

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals

Appeal From York County

Hon. J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

THE STATE,

Petitioner,

v.

TAMI BAKER SISLER,

Respondent.

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

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEAL

Appeal from York County
Honorable J. Cordell Maddox, Jr., Circuit Court Judge
Appellate Case Tracking 2015-000604

THE STATE,

APPELLANT,

vs.

TAMI BAKER SISLER,

RESPONDENT.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	CENTRALIZED DUI COURT
COUNTY OF YORK	)	
	)	
State of South Carolina,	)	RETURN NOTICE OF APPEAL
	)	
Vs.	)	Case No. 2014-CP-46-00272
	)	
Tami Baker Sisler,	)	
DEFENDANT.	)	
_____	)	

- The first motions were based on all discovery requested by Sisler not provided by the Solicitor's Office. Everything the Solicitor had was provided to Sisler- Motion Denied.
- The second motion concerned probable cause or reasonable suspicion for the initial traffic stop itself. Officer Fowler and Officer Haire both with the York County Sheriff's Office were sequestered and sworn in. Officer Fowler was the arresting officer but did not make the traffic stop. His testimony was about what occurred when he arrived on the scene. His testimony was limited because the motion concerned what took place prior. Officer Fowler was dismissed.
- Officer Haire was then brought in. Sworn testimony from the officer and video of the incident was presented. Officer Haire was patrolling on Anderson Road (215) in the Lesslie Highway area. His video was recording and he approached two vehicles on the side of the four lane road. Sisler's vehicle was positioned on the median side headed the wrong way. As the officer approached, he stopped in the lane next to her vehicle and asked what was going on. Sisler



said that her Garmin told her to turn left so she did because she was lost. Haire told her to get in the car and he and the other driver would push her out. They did and then the officer told her that he would stop both lanes for her to initiate a three-point turn and to proceed the right way on the four lane road. Somewhere during this situation, it was heard on Officer Haire's radio asking if this is a 10:55 (a DUI) whereas he responded no. Sisler proceeded in the right direction with Officer Haire behind her. She missed her turn again. Officer Haire flashed his bright lights and right turn signal on and bumped his blue lights, Sisler pulled over, Officer Fowler was called, and the DUI investigation began. Even though the State argues that Sisler crossed the line, Sisler argued no. Granted, it appeared she crossed over, it was not conclusive. Also Officer Haire's testimony wavered back and forth whether this was a traffic stop or checking on Sisler. This all occurred within one mile of the first incident and the second incident with Sisler.

- o Officer Haire testified that he could have ticketed Sisler for crossing the broken line but he did not. Officer Haire was face to face with Sisler for eight minutes or so at the first incident site. She was stuck going the wrong way on the four lane road. After she left, she was detained until Officer Fowler arrived and began a DUI investigation. No probable cause or reasonable suspicion for the second stop. Motion to Dismiss. Granted.

A handwritten signature in black ink, appearing to read "Amber Floyd".

AMBER FLOYD
DUI CLERK

A large, stylized handwritten signature in black ink, appearing to read "Clayburn S. Barnette, Jr.".

CLAYBURN S. BARNETTE, JR.
DUI JUDGE

February 5, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
State of South Carolina,)
)
Vs.)
)
Tami Baker Sisler,)
)
DEFENDANT.)
_____)

IN THE MAGISTRATE'S COURT

CENTRALIZED DUI COURT

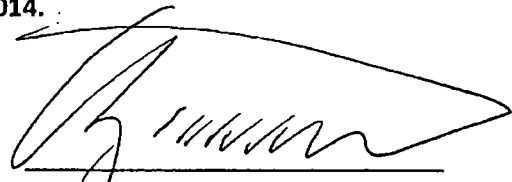
ORDER DENYING MOTION FOR
REHEARING AND/OR
RECONSIDERATION

This matter came before the Court on the State's Motion to Rehear using a normal record and/or Reconsideration of the overall case, filed on January 16, 2014. The Court has carefully considered the Motion, the arguments of counsel, and the law.

D.U.I. COURT
2014 JAN 30 PM 2:32

WHEREFORE, based upon the foregoing, the State's Motion for rehearing and reconsideration is hereby DENIED.

DONE AND ORDERED this 30th day of January, 2014.

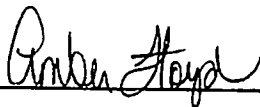

CLAYBURN S. BARNETTE, JR.
DUI JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been
furnished via Interoffice, U.S. Mail and Email this 30th day of January 2014

to:

- Aaron Hayes, Assistant Solicitor, 16th Judicial Circuit-DUI Unit, 1070 Heckle Boulevard,
Suite 207, Rock Hill, South Carolina 29730
- Edward L. Phipps, Esquire, Phipps Law Firm, 260 West Coleman Boulevard, Mount
Pleasant, South Carolina 29464


JUDICIAL ASSISTANT

CERTIFIED TRUE COPY
STATE OF SOUTH CAROLINA
COUNTY OF YORK
State of South Carolina,
Appellant,
v.
Tami Baker Sisler,
Respondent.

2015 FEB 20 PM 12:13
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Case No.: 2014-CP-46-00272
DAVID HAMPTON
CLERK OF COURT
YORK COUNTY
For Ticket Nos. 69327GM, -28GM

ORDER

FILED-RECEIVED
2015 FEB 20 AM 11:53
DAVID HAMPTON
C.C. & J.S.
YORK COUNTY, SC

This matter came before the Court on June 3, 2014, on the State's appeal of York County Magistrate Clayburn S. Barnette, Jr.'s order dismissing the above-referenced charges.

PROCEDURAL HISTORY

This case originated in the York County Magistrate's Centralized DUI Court as two charges: DUI 1st (Citation 69237GM) and Child Endangerment (Citation 69328GM). At a pretrial motions hearing on January 15, 2014, the Honorable Judge Barnette dismissed these charges for lack of probable cause. The State filed a Motion to Reconsider on January 16, 2014, which was denied via written order dated January 30, 2014. The State then filed an Appeal of the Magistrate's Order that same day.

FACTS

On August 17, 2013, at approximately 10:24 pm, the Respondent had pulled to the side of Hwy 5 and got stuck in the grass median after becoming lost. Deputy Chris Haire with the York County Sheriff's Office arrived on scene shortly after Respondent got stuck and stopped to help. After making contact, Deputy Haire and an unknown witness pushed Respondent's vehicle to get it unstuck and he provided her with directions on how to reach her stated destination. Deputy

Haire, along with two witnesses, who never mentioned any concern that they thought Respondent was intoxicated, were with her for approximately eight (8) minutes while trying to help her get back onto the road. After making contact with Respondent, Deputy Haire is asked over the radio by another officer if she is intoxicated, to which he responds that she was not. Respondent then performed a three (3) point turn, began driving away, and Deputy Haire followed behind her.

When the Respondent did not take the turn he had informed her she could take, Deputy Haire turned on his marked cruiser's blue lights, causing Respondent to pull over. During this secondary encounter, Deputy Haire requested Deputy Fowler to respond to the scene and investigate Respondent for Driving Under the Influence. After approximately six (6) minutes of investigation, Respondent was arrested for DUI and Child Endangerment.

STANDARD OF REVIEW

"In a criminal appeal from the Magistrate's Court, the Circuit Court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception." *State v. Hoyle*, 725 S.E.2d 720, 722 (S.C.App. 2012) The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law. *State v. Johnson*, 396 S.C. 182, 186 (S.C.App. 2011). Restated, "[a]n appellate court must affirm the court's ruling if there is *any* evidence to support the ruling." *State v. Pinchardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct.App. 2005) (emphasis in original).

FINDINGS OF FACT AND CONCLUSION

It is undisputed that traffic stops implicate the "seizure" provisions of the Fourth Amendment, and therefore such stops must not be "unreasonable" under the circumstances.

Whren v. United States, 517 U.S. 806, 809-10 (1996). Additionally, an officer may only pull a vehicle over when he has probable cause to believe that a traffic violation has occurred or has reasonable suspicion to believe that any of the vehicle's occupants are involved in criminal activity. *State v. Burgess*, 394 S.C. 407, 412.

The stop of a motor vehicle must be justified by probable cause or reasonable suspicion based upon specific and articulable facts of unlawful conduct. "To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion 'would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.'" *Delaware v. Prouse*, 440 U.S. 648, 661 (citing *Terry v. Ohio*, 392 U.S. 1, 22).

The State initially had taken two positions regarding the traffic stop by Deputy Haire: *First*, that the second contact by Deputy Haire with Respondent was a lawful traffic stop. *Second*, if it was not a lawful traffic stop, then it was still lawful because the Deputy was merely performing a safety check. At the motion hearing that is the subject of this appeal, Deputy Haire testified that his second contact with the Respondent was not a traffic stop and denied even turning on his blue lights prior to her pulling over. His justification for the encounter was that he was conducting a safety check of the Respondent due to her pulling over on her own. (*Sisler Tr.* at pg. 36, line 11-25).

Deputy Haire testified several times that he did not initiate a traffic stop. The instances wherein he insisted he did not intend to stop the Respondent are exhaustive, and evidenced as follows:

- "I wasn't initiating a traffic stop for any other purpose than to, 'Lady, you're going the wrong way.'" (*Sisler Tr.* at pg. 36, line 8-10);

- "... the blue lights were not initiated to stop her on a traffic offense" (*Sisler Tr.* at pg. 37, line 4-5);
- "I didn't turn the blue lights on to pull her over" (*Id.* at line 10);
- Question from counsel for Sisler (hereinafter "Phipps"): "And so you're saying you didn't turn on your blue lights until after she pulled over?" Deputy Haire responded, "If I had stopped her, that would be my reason for the stop: because I didn't want her to get lost again," (*Id.* at line 17-19);
- Question from Phipps: "There is no statute for missing a turn?" Deputy Haire responded, "I just had to get her stopped, or had to get her basically reminding her to turn" (*Sisler Tr.* at pg. 40, line 14-15); "I was trying to get her back towards Rock Hill" (*Id.* at line 22).

Once the video was published during the motion hearing and Deputy Haire had the opportunity to re-view it, he changed his testimony and admitted to turning on his blue lights, evidenced as follows:

- "...I did blink it for the turn. I thought I was blinking my headlights. What I did, I blinked blue lights trying to get her to turn. She missed the turn." (*Sisler Tr.* at pg. 54, line 23-25 through pg. 55, line 1);

After Deputy Haire changed his testimony to admit that he did turn on his blue lights prior to Respondent pulling over, he continued to deny that it was a traffic stop, which was evidenced as follows:

- "I never initiated a traffic stop. I'll stick with that" (*Sisler Tr.* at pg. 56, line 7); and
- "You can turn it around all you want. I didn't initiate a traffic stop. I just blinked the lights to, 'Hey woman, don't miss your turn'" (*Sisler Tr.* at pg 57, line 9-11).

Per S.C. Code Ann. § 56-5-750, a driver is required to stop when signaled via either siren or flashing light by a law enforcement vehicle. At the motion hearing, Respondent testified that she observed blue lights behind her and immediately pulled her vehicle to the side of the road as

she was legally obligated to do. (*Sisler Tr.* at pg. 72, line 12-20). Deputy Haire admitted to the legal requirement to pull over when blue lights are observed. (*Sisler Tr.* at pg. 38, line 19).

Deputy Haire testifies over and over that he did not stop her, that it was not a traffic stop, and that the only reason he would have stopped the Respondent is because she missed her turn. Missing a turn is not a violation of any statute in the State of South Carolina, and it does not provide reasonable suspicion or probable cause to justify stopping the Respondent, as confirmed by both Deputies. Police are not authorized to use their blue lights to stop someone for merely missing their turn, and anything gained from that unlawful stop is inadmissible as a matter of law.

The State's "new" position now is that Respondent committed some violation prior to the activation of Deputy Haire's blue lights – a violation that was discovered and remotely testified to only after seeing it on the published video during the hearing. Even after seeing that on the video, it was not conclusive and Deputy Haire continued to deny that it was the reason he "pulled" her. Assistant Solicitor Hayes asked Deputy Haire if he had noticed the Respondent driving left of center prior to flashing his blue lights, to which Haire responded, "Yeah, I mean, I had seen that during the driving part of it. But, I mean, I'm not going to argue that that's why I pulled her. I blinked my lights for the turn. I didn't pull her over on a traffic stop." (*Sisler Tr.* at pg. 70, line 9-12).

The State cannot create new reasoning to justify a traffic stop when said reasoning did not exist at the time of the stop. The State has continued to go back and forth, changing their position/reasoning in this case to try to justify the unlawful stop. There are/were no specific and/or articulable facts of unlawful conduct.

Based on the above findings of fact and conclusions of law, it is therefore:

ORDERED, ADJUDGED, and DECREED that York County Magistrate Clyburn S. Barnette, Jr.'s order is hereby **AFFIRMED** and that the charges of DUI 1st and Child Endangerment against Tami Baker Sisler are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.


Analog, South Carolina
November 2014
File 5th 5



J. Cordell Maddox, Jr.
Circuit Court Judge

STATE OF SOUTH CAROLINA) YORK COUNTY CENTRALIZED DUI COURT
)
 COUNTY OF YORK) CASE NO.: 69327GM-28GM

State of South Carolina,)
)
 vs.)
)
 Tami Baker Sisler.)
)
)

TRANSCRIPT OF PROCEEDINGS

ROCK HILL, SOUTH CAROLINA

JANUARY 15, 2014

This transcript was produced from an audio recording provided to Dallas Reporting. No court reporter was present; therefore, there are inaudible portions of the transcript.

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1 HEARING ON MOTIONS recorded at York County
2 Centralized DUI Court, 529 South Cherry Road, Rock
3 Hill, South Carolina; commencing at 8:24 A.M. on
4 January 15, 2014; taken in the aforementioned
5 cause now pending before the York County
6 Centralized DUI Court, County of York, State of
7 South Carolina.

8 * * * * *

9 THE COURT: Okay. Today is January the 15th.
10 It's approximately 8:24 A.M. This is the pretrial
11 motions that have been made in the case of the
12 State of South Carolina, represented by Aaron
13 Hayes, against Tami Baker Sisler, Ticket No.
14 69327GM DUI 1st, and 69328GM, child
15 endangerment. Ms. Sisler is represented by Mr. Ed
16 Phipps. And, at this time, Mr. Phipps, I assume
17 you're ready on this motion?

18 MR. PHIPPS: Yes, Your Honor.

19 THE COURT: You going to take them as you
20 presented them? Is that the way you want to do it,
21 or do you have a particular way that you would
22 like to --

23 MR. PHIPPS: We can go right down through
24 them.

25 THE COURT: Let's go in the order. And I want

1 to put on the record that I do appreciate you
2 sending me this. I thank you for it. A lot of times,
3 we don't have that, I'll be quite honest with you.

4 MR. PHIPPS: Okay.

5 THE COURT: Motions or --

6 MR. PHIPPS: Prior to that, we --

7 THE COURT: Didn't.

8 MR. PHIPPS: Yeah, we did not send them.

9 THE COURT: All right. Go ahead with --

10 MR. PHIPPS: Just as a couple of housecleaning
11 matters, Your Honor, may it please the Court, this is
12 really a procedural motion. It doesn't really involve
13 the officers. But we will, after this, make a motion
14 to sequester them. But there's not a problem with
15 them sitting in -- having them sit in on this.

16 And, also, as another housecleaning issue, we
17 have not received a jury list.

18 THE COURT: Well, the normal way we do it is --
19 See, we would go into a jury pool and we would sit
20 down and give you a jury list, at that time. And
21 then you look at the jury, and you're going to select
22 half of them. Then we're going to -- I'm going to
23 get you a jury list, maybe not right now.

24 MR. PHIPPS: That's fine.

25 THE COURT: But it won't be at pretrial. But

1 before we sit down in there, you'll have a jury list.
2 The way I want -- The way we had to do it, because
3 of what happened, in your particular situation, we
4 would've had you here Monday. And you would've
5 had the jury list and we would've qualified the jury.
6 However, to help you, we put that off, --

7 MR. PHIPPS: Certainly.

8 THE COURT: -- delayed that, and brought you in
9 here today. But, before we go into the courtroom,
10 you'll have a jury list.

11 MR. PHIPPS: I appreciate that. And it's not a
12 problem. I just wanted to bring it to your attention.

13 THE COURT: No question, you will.

14 MR. PHIPPS: Because he apparently sent out
15 an e-mail -- I think you got a copy of it -- that said
16 that one of the potential jurors was a squatter --

17 THE COURT: Oh, yeah. Yeah.

18 MR. PHIPPS: -- and was --

19 THE COURT: He's already stricken.

20 MR. PHIPPS: And so -- And my -- The point
21 was that he's already seen it and has it. We would
22 just like the benefit of getting it --

23 THE COURT: Oh, yeah.

24 MR. PHIPPS: -- so we're ready before we sit
25 down.

1 THE COURT: All right. I'll make sure you have
2 a list before you leave here.

3 MR. PHIPPS: Okay. Thank Your Honor.

4 I'll go forward with the motion. This is a Brady
5 motion, a motion on discovery. I filed a motion, a
6 Brady motion, about 11 pages, back in --
7 September 11th of 2013.

8 THE COURT: You did.

9 MR. PHIPPS: I did not get a written response,
10 particularly to each requested issue. Some
11 jurisdictions don't do that. They'll just give you
12 particularly what the file -- what comes in, they'll
13 package something and send it to you. There's a
14 couple of jurisdictions down in Charleston, they will
15 actually treat it as almost like a complaint and
16 actually go through and answer each one and say
17 "we give you this, we gave you that, you can get
18 this there," and so forth. I just, as a foundation,
19 explain how that works sometimes.

20 In this particular instance, opposing counsel
21 has provided certain things. But there were a
22 couple of particular things that I was specifically
23 looking for, for this particular case: copies of
24 original police, telephone and dispatch logs.

25 This is a very unique case and I -- you'll hear

1 some of the more interesting parts of it. But not
2 to belabor it, there are two unidentified witnesses
3 that actually spend time with Ms. Sisler, as much time
4 as Officer Haire, prior to her leaving and then again
5 engaging with the police officers. And we would
6 think that that's kind of germane that we have them.
7 They potentially could be a witness to benefit us,
8 could be, you know, exculpatory. And so potentially
9 maybe they called in -- called the dispatch and said,
10 "Hey, we're out with this stranded motorist. Can you
11 help us?" -- give us something that would assist us in
12 trying to locate them, whether they want to find them
13 or not. And so we asked for that. That was one of
14 the particular things that I asked for.

15 And, even when I sent this second motion,
16 which was sent on -- I believe I sent it on
17 January 8th. Yeah, they were sent on January 8th,
18 and I e-mailed it to him, and we actually spoke
19 about these prior to. And so I broke it down. I
20 tried to pick out the particular things I thought I
21 needed and not just bombard him with 11 pages worth
22 of questions or stuff. So that was one particular --
23 That's Paragraph 5 that I requested. I did not get
24 anything, in that result.

25 And I'll stop there and let Aaron address that.

1 We can just go through these, particularly,
2 because there's only maybe six of them that I really
3 need to address.

4 THE COURT: You only need to address six of
5 them?

6 MR. PHIPPS: Yes.

7 THE COURT: Thank you. All right.

8 MR. HAYES: Yes, sir. And I only have to say
9 this one time, because the State's response is the
10 same on each one. There are two governing issues
11 here: discovery under Rule 5 and Brady, under the
12 constitution.

