("[The] subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause.").

U.S. v. Willis, 431 F.3d 709 (9th Cir. 2005) (some internal citations omitted)(emphasis added).

Our South Carolina Supreme Court has stated: "The test whether reasonable suspicion exists is an objective assessment of the circumstances; the officer's subjective motivations are irrelevant." State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) (citing Ohio v. Robinette, 519 U.S. 33, 38 (1996) ("[T]he fact that an officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.")). "Violation of motor vehicle codes provides an officer reasonable suspicion to initiate a traffic stop." Id.

Additionally, as explained by the Eighth Circuit Court of Appeals, "an officer's subjective motivation—whether revealed at the time of the traffic stop or at the time of a suppression hearing—is irrelevant to the probable-cause inquiry." U.S. v. Demilia, 771 F.3d 1051, 1055 (8th Cir. 2014). The Court concluded even though the officer intended to base his traffic stop on an invalid basis, the fact he could have justified the stop on another basis could still provide the requisite "objective legal justification needed to support probable cause for the stop." Id.

Moreover, a traffic stop supported by probable cause "is valid even if the police would have ignored the traffic violation but for their suspicion that greater crimes are afoot." United States v. Thomas, 93 F.3d 479, 485 (8th Cir.1996). "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.").

While the Court of Appeals correctly indicated 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 Respondent 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' Respondent 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 Respondent was not a traffic stop.

As a result of its focus on Deputy Haire's subjective intent to not stop Respondent based on reasonable suspicion of crossing the centerline, the Court of Appeals improperly analyzed

whether Respondent missing her turn allowed for a proper basis to stop her vehicle. The 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 Respondent 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.

This Court can consider whether Deputy Haire would have had reasonable suspicion of the moving violation even if he did not base his stop of Respondent 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. This Court's opinions agree:

> 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). This Court 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 was required by the lower courts and the Court of Appeals. 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 this Court, the Court of Appeals clearly erred in requiring a "conclusive objective basis" or otherwise "conclusive" proof of the traffic violation. As a result, the Court of Appeals committed an error of law necessitating review by this Court.

A review of the instant case demonstrates the "historical facts" upon which the Court can determine whether reasonable suspicion or probable cause existed are undisputed because a video captured exactly what transpired. (Video of Deputy Haire). Further, Deputy Haire indicated prior to watching the video: "She had traffic violations." (App.51). 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." (App.52)(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.**

(App.55) (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.

(App.57) (emphasis added). After this colloquy, in which the Deputy Haire makes it abundantly clear he witnessed traffic violations and those violations consisted of Respondent "riding the line . . . crossing the centerline," the parties watch the video. (App.58).

After witnessing the video, the attorneys and the magistrate discuss whether Respondent committed a traffic violation by crossing the centerline. Most significantly, the trial judge indicated immediately after watching the video his belief Respondent crossed the centerline. (App.73). Additionally, Respondent's counsel admits: "She was -- She rides – She drives on the -- very close to the line, but never swerves, never drifts, never goes over it." (App.74).[1] Driving on the line 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). The Court of Appeals analyzed the statute in State v. Vinson, 400 S.C. 347, 734 S.E.2d 182 (Ct. App. 2012). The 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. The Court of Appeals in Vinson then correctly utilized the proper standard for determining the existence of reasonable suspicion or probable cause and 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 Respondent failed to maintain her lane. This Court incorrectly required "conclusive proof" of a violation instead of determining whether reasonable suspicion would have existed. The Court of Appeals focused on the magistrate's return and the portion in which he found whether she crossed the centerline to be "conclusive." Instead, the Court should have properly

[1] This Statement admits reasonable suspicion existed for Deputy Haire to pull Respondent over based on the officer's reasonable belief she crossed or at minimum drove on the dividing line.

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 Petition for Certiorari to review the Court of Appeals' decision because the Court, and both lower courts, committed an error of law in their analysis of probable cause and reasonable suspicion.

Reasonable Seizure

In addition, Deputy Haire did not unreasonably seize Respondent as is required for a violation of the Fourth Amendment. Pursuant to the Fourth Amendment, an individual's constitutional rights are not infringed by an encounter with a law enforcement officer **unless** the individual is seized or detained by the officer and the officer does not possess reasonable, objective grounds for effectuating the seizure. Florida v. Royer, 460 U.S. 491, 497-498 (1983). 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). Likewise, an officer does not effectuate a seizure merely by identifying himself or herself to an individual as a law enforcement officer. Royer, 460 U.S. at 497. Instead, a seizure occurs "[o]nly when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]" Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968). 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 (emphasis added). "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).

In the instant case, Respondent and Deputy Haire had more than one encounter. Deputy Haire pulled up alongside Respondent's stuck vehicle to ascertain whether she needed assistance. Respondent immediately indicates she is "not from here" and seeks assistance after explaining her GPS lead her down the wrong side of the road. After getting her vehicle unstuck, Deputy Haire instructs Respondent on how to get where she indicates she is intending to go. He mentions several times the importance of taking the first right and of paying attention as she crosses the bridge so she does not miss the first right. Finally, he indicated he would blink his lights to signal to Respondent that she can go ahead and do the three point turn; so they have established his blinking lights as a signal for her to do what he has instructed her to do. (Video from Deputy Haire at 22:30:40). This encounter sets the stage for the second encounter after Respondent misses the turn she has been instructed to take.

After following Respondent at approximately 25 miles per hour, Deputy Haire witnessed Respondent 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 Respondent's attention as she passed the turn by blinking both his headlights and blue lights. (Video from Deputy Haire at approximately 22:32:15). Deputy Haire blinked the lights right at the turn, which Respondent knows is 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.

Respondent 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. Respondent, 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 Respondent understands Deputy Haire intended to continue offering assistance. Upon exiting the vehicle, Respondent 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.

The second interaction between Respondent and Deputy Haire is much more analogous to a consensual encounter than it is a seizure. "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).

A reasonable person, who had participated in all the interaction with Deputy Haire prior to the second stop, would have believed they were free to leave, and would not have felt compelled to stop. Further, as Deputy Haire testified, "a normal rational person, if you blink a light, wouldn't have pulled over." (App.79). She only pulled over because she knew Deputy Haire was attempting to assist her and she consented to the encounter with him to gain that assistance or explain why she did not need his further assistance. Accordingly, there was no

unreasonable seizure in this case and, therefore, no violation of the Fourth Amendment justifying excluding any evidence resulting after Respondent pulled over or the dismissal of the case. Accordingly, this Court should grant the Petition for Writ of Certiorari to review the decision of the Court of Appeals.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

February 21, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From York County
Hon. J. Cordell Maddox, Circuit Court Judge
Appellate Case Tracking No. 2015-000604

The State, Petitioner,

v.

Tami Baker Sisler, Respondent.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Petition For Writ of Certiorari to the Court of Appeals and Appendix by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Edward L. Phipps, Esquire
James D. Stanko, Esquire
155 King Street, 2nd Floor
Charleston, SC 29401

I further certify that all parties required by Rule to be served have been served.
This 21st day of February, 2018.

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