13 Discovery, under Rule 5, requires that we
14 provide what we're going to use at trial, and we
15 have done that. Brady requires that we provide
16 anything that we know about that is exculpatory,
17 and there is nothing. We have no exculpatory
18 information, so there is no Brady problem.

19 And Your Honor knows me well, and Your Honor
20 knows that I would not say this lightly. This motion
21 is completely without merit. We've given him
22 everything we've got. We have hidden nothing. And
23 anything on this list that he wants he can go get
24 through his investigator or through his own
25 subpoena power. And we are under no obligation to

1 produce it. There is no discovery or Brady problem
2 in this case whatsoever. He has subpoena power.
3 If he wants a 911 log, he can send a subpoena to
4 911, and he hasn't done that. He's asking me to do
5 his work for him, and there's no requirement that I
6 do so.

7 THE COURT: Not our freedom of Information.

8 MR. HAYES: Or that. What Brady says is that
9 this coffee mug -- Say this coffee mug is exculpatory
10 information, and it's out there on the table for all to
11 see and use. What Brady says is I can't take this
12 coffee mug and hide it in my briefcase. But if that
13 coffee mug's sitting on the table for everyone to use,
14 and all he's got to do is send a subpoena to get that
15 coffee mug, there's no Brady problem. He can't ask
16 me to give him that coffee mug, when all he's got to
17 do is send a subpoena or a FOIA or send his
18 investigator, who's standing in the back.

19 I know know of nothing exculpatory in this case.
20 I haven't hidden a single thing. He can subpoena
21 whatever he wants and he hasn't done so.

22 And then, as far as Rule 5 goes, which is a
23 separate issue, I've given him everything I'm going
24 to use at trial. I would hand him my trial folder
25 right now, if I didn't need it. He's got everything --

1 THE COURT: Got everything that you got.

2 MR. HAYES: Your Honor, this motion is without
3 merit and that's the State's position. There's
4 nothing else we can say.

5 THE COURT: Let's move on. Give me another
6 one.

7 MR. PHIPPS: You want me to go --

8 THE COURT: You do it the way you want to.
9 You said you had six of them.

10 MR. PHIPPS: Yes. And could I address that
11 very quickly?

12 THE COURT: Yes.

13 MR. PHIPPS: Your Honor, each six of these
14 are -- have to be exculpatory. And that's a mistake
15 of the rule. The rule says they have to be potentially
16 exculpatory. And the fact that he -- we did have a
17 conversation, he says he has an open file, this case
18 has moved very quickly. To me, it's a very fresh and
19 new case. I expect -- I have never had a prosecutor
20 not provide me background -- I mean, that will be the
21 next thing I'm going to talk about is an officer's
22 background. He's provided me his expert's CV. I
23 have asked for the officers' training background,
24 because it is going to be an issue, and it's going to be
25 germane.

1 Absolutely, I have subpoena power. (Inaudible)
2 power. But, as this case progressed and we get to
3 this point, I didn't realize that he was going to say,
4 "Well, no, I've given you what I got, even though I'm
5 telling you I have an open file, and I could easily
6 deliver these officers," who -- It's their case, and
7 they know the Brady motions there. They're required
8 to give me that stuff. I've asked for it. And, if he
9 don't want to give it to me, he's the one that should
10 be filing the motion saying, "Your Honor, we don't
11 want to give him that stuff, and this is why."

12 If we were in Charleston, there would be two
13 things that the judge would look at. And, again, it's
14 a different jurisdiction. But the judge would say,
15 "What do you want and why do you want it, and how
16 come he won't give it to you?" And just the fact
17 that he has given me a BA certificate, he's given me
18 stuff that he just generally didn't have, those guys
19 went and got that for him and gave it to him, and
20 it's easy. They're standing right there and could
21 probably go down the hall and pull that stuff for us.
22 And here we sit, you know, arguing over it, which to
23 me really shouldn't happen.

24 But particularly, the State's failure to provide
25 the requested discovery material deprives the

1 Defendant of her due process under the 5th and 14th
2 amendments of the constitution. The Defendant's
3 right to due process is further guaranteed by
4 Article I and III of the Constitution of South
5 Carolina. Due process requires adequate notice,
6 adequate opportunity for a hearing, the right to
7 introduce evidence and the right to confront, and
8 cross-examination of the witnesses. And that's in
9 *Vora*, 582 S.E. 2nd 413. Depriving her of this
10 requested discovery information deprives her of the
11 ability to question the accuracy of their testimony.
12 And, in this particular testimony -- And the most
13 important thing here is their background.

14 In conversation with Mr. Hayes -- This case
15 hinges on one officer coming in contact with Ms.
16 Sisler for about eight minutes, and he's fully
17 engaged in contact with her, and then helps her
18 back into the car and lets her go. And then she is
19 stopped about two or three minutes later because
20 the officer -- that she didn't take a turn that the
21 officer told her to take. He then gets her out of the
22 car and says, "I think she's been drinking,"
23 immediately -- before even making contact with her
24 again, because he's a little agitated. And he calls
25 Officer Fowler to come do a (inaudible) with her for

1 only six minutes and decides to make an arrest. So
2 he is with her for eight minutes and doesn't arrest
3 her, and still can't make a decision. The other
4 officer comes in for six minutes alone and makes an
5 arrest.

6 Now, having that conversation with opposing
7 counsel, he says, "That's fine. It doesn't really
8 matter." Because, in no uncertain terms, he was
9 basically going to throw the other officer under the
10 bus, the first one; that he didn't know, he wasn't
11 trained and as qualified as the second officer. I
12 think that's kind of important that we would have
13 the first officer's background, his training, how long
14 he's been employed, for them to get up and try to
15 make that claim. Because it could be that Officer
16 Fowler has more experience -- I'm sorry, Officer
17 Haire, has more experience than Officer Fowler, but
18 did not engage in an arrest. And so --

19 THE COURT: Well, you're going to bring that
20 out in trial, aren't you?

21 MR. PHIPPS: But I would need -- I would like
22 to have that information to prepare, and I'm allowed
23 to have it. It's exculpatory. It's very germane for
24 this particular case. It's a very interesting -- I was
25 a cop for ten years and an attorney for over ten,

1 and I've never seen a case like this. And that's a
2 very important issue, for this particular case. It
3 would be easy for them to give this to us.

4 THE COURT: But definitely in trial, you're
5 going to ask Officer Haire how long he's been on the
6 force. You're going to ask Officer Fowler how long
7 he's been on the force, no question.

8 MR. PHIPPS: If we get to trial, --

9 THE COURT: Okay.

10 MR. PHIPPS: -- yes.

11 THE COURT: Okay.

12 MR. PHIPPS: But I would like to have that
13 information so I can prepare. I can't even prepare
14 to argue the next motion very thoroughly, because
15 I'm missing that information; and that's based upon
16 the unlawful stop, unlawful arrest. We got two
17 officers doing two different things; one's, you know,
18 not making a decision and another one making the
19 decision. And just as simple of what training
20 they've had and how long they've been employed,
21 that would be absolutely fantastic for this next
22 motion.

23 THE COURT: Well, it's definitely going to come
24 out in trial, because I've never handled a DUI where
25 it didn't come out. I've known about the officers'

1 experience, and what not. So let's move forward to
2 another one.

3 MR. PHIPPS: Well, --

4 THE COURT: Give me another one and let me
5 see what's germane about this, moving into the
6 other --

7 MR. PHIPPS: Well, Your Honor, really those are
8 the two. I can -- We don't even have to go through
9 the six of them. Those are the two. And here's the
10 other issue. You keep saying this is going to come
11 out in court.

12 THE COURT: Yes.

13 MR. PHIPPS: Well, if it's going to come out in
14 court, it should be provided to me. I mean, if they
15 don't provide it to me, then they shouldn't be
16 allowed to bring it into court.

17 MR. HAYES: Your Honor, I understand Mr.
18 Phipps is asking me to anticipate what their
19 testimony is going to be and then give him a
20 synopsis, and that's not required under the law.
21 What's required under the law is that I give him all
22 the documents and tangible objects that I'm going to
23 use at trial. That's Rule 5, discovery.

24 THE COURT: Do you have how much
25 experience each one of these two officers --

1 MR. HAYES: I don't know.

2 THE COURT: You don't know?

3 MR. HAYES: I don't know. I haven't asked
4 them. But I think Andy's been on the force for 11
5 years. I don't know about Deputy Haire.

6 DEPUTY HAIRE: Six.

7 MR. HAYES: Six? But the point is, Your Honor,
8 there are a hundred different ways he can find that
9 out, and I have done nothing to hide it. He can
10 send a subpoena, they can send a FOIA, he can send
11 his investigator to talk to him, he could call them
12 and ask them himself. There's nothing -- What
13 Brady requires is that I --

14 THE COURT: I understand.

15 MR. HAYES: -- not hide the coffee cup.

16 THE COURT: That's right.

17 MR. HAYES: Nothing is being held.

18 THE COURT: I'm with you.

19 MR. PHIPPS: Your Honor, --

20 THE COURT: I'm listening.

21 MR. PHIPPS: In response to that, these
22 officers -- and Aaron seems to be a very, very
23 diligent and capable opposing counsel. But, as he
24 knows, he can't just have the officers come up and
25 start testifying about the day. He has to lay a

1 foundation for the testimony. That's absolute. And
2 that foundation that he has to lay that is part of his
3 case, for them to even testify, is the background.

4 THE COURT: And he's going to ask them at
5 trial. But he doesn't have that information, at this
6 time. He could get it. You could get it.

7 MR. HAYES: And so could he.

8 THE COURT: And you could, too.

9 MR. PHIPPS: Your Honor, he just gave you
10 more information that he had that I didn't have. He
11 had it. He just said one officer worked for maybe
12 eight years, the other one for possibly six. He has
13 some information about these officers that I don't
14 have, and that's not fair.

15 MR. HAYES: And, respectfully, to use a casual
16 expression, I don't have to do his job for him.

17 MR. PHIPPS: But you have information that I'm
18 allowed to have.

19 THE COURT: Now, on the flipside, according to
20 what you just told me, there are certain jurisdictions
21 that are down there in your area --

22 MR. PHIPPS: Uh-huh (affirmative).

23 THE COURT: -- that you use this type of -- In
24 other words, when you request it, they give it to
25 you.

1 MR. PHIPPS: That's right.

2 THE COURT: We don't -- I'm not telling you
3 that we can't -- We give every -- I guess you've
4 given everything you got, is what you're saying, --

5 MR. HAYES: Everything I've got, he's got.

6 THE COURT: -- right here. You've given
7 everything you got. Okay. When you request this
8 information down there in low country, they give you
9 every bit of it.

10 MR. PHIPPS: They give me everything.

11 THE COURT: Everything.

12 MR. PHIPPS: If they don't, I file a motion and --

13 THE COURT: Then you go before the judge and
14 the judge makes sure you get it.

15 MR. PHIPPS: And the judge makes sure we get
16 it. And so my -- Those are the two issues. What I
17 would ask, then, because I think those two issues
18 are very germane --

19 THE COURT: Tell me what you need out of
20 here right now.

21 MR. PHIPPS: I need their training and
22 background, just how long they've been employed
23 and what particular training have they had in
24 regards to DUI's.

25 THE COURT: Can we give it to you right now?

1 Officer Fowler?

2 DEPUTY FOWLER: Yes, sir.

3 THE COURT: Officer Halre? Come over and tell
4 this gentleman what he needs to know. Tell him
5 about yourself.

6 MR. HAYES: Judge --

7 THE COURT: I don't have any problem.

8 MR. HAYES: And I don't have a problem with
9 it, either, because it's all going to come out --

10 THE COURT: That's right.

11 MR. HAYES: -- at trial.

12 THE COURT: It's coming out.

13 MR. HAYES: The problem is -- However they do
14 it down in low country is not required in --

15 THE COURT: That's right.

16 MR. HAYES: It must be a courtesy --

17 THE COURT: That's right.

18 MR. HAYES: -- to the bar down there, which is
19 fine. They can do that however they want to do. He
20 could've sent a subpoena two months ago to the
21 sheriff's office that said, "Tell me every time
22 Captain Brandon has gotten aggravated with Andy
23 Fowler." And, I mean, he could've known
24 everything about these officers and now he wants to
25 know it, but he didn't even try to get it.

1 THE COURT: Tell him how long you've been --

2 MR. HAYES: Now, if the officers have a
3 problem talking about --

4 THE COURT: You got any problem with it?

5 DEPUTY FOWLER: You want hard copy, it's
6 going to take a little bit?

7 THE COURT: You don't have to give him a hard
8 copy. You're going to talk. Tell him what you are,
9 tell him who you are. You're going to tell him in
10 trial, but tell him right now.

11 DEPUTY FOWLER: Deputy David Andrew Fowler.
12 Been employed with the York County Sheriff's Office
13 for 11 years on February 17th of this year, so a
14 little under 10.

15 MR. PHIPPS: I mean, Your Honor, I would ask
16 that if they don't want to do it and if he has an
17 objection to it, that we would continue it to give me
18 an opportunity to subpoena that stuff.

19 MR. HAYES: No. Your Honor, he's been duly
20 noticed for trial.

21 THE COURT: Let's move it.

22 MR. HAYES: We can't --

23 THE COURT: That's why I'm moving forward. I
24 can tell you that. We're going to move forward. I
25 have a jury coming in here, and we're going to

1 move forward.

2 Let me tell you a little something about York
3 County. This is the only centralized DUI court, in
4 the State of South Carolina right here.

5 MR. PHIPPS: Uh-huh (affirmative).

6 THE COURT: And the reason it was designed
7 and made is -- This is Chief Justice Toal. She
8 wants to streamline this DUI. We all got our
9 arguments, and maybe we can disagree; but, I
10 ain't disagreeing with her.

11 MR. PHIPPS: Sure.

12 THE COURT: She told me that she wanted
13 these cases moved, and we do every single thing we
14 can do in the County of York to make sure that
15 these cases are moved forward in a timely manner.
16 And you know and I know that I've been -- You've
17 got to say I've been most gracious Monday, today.
18 Let's go ahead. I'll deny the motions. I'm ready to
19 move forward.

20 MR. PHIPPS: I was going to say --

21 THE COURT: Go ahead.

22 MR. PHIPPS: Your Honor, that's perfect. We
23 could stop with the Brady, because the next motion,
24 we're going to sequester these officers, they're
25 going to have to get up on the stand and testify.

1 We're going to get some of that information
2 before ---

3 MR. HAYES: That's fine. And that's normal.

4 MR. PHIPPS: That's fine. I'm okay with that.

5 MR. HAYES: All right. Let's go.

6 MR. PHIPPS: So I'd make a motion to
7 sequester the witnesses.

8 THE COURT: All right.

9 MR. HAYES: The State has no objection, Your
10 Honor.

11 THE COURT: No objection.

12 MR. HAYES: There's no real basis for me to
13 object.

14 MR. PHIPPS: I would be calling Officer Fowler.

15 MR. HAYES: If we could just, real quick,
16 Deputy Haire is going to have to go somewhere out
17 of earshot, and then we'll call you shortly. Don't go
18 too far away. And I would ask that all your
19 witnesses be sequestered, as well.

20 MR. PHIPPS: That's fine. She gets to stay.

21 MR. HAYES: She gets to stay as part of --

22 THE COURT: Sir, you can go down the hall.
23 There's plenty of chairs down there. Make yourself
24 comfortable.

25 MR. HAYES: And since we are making a record

1 for the court, the State has no objections. Do you
2 want to swear Deputy Fowler now?

3 THE COURT: I'll do it. Deputy Fowler, tell me
4 who you are.

5 DEPUTY FOWLER: Deputy Fowler, York County
6 Sheriff's Office.

7 (WHEREUPON, DEPUTY DAVID ANDREW
8 FOWLER, having been duly sworn, was examined
9 and testifies as follows:)

10 THE COURT: Answer any questions that the
11 two counsel have.

12 MR. PHIPPS: How are we going to do the video?

13 MR. HAYES: I'm setting it up.

14 MR. PHIPPS: Oh, okay. Very good. I'll give
15 you a couple of seconds.

16 THE COURT: I'll get all of this out of your way.
17 Mr. Hayes, you can use any of this desk.

18 MR. PHIPPS: Your Honor, this motion is going
19 to be a motion to dismiss --

20 THE COURT: Okay.

21 MR. PHIPPS: -- based on an unlawful traffic
22 stop.

23 THE COURT: Okay.

24 MR. PHIPPS: In that they did not have any
25 probable cause or reasonable suspicion to make the

1 stop.

2 THE COURT: Okay.

3 MR. PHIPPS: Tell me when you're ready.

4 MR. HAYES: Would you like me to orient the
5 screen around to the judge, and we can step on
6 either side or --

7 MR. PHIPPS: That's a good question.

8 MR. HAYES: -- would you --

9 THE COURT: No. I'm going to come over
10 there, because it's bigger. Let's make it easier.

11 MR. PHIPPS: You want the -- You want a chair?

12 THE COURT: That's all right. I'm fine. I've
13 set down for 18 years.

14 MR. HAYES: Is this Deputy Haire's video or
15 Deputy Fowler's video?

16 DEPUTY FOWLER: That's Haire's roadside,
17 Fowler roadside, and then I think that camera was
18 just running while I was in the bay.

19 THE COURT: Whose is that?

20 MR. HAYES: I just pulled up Deputy Haire's
21 roadside video.

22 MR. PHIPPS: I believe Haire's is the second
23 video, correct?

24 MR. HAYES: It's the first video that appears on
25 the welcome screen. Deputy Haire would be the one

1 that got her unstuck from the mud.

2 MR. PHIPPS: Right, that's the first one. I
3 apologize, Your Honor. I would like to call Deputy
4 Fowler first.

5 MR. HAYES: That is Deputy Fowler.

6 MR. PHIPPS: I'm sorry. There we go. Okay.
7 That's -- You had me confused there.

8 THE COURT: But that's Deputy Haire's video.

9 MR. PHIPPS: Right. We would need Fowler's
10 video.

11 MR. HAYES: Okay.

12 MR. PHIPPS: He's the one here. Okay.
13 Whenever you -- It's rolling.

14 THE COURT: Turn it a little this way.

15 MR. PHIPPS: Just hold tight. I'm going to ask
16 him some questions first. There you go.

17 DIRECT EXAMINATION - (By Mr. Phipps)

18 Q Officer Haire, would you state your name for the
19 record?

20 A I'm Fowler.

21 Q I apologize. Officer Fowler, state your full name for
22 the record.

23 A I'm Master Deputy David Andrew Fowler.

24 Q Andrew?

25 A Yeah.

- 1 Q And how long have you been a police officer?
- 2 A Ten years, roughly, in a month.
- 3 Q And what agency do you work for?
- 4 A York County Sheriff's Office.
- 5 Q And have you always worked for York County
- 6 Sheriff's Office?
- 7 A It's the only law enforcement agency I've worked
- 8 for, yeah.
- 9 Q Okay. And do you have any college background?
- 10 A Yeah.
- 11 Q What would that be?
- 12 A I've got a two-year associate's degree in mechanical
- 13 engineering, with a minor in engineering graphics
- 14 from York Technical College in Rock Hill.
- 15 Q And, as a sheriff, are you on a special team, or
- 16 traffic or branch?
- 17 A Yes, sir. I've gone through the state Highway
- 18 Enforcement for Aggressive Traffic.
- 19 Q Okay. Is that like a speed team?
- 20 A Yes. It's Highway Enforcement of Aggressive Traffic.
- 21 We handle speeding, DUI's.
- 22 Q How long have you been on it?
- 23 A Since December 14th of last year -- I'm sorry,
- 24 2013 -- or '12, I'm sorry.
- 25 Q Of last year.

- 1 A Of 2012.
- 2 Q And have you received any specialized training in
3 regards to that position?
- 4 A In regards to the position or in regards to DUI?
- 5 Q The position first.
- 6 A With regards to the position and DUI, it's probably
7 going to be the same.
- 8 Q Okay.
- 9 A I'm radar certified. I'm certified as SFST
10 practitioner and instructor. I've been a practitioner
11 since 2006. I've been an instructor since 2008. I
12 was certified in ARID last year.
- 13 Q So, ARID, would you put that -- what the acronym
14 stands for in the record?
- 15 A Advanced Roadside Impaired Driving.
- 16 Q Okay. And is that an equivalent of the academy's
17 advanced DUI detection? Is that what they're
18 calling it now?
- 19 A No, sir. The ARID is for noticing if there's drugs
20 and a person took them along with alcohol or just
21 drugs.
- 22 Q So it's a drug recognition.
- 23 A Yes.
- 24 Q Okay. Have you been to the advanced DUI course?
- 25 A Yes.

1 Q Okay. So you are advanced DUI certified?

2 A Yeah, I have a SFST certification, yes , sir.

3 Q Okay. And when did you get that?

4 A 2006.

5 Q 2006. And you are a BA operator and BA certified.

6 A Yes.

7 Q Okay. Did you have an opportunity to come cross

8 Ms. Sisler?

9 A Yes.

10 Q What date was that?

11 A August 17th.

12 Q Of what year?

13 A 2013.

14 Q What time?

15 A About 10:30, 11:00 o'clock.

16 Q And what was the probable cause or traffic violation

17 for her stop?

18 A I didn't stop the vehicle.

19 Q Okay. But you made the arrest.

20 A Yes.

21 Q What was the traffic violation or probable cause for

22 her stop?

23 A From my understanding from Deputy Haire, --

24 MR. PHIPPS: Objection.

25 MR. HAYES: Your Honor, he can't object to a

1 question he just asked.

2 THE COURT: I know what he just asked.

3 MR. HAYES: He cannot object to testimony he's
4 soliciting.

5 THE COURT: Do you want to put that a little bit
6 different?

7 MR. PHIPPS: Well, I'm objecting to hearsay
8 that he's getting ready to testify to. I'm not
9 objecting to his answering the question.

10 THE COURT: Ask your question again.

11 BY MR. PHIPPS: (Continuing Direct)

12 Q What was the probable cause for the traffic stop?

13 A I didn't stop the vehicle.

14 Q Okay. And you said that already. But you did
15 arrest her. You're the arresting officer.

16 A Yes.

17 Q What was the probable cause for the traffic stop, or
18 what was the traffic violation?

19 A I didn't stop the vehicle.

20 Q I understand that, but you're the arresting officer.

21 A Yes.

22 Q Was there no traffic violation?

23 A If you want me to answer the question, I'm going to
24 advise you of what another officer observed.

25 Q Don't tell me what -- I think that's -- and I hate to

- 1 be technical on you. Don't tell me what he told you.
2 Just tell me what you know.
- 3 A I can tell you what I saw on the video.
- 4 Q So you've watched the video.
- 5 A Yes.
- 6 Q Okay. Did you write a report?
- 7 A Yes, sir, I did.
- 8 Q And what's your report say?
- 9 A In regards to --
- 10 Q The traffic violation and traffic stop.
- 11 A According to my report, like I say, I had information
12 from Deputy Haire.
- 13 Q You wrote the report?
- 14 A Yes, sir, I did.
- 15 Q What does your report say?
- 16 A Do you want to know what the report said based on
17 Deputy Haire's testimony?
- 18 Q I want to know what the report says based upon --
19 you're the arresting officer -- based upon the
20 probable cause that you -- the traffic stop that you
21 relied on to make your arrest.
- 22 A He saw her swerving.
- 23 Q Okay. Anything else?
- 24 A That's what I wrote in the report.
- 25 Q There's language here in the report -- correct me, if I

1 read it wrong, as I read it into the record. Quote,
2 unquote, "swerving in her lane and then abruptly
3 pulled over."

4 MR. HAYES: Your Honor, I'm going to object.
5 If we're going to ask the officer what the report
6 says, it's only fair that the officer gets to look at
7 the report.

8 MR. PHIPPS: All right. Not a problem.

9 THE COURT: You got the report?

10 BY THE WITNESS: (Continuing Direct)

11 A "She was swerving in her lane and abruptly pulled
12 over and was driving on the road on (inaudible) Road
13 and Lesslie Highway.

14 Q Was the abruptly pulling over part of your reasoning
15 in charging her with DUI?

16 A I wrote the report from what was told to me.

17 Q Okay. And when was this told to you?

18 A I had a conversation with Deputy Haire, prior to my
19 arrival; and I spoke with him again, prior to
20 speaking with Ms. Sisler, when I arrived on scene.

21 Q Okay. So you had a telephone conversation.

22 A Yes.

23 Q And do you recall that telephone conversation?

24 A Parts of it, yes.

25 Q Okay. And, in that telephone conversation, he told

1 you that she was swerving?

2 A I can't remember exactly what his words were but it's
3 on the video.

4 **(TRANSCRIPTIONIST'S NOTE: Audio stops**
5 **abruptly, then continues as follows. There**
6 **appears to be a gap in the audio recording)**

7 THE COURT: All right. Let's move forward.

8 DIRECT EXAMINATION - (By Mr. Phipps)

9 Q All right. It's Deputy Haire, correct?

10 A Yes.

11 Q And would you give me your title?

12 A Deputy II, Patrol District 3, assigned Rock Hill,
13 primarily what we call Catawba-Lesslie, which is this
14 area here, South Anderson all the way up to Chester
15 County.

16 Q And Deputy II, what is that?

17 A It's just our ranking schedule. There's really no
18 timeframe with our rank at Deputy II. It's just
19 Deputy II until you go to what they call "master
20 deputy," which is just our mix -- little line of rank.

21 Q Is it like a corporal? Do you have any supervisory --

22 A No.

23 Q Okay. So it's just a notch --

24 A Correct, exactly.

25 Q -- for somebody, at that time, --

- 1 A Yes.
- 2 Q -- (inaudible.) How much time do you have on the
3 job?
- 4 A Roughly, six years and three months from the date
5 of hire. And I probably went to the -- I was
6 probably here for four months before I went to the
7 academy, if you want to get road time.
- 8 Q Okay. And you've always been with York County
9 Sheriff's Office?
- 10 A I have always been with the sheriff's office, never
11 been anywhere else.
- 12 Q And what did you do before that?
- 13 A Some real estate.
- 14 Q Okay.
- 15 A For about 12 years.
- 16 Q And with your tenure here at the sheriff's office, do
17 you have any special training, radar certification --
- 18 A I've got radar, lidar. I've got standardized field
19 sobriety. Got that last year. I'm an (Inaudible) on
20 response team.
- 21 Q Do you have the advanced DUI, or is it just the
22 basic --
- 23 A I've got the basic standardized SFST.
- 24 Q And you train your -- Do you train your trainees as
25 part of your DOR -- or whatever you call those

1 things -- train them as part of DUI? Is that part of
2 your phase --

3 A No, DUI now is covered by the academy.

4 Q Okay.

5 A We don't train specifically on any part. I'm there
6 for basically teaching them time management in the
7 day for calls for service, the proper county
8 ordinances, and stuff like that. Our FDO period is
9 post- academy. We're not there to -- We're
10 teaching them to apply. We're not -- We don't have
11 time -- Because it's only an eight-week program.
12 I'm probably with them two days out of each of
13 those weeks. They have four FDO's during that
14 time. And we cover their procedure lines and they're
15 supposed to get that. We shouldn't have to be
16 teaching them anything when we're doing that. We
17 send them back for remedial and they go through an
18 actual -- Like we have people who do courses for
19 the remedial track.

20 Q Let's fast-forward. Did you have an opportunity --
21 You saw Ms. Sisler sitting in here. Did you have an
22 opportunity to meet her?

23 A Not other than -- I didn't talk to her other
24 (inaudible).

25 Q Did you have an opportunity to make contact with

1 her prior to today?

2 A Since this?

3 Q (Inaudible)

4 A Yes, yes. I mean it is the same person, if that's

5 what you're saying. But now --

6 Q Yes. But do you know her?

7 A Yes.

8 Q What date was that?

9 A I can look at the video and tell you. I don't know,

10 off the top of my head, I would have no clue. I'm

11 looking at 8/17/2013 there.

12 Q Okay, very good. What was your probable cause --

13 What was the traffic violation for the traffic stop the

14 second time that you made contact with her that day?

15 A I never issued a second traffic stop. She pulled

16 over on her own.

17 Q Okay. You said you did not negotiate a traffic stop.

18 A I had my turn signal on and was blinking my

19 headlights, I think, because she was missing the

20 turn. At that time, she just pulls over. I was

21 really -- If I would've stopped her, it was because --

22 At one point, she told me she was out of town. I've

23 got a lady and two kids. They're in the pitch black

24 dark, they got lost. I don't want her to get any

25 farther lost than she was.

- 1 Q Okay. Well, you just said two different things there.
2 You initially said that you did not initiate a traffic
3 stop.
- 4 A Uh-huh (affirmative).
- 5 Q And then you turned around and said, well, if I did,
6 this is why.
- 7 A If I cut the lights on, it would've been as we're
8 going off the side of the road. I wasn't initiating
9 the stop for any other purpose than to, "Lady,
10 you're going the wrong way."
- 11 Q Okay. So you -- you initiated your blue lights.
- 12 A I did it as a safety reason. We were sitting on the
13 side, on South Anderson Road.
- 14 Q I'm taking about the second time -- the first time,
15 when you -- Prior to her pulling over, --
- 16 A Uh-huh (affirmative).
- 17 Q -- isn't it true you turned on our blue lights?
- 18 A She began to pull over and -- You're going to bring
19 this out, because -- I don't remember exactly, from
20 the video, but I didn't stop her as a traffic stop.
21 I've got my turn signal on, because I wanted her to
22 turn, and I'm blinking my headlights. And, at that
23 time, she's pulling over on her own before I cut the
24 blue lights on. Once she's off the side of the road
25 and I initiate blue lights, it's for safety reasons.

1 There's people coming down the road. We're
2 stopped on the side of the road. We're fixing to get
3 out of the car. I cut the blue lights on any time I do
4 that. But the blue lights were not initiated to stop
5 her on a traffic offense. Understand what I'm
6 saying?

7 Q I do. And so you're saying you didn't turn on your
8 blue lights until after she pulled over.

9 A Or until she started to pull over, one of the two. I
10 didn't put -- turn the blue lights on to pull her over,
11 only to -- I'm pretty sure it was the turn signal and
12 blinking the headlights.

13 Q Okay.

14 A I was worried she was going to go the wrong again
15 and be lost, --

16 Q Okay.

17 A -- is what I'm doing that for. And, if I had stopped
18 her, that would be my reason for the stop, because
19 I didn't want her to get lost again.

20 Q Okay. Well, let me ask you this.

21 A Okay.

22 Q Isn't turning on blue lights part of a traffic stop?

23 A Yes.

24 Q If you turn on blue lights, you expect the driver in
25 front of you to pull over.

- 1 A Unless they are already -- Well, they're -- Yeah,
2 they're going to pull over, if I -- But if they're
3 already pulling over, tell me what the -- I need to
4 understand your reasoning here.
- 5 Q Well, just follow me. Just, on a generic traffic
6 stop, --
- 7 A I initiate blue lights and they pull over.
- 8 Q You initiate blue lights and they pull over.
- 9 A Yes.
- 10 Q And you expect that response. Because, if they
11 don't pull over, it's a 1050. It would be a case --
- 12 A It would be a (inaudible) right here.
- 13 Q I'm sorry. But basically, it could --
- 14 A Yes.
- 15 Q Be a --
- 16 A She pulled over and I cut them on.
- 17 Q But there's a statute that says you've got to pull
18 over.
- 19 A Uh-huh (affirmative).
- 20 Q Do you know that statute?
- 21 A (Inaudible). I was looking up my chart --
- 22 Q Oh, okay. You don't know it, but you know --
- 23 A Oh, yeah.
- 24 Q You know the law regarding blue lights.
- 25 A Yeah, (inaudible).

1 Q Okay. There is a law that says you've got to pull
2 over.
3 A Uh-huh (affirmative).
4 Q And it's your testimony today -- I'm just trying to be
5 very clear about this --
6 A Uh-huh (affirmative).
7 Q -- that you're saying you did not turn on your blue
8 lights until after she was pulled over.
9 A Starting to make a motion toward pulling over that I
10 could tell she was going to stop, --
11 Q Okay.
12 A -- at that point. I could tell she missed the turn, at
13 that point there, at that spot.
14 Q And, at that point, there was no traffic violation. I
15 mean, there -- Let me ask you this. There is no
16 statute for missing a turn.
17 A No. She had traffic violations, but I'm looking at --
18 I'm looking at the scope of the whole thing. And I
19 know we're going to touch on the other. And since
20 we're in this part and not in the other, yet, I give
21 people the benefit of the doubt. I'm worried about
22 her and her two kids. I know it's going to --- I
23 missed the whole thing with the first part of it, as
24 far as when I stopped her and let her go again. But
25 I'm looking out for her. I mean, why would she not

1 be a little nervous in this kind of thing here,
2 because she's going the wrong way. She just got
3 run into the ditch, pretty much, because somebody
4 was coming at her head-on. Then when she pulls off
5 again, she's riding on the middle line, she's going 25
6 miles an hour, and she misses the turn. And, I'm --
7 At that point, I was getting aggravated. I mean,
8 hey, you're going to get lost again. I mean, I'm
9 trying to get her back, trying to help her the best I
10 can and, basically, we missed it. And I started my
11 putting my turn signal on and blinking the lights. At
12 whatever time I believe she started to pull over, I
13 would've cut the blue light on, at that point, to see.
14 I just had to get her stopped, or had to get her --
15 basically, reminding her to turn. She could've
16 turned right. She could've turned left. She could've
17 gone anywhere but straight, and that's the way she
18 went.

19 Like I say, I -- As far as I knew, first she told
20 me she was out of town. She wanted to know how
21 to get back to Rock Hill and this kind of thing. I
22 was trying to get her back toward Rock Hill.

23 Q All right. So we got to be very -- I mean, did you or
24 did you not initiate a traffic stop, pull her over?

25 A I'm not going to term it a traffic stop. I stopped

1 her to keep her from proceeding in the wrong
2 direction. Whether I initiated blue lights or blinked
3 the headlights, either one that made her pull over,
4 I'm going to say I don't recall; because, I don't know
5 the exact second I flipped the switch to do it.

6 I know I'm going to cut them on, if I'm on the
7 side of the road. That's habit of doing that -- going
8 to do it, and I would've done it there. And -- But,
9 initially, I started with a turn signal, I was blinking
10 the lights, "Why aren't you turning? Why aren't you
11 turning?" I'm turning mine on for her to go, and I'm
12 blinking headlights. At what point I turned my light
13 on, we can tell on there where it was.

14 Q Okay. So you're stating that you did not initiate a
15 traffic stop until she was pulled over. You basically
16 turned on your blue lights --

17 A You're wanting a yes-or-no answer to something I
18 don't know. I don't recall when that blue light came
19 on, and that's what you're going to term a traffic
20 stop as. I don't know. She started to stop, when
21 I'm probably blinking lights, and wanting to pull
22 over on the side of the road. Because she's
23 intoxicated. She doesn't know. She's -- just
24 wanting to go to the side of the road. I mean, she
25 doesn't -- She can't rationalize what I'm wanting, at

1 that point.

2 Q Okay. Well, she's -- Ms. Sisler's under arrest for
3 driving under the influence.

4 A Okay.

5 Q And that requires a traffic stop. Do you agree or
6 disagree?

7 A I don't agree with that.

8 Q Okay.

9 A Because we've come across people before -- What is
10 a -- If the highway patrol's got somebody with a --
11 that's got a 1050 and they charge them with DUI,
12 they didn't stop that person. That person wrecked.

13 If we come across a person on the side of the
14 road and they're a thousand yards ahead of me, and
15 I see them pull over to the side of the road and I
16 pull over to check on them, I didn't stop that
17 person. If they're intoxicated, they would be
18 arrested for DUI.

19 Q Well, that's my question to you. Did you stop to
20 check on her? You cut on your blue lights, because
21 she was pulling over, to check on her?

22 A Uh-huh (affirmative).

23 Q Or did you cut on your blue lights and she pulled
24 over?

25 A I put on my blue lights and -- Okay. If we're not

1 getting the actual point of when -- I was initially
2 stopping there to check on her to see what's going
3 on. Because, we've got somebody here that was
4 before -- I can see her being nervous and stuff with
5 this. I mean, she's got run off. But once we got
6 back on the road and we're going, everything's
7 done. She should be calm. She passed the turn.
8 She's just doing weird stuff, and I need to see
9 what's going on again. So I need to make sure -- I
10 need to make sure she's getting home safe, is
11 what is -- completely what I'm looking at.

12 Q So she passed the turn. And you've already said
13 there's no -- there's no statute against that, no
14 statute against missing a turn.

15 A Uh-huh (affirmative).

16 Q No -- That's not against the law.

17 A Uh-huh (affirmative).

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

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

21 Q She's nervous.

22 A Yeah, she's riding the line, she's crossing the
23 centerline. She's running 25 in a 55. It's just --
24 But I'm not, at that point, initiating -- Because
25 she's pulling over, and I'm getting out with her to --

1 "What's going on? You're missing the turn."

2 I honestly think she pulled over because I had
3 my turn signal on, and I'm blinking my headlights
4 trying to remind her, "Turn, turn, turn, this is
5 where we're talking about."

6 Q Right.

7 A I mean, it's the first turn. It's the only turn. She
8 could've turned right, she could've turned left.
9 Either way, it's going to take her back to the exact
10 same place, but she just passes it altogether.

11 Q And so you didn't not stop her for a traffic
12 violation, is what you're telling me.

13 MR. HAYES: Your Honor, I'm going to object
14 to this line of questioning as superfluous. We've
15 kind of gone over this a hundred times. And the
16 video will speak for itself. It's just -- You know, we
17 can sit here and debate it or we can sit here and
18 watch it.

19 THE COURT: I'm about to say the same thing.
20 Let's watch the video, and that question can be
21 answered.

22 MR. PHIPPS: That's fine. Let's watch the
23 video.

24 (WHEREUPON, audio is turned off; resuming as
25 follows:)

1 MR. PHIPPS: And, Your Honor, this is my
2 witness, and this is very important and very
3 germane, because he's -- he's gone back and forth
4 and -- and this is important to her. This is a very
5 important part of her case. If Aaron has an
6 objection, that's fine, we can rule on it. But I don't
7 think he has clearly answered the question, and I
8 think there is a clear question: "Did you initiate a
9 traffic stop? Was there a traffic violation?" And I
10 think his answer has been, "No, I did not initiate a
11 traffic stop." And, "No, there was not a traffic
12 violation," because missing a turn is not a violation.

13 BY THE WITNESS: (Continuing Direct)

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

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

19 A Crossing the centerline.

20 Q She crossed over the centerline.

21 A I believe she was driving on the centerline, over the
22 centerline, however you want. So we'll see that on
23 the video.

24 Q Well, you had an opportunity to review these videos
25 before you testified.

1 A Uh-huh (affirmative).

2 Q Did she or did she not cross the centerline and you
3 initiate a traffic stop?

4 A I initiate a traffic stop if she pulls over.

5 MR. HAYES: I'm just cueing it up.

6 BY MR. PHIPPS:

7 Q So you're saying it's not a traffic stop if she's
8 pulling over.

9 A Yes.

10 Q So it was not a traffic stop.

11 A Well, let's end the whole thing, just say it's not.
12 She did pull over, yeah.

13 Q Okay.

14 MR. HAYES: Your Honor, if I can just clarify
15 for the record, Deputy Haire has just gotten her
16 unstuck, and she is now going to proceed on her
17 way the correct direction down Anderson Road. So
18 she's just got to three-point it and then head the
19 correct way down Anderson.

20 THE COURT: That's her vehicle?

21 BY THE WITNESS: (Continuing Direct)

22 A All I did was I stopped in the center of the road, we
23 got her back to the pavement where she could get
24 traction. I stopped traffic where she could do a
25 three-point turn and head on to that point.

1 MR. HAYES: It's just a motion hearing. We're
2 just getting everybody caught up to where we are.

3 MR. PHIPPS: Right, but this is my witness.
4 I'll get to run the witness -- I appreciate it, but --

5 MR. HAYES: I understand.

6 MR. PHIPPS: -- you know, let me ask -- let
7 me -- let me ask my questions and run the motion
8 like I want to run it, please. And I say that very
9 respectful, and I appreciate it. But he just testified
10 that there was no traffic stop, Your Honor.

11 THE WITNESS: Correct.

12 MR. PHIPPS: He pulled over as she was pulling
13 over, basically to check on her.

14 BY MR. PHIPPS: (Continuing Direct)

15 Q And you would say that would be the equivalent of a
16 trooper pulling up on an accident.

17 A Or either them seeing a car ahead pulling off the
18 road.

19 Q Pulling off the road. Okay.

20 A It's not a traffic stop, but I witnessed her on the
21 roadway. Let's put it that way.

22 Q Okay.

23 A If we -- If we're trying to connect it ---

24 Q It's very specific and it's all germane.

25 MR. PHIPPS: Aaron, if you would, please, cue

1 that up to -- cue that up to 22:23.

2 MR. HAYES: Your Honor, I'm just going to let
3 the video run. I don't want to skip too much. And
4 then we'll get to a point, --

5 MR. PHIPPS: And then we'll --

6 MR. HAYES: -- instead of skipping around --

7 MR. PHIPPS: -- we'll talk about some stuff --
8 particulars.

9 MR. HAYES: This is from the beginning, so
10 we're going to watch from the beginning.

11 MR. PHIPPS: That's fine.

12 (WHEREUPON, video is viewed; resuming as
13 follows:)

14 THE COURT: Can you stop that just a minute.
15 Is that a four-lane road?

16 THE WITNESS: Yes, two lanes on each side of
17 South Anderson.

18 MR. HAYES: Grass median.

19 THE WITNESS: Yeah.

20 MR. HAYES: There's an on ramp right here that
21 she had come up.

22 THE WITNESS: Yeah. She's pointed the
23 opposite direction. And when the guy in the Honda
24 came, she went off the side to go into the -- She's
25 facing toward me. That's the car that had pulled

1 over.

2 (WHEREUPON, video is viewed; resuming as
3 follows:)

4 MR. PHIPPS: Stop, please.

5 BY MR. PHIPPS:

6 Q Now, y'all heard that on the radio?

7 A Uh-huh (affirmative).

8 Q Where I come from and when I was on the job, 1055
9 means --

10 A It means intoxicated driver.

11 Q -- intoxicated.

12 A Yes. And he asked and I said no.

13 Q And you said no. Okay.

14 (WHEREUPON, video is viewed; resuming as
15 follows:)

16 MR. PHIPPS: Why don't you stop just a
17 minute.

18 BY MR. PHIPPS:

19 Q Now, Officer, you have talked to her and there was
20 no indication of her being inebriated or materially
21 or appreciably impaired.

22 A Nothing that I was noticing, at that time. I wasn't
23 having a smell of alcohol, wasn't having anything in
24 any erratic behavior she was having. In all honesty,
25 she's a lady on the side of the road with two kids,

- 1 she's going to be nervous. I mean, she's going the
2 wrong way, she just got run off the side of the road,
3 with the car coming head-on at her. I can see her
4 being -- Just like I'm telling her to turn the wheels
5 one way, she's not. She's turning the opposite way.
6 She's -- I'm thinking she's nervous. I mean, --
7 Q And you don't know her. You've never met her
8 before.
9 A No. No, I don't know her.
10 Q You don't know her medical history.
11 A No.
12 Q And you don't know that she has some anxiety
13 issues, --
14 A No.
15 Q -- as she just -- While she was sitting in there, she
16 had to leave, she -- you heard her say, "I can't sit
17 here," because that was causing some anxiety.
18 A Yeah.
19 Q And so here you're getting ready to push her
20 vehicle --
21 A Uh-huh (affirmative).
22 Q -- and help her get unstuck. She --
23 A Yeah.
24 Q -- was stuck.
25 A Yeah.

- 1 Q And do a three-point turn.
- 2 A Yeah.
- 3 Q Okay. And one more thing. There were two other
4 witnesses there that were there before you got
5 there.
- 6 A I don't -- I didn't know -- I remember the one. I
7 don't remember two. I remember one guy that
8 stopped in a Honda.
- 9 Q You'll see another one walk up.
- 10 A Okay.
- 11 Q But at no time either of them walked up to you and
12 said, --
- 13 A "That woman's drunk."
- 14 Q "Don't put her back in that car with them kids.
15 She's intoxicated."
- 16 A No.
- 17 Q Okay.
- 18 A Because, if I would've noticed, at that point, I
19 would've never put her back in the car.
- 20 Q Certainly.
- 21 (WHEREUPON, video is viewed; resuming as
22 follows:)
- 23 MR. PHIPPS: Stop for a second.
- 24 BY MR. PHIPPS: (Continuing Direct)
- 25 Q So right there, you saw her ask you where Rock Hill

- 1 is.
- 2 A Uh-huh (affirmative).
- 3 Q And then you hesitate, all right, let me figure out
- 4 how to get you there.
- 5 A Uh-huh (affirmative).
- 6 Q You're familiar with this area.
- 7 A Uh-huh (affirmative). I'm not figuring out how to
- 8 get there. I'm figuring out if it's the first turn, or
- 9 whatever to explain to her, so I can make it as easy
- 10 as possible for her to go.
- 11 Q Okay.
- 12 A There's 50 million ways I can get back to Rock Hill.
- 13 I mean, I know there's a little path down through
- 14 the woods right there. But, I mean, I'm trying to
- 15 figure out what I'm going to explain it to her. It
- 16 has nothing to do with I don't know where I'm at.
- 17 Q Sure. And I may be jumping the gun, but I'm
- 18 trying to prevent you from stopping it. But, at some
- 19 point in time, she says, "Look at my Garmin that I
- 20 have" --
- 21 A Uh-huh (affirmative).
- 22 Q -- "and it's pointing me" -- "I'm where I'm supposed
- 23 to be. It's telling me to be going this direction."
- 24 And you actually --
- 25 A But not down the side -- the wrong side of the road.

1 I'm not going to tell her to do anything on the
2 Garmin, because she's talking about the Garmin
3 putting her on that side of the road before, so --

4 Q Right. But my question is did you notice the
5 Garmin, that it had her going --

6 A No, I never really -- She's pointing at it, and I'm
7 not -- I didn't look at the screen. I don't --

8 Q Okay, that was my question.

9 A No, I don't --

10 MR. HAYES: Your Honor, I've got to have to
11 object, at this point. I mean, we're trying to
12 determine if there was reasonable suspicion or
13 probable cause, and I just feel like we're pretty far
14 afield here. We've got a jury waiting. You know,
15 it's going to be Your Honor's determination if they
16 had reasonable suspicion or probable cause to do
17 what they did and, you know --

18 THE COURT: You ready to move forward?

19 MR. PHIPPS: Thank you.

20 (WHEREUPON, video is viewed; resuming as
21 follows:)

22 MR. PHIPPS: Can you reduce it for a second.
23 Your Honor, I think this is important. As we look at
24 this video -- and this would be a question to the
25 officer; he can just confirm it or not.

1 BY MR. PHIPPS:

2 Q It indicates, on your video, whether you have lights
3 on or not.

4 A Yes.

5 Q So, if you cut on your light, --

6 A It'll come on.

7 Q -- it'll come on.

8 A Yeah.

9 MR. PHIPPS: You understand that, Your Honor?

10 THE COURT: I do. It just turned off.

11 (WHEREUPON, video is viewed; resuming as
12 follows:)

13 MR. PHIPPS: All right. Stop there.

14 BY MR. PHIPPS:

15 Q At 22:37:17 -- and we just passed it -- it's at 21.
16 You just saw the light blink, which indicated you cut
17 on your blue lights.

18 A Back up, back up, we're going to have to see that a
19 second. Because, it doesn't blink. It should -- If I
20 cut them on, it should've stayed on. That little red
21 dot like right up beside the lights, okay, we're
22 passing the turn -- Stop right there where it says
23 (inaudible). All right, that's on. Yep, I did blink it
24 for the turn. I thought I was blinking my headlights.
25 What I did, I blinked blue lights trying to get her to

1 turn. She missed the turn.

2 Q And so, as a result of you hitting those blue lights,
3 she pulls over, but you're telling her not to.

4 A Yeah, because I didn't turn them on for her to stop.
5 I'm blinking the lights for, "Here's your turn, lady.
6 You're missing the turn." All right. I pull over on
7 the side of the road with her. At that point, I cut
8 the lights on and left them on.

9 MR. PHIPPS: Okay, stop.

10 THE WITNESS: Now, let me -- can I ask you a
11 question?

12 MR. PHIPPS: No. I apologize, I'm sorry. And
13 we can talk outside --

14 THE WITNESS: Well, can I make a statement?

15 MR. PHIPPS: No. He's got an opportunity to
16 cross-examine.

17 THE WITNESS: Okay.

18 MR. PHIPPS: You get to talk -- to answer his
19 questions. I hate to be formal, but we are getting a
20 record here.

21 THE WITNESS: Okay.

22 MR. PHIPPS: You and I can just chat outside
23 afterwards, absolutely.

24 BY MR. PHIPPS: (Continuing Direct)

25 Q So -- And, basically, your prior testimony is not

1 accurate.

2 A Okay. How?

3 Q Well, you testified that you never put on your blue

4 lights.

5 A I never initiated a traffic stop, is what you said.

6 Q You initiated a --

7 A I never initiated a traffic stop. I'll stick with that.

8 Q Did you hit blue lights?

9 A I blinked my lights because of the turn, yes.

10 Q And is --

11 A But, if we blink our lights, people do not pull over.

12 Q But isn't -- your blue lights is part of a traffic stop?

13 A Continually leaving your blue lights on can be a

14 traffic stop.

15 Q Sure.

16 A Like I say, if we clear an intersection, if we --

17 moving through traffic, or whatever, people --

18 people blink -- I never left the light on. I'm

19 blinking it telling her, "Don't miss your turn." It

20 was not turned on to initiate a traffic stop. And you

21 can see, when she pulled off on the side of the road

22 on down around the curve, I didn't cut them on till I

23 stopped, --

24 Q Right.

25 A -- after she'd already pulled all the way off the road.

1 Q But didn't she respond correctly to your blue lights?

2 A No. Because I think she actually went a little bit
3 too far.

4 Q So you were pursuing her.

5 A No. If I would've been on a traffic stop, I would've
6 wanted her to pull over the first opportunity, which
7 would've been that.

8 Q I --

9 A You can turn it around all you want. I didn't initiate
10 a traffic stop. I just blinked the lights to, "Hey,
11 woman, don't miss your turn."

12 Q I'm -- I didn't turn it around. But the video speaks
13 for itself. You said you didn't -- did turn them on,
14 and she pulled over properly, as a result.

15 A I don't agree with that, but that's why you --

16 Q That's fine. The video speaks for itself.

17 A Right.

18 MR. PHIPPS: Your witness.

19 BY THE WITNESS: (Continuing Direct)

20 A See, when we pull cars, we just blink our lights. We
21 don't turn them on anymore. That's some new --
22 That's some new procedure I don't know about.
23 Because, I thought I'd blinked the lights. I might've
24 turned --

25 CROSS-EXAMINATION - (By Mr. Hayes)

1 Q Deputy Haire, after you got her unstuck and she
2 proceeded down the roadway, did you observe her
3 swerving left of center?

4 A I saw her driving on the centerline, yes, sir.

5 Q Okay. Regardless of whether -- because you blinked
6 your blue lights or because she just decided to, did
7 she pull over?

8 A Yes.

9 Q Did you get out of the car to talk with her at any
10 point?

11 A Yes.

12 Q At any point, did reasonable suspicion come into
13 your mind that she may be DUI?

14 A Yes.

15 Q About what point was that?

16 A About when she started getting out of the car. And
17 you can actually hear me on video say, "What was
18 that?" is when she grabbed the door for stability.

19 **(Transcriptionist's Note: At this point in the**
20 **audio recording, there is a malfunction**
21 **in the audio that causes previously recorded**
22 **testimony to be replayed)**

23 MR. PHIPPS: Your Honor, I'm going to object to
24 that line of questioning, because it's not germane
25 for the issue at hand. The motion that was made,

1 but is for a dismissal based upon an unlawful traffic
2 stop. What they're discussing now are things that
3 happened after the stop. I would object.

4 THE COURT: How far are you going with it?

5 MR. HAYES: Judge, I think that there are
6 several layers here. And I'll just go ahead and
7 make my argument.

8 THE COURT: Is -- Make the argument about
9 the stop.

10 MR. HAYES: There's -- As Deputy Haire
11 testified, you don't have to have a traffic stop to
12 arrest someone for DUI. If someone pulls over on
13 their own and you have reasonable suspicion to
14 detain them for DUI investigation, you can do so. I
15 would say she stopped on her own. He has
16 reasonable suspicion, when he sees her getting out
17 of the car, so he detains her for DUI investigation.
18 So the issue of whether there's a stop or not really
19 doesn't matter. If there was a traffic stop, he did
20 observe her drive left of center. If there's not a
21 traffic stop and she stopped on her own, it's okay,
22 because he's got plenty of reasonable suspicion to
23 think she'd DUI, based on what's about to happen.
24 So either she stopped on her own and he had
25 reasonable suspicion to continue the stop to

1 Investigate for DUI or, if it was a traffic stop, well,
2 we just watched her on the video drive left of
3 center, you know, and he saw that. So it's kind of
4 either way Mr. Phipps wants to paint it. Traffic stop
5 or not, the State did nothing wrong. The State had
6 reasonable suspicion and/or problem cause to do
7 everything that they did.

8 He told her, as -- You know, when he gets her
9 unstuck, he says, "I'm going to blink my lights at
10 you so you don't miss your turn." Well, she goes --
11 She's about to miss her turn. He's blinking his
12 lights. I guess he hits his headlights and his blue
13 lights.

14 MR. PHIPPS: Your Honor, I object. He's --

15 MR. HAYES: Well, I'm making my argument, as
16 the Judge requested that I do.

17 THE COURT: On the stop. That's where we --
18 We're at the stop.

19 MR. HAYES: And, Your Honor, you can have a
20 DUI without a traffic stop. Because, this may not be
21 a traffic stop. But, even if it is a traffic stop, they
22 had a reasonable suspicion to do so, because he
23 observed her drive left of center, and we just saw it
24 on the video. He observed her miss her turn. He's
25 starting to put things together that there might be a

1 issue here. And, in fact, the first thing he says,
2 when he gets out of the car here, is, "Have you
3 been drinking?" Because it's all falling into place.

4 MR. PHIPPS: Your Honor, I object. He's
5 testifying --

6 MR. HAYES: That's my argument. I mean,
7 that's my argument on what the facts of this case --

8 MR. PHIPPS: Those are facts after stop. And
9 what he's trying -- He can't have his cake and eat it,
10 too. He's -- You're either pregnant or not pregnant.
11 It's either a stop or it's not a stop. It can't be both.

12 And you heard one officer testify that it was a
13 traffic -- Well, the other officer said he'd made the
14 arrest based upon a traffic stop, and the traffic stop
15 was based upon swerving and abruptly pulling over.
16 That was Officer Haire's testimony. He's the
17 arresting officer. And so Officer Haire gets here and
18 testifies that, no, it was not a traffic stop and there
19 was no traffic violation. You can see for yourself,
20 there was no crossing the line. He didn't testify that
21 she crossed over the line. And --

22 THE COURT: I thought she did. I thought I
23 saw -- she did not --

24 THE WITNESS: Do want to play it back. We
25 got the judge saying it did and you're the only one

1 saying she didn't.

2 THE COURT: I thought she -- I may --

3 MR. PHIPPS: She was -- She rides -- She
4 drives on the -- very close to the line, but never
5 swerves, never drifts, never goes over it. It's a
6 turn but she's -- never goes over, not once.

7 THE COURT: We're going to let the jury make
8 that decision, sir.

9 MR. PHIPPS: Well, then do I need to stop even
10 making my arguments here, because here's -- I
11 have another witness that is a --

12 THE COURT: You can bring another witness in.
13 But, now, as far as I'm concerned, I know what I
14 just saw; and you said that I didn't, but I said that I
15 did.

16 MR. PHIPPS: Okay.

17 THE COURT: But I'm not -- I don't have to
18 make the decision.

19 MR. PHIPPS: Right. But we're making a
20 motion --

21 THE COURT: We made a motion. But the
22 motion is, right now -- Go ahead and make your
23 motion.

24 MR. PHIPPS: The motion is that it was an
25 unlawful traffic stop.

1 THE COURT: Okay.

2 MR. PHIPPS: There was no violation. And he's
3 testified to that, that there was no traffic stop, that
4 there was no violation. Mr. Hayes is trying to say
5 that this is like a DUI checkpoint or a traffic
6 accident or something like that. But he pulls up on
7 her. And that's what he's basically testified to, and
8 that's not the fact. The fact is he initiated a traffic
9 stop and has testified over and over that the only
10 reason that he stopped her was because she missed
11 her turn. That's the only reason he stopped her.
12 We can sit here and look at the video, but that's not
13 why. And the law is very clear and says "the stop of
14 a motor vehicle must be justified by probable cause
15 or reasonable suspicion based upon specific and
16 articulable facts of unlawful conduct." Missing your
17 turn is not a violation of the law. That's why he
18 stopped her.

19 THE WITNESS: So blinking your light for her to
20 turn is --

21 MR. PHIPPS: Hold on.. And he said that he did
22 it. Now, Your Honor, I would like to play his phone
23 conversation with Officer Fowler --

24 MR. HAYES: Okay.

25 MR. PHIPPS: -- where he tells Officer Fowler --

1 and we'll listen to it, but I've transcribed it, and I'll
2 read it to what it says, and we can hear it for
3 ourselves. But he says, "Soon as we pull off, I
4 dropped in behind her. She passes right by the
5 road. I'm flashing my lights. I got my turn signal
6 on for her. Keeps going straight, so she's going to
7 miss it again. Says she's from out of town. So I go
8 to pull her over. She pulls all the way off into the
9 grass, jumps out. The car, this time, when I get
10 her stopped" -- "when I get her stopped, then she's
11 stuck."

12 And so that's him talking to the arresting
13 officer. He doesn't say she was swerving, he
14 doesn't say that she -- He says that she abruptly
15 stopped after he put on his blue lights. He admits
16 to it in a conversation with the other officer; but
17 here, he's saying no.

18 THE WITNESS: No, I'm going on -- We're going
19 on video.

20 MR. PHIPPS: I got problems with that. Hold
21 on. I got problems with that. And they've been
22 doing it from the very beginning. He's -- And
23 they're saying, "Well, I don't know" --

24 I mean, we went on for 20 minutes, almost,
25 trying to determine a simple question: "What was

1 the traffic violation?" and, "Did you stop her?" For
2 almost 20 minutes, we went back and forth, back
3 and forth. And his answer was, "No, it was not a
4 traffic stop, and there was not a violation. The
5 reason I" -- And then he comes out, "The reason I
6 pulled up after her, because she pulled over and
7 missed her turn." But that's -- The law is very
8 clear, Your Honor, very clear.

9 And, I mean, he missed an opportunity. He
10 was with her for over eight minutes. And the jury's
11 going to see that, absolutely. We -- This case is a
12 video, there's no doubt about it. But this case
13 shouldn't get to a jury. The law is very clear, very
14 clear. You got to have probable cause to make a
15 traffic stop, and there is abundance of evidence --
16 She's going to get up and testify next that the
17 reason she pulled over is because he put on the blue
18 lights. She followed the law and didn't do anything
19 wrong, and that will be my argument. I can go
20 through the whole litany of things and opportunities
21 that he saw.

22 We have witnesses that -- Nobody said, "Hey,
23 she's drunk. Pull her over. But I'll make that in
24 closing. So, without making my final argument, if
25 you want to hear her, that'll take five minutes. But

1 she's going to testify to the fact that he turned on
2 the blue lights, which he sat here and said he didn't.

3 THE COURT: Well, he testified that he flashed
4 his blue lights; did he not? That's what he testified
5 to.

6 MR. PHIPPS: No.

7 THE COURT: He did not?

8 MR. PHIPPS: He said he did not. He said he
9 flashed his lights at the time --

10 THE COURT: No, he did say he flashed his blue
11 lights, and we saw it.

12 MR. PHIPPS: Well, that was after we pointed
13 it out to him. And then he said, "Well, yeah, maybe
14 I did."

15 THE COURT: Yes.

16 MR. PHIPPS: Which means he initiated the
17 traffic stop. And now he's saying, "But that wasn't
18 a traffic stop. That was just a flicker of lights. You
19 don't have to pull her over because of that." But
20 she don't know that. She's not a police officer. She
21 saw the blue lights. It was enough for her to pull
22 over. And you see her, she does exactly what she's
23 supposed to.

24 THE WITNESS: When I pull over a person --
25 and I've made a lot of traffic stops. When I pull

1 over a person that just out of the blue or for
2 whatever reason, and this kind of thing, usually the
3 first thing they ask is, "What'd you stop me for?"
4 She never asked what I stopped her for. I mean, I
5 wasn't -- She knew what blinking the light meant,
6 "You missed your turn." I mean, "That was your
7 turn." Until she pulled all the way over, I turn
8 them on and leave them on. Blinking my blue light
9 is not a -- That's not an issue in a traffic stop.
10 That's not how we do it. That's not how -- I pull
11 cars every day. I don't pull in behind a car and
12 blink the light and they pull over on the side of the
13 road.

14 MR. PHIPPS: You're a police officer.

15 THE WITNESS: Well, she's intoxicated, too, so
16 she probably didn't know --

17 MR. PHIPPS: Well, --

18 THE WITNESS: -- the whole thing, too.

19 Because, a normal rational person, if you blink a
20 light, wouldn't have pulled over.

21 MR. PHIPPS: -- if she was intoxicated, as you
22 say, you should not have put her back in the car
23 with children.

24 THE WITNESS: She didn't go back in the car
25 then, once I realized that. That's why she -- I

1 don't care if it took Fowler 20 minutes or two
2 hours --

3 MR. PHIPPS: The law is very clear, very
4 clear --

5 THE WITNESS: And it's ambiguous to our
6 argument as if a flash of the light is initiating a
7 traffic stop, is what it all comes down to.

8 MR. PHIPPS: It's the laws --

9 THE COURT: I've got to look at totality here
10 just a little bit. Everything I've seen so far appears
11 to me like your main concern was a safety concern.
12 Is that what -- I mean, he didn't initiate anything.
13 He pulled up beside the vehicle. He didn't get out.
14 He's asking, "What's going on here?" That's what
15 he's saying.

16 MR. PHIPPS: But he did get out.

17 THE COURT: But he -- Yeah, but he didn't --
18 When he got started, he wasn't there to initiate a
19 traffic stop. He was there to find out what was
20 going on, on the side of a road into ongoing traffic,
21 and remedy the situation. He did all he could do as
22 a cop.

23 MR. PHIPPS: Your Honor, that's not the law.

24 THE COURT: The law --

25 MR. PHIPPS: The law says you can't randomly

1 pull something and use your government powers
2 to stop somebody because they merely missed a turn.
3 She was going to go home. She was going forward,
4 because she decided she was so nervous, she was
5 not going to go home. She was going to go back to
6 her friend's house, which she knew how to get --

7 THE COURT: If you're going to argue this
8 more, I'm going to deny your motion. I'm ready to
9 move forward.

10 MR. PHIPPS: Do you want me to bring her in
11 and put her on, so we have a record where she says,
12 "The reason I pulled over was because" --

13 THE COURT: You going to put her on the
14 stand?

15 MR. PHIPPS: Yeah, I'd like to put her -- Make
16 a record for this motion; take two seconds.

17 THE COURT: I thought she was too nervous to
18 be in here.

19 MR. PHIPPS: She is.

20 THE COURT: That's what you're saying.

21 MR. PHIPPS: She is, but I -- It's very
22 important that she --

23 THE COURT: Give me two seconds. Put her in
24 this chair. I'll call her.

25 MR. HAYES: I have one more question for

1 Deputy Haire.

2 THE COURT: Go ahead.

3 BY MR. HAYES: (Continuing Direct)

4 Q Deputy Haire, (inaudible) driving left of center.

5 A Yes. But that's my discretion whether I wanted
6 to --

7 Q That's your -- Okay. You had reasonable suspicion
8 to believe that that offense had occurred.

9 A Yeah, I mean, I had seen that during the driving
10 part of it. But, I mean, I'm not going to argue that
11 that's why I pulled her. I blinked my lights for the
12 turn. I didn't pull her over on a traffic stop.

13 Q Did you have reasonable suspicion that --
14 Regardless of whether you pulled her or not, after
15 she stopped on the side of the road the second
16 time, did you have reasonable suspicion to initiate
17 an investigation for DUI?

18 A Absolutely, one hundred percent.

19 MR. PHIPPS: Your Honor, again, I object to
20 the line of questioning. It's outside the scope.

21 THE COURT: Okay.

22 MR. HAYES: Thank you, Deputy Haire.

23 THE COURT: Deputy Haire.

24 (WHEREUPON, the witness was excused.)

25 THE COURT: Ms. Sisler.

1 MR. PHIPPS: And I want to note that this is
2 not important to anybody else except her.

3 THE COURT: I understand.

4 MR. HAYES: (Inaudible). Thank you.

5 THE COURT: You're good. Go on ahead and
6 get that; get the rest of it on the phone. Come on
7 in, ma'am. All right. Go right ahead and roll. We
8 need to swear you in, I think.

9 (WHEREUPON, the witness is duly sworn.)

10 THE COURT: If you will, answer the questions
11 any of these fellows ask.

12 MR. PHIPPS: Because of brevity, I'm not going
13 to go through the whole foundation with her. I'll
14 just try and get right to the point.

15 TAMI BAKER SISLER, having being duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION - (By Mr. Phipps)

18 Q At some particular time on August 17th, did you
19 have an opportunity to interact with Officer Fowler?

20 A Yes.

21 Q And just to get right to the point for this particular
22 motion, after he helped you turn around --

23 THE COURT: That wasn't Fowler. That was
24 Haire.

25 BY THE WITNESS:

1 A Yes, that was Harris (sic).

2 Q I always get this --

3 THE COURT: Don't worry about it. I'm going
4 to help you.

5 MR. PHIPPS: Thank you.

6 BY THE WITNESS:

7 A Yes, I did see Officer -- I was in contact with Officer
8 Harris (sic).

9 Q And after he helped you turn around and get going,
10 when you were stuck, --

11 A Yes, sir.

12 Q -- at some point in time, did he initiate his blue
13 lights?

14 A Yes, sir, when I missed the turn.

15 Q Okay. And so, as a result of him turning on those
16 blue lights, what did you do?

17 A I wanted to pull over.

18 Q And you did that because that's what the law
19 requires you to do.

20 A Yes, sir.

21 Q Okay.

22 (WHEREUPON, the witness was tendered.)

23 MR. HAYES: No questions for this witness, Your
24 Honor, at the time.

25 THE COURT: Ma'am, before you leave. Thank

1 you. Okay.

2 (WHEREUPON, the witness was excused.)

3 MR. PHIPPS: Your Honor, could I put just a
4 couple of things on the record? I know you said
5 you were going to deny the motion, but I'd just like
6 to --

7 THE COURT: You can go ahead.

8 MR. PHIPPS: -- proffer some information onto
9 the record so we have it.

10 Delaware versus Prouse, which is us a US
11 Supreme Court case, says stopping an automobile
12 and retaining its occupants constitutes a seizure.
13 Within the meaning of --

14 THE COURT: Okay.

15 MR. PHIPPS: When there is neither probable
16 cause to believe in a reasonable suspicion that the
17 car is being driven contrary to the laws, the
18 operation of motor vehicles or either the car or any
19 of its occupants are subject to a seizable
20 intention.

21 THE COURT: Okay.

22 MR. PHIPPS: In connection with violation of
23 any other applicable laws, South Carolina
24 specifically says -- and they follow the Supreme
25 Court -- "The stop of an automobile must be

1 justified by probable cause or reasonable suspicion
2 based upon specific and articulable unlawful
3 conducts." "Minor" -- Well, there's case law in
4 another jurisdiction that says (inaudible), but that
5 doesn't matter. It's not really germane for this.

6 But I would like to follow up with what we saw
7 and heard on the testimony, is that he approached
8 her at around 22:25 hours. She had pulled off on the
9 side of the road, because she was lost and got
10 turned around. It's raining out. And he makes
11 contact with her, and he is with her for over eight
12 minutes. And there is witnesses there. And they
13 ask him, on the radio, "Is she 1055?" -- Is she
14 driving intoxicated. And his response is,
15 "Negative." -- not at all. He backs up, she backs up,
16 doesn't hit the car that's behind her. He actually
17 gets behind her car, helps her push it, helps her get
18 unstuck. She does a three-point turn, does --
19 follows every bit of direction that he gives her.
20 There were other witnesses there; there's two
21 witnesses. You see, in the video, they were up
22 there, they were there just as long as he was, and
23 neither one of those witnesses grabbed him and
24 said, "Sir, we think this lady's intoxicated. Do not
25 let her get back in that car."

1 All that being said, he had plenty of
2 opportunity to arrest her and make a charge, but he
3 did not, because he didn't think she was intoxicated.
4 And so that is somewhat germane to the issue, but
5 not exactly completely, in regards to the next part
6 where he's following her, and he says -- He cuts his
7 blue lights on, which he testified that he did not,
8 but he did. And he testified, I think, quote,
9 unquote -- what I wrote down was, "It was not a
10 traffic stop," that, "I did not pull her over," and
11 that there was no violations, that he merely was
12 checking on her. But the law's clear you can't just
13 pull someone over. He did. He did pull her over,
14 because she missed her turn.

15 Whether he's checking on her or not, that's not
16 the law. You cannot use your blue lights to check
17 on someone because they missed their turn. Has to
18 be a violation. He used his government entity and
19 vehicle to stop her. And he tells her, on the video,
20 as she starts to pull over from them, he's telling
21 her, "No, no, don't pull over." Telling her not to,
22 after he already indicated that she -- So it's -- he
23 doesn't know, doesn't want to know -- "Don't pull
24 over into the grass again." He says, "God Almighty,
25 woman, what are you doing? You missed your turn."

1 He is irritated, not because she is doing anything
2 wrong. She made a conscious choice that she was
3 going to go back to her friend's house and not take
4 that route back home. Because it was simple, she
5 was rattled by the whole event.

6 But all of that being said, the bottom line -- a
7 very important part of this is, "A," was it a traffic
8 stop. You saw it; it was. He testified that it wasn't,
9 testified that it was. Opposing counsel said, well, if
10 it's this, it's that; but if it's that, it's this. We don't
11 know. It's not "if" or -- It's one or the other. You
12 know, you either pulled over because she pulled off,
13 or you hit the blue lights. And, no matter what,
14 they did hit the blue lights, so she responded like
15 she legally was supposed to, and they had no
16 reason to pull her over. They both -- Both
17 officers -- Even the arresting officer testified that it
18 was a traffic stop and said that she abruptly pulled
19 over, as what they wanted -- Mr. Hayes wants to
20 say, is that they just pulled over because she pulled
21 over and they were checking up on her. And that's
22 okay, but that's not what happened. We all saw it
23 and you saw it. He hit his blue lights, pulled her
24 over, she responded to it. Whether he says that's a
25 proper traffic stop or not, you had on your blue

1 lights -- He wanted her -- He was trying to get her
2 attention and stop her.

3 I think the video speaks for itself. The law
4 should be very clear. I think the case should be
5 dismissed, very clear on its merits, on the fact that
6 it was an unlawful traffic stop. He had no reason to
7 stop her, and they've both testified to it. I don't
8 know how we cannot dismiss this case and create
9 our own interpretation of what occurred, when
10 there's enough facts here to say, "A," there was a
11 traffic stop and there was no reason for it, other
12 than the fact that she missed her turn. That's it.
13 And that's not -- that's not enough. And I
14 apologize, and I wish they had done better. He
15 even said that himself. But the law is the law. It's
16 very clear.

17 MR. HAYES: Your Honor, in State v Burgess,
18 394 S.C. 407, "A police officer may stop a vehicle
19 when the officer has probable cause to believe a
20 traffic violation has occurred."

21 As Deputy Haire testified and as we just
22 watched on the video, she was driving left of center
23 and he could've pulled her over for that, if he wanted
24 to. So there's no constitutional problem for this stop.
25 If it's a stop or not, it's not a problem, because he

1 had reasonable suspicion and probable cause at left of
2 center. Deputy Halre testified to that.

3 So regardless of what this encounter is, it's not
4 a constitutional problem, because he watched her
5 drive left of center and had probable cause for that
6 violation. And he also had reasonable suspicion and
7 probable cause to investigate her for DUI. And as
8 he testified, we can investigate people for DUI
9 without a traffic stop, if we come upon somebody
10 who's decided to stop themselves.

11 So, in any circumstance, Your Honor, there's no
12 constitutional problem here. They had reasonable
13 suspicion and probable cause for everything they
14 did, and the State suggests that this motion should
15 be denied.

16 THE COURT: Well, I was denying on the other,
17 so I haven't denied you yet. Do you understand
18 I'm -- This was off of this. That's what I had been
19 talking about earlier.

20 MR. PHIPPS: Oh.

21 THE COURT: I haven't gotten to what we're
22 dealing with yet.

23 MR. PHIPPS: Oh, okay. Well, I appreciate that.

24 THE COURT: No, I --

25 MR. PHIPPS: Because --

1 THE COURT: You haven't gave your final
2 argument. I'm talking about some of this other
3 stuff that's been brought up. I'm talking about
4 some of this stuff that I saw on the video. But I
5 haven't made a final ruling on this motion, yet.
6 Give me some time.

7 MR. PHIPPS: Thank you, Your Honor.

8 THE COURT: Give me 15 minutes. Thank you.

9 MR. HAYES: And, Your Honor, I cited State v
10 Burgess. I have a copy here that I would leave
11 with the Judge --

12 THE COURT: I thank you.

13 MR. HAYES: -- to read it, one copy.

14 MR. PHIPPS: I haven't seen it. Do you have a
15 copy I can --

16 MR. HAYES: It's one case.

17 MR. PHIPPS: Your Honor, I would object, given
18 he's got highlighted stuff and notes on it.

19 MR. HAYES: Well, I'll waive the work product
20 on that scenario.

21 MR. PHIPPS: "when an official -- territory,
22 probable cause," I mean, it's a little bit of
23 argument.

24 MR. HAYES: Yes.

25 **(Transcriptionist's Note: End of Audio)**

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
County of York	)	2014-CP-46-00272
	)	
State of South Carolina,	)	
Appellant,	)	
vs.	)	TRANSCRIPT OF RECORD
Tami Baker Sisler,	)	
Respondent.	)	

June 3rd, 2014
York, South Carolina

BEFORE:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE.

APPEARANCES:

AARON J. HAYES, ASSISTANT SOLICITOR
Attorney for the State

JAMES D. STANKO, ESQ.
Attorney for the Defendant

AMINAH R. HARDY, CM
Official Court Reporter

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P R O C E E D I N G S

1 THE COURT: Now let me tell y'all, someone sent me a
2 memo at 1:00 a.m. this morning.

3 MR. STANKO: That was me, Your Honor.

4 THE COURT: I didn't get it. So for what it's
5 worth...

6 MR. HAYES: And, Your Honor, also I sent a memo to
7 your law clerk last week, but I understand now you might
8 not have gotten that either.

9 THE COURT: She's gone.

10 MR. HAYES: So if I may approach, I have a copy of my
11 memorandum I sent last week.

12 THE COURT: This is State of South Carolina versus
13 Tami Baker Sisler. As I said, I did get an e-mail at
14 1:01...

15 MR. STANKO: I have a hard copy if that's --

16 THE COURT: That actually may help me.

17 MR. STANKO: I just showed it to...

18 THE COURT: That's okay. And obviously I want to
19 hear your arguments, and then I'll take this and read it.
20 The one thing without a law clerk that I'm not going to do
21 is take too much under advisement because that just leads
22 to complaints. 90 days when I haven't dealt with it, but
23 I'll have to do that unless you can convince me otherwise.

24 Who is the moving party?
25

1 MR. HAYES: Your Honor, the state is the appellant.

2 THE COURT: Yes, sir.

3 MR. HAYES: Your Honor, we do have a matter by
4 stipulation to address with the Court. This was an appeal
5 from a pretrial dismissal that was recorded on audio CD,
6 which is in the record. But we've had the audio CD
7 transcribed and would stipulate as Court's Exhibit 1,
8 should it please the Court -- I didn't get a sticker on it
9 but this is the Court's copy should that please the Court.

10 THE COURT: Do you have a copy for her? Is this
11 only one you got?

12 MR. HAYES: I can send it electronically.

13 Your Honor, this case originated in a centralized DUI
14 court that we have here in York County that's presided
15 over by a magistrate. Was charges of driving under the
16 influence and child endangerment. And on the day of
17 trial, the defendant made a pretrial motion to dismiss
18 based on lack of reasonable suspicion on probable cause
19 for the underlying traffic stop. And we had a hearing on
20 that motion, which Your Honor has before you as part of
21 that transcript. And the magistrate granted the motion
22 and dismissed the case.

23 Just briefly, Your Honor, the roadside video was
24 presented to the magistrate at the hearing and provides
25 context for the discussion. So should it please the

1 Court, I have a three-minute clip I would like to show.

2 THE COURT: Sure.

3 MR. HAYES: So that --

4 MR. STANKO: Your Honor, we would object to the
5 introduction of that. It's -- the scope of the appeal is
6 limited to evidence and things that are in the record.
7 That was not preserved as part of the record and I feel
8 it's outside the scope of this appeal.

9 MR. HAYES: Your Honor, it was published to the
10 magistrate during the hearing, and he reviewed it and made
11 findings on it. And this Court's standard of review, you
12 are allowed to review the underlying facts for clear
13 error.

14 THE COURT: Was the entire disk introduced, or was
15 none of it introduced?

16 MR. HAYES: The pertinent portions of the disk were
17 published to the magistrate during the hearing, and then I
18 retained the disk in my possession, but the magistrate
19 reviewed it, and in his return he made findings about what
20 it shows.

21 THE COURT: Okay. Subject to your objection, you're
22 protected for the record. I'll -- and again, I'm doing
23 this just as the trier of fact so that I can understand a
24 little bit about what's going on. But you're protected
25 for the record.

1 MR. STANKO: Thank you.

2 THE COURT: So overruled. You can play it.

3 MR. HAYES: Just to provide a little context before
4 we play it, on August 17th, 2013, Deputy Chris Herra
5 (phonetic) of the York County Sheriff's Office came across
6 the defendant's vehicle lodged in a grassy median. And he
7 assists the defendant in getting her vehicle unstuck and
8 takes her at her word that she's lost and points her in
9 the right direction, give her direction as to where to go.
10 And as what -- the clip that we're going to see is between
11 that initial encounter or the end of that initial
12 encounter and the second encounter that the officer later
13 had with the defendant that resulted in her being arrested
14 for DUI. So it's a three-minute interval between the end
15 of the officer's first encounter with the defendant --

16 THE COURT: In the grassy knoll.

17 MR. HAYES: -- in the grassy median and the officer's
18 second encounter with the defendant, which is the subject
19 of this motion and the subject of this appeal.

20 THE COURT: Okay. Is this his dash cam?

21 MR. HAYES: Yes, sir.

22 THE COURT: And, again, just for the record, you're
23 protected. Your objection to my watching this is noted
24 and overruled.

25 MR. STANKO: Thank you, Your Honor.

1 THE COURT: No problem.

2 (Videotape played in open court.)

3 MR. HAYES: Your Honor, just briefly, the issue --
4 the pretrial motion to dismiss is based upon the
5 defendant's contention that there was no basis for the
6 second encounter. It's the state's contention that there
7 was an intervening traffic violation between the first
8 encounter and the second encounter. That's covered in the
9 brief and we'll discuss it more, but...

10

11 THE COURT: This is after he pushed her out and
12 helped her out?

13 MR. HAYES: Yes, sir, and she's going to go on her
14 way now.

15 THE COURT: Okay. I got you.

16 MR. HAYES: State contends she drives left-of-center
17 in between now and the second encounter with the officer.

18 (Videotape played in open court.)

19 THE COURT: She said yes?

20 MR. HAYES: I believe she said no, Your Honor.

21 THE COURT: Okay.

22 MR. HAYES: That's the portion of the video that's
23 relevant to this motion. The defendant contended there
24 was no basis for that second encounter and that the blue
25 lights that we saw on the screen was the officer

1 improperly blue lighting her for nothing more than missing
2 her turn. As you recall, they had a discussion, "I'm
3 going to flash my lights at you, this is where you're
4 supposed to turn." She missed her turn, so the officer
5 flashed his headlights and his blue lights, and the
6 defendant contended that was a traffic stop without
7 reasonable suspicion of probable cause to do so, and the
8 magistrate agreed. And the state appeals, which is what
9 we're here on today.

10 The first thing I would point out.

11 THE COURT: Let me ask you this: Did she blow?

12 MR. HAYES: Yes, sir.

13 THE COURT: What was her --

14 MR. HAYES: .14 percent.

15 THE COURT: Okay.

16 MR. HAYES: The first thing I would point out as a
17 basis for the appeal is I believe there's an error of law
18 on the face of the magistrate's return. If Your Honor has
19 that record -- I have my copy here which I can show the
20 Court.

21 THE COURT: Hold on just a second. I got it. Now,
22 the disk that's attached, is that the entire disk that --

23 MR. HAYES: No, sir, that's the audio of the hearing
24 we had transcribed.

25 THE COURT: Okay. I'm sorry to interrupt you. Go

1 ahead.

2 MR. HAYES: No problem, sir. It's well-established
3 law that all an officer needs to stop a vehicle is
4 reasonable suspicion of a traffic violation. And that's
5 State v. Burgess, 394 SC 407 and State v. Vinson, 400 SC
6 347. And the observation of failing to maintain the lane
7 is a violation of South Carolina traffic law 56-5-1900 for
8 which a vehicle stop is valid, and that's also State v.
9 Vinson. And in the officer's return -- excuse me, the
10 magistrate's return, he essentially conceded that it
11 appears she crossed over the line on the second page.
12 Granted, it appeared she crossed over. It was not
13 conclusive.

14 And that the magistrate's finding of fact, Your
15 Honor, and I think that language right there essentially
16 stipulates there was reasonable suspicion that she crossed
17 the line. That's all the state has to have to initiate a
18 traffic stop. So I think it's a non-sequitur in the
19 magistrate's return when he says essentially it looks like
20 there's a traffic violation, but there's no reasonable
21 suspicion or probable cause for the stop. That doesn't
22 work under our law, Your Honor. I would submit that's
23 reversible error of law on the face of the return.

24 Then, Your Honor, you've been submitted with briefs
25 that kind of go a little bit deeper on the issue of what

1 that second encounter exactly was under the law. I
2 submitted my memorandum that I emailed to your law clerk
3 last week but just handed the Court today, and I did file
4 it into the record last week as well. Our contention
5 would be it was a clear error of law to dismiss these
6 charges for lack of probable cause, initiated traffic stop
7 because the officer testified in the transcript that Your
8 Honor has that he did directly observe a traffic violation
9 and that constitutes probable cause, per se, to initiate a
10 traffic stop, and that would be State v. Adams, 377 SC
11 344.

12 And another thing that comes into play in this case
13 is that an officer's intent in making a traffic stop is of
14 no constitutional significance, and that would be Whren
15 versus United States, 517 US 806. Because what the
16 defendant essentially is arguing or argued below and I
17 imagine will argue today is that this was an accidental
18 encounter, that the officer's blue light was not intended
19 to pull her over for a traffic violation, but was
20 intending to signal that she missed her turn and that she
21 should turn here.

22 And it's the state's position that even if that is
23 true, even if this officer did not intend to pull her over
24 for a traffic violation, the officer's subjective intent
25 is irrelevant when reviewing the propriety of the stop

1 under the Constitution because Whren says that you don't
2 look at it from the perspective of the officer involved,
3 you look at it from the perspective of a reasonable
4 officer. This is an objective analysis, not a subjective
5 analysis. So what the officer is thinking when he pulls
6 someone over doesn't really bear upon the 4th Amendment
7 analysis as long as there's probable cause for that stop,
8 something like a traffic violation, which we just watched
9 and which the magistrate watched.

10 Another case directly on point is State v. Nelson,
11 336 SC 186. And this is a South Carolina Supreme Court
12 case construing Whren concerning officer motivations for
13 traffic stops. And in Nelson, the officer had arguably
14 improper intentions for the stop. He was trying to stop
15 somebody for an invalid reason. He did not have probable
16 cause or reasonable suspicion to stop the defendant when
17 he first encountered him. But then he witnessed a traffic
18 violation, which gave him the reasonable suspicion and
19 probable cause he needed to initiate the traffic stop, and
20 the South Carolina Supreme Court said even if his initial
21 intentions toward that stop were unlawful, even if the
22 stop he was trying to effect was not valid under our
23 constitution, the fact he witnessed traffic violations
24 essentially cures that. And the state would argue that's
25 what we have here. In this case, it's less severe because

1 the officer didn't want to pull her over. He was using
2 his discretion to not pull her over for that traffic
3 violation, but nonetheless he could have and so there's no
4 constitutional problem. If the officer can pull you over
5 under the law, because of an observation of a traffic
6 violation, you have no constitutional complaint when that
7 stop is effected, even if the officer accidentally hit his
8 blue lights.

9 Then another issue I would address for Your Honor
10 that I imagine opposing counsel is going to mention: At
11 the hearing of this -- and this is clear in the record --
12 the state made two arguments in response to this motion.
13 We argued in the alternative. One, we argued that this
14 was a consent -- the second stop was a voluntary encounter
15 with police. Or in the alternative, like we're arguing
16 today, it was a traffic stop with probable cause or
17 reasonable suspicion to do so. In their memorandum they
18 just handed you, they accuse the state of not being able
19 to decide what this encounter was, and I would just point
20 out for the record, Your Honor, that the state was making
21 alternative arguments to the Court below, but today we put
22 it before Your Honor as this is a traffic stop with
23 reasonable suspicion and/or probable cause to make it.

24 So Your Honor has my memorandum which I would
25 incorporate into the record at this time. And I would

1 request the Court enter an order reversing the
2 magistrate's order of dismissal and remanding this case
3 for trial.

4 THE COURT: Okay. Thank you.

5 Yes, sir, I'll be happy to hear from you.

6 MR. STANKO: Thank you, Your Honor. May it please
7 the Court. And again, I do apologize for not sending this
8 email until --

9 THE COURT: That's okay. Were you working at 1:01 in
10 the morning?

11 MR. STANKO: Yes, I was, Your Honor. We were trying
12 to get this all firmed up in time for this morning.

13 (A discussion was held off the record.)

14 MR. STANKO: In Supreme Court case, Whren versus
15 United States, said the traffic stops must not be
16 unreasonable. Additionally, an officer may only pull a
17 vehicle over when he has probable cause to believe that a
18 traffic violation has occurred. That's State v. Burgess,
19 394 SC 407. What you've heard from opposing were several
20 different positions the state has taken. This has been an
21 ambiguous log rolling. They've changed their position I
22 believe three different times now.

23 They initially took the position it was a lawful
24 traffic stop. They said, Well, if that's not the case,
25 how about a welfare or safety check, that he was merely

1 making a public contact with her to find out whether or
2 not she was doing okay. When Deputy Herra, the deputy on
3 the video, was questioned as to whether he had initiated a
4 traffic stop, he stated at the motion hearing several
5 times that was not his intent, that he never activated his
6 lights. Quoting from the transcript, "I wasn't initiating
7 a traffic stop for any other purpose than to, 'Lady,
8 you're going the wrong way.'" Additionally, he said blue
9 lights were not initiated to stop her on a traffic
10 offense. "I didn't turn the blue lights on to pull her
11 over." In response to a question from counsel from -- to
12 Ms. Sisler, he said, "If I had stopped her, that would be
13 my reason for the stop because I didn't want her to get
14 lost again." He also said, "I just had to get her stopped
15 or I had to get -- basically reminding her to turn. I was
16 just trying to get her back towards Rock Hill."

17 After the video was published, and Deputy Herra had
18 an opportunity to view the video, he changed his testimony
19 and admitted that he did, in fact, turn on his blue
20 lights. However, after admitting he had turned on his
21 blue lights, he said, "I did blink it for the turn. I
22 thought I was blinking my headlight. What I did, I
23 blinked blue lights trying to get her to turn because she
24 missed the turn."

25 THE COURT: Okay.

1 MR. STANKO: After he had changed his testimony to
2 admit that he had turned on blue lights prior to
3 respondent pulling over, Ms. Sisler, he continued to deny
4 it was a traffic stop. He said, "I never initiated a
5 traffic stop. I'll stick with that." He also stated,
6 "You can turn it around all you want. I didn't initiate a
7 traffic stop. I just blinked the lights, hey, woman don't
8 miss your turn." Several, several --

9 THE COURT: Which is what he said on the thing.
10 Don't pull over, again. Yeah, I got you.

11 MR. STANKO: An exhaustive list of times that he said
12 he never intended to hit the blue lights or pull her over
13 if, in fact, he hit the blue lights, which, as Your Honor
14 saw as they -- right as they were passing the turn, he
15 blinked the lights for approximately one second, and I
16 believe you saw it on video, the blue lights came on and
17 she witnessed those from behind.

18
19 South Carolina law 56-5-750 says a driver is required
20 to stop when signaled by either siren or flashing light by
21 a law enforcement vehicle. Here again, the blue lights
22 came on. And at the motion hearing, Ms. Sisler testified
23 she saw those blue lights and she immediately -- as soon
24 as she passed by the turn area, she put on her turn signal
25 and pulled right over to the side. She testified that she

1 did that and Deputy Herra, in fact, admitted there is a
2 legal requirement for someone to pull over as soon as blue
3 lights are initiated. There is no requirement as to
4 whether the blue lights stay on for an extended period of
5 time. Your average driver, when he sees blue lights come
6 on behind him, is going to pull off to the side. It's the
7 legal requirement.

8 Deputy Herra testified that if he had initiated a
9 traffic stop, the only reason he did so was because she
10 missed her turn. During the motion hearing --

11 THE COURT: That was his testimony about the second
12 stop?

13 MR. STANKO: Yes, Your Honor.

14 THE COURT: Okay. All right.

15 MR. STANKO: He said the only reason he would have
16 stopped her, if he had stopped her, was because she missed
17 her turn. During the motion hearing, Deputy Fowler, who
18 later became the arresting officer in this and Deputy
19 Herra both testified to the fact that missing your turn is
20 not a violation of any law in South Carolina.

21 So now we come to the state's new position. The new
22 position is this was a traffic stop and he had some
23 probable cause to pull her over. Problem with that is
24 that's -- that probable cause didn't come out until the
25 motion hearing. We were watching the video, and on the

1 video they point to some alleged conduct that even the
2 magistrate says in his return was inconclusive at best.
3 But they point to that and try to establish that as the
4 reason for the stop. Basically you have a -- you have
5 blue lights activated, she pulls over, and then later on
6 several months on down the line, they're watching a video
7 trying to say oh, there, that's the reason why I pulled
8 her over.

9 It's not permitted for the state to do that. They
10 are -- state is not allowed to create new reasoning to
11 justify a traffic stop when that reasoning did not exist
12 at the time of the stop. State has continued to go back
13 and forth. As we've shown, they've had three different
14 positions so far changing their position or their
15 reasoning in this case to try to justify an unlawful stop.
16 At the time of the stop and at the motion hearing and now,
17 there were no specific or articulable facts of unlawful
18 contact. We would ask that the memo presented to Your
19 Honor this morning be entered into the record, and would
20 move for a order affirming the magistrate decision.

21 THE COURT: Okay. Anything else? What I'm going
22 do -- and again part of the problem is I was in Union
23 yesterday and drove back to Anderson. I will take this
24 and break my rule and take it under advisement because I
25 want to read it. And I'll let you know something.

1 MR. STANKO: Thank you, Your Honor.

2 THE COURT: Thank you.

3 (Court's Exhibits 1 and 2 were marked.)

4 (Whereupon, the proceedings were concluded.)

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Form S-438
Rev. 9/10STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF <u>NOV</u>										VERSUS					
FIRST NAME <u>TAMI</u>					MIDDLE NAME <u>BAKER</u>					LAST NAME <u>SILVER</u>					
STREET AND NO. <u>Rock Hill</u>					CITY <u>Rock Hill</u>					STATE <u>SC</u> ZIP CODE <u>29732</u>					
STATE LICENSED <u>SC</u>		DRIVER'S LICENSE NO.			CDL ☐ YES ☒ NO		DRI. LIC. CLASS <u>D</u>								
VEH. UC. NO.		STATE <u>SC</u>		MAKE OF VEH. <u>CAR</u>		YEAR <u>07</u>		COMB. VEH. <u>ALTO</u>		16 PSGR. VEH. <u>HAZ. MT.</u>					
								MOPED <u>OTHER</u>							
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT															
NAME OF TRIAL COURT <u>BARNETTE</u>					STREET AND NO. <u>529 S. GREEN RD</u>										
DATE <u>10/11/2013</u>		OF TRIAL <u>0900</u>		TIME OF TRIAL <u>Rock Hill</u>		CITY <u>SC</u>		STATE <u>29732</u>		ZIP CODE					
VIOLATION - COURT APPEARANCE REQUIRED <u>(YES)</u> NO										VIOLATION SECTION NO. <u>SL-5-2467</u>					
OWNER OF VEHICLE <u>CHILD ENDANGERMENT</u>										DATE OF ARREST <u>8/17/2013</u>					
ADDRESS OF OWNER <u>SAME</u>										DATE OF VIOLATION <u>8/17/2013</u>					
BAIL DEPOSITED <u>JAIL</u>					NAME OF ARRESTING OFFICER <u>FULLER</u>					RANK <u>DET</u>					
RACE <u>W</u>		SEX <u>F</u>		BIRTH DATE <u>5/21/1982</u>		HT. <u>5'2"</u>		HAIR <u>BRN</u>		EYES <u>BW</u>					
DATE BAIL REC'D. <u>20</u>		BY		DESCRIPTION OF ACCUSED		COUNTY <u>NOV</u>		NUMBER <u>46</u>		TROOP <u>3</u>					
						BADGE <u>F.432</u>									
						D A Y 1 2 3 4 5 6 7		S M T W T F S		DOCKET NO.					
CASE BEFORE															
CIRCUIT COURT ☐				MAGISTRATE ☐				MUN. COURT ☐				FEDERAL COURT ☐			
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE															
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐															
DISPOSITION															
NOLLE PROSSED ☐				GUILTY ☐				FORFEITED BOND ☐				PLED: NOLO CONTENDERE ☐			
TRIAL BY: TRIAL JUDGE ☐ JURY ☐															
VERDICT OF TRIAL IF ANY															
JAIL		SUSPEND		FINE		AMT. COLLECTED		AMT. SUSPENDED		DATE OF TRIAL IF ANY <u>20</u>					
COMMITTED TO:															
Vehicle Searched <u>NO</u>		Arrest as Result of Collision <u>NO</u>		OFFENSE CODE <u>94</u>		B.A. LEVEL									
CERTIFIED CORRECT										DATE <u>20</u>					
69328 GM															

DRIVER'S RECORD COPY

Form S-438
Rev. 9/10STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF <u>York</u>		VERSUS	
FIRST NAME	MIDDLE NAME	LAST NAME	
<u>TAMI</u>	<u>BAKER</u>	<u>SILVER</u>	
STREET AND NO.		CITY	STATE ZIP CODE
		<u>Rock Hill</u>	<u>SC 29738</u>
STATE LICENSED	DRIVER'S LICENSE NO.	CDL	DRI. LIC. CLASS
<u>SL</u>		☐ YES ☒ NO	<u>D</u>
VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR
	<u>SC</u>	<u>VIA</u>	<u>02</u>
		COMB. VEH.	AUTO
		HAZ. MT.	MOPED
		MTRCYCL.	OTHER
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT			
NAME OF TRIAL COURT		STREET AND NO.	
<u>BARNETTE</u>		<u>529 S. CHEROKEE RD</u>	
DATE OF TRIAL	TIME OF TRIAL	CITY	STATE ZIP CODE
<u>10/11/2013</u>	<u>0200</u>	<u>York</u>	<u>SC 29745</u>
VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO		VIOLATION SECTION NO.	
<u>DUI</u>		<u>5.5-2430</u>	
OWNER OF VEHICLE		DATE OF ARREST	
<u>SAME</u>		<u>8/17/2013</u>	
ADDRESS OF OWNER		DATE OF VIOLATION	
		<u>8/17/2013</u>	
BAIL DEPOSITED	NAME OF ARRESTING OFFICER		RANK
<u>JAIL</u>	<u>FAULKNER D A</u>		<u>DET</u>
DESCRIPTION OF ACCUSED		COUNTY	NUMBER
RACE	SEX	BIRTH DATE	HT. HAIR WT. EYES
<u>W</u>	<u>F</u>	<u>5/11/1982</u>	<u>52 BLU 150 BLU</u>
DATE BAIL REC'D. BY		BADGE	TROOP
		<u>FILE 37</u>	<u>3</u>
CASE BEFORE		TIME OF VIOLATION	
MAGISTRATE ☐ MUN. COURT ☐		<u>2245</u> A.M. - 1 P.M. - 2 P.M. - 3 P.M. - 4 P.M. - 5 P.M. - 6 P.M. - 7 P.M. - 8 P.M. - 9 P.M. - 10 P.M. - 11 P.M. - 12 P.M.	
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐		WEATHER	
NAME OF TRIAL COURT		DISTANCE IN FEET FROM INTERSECTION	
IF DIFFERENT FROM ABOVE		<u>S. ANDERSON RD</u>	
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐		MILES	
DISPOSITION		MILES	
NOLLE PROSSED ☐ GUILTY ☐		<u>15.5</u>	
FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐		MILES	
TRIAL BY: TRIAL JUDGE ☐ JURY ☐		CITY	
VERDICT OF TRIAL IF ANY		Lat	
GUILTY ☐ NOT GUILTY ☐		<u>0</u>	
DATE OF TRIAL IF ANY		Long	
<u>20</u>		<u>0</u>	
JAIL	SUSPEND	FINE	AMT. COLLECTED
COMMITTED TO:		Vehicle Searched	Arrest as Result of Collision
		<u>No</u>	<u>No</u>
CERTIFIED CORRECT		DATE	
		<u>20</u>	

DRIVER'S RECORD COPY

69327 GM

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	CENTRALIZED DUI COURT
COUNTY OF YORK	)	
	)	
State of South Carolina,	)	MOTION FOR REHEARING
	)	AND/OR RECONSIDERATION
	)	
v.	)	Ticket Nos. 69327GM, -28GM
	)	
Tami Baker Sisler,	)	
	)	
DEFENDANT.	)	

TO: EDWARD L. PHIPPS, ESQUIRE, ATTORNEY FOR THE DEFENDANT
ABOVE-NAMED, AND TO THE DEFENDANT ABOVE-NAMED:

DUI COURT
2014 JAN 16 PM 1:16

YOU WILL PLEASE TAKE NOTICE that the State of South Carolina intends to move, and does hereby so move, for an order from the Court granting that this matter be reheard, or in the alternative, that the Magistrate reconsider his earlier decision to dismiss this case. The State requests that the Court set this matter for rehearing and/or reconsideration at a time mutually convenient to the Court and all parties. Ultimately, the State requests that the Court reconsider its dismissal of these charges, and reinstate them so that the case may proceed to trial.

As the Court and all parties are aware, the Court dismissed Ticket Nos. 69327GM and 69328GM (alleging DUI and Child Endangerment, respectively) after in-chambers pretrial motions arguments, made on January 15, 2014. Therefore, the State makes the following requests:

I. THE STATE REQUESTS THAT THIS MATTER BE REHEARD IN OPEN COURT, SO THAT A NORMAL RECORD MAY BE CREATED.

Due to circumstances beyond the Court's and the parties' control, the pretrial motions in this matter were heard in the Judge's chambers, without the normal recording devices present. The State requests that the Court schedule reargument on the Defendant's motion to dismiss at a

time when all parties and counsel may be present to make a traditional record. The State submits that this will make it easier on the Court and the parties, should it become necessary to transmit the record of this matter to an appellate court.

II. IN THE ALTERNATIVE, THE STATE REQUESTS THAT THE COURT RECONSIDER ITS DECISION TO DISMISS THIS CASE. THE STATE REQUESTS THAT THE CHARGES BE REINSTATED AND THE CASE RESCHEDULED FOR A JURY TRIAL.

Should the Court not wish to rehear this matter, the State respectfully urges that the Court reconsider its decision to dismiss these charges. As understood by the State, the Court dismissed these charges because it found that Deputy Haire did not have reasonable suspicion or probable cause to initiate a traffic stop prior to his second encounter with Ms. Sisler on the night of August 17, 2013. During the in-chambers hearing, Deputy Haire testified that he *could* have pulled Ms. Sisler over for a traffic violation. Indeed, he testified that he directly observed Ms. Sisler's tires cross the white line prior to his second encounter with her. This offense is clearly visible on Deputy Haire's roadside video. He testified that he could have issued her a citation for this offense. For the purposes of this Motion, the State stipulates that Deputy Haire's one-second use of his blue light constitutes the initiation of a traffic stop. These facts, coupled with the law as explained below, indicates that there is no constitutional defect in Deputy Haire's stop of Ms. Sisler, and therefore the charges should not have been dismissed.

It is of no constitutional import that Deputy Haire did not intend to pull her over at the time of the second stop. See Whren v. United States, 517 U.S. 806, 813 (1996) ("We think [previous Supreme Court jurisprudence] foreclose[s] any argument that the constitutional reasonableness of traffic stops depends on the *actual motivations* of the individual officers involved") (emphasis added). "Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is reasonable per se." *State v. Adams*, 377 S.C.

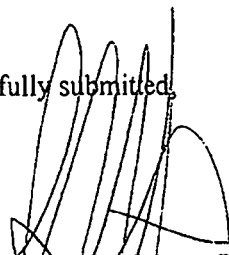
334, 338 (Ct. App. 2008) (citing Whren). "A police officer may stop a vehicle when the officer has probable cause to believe that a traffic violation occurred." State v. Burgess, 394 S.C. 407, 412 (Ct. App. 2011).

Because he witnessed the traffic violation, Deputy Haire had the legal authority (i.e. probable cause) to stop Ms. Sisler for their second encounter. Even though the stop happened due to Ms. Sisler's mistake about the meaning of the one-second blue light, and even though Deputy Haire did not want to pull her over for the second encounter, this does not make it an invalid stop under the Constitution. See Whren. Therefore, the Court should reconsider its decision to dismiss these charges, and reinstate them so that the case may be tried before a jury.

CONCLUSION

For the foregoing reasons, the State requests that the Court rehear the Defendant's Motion to Dismiss in open court, so that a traditional record may be made. In the alternative, the State requests that the Court reconsider its decision to grant the Defendant's Motion to Dismiss, and enter an order denying the Defendant's Motion.

Respectfully submitted,



Aaron J. Hayes, Assistant Solicitor
16th Judicial Circuit - DUI Unit
1070 Heckle Boulevard, Suite 207
Rock Hill, South Carolina 29730
(803) 909-7582

Rock Hill, South Carolina

January 16, 2014

CERTIFICATION OF FILING

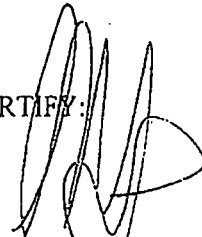
I hereby certify that I have filed the original of the foregoing Motion for Rehearing and/or Reconsideration by hand-delivery of same to the Clerk of the York County Centralized DUI Court, 529 S. Cherry Road, Rock Hill, South Carolina 29730.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion for Rehearing and/or Reconsideration by email and by United States Mail, postage prepaid, to the following Counsel of Record in this matter:

Edward L. Phipps, Esquire
Phipps Law Firm, LLC
260 West Coleman Boulevard, Suite A
Mt. Pleasant, South Carolina 29464
edward@phippsfirm.com

I SO CERTIFY:



1/16/14

Aaron J. Hayes, Assistant Solicitor
16th Judicial Circuit – DUI Unit
1070 Heckle Boulevard, Suite 207
Rock Hill, South Carolina 29730
(803) 909-7582

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

State of South Carolina,)

Appellant,)

v.)

Tami Baker Sisler,)

Respondent.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-46- 272

Former Ticket Nos. 69327GM, -28GM

NOTICE OF APPEAL

FILED-RECEIVED
2014 JAN 30 PM 2:33
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

TO: EDWARD L. PHIPPS, ESQUIRE, ATTORNEY FOR THE RESPONDENT, AND
TO THE RESPONDENT ABOVE-NAMED:

THE STATE OF SOUTH CAROLINA in the Sixteenth Judicial Circuit, by and through Assistant Solicitor Aaron J. Hayes, hereby appeals the ruling of York County Centralized DUI Court Magistrate Clayburn Barnette dismissing the Driving Under the Influence (Ticket No. 69327GM) and Child Endangerment (Ticket No. 69328GM) charges against Tami Baker Sisler ("Respondent"). Respondent is represented by Edward L. Phipps, Esquire. The ruling was made by Judge Barnette at a pretrial motions hearing on January 15, 2014. Judge Barnette denied the State's Motion for Rehearing/Reconsideration via written order issued on January 30, 2014. A copy of this written order is attached hereto as **Exhibit A**.

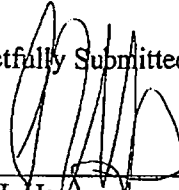
This appeal is made on the following grounds:

1. The Magistrate erred in dismissing the above-referenced charges for lack of probable cause to initiate a traffic stop, where the officer who initiated the traffic stop stated that he directly observed a car being driven by Respondent cross the broken white line demarcating lanes of travel on a four-lane, divided highway; and where this direct observation of a traffic violation constitutes probable cause *per se* for a lawful traffic stop; and where the officer who initiated the traffic stop stated that he had probable cause to issue a citation for this traffic violation but chose not do so at the time; and where the officer who observed this traffic violation created a dashboard camera video of same. This Appeal is based on the legal doctrines as stated in the cases of Whren v. United States, 517 U.S. 806 (1996), State v. Adams, 377 S.C. 334 (Ct. App. 2008), State v. Burgess, 394 S.C. 407 (Ct. App. 2011), State v. Vinson, 400 S.C. 347 (Ct. App.

2012), and related cases. Therefore, the Magistrate's order of dismissal should be reversed and this case remanded for further proceedings.

2. To the extent that the audio record in this matter is unclear, the Magistrate erred in denying the State's Motion for Rehearing with normal equipment present, and this matter should be remanded for rehearing under normal circumstances.

Respectfully Submitted,



Aaron J. Hayes
Assistant Solicitor
16th Judicial Circuit – DUI Unit
1070 Heckle Boulevard, Ste. 207
Rock Hill, SC 29732
(803) 909-7582

Rock Hill, South Carolina

January 30, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

State of South Carolina,)

Appellant,)

v.)

Tami Baker Sisler,)

Respondent.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No. 2014-CP-46- 272

Former Ticket Nos. 69327GM, -28GM

CERTIFICATE OF FILING
AND SERVICE

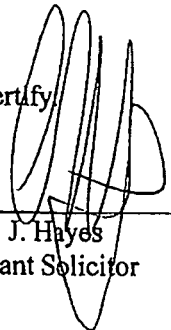
I hereby certify that I have filed the original of the foregoing Notice of Appeal by hand-delivery to the Clerk of Court for the Court of Common Pleas, Sixteenth Judicial Circuit, 300 W. Liberty Street, York, South Carolina 29745.

I hereby further certify that I have filed a copy of the foregoing Notice of Appeal by hand-delivery to the Clerk of the York County Centralized DUI Court, 529 S. Cherry Road, Rock Hill, South Carolina 29730.

I hereby further certify that I have served upon Respondent a copy of the foregoing Notice of Appeal by email and by United States Mail, postage prepaid, to her Counsel of Record in this matter:

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260 West Coleman Boulevard, Suite A
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Attorney for Respondent

I so certify



Aaron J. Hayes
Assistant Solicitor

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DAVID HAMILTON
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YORK COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No. 2014-CP-46-00272
	)	
Appellant,	)	Former Ticket Nos. 69327GM, -28GM
	)	
v.	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF
	)	THE STATE'S APPEAL
	)	
Tami Baker Sisler,	)	
	)	
Respondent.	)	
	)	

For the following reasons, the State hereby respectfully requests that the Court enter an Order reversing the Magistrate's dismissal of the above-referenced charges.

NATURE OF THE CASE AND PROCEDURAL HISTORY

This matter originated in the York County Magistrate's Centralized DUI Court as two charges: DUI, First Offense (Ticket No. 69237GM) and Child Endangerment, First Offense (Ticket No. 69328GM). At a pretrial motions hearing on January 15, 2014, the Honorable Clayburn S. Barnette, Jr., dismissed these charges. The gravamen of the Defendant's motion to dismiss is her contention that the State lacked probable cause to initiate the underlying traffic stop. The State filed a Motion to Reconsider on January 16, 2014, which was denied via written order dated January 30, 2014. The State served and filed this Notice of Appeal on the same day.¹

¹ The State's Notice of Appeal also includes its appeal of the Magistrate's decision not to allow rehearing of the Motion to Dismiss with normal audio recording devices present. The State will address this contention at oral argument on this Appeal.

FACTS BEARING UPON THE APPEAL

On August 17, 2013, Deputy Chris Haire of the York County Sheriff's Office came upon the Defendant's vehicle lodged in the grass median of a four-lane, divided highway.² The vehicle was pointing in a direction opposite the direction of travel for that side of the highway. After making contact with the Defendant, Deputy Haire assisted her in getting her vehicle unstuck and turned in the appropriate direction. Deputy Haire also provided the Defendant with instructions on how to reach her stated destination. Before sending the Defendant on her way, Deputy Haire informed her that he would follow her and blink his headlights at her when she was supposed to make her next turn, so that she could get back on the correct road to her destination.

After the Defendant began driving in the correct direction, Deputy Haire noticed her vehicle cross the broken white line demarcating the lanes of travel on that portion of the highway. (See, e.g., Transcript of Audio Recording of Pretrial Motions Hearing, pertinent excerpts attached hereto and collectively referred to as **Exhibit A**, at pp. 45, 58, 70). During the hearing on this motion, the Court agreed that the roadside video showed her crossing the line. (Ex. A at pp. 61-62.) After the Defendant's vehicle had crossed the broken white line, but before she reached the road she was supposed to turn onto, Deputy Haire flashed his headlights at her. This flash also included an approximately one-second activation of his blue lights. After this blue-light activation, the Defendant pulled over to the side of the road and had another encounter with Deputy Haire. During this second encounter, Deputy Haire began investigating the Defendant for DUI, and called in another deputy to assist. The Defendant was ultimately arrested for DUI and Child Endangerment.

² The State provides these general background facts for reference purposes, and they are taken substantially from the officers' testimony at the pretrial hearing. The State provides specific citations to those facts which are directly germane to the issues on appeal.

At the pretrial motions hearing, Deputy Haire testified that he could have ticketed the Defendant for crossing the broken line (See Magistrate's Return at p. 2; see also Ex. A at p. 70). Since it lies within an officer's discretion whether to initiate stops for such violations, see Ex. A at p. 70, Deputy Haire opted not to pull her over for this violation. Hence, the activation of his blue lights prior to his second encounter with the Defendant was his attempt to signal her that she had reached the road onto which she was supposed to turn. (Ex. A at pp. 54-55.) The Defendant contends that this activation of blue lights due to the Defendant's "missing her turn" amounts to the initiation of a traffic stop without probable cause. As further explained below, it is the State's contention that there is no constitutional defect with this traffic stop because of the officer's direct observation of a traffic violation immediately prior to the stop. An accidental traffic stop is permissible under the Constitution if there is probable cause to make the stop.

STANDARD OF REVIEW

"In a criminal appeal from the magistrate's court . . . the court reviews the case for preserved errors raised by appropriate exception." State v. Hoyle, 397 S.C. 622, 624, 725 S.E.2d 720, 721-22 (Ct. App. 2012) (citing Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011)). Further, "[i]n criminal cases, an appellate court only reviews errors of law . . . [w]e are bound by the circuit court's factual findings *unless they are clearly erroneous*. This standard of review also applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases." State v. Adams, 377 S.C. 334, 338, 659 S.E.2d 272, 274 (Ct. App. 2008) (citations omitted) (emphasis added).

LEGAL ARGUMENT

IT WAS A CLEAR ERROR OF LAW FOR THE MAGISTRATE TO DISMISS THESE CHARGES FOR LACK OF PROBABLE CAUSE TO INITIATE A TRAFFIC STOP, BECAUSE THE OFFICER DIRECTLY OBSERVED THE DEFENDANT COMMIT A TRAFFIC VIOLATION PRIOR TO THE STOP.

It is undisputed that traffic stops implicate the “seizure” provisions of the Fourth Amendment, and therefore such stops must not be “unreasonable under the circumstances.” See Whren v. United States, 517 U.S. 806, 809-10 (1996). “Where probable cause exists to believe that a traffic violation has occurred, the decision to stop the automobile is *reasonable per se*.” Adams, 377 S.C. at 338, 659 S.E.2d at 274 (citing Whren, 517 U.S. at 810) (emphasis added); see also State v. Burgess, 394 S.C. 407, 412, 714 S.E.2d 917, 919 (Ct. App. 2011) (“a police officer may stop a vehicle when the officer has probable cause to believe a traffic violation has occurred... or when the officer has reasonable suspicion the occupants are involved in criminal activity”) (citations omitted). Failing to maintain one’s lane on a highway with multiple lanes is a traffic violation under South Carolina law, sufficient to justify a traffic stop if the officer has probable cause (or reasonable suspicion) to believe that a motorist has committed that violation. See State v. Vinson, 400 S.C. 347, 734 S.E.2d 182 (Ct. App. 2012) (construing the statute regarding failure to maintain lane, S.C. CODE ANN. § 56-5-1900, and affirming the circuit court’s determination of a lawful traffic stop based on a perceived violation of the statute).

In the instant case, Deputy Haire directly observed the traffic violation, giving him probable cause *per se* to stop the Defendant. See Adams, supra. The Defendant’s contention is that the ensuing stop was unlawful because Deputy Haire used his blue lights to signal her to turn her vehicle onto the correct road, and that Deputy Haire did not intend to pull her over at the time he activated his blue lights. Defendant contends that she was stopped for “missing her turn,” and nothing more. However, even if this second encounter was an “accidental” stop, it is still permissible under the Constitution.³ In Whren, supra, the United States Supreme Court stated as

³ In Whren, the United States Supreme Court made it clear that probable cause determinations are reviewed objectively, from the perspective of a reasonable officer, not from the subjective perspective of the officer involved. See 517 U.S. at 813 (citing Scott v. United States, 436 U.S. 128, 136, 138 (1978)).

follows: “We think [prior United States Supreme Court cases] foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the officers involved . . . [s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment Analysis.” 517 U.S. at 813.

In applying Whren to a DUI case in South Carolina, the South Carolina Supreme Court has noted that even when an officer wants to make a traffic stop for an *unlawful* reason, the defendant has no constitutional complaint if the officer witnesses a traffic violation that would justify the stop. See State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999). In Nelson, the arresting officer responded to personal disturbance between a dog owner (Nelson), and a landowner who did not want the dog on his property. Id. at 189, 519 S.E.2d at 787. When the officer arrived, Nelson had already left the scene. Id. After the officer left the property, he encountered Nelson’s vehicle near a stop sign. Id. He flashed his high beams at Nelson to get his attention, but then Nelson rolled through the stop sign without stopping and sped off down the road. Id. At that point, the officer triggered his blue lights and initiated a traffic stop. Id. at 190, 519 S.E.2d at 787. Nelson was eventually arrested and convicted of DUI as a result of the stop. Id. at 191, 519 S.E.2d at 788. In upholding the trial court’s denial of Nelson’s motion concerning probable cause for the stop, the South Carolina Supreme Court held as follows:

However, even assuming Officer Hadden’s initial attempt to stop Defendant would have violated the Fourth Amendment, Officer Hadden was nonetheless justified in making the stop after [Nelson] committed the subsequent traffic infractions . . . Although disputed by [Nelson], Officer Hadden testified he witnessed [Nelson] roll through a stop sign and then speed through a residential neighborhood. Under Whren, these traffic infractions provided Officer Hadden with probable cause to make the traffic stop. The question is whether the stop was nonetheless tainted because Officer Hadden’s initial attempt to stop [Nelson] may have been unlawful . . .

In the instant case, even assuming Officer Hadden’s initial attempt to stop [Nelson] was unlawful, [Nelson’s] acts of running the stop sign and speeding

through the neighborhood constituted new and distinct crimes for which Officer Hadden had probable cause to stop [Nelson].

Nelson, 336 S.C. at 193, 195, 519 S.E.2d at 789-90.⁴

The rules from Whren and Nelson are clear: if an officer observes a traffic violation, a subsequent traffic stop is valid *per se*, regardless of the officer's initial intentions concerning the stop. If an "ill-intentioned" stop—such as the one in Nelson—passes constitutional muster, then it follows that an "accidental" stop—such as the one in this case—passes muster even more so, due to the officer's direct observation of a traffic violation.

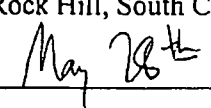
CONCLUSION

For the foregoing reasons, the State asserts that it was an error of law for the Magistrate to dismiss these charges for lack of probable cause to initiate a traffic stop. Accordingly, the State requests that this Court enter an Order reversing the Magistrate's decision and reinstating these charges for trial. This Memorandum may be further supplemented by the oral arguments of counsel at the hearing on this Appeal.

Respectfully Submitted,


 Aaron J. Hayes
 Assistant Solicitor
 16th Judicial Circuit
 1070 Heckle Boulevard, Ste. 207
 Rock Hill, SC 29732
 (803) 909-7582

Rock Hill, South Carolina

, 2014

⁴ To the extent that this Defendant disputes that she crossed the broken white line, the State notes that the Nelson Court paid no attention to factual disputes for the purposes of reviewing the outcome of motion to dismiss. See Nelson, 336 S.C. at 193, 519 S.E.2d at 789. Further, and to the extent that the Magistrate's Return does not clearly state that the Magistrate agreed that the Defendant crossed the broken white line, this Court is empowered to review that factual finding because it is clearly erroneous. See sources cited in Standard of Review, *supra*. The competent evidence in the record on this point—Deputy Haire's roadside video—was published to the Magistrate during the hearing and is in the State's possession for use at the hearing on this Appeal. The roadside video clearly shows the Defendant's tires cross the broken white line prior to the activation of Deputy Haire's blue lights.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

State of South Carolina,

Appellant,

v.

Tami Baker Sisler,

Respondent.

) IN THE COURT OF COMMON PLEAS

) SIXTEENTH JUDICIAL CIRCUIT

) Case No. 2014-CP-46-00272

) Former Ticket Nos. 69327GM, -28GM

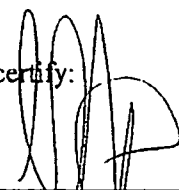
) **CERTIFICATE OF FILING
AND SERVICE**

I hereby certify that I have filed the original of the foregoing Memorandum in Support of the State's Appeal by depositing same in inter-departmental delivery to the Clerk of Court for the Court of Common Pleas, Sixteenth Judicial Circuit, 300 W. Liberty Street, York, South Carolina 29745.

I hereby further certify that I have served upon Respondent a copy of the foregoing Notice of Appeal by email and by United States Mail, postage prepaid, to her Counsel of Record in this matter:

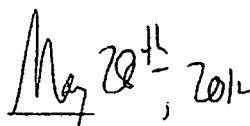
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Attorney for Respondent

I so certify:



Aaron J. Hayes
Assistant Solicitor

Date:



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	Case No.: 2014-CP-46-00272
	)	
State of South Carolina,	)	Former Ticket Nos. 69327GM, -28GM
	)	
Appellant,	)	
	)	
v.	)	MEMORANDUM IN
	)	OPPOSITION TO
Tami Baker Sisler,	)	THE STATE'S APPEAL
	)	
Respondent.	)	

For the following reasons, the Respondent hereby respectfully requests that the Court enter an Order upholding the Magistrate's dismissal of the above-referenced charges.

PROCEDURAL HISTORY

This matter originated in the York County Magistrate's Centralized DUI Court under the following charges: Driving Under the Influence (Ticket # 69327 GM) and Child Endangerment (Ticket No. 69328 GM). The Honorable Clayburn S. Barnette, Jr., dismissed the charges due to the fact that the State lacked probable cause for the traffic stop. On January 16, 2014, the State filed a Motion to Reconsider, which was denied via written order dated January 30, 2014.

FACTS

On August 17, 2013, at approximately 10:24 pm, the Respondent had pulled to the side of Hwy 5 and got stuck in the grass median after becoming lost. Deputy Chris Haire with the York County Sheriff's Office arrived on scene shortly after Respondent got stuck and stopped to help. After making contact, Deputy Haire and an unknown witness pushed Respondent's vehicle to get it unstuck and he provided her with directions on how to reach her stated destination. Deputy Haire, along with two witnesses, who never mentioned any concern that they thought Respondent was intoxicated, were with her for approximately eight (8) minutes while trying to

help her get back onto the road. After making contact with Respondent, Deputy Haire is asked over the radio by another officer if she is intoxicated, to which he responds that she was not. (*State v. Tami Baker Sisler* Motion Hearing Transcript at pg. 49, line 12). Respondent then performed a three (3) point turn, began driving away, and Deputy Haire followed behind her.

When the Respondent did not take the turn he had informed her she could take, Deputy Haire turned on his marked cruiser's blue lights, causing Respondent to pull over. During this secondary encounter, Deputy Haire requested Deputy Fowler to respond to the scene and investigate Respondent for Driving Under the Influence. After approximately six (6) minutes of investigation, Respondent was arrested for DUI and Child Endangerment.

STANDARD OF REVIEW

"In a criminal appeal from the Magistrate's Court, the Circuit Court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception." *State v. Hoyle*, 725 S.E.2d 720, 722 (S.C.App. 2012) The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law. *State v. Johnson*, 396 S.C. 182, 186 (S.C.App. 2011). Restated, "[a]n appellate court must affirm the [circuit] court's ruling if there is any evidence to support the ruling." *State v. Pinchardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (ClApp. 2005) (emphasis in original).

ARGUMENT

THE MAGISTRATE CORRECTLY DISMISSED THE CHARGES FOR LACK OF PROBABLE CAUSE FOR THE TRAFFIC STOP.

It is undisputed that traffic stops implicate the "seizure" provisions of the Fourth Amendment, and therefore such stops must not be "unreasonable" under the circumstances. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). Additionally, an officer may only pull a vehicle over when he has probable cause to believe that a traffic violation has occurred or has

reasonable suspicion to believe that any of the vehicle's occupants are involved in criminal activity. *State v. Burgess*, 394 S.C. 407, 412.

The stop of a motor vehicle must be justified by probable cause or reasonable suspicion based upon specific and articulable facts of unlawful conduct. "To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion 'would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.'" *Delaware v. Prouse*, 440 U.S. 648, 661 (citing *Terry v. Ohio*, 392 U.S. 1, 22).

The State initially had taken two positions regarding the traffic stop by Deputy Haire: *First*, that the second contact by Deputy Haire with Respondent was a lawful traffic stop. *Second*, if it was not a lawful traffic stop, then it was still lawful because the Deputy was merely performing a safety check. At the motion hearing that is the subject of this appeal, Deputy Haire testified that his second contact with the Respondent was not a traffic stop and denied even turning on his blue lights prior to her pulling over. His justification for the encounter was that he was conducting a safety check of the Respondent due to her pulling over on her own. (*Sisler Tr.* at pg. 36, line 11-25).

Deputy Haire testified several times that he did not initiate a traffic stop. The instances wherein he insisted he did not intend to stop the Respondent are exhaustive, and evidenced as follows:

- "I wasn't initiating a traffic stop for any other purpose than to, 'Lady, you're going the wrong way.'" (*Sisler Tr.* at pg. 36, line 8-10);
- "... the blue lights were not initiated to stop her on a traffic offense" (*Sisler Tr.* at pg. 37, line 4-5);

- "I didn't turn the blue lights on to pull her over" (*Id.* at line 10);
- Question from counsel for Sisler (hereinafter "Phipps"): "And so you're saying you didn't turn on your blue lights until after she pulled over?" Deputy Haire responded, "If I had stopped her, that would be my reason for the stop: because I didn't want her to get lost again," (*Id.* at line 17-19);
- Question from Phipps: "There is no statute for missing a turn?" Deputy Haire responded, "I just had to get her stopped, or had to get her basically reminding her to turn" (*Sisler Tr.* at pg. 40, line 14-15); "I was trying to get her back towards Rock Hill" (*Id.* at line 22).

Once the video was published during the motion hearing and Deputy Haire had the opportunity to re-view it, he changed his testimony and admitted to turning on his blue lights, evidenced as follows:

- "...I did blink it for the turn. I thought I was blinking my headlights. What I did, I blinked blue lights trying to get her to turn. She missed the turn." (*Sisler Tr.* at pg. 54, line 23-25 through pg. 55, line 1);

After Deputy Haire changed his testimony to admit that he did turn on his blue lights prior to Respondent pulling over, he continued to deny that it was a traffic stop, which was evidenced as follows:

- "I never initiated a traffic stop. I'll stick with that" (*Sisler Tr.* at pg. 56, line 7); and
- "You can turn it around all you want. I didn't initiate a traffic stop. I just blinked the lights to, 'Hey woman, don't miss your turn'" (*Sisler Tr.* at pg 57, line 9-11).

Per South Carolina Code of Laws § 56-5-750, a driver is required to stop when signaled via either siren or flashing light by a law enforcement vehicle. At the motion hearing, Respondent testified that she observed blue lights behind her and immediately pulled her vehicle to the side of the road as she was legally obligated to do. (*Sisler Tr.* at pg. 72, line 12-20). Deputy Haire admitted to the legal requirement to pull over when blue lights are observed. (*Sisler Tr.* at pg. 38, line 19).

Deputy Haire testifies over and over that he did not stop her, that it was not a traffic stop, and that the only reason he would have stopped the Respondent is because she missed her turn. Missing a turn is not a violation of any statute in the State of South Carolina, and it does not provide reasonable suspicion or probable cause to justify stopping the Respondent, as confirmed by both Deputies. Police are not authorized to use their blue lights to stop someone for merely missing their turn, and anything gained from that unlawful stop is inadmissible as a matter of law.

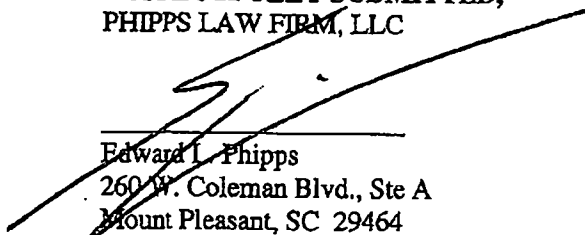
The State's "new" position now is that Respondent committed some violation prior to the activation of Deputy Haire's blue lights – a violation that was discovered and remotely testified to only after seeing it on the published video during the hearing. Even after seeing that on the video, it was not conclusive and Deputy Haire continued to deny that it was the reason he "pulled" her. Assistant Solicitor Hayes asks Deputy Haire if he had noticed the Respondent driving left of center prior to flashing his blue lights, to which Haire responds, "Yeah, I mean, I had seen that during the driving part of it. But, I mean, I'm not going to argue that that's why I pulled her. I blinked my lights for the turn. I didn't pull her over on a traffic stop." (*Sisler Tr.* at pg. 70, line 9-12).

The State cannot create new reasoning to justify a traffic stop when said reasoning did not exist at the time of the stop. The State has continued to go back and forth, changing their position/reasoning in this case to try to justify the unlawful stop. There are/were no specific and/or articulable facts of unlawful conduct.

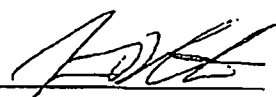
CONCLUSION

For the foregoing reasons, Respondent asserts that the Magistrate Court was correct in their decision to dismiss this case for lack of probable cause to initiate the traffic stop. The Respondent would respectfully request an Order affirming the Magistrate's decision.

RESPECTFULLY SUBMITTED,
PHIPPS LAW FIRM, LLC



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Mount Pleasant, South Carolina
June 3, 2014

1 Q Okay. Well, you just said two different things there.
2 You initially said that you did not initiate a traffic
3 stop.

4 A Uh-huh (affirmative).

5 Q And then you turned around and said, well, if I did,
6 this is why.

7 A If I cut the lights on, it would've been as we're
8 going off the side of the road. I wasn't initiating
9 the stop for any other purpose than to, "Lady,
10 you're going the wrong way."

11 Q Okay. So you -- you initiated your blue lights.

12 A I did it as a safety reason. We were sitting on the
13 side, on South Anderson Road.

14 Q I'm taking about the second time -- the first time,
15 when you -- Prior to her pulling over, --

16 A Uh-huh (affirmative).

17 Q -- isn't it true you turned on our blue lights?

18 A She began to pull over and -- You're going to bring
19 this out, because -- I don't remember exactly, from
20 the video, but I didn't stop her as a traffic stop.
21 I've got my turn signal on, because I wanted her to
22 turn, and I'm blinking my headlights. And, at that
23 time, she's pulling over on her own before I cut the
24 blue lights on. Once she's off the side of the road
25 and I initiate blue lights, it's for safety reasons.

1 There's people coming down the road. We're
2 stopped on the side of the road. We're fixing to get
3 out of the car. I cut the blue lights on any time I do
4 that. But the blue lights were not initiated to stop
5 her on a traffic offense. Understand what I'm
6 saying?

7 Q I do. And so you're saying you didn't turn on your
8 blue lights until after she pulled over.

9 A Or until she started to pull over, one of the two. I
10 didn't put -- turn the blue lights on to pull her over,
11 only to -- I'm pretty sure it was the turn signal and
12 blinking the headlights.

13 Q Okay.

14 A I was worried she was going to go the wrong again
15 and be lost, --

16 Q Okay.

17 A -- Is what I'm doing that for. And, if I had stopped
18 her, that would be my reason for the stop, because
19 I didn't want her to get lost again.

20 Q Okay. Well, let me ask you this.

21 A Okay.

22 Q Isn't turning on blue lights part of a traffic stop?

23 A Yes.

24 Q If you turn on blue lights, you expect the driver in
25 front of you to pull over.

1 A Unless they are already -- Well, they're -- Yeah,
 2 they're going to pull over, if I -- But if they're
 3 already pulling over, tell me what the -- I need to
 4 understand your reasoning here.
 5 Q Well, just follow me. Just, on a generic traffic
 6 stop, --
 7 A I initiate blue lights and they pull over.
 8 Q You initiate blue lights and they pull over.
 9 A Yes.
 10 Q And you expect that response. Because, if they
 11 don't pull over, it's a 1050. It would be a case --
 12 A It would be a (inaudible) right here.
 13 Q I'm sorry. But basically, it could --
 14 A Yes.
 15 Q Be a --
 16 A She pulled over and I cut them on.
 17 Q But there's a statute that says you've got to pull
 18 over.
 19 A Uh-huh (affirmative).
 20 Q Do you know that statute?
 21 A (inaudible). I was looking up my chart --
 22 Q Oh, okay. You don't know it, but you know --
 23 A Oh, yeah.
 24 Q You know the law regarding blue lights.
 25 A Yeah, (inaudible).

1 be a little nervous in this kind of thing here,
2 because she's going the wrong way. She just got
3 run into the ditch, pretty much, because somebody
4 was coming at her head-on. Then when she pulls off
5 again, she's riding on the middle line, she's going 25
6 miles an hour, and she misses the turn. And, I'm --
7 At that point, I was getting aggravated. I mean,
8 hey, you're going to get lost again. I mean, I'm
9 trying to get her back, trying to help her the best I
10 can and, basically, we missed it. And I started my
11 putting my turn signal on and blinking the lights. At
12 whatever time I believe she started to pull over, I
13 would've cut the blue light on, at that point, to see.
14 I just had to get her stopped, or had to get her --
15 basically, reminding her to turn. She could've
16 turned right. She could've turned left. She could've
17 gone anywhere but straight, and that's the way she
18 went.

19 Like I say, I -- As far as I knew, first she told
20 me she was out of town. She wanted to know how
21 to get back to Rock Hill and this kind of thing. I
22 was trying to get her back toward Rock Hill.

23 Q All right. So we got to be very -- I mean, did you or
24 did you not initiate a traffic stop, pull her over?

25 A I'm not going to term it a traffic stop. I stopped

1 over.

2 (WHEREUPON, video is viewed; resuming as
3 follows:)

4 MR. PHIPPS: Stop, please.

5 BY MR. PHIPPS:

6 Q Now, y'all heard that on the radio?

7 A Uh-huh (affirmative).

8 Q Where I come from and when I was on the job, 1055
9 means --

10 A It means intoxicated driver.

11 Q -- Intoxicated.

12 A Yes. And he asked and I said no.

13 Q And you said no. Okay.

14 (WHEREUPON, video is viewed; resuming as
15 follows:)

16 MR. PHIPPS: Why don't you stop just a
17 minute.

18 BY MR. PHIPPS:

19 Q Now, Officer, you have talked to her and there was
20 no indication of her being inebriated or materially
21 or appreciably impaired.

22 A Nothing that I was noticing, at that time. I wasn't
23 having a smell of alcohol, wasn't having anything in
24 any erratic behavior she was having. In all honesty,
25 she's a lady on the side of the road with two kids,

1 BY MR. PHIPPS:

2 Q It indicates, on your video, whether you have lights
3 on or not.

4 A Yes.

5 Q So, if you cut on your light, --

6 A It'll come on.

7 Q -- It'll come on.

8 A Yeah.

9 MR. PHIPPS: You understand that, Your Honor?

10 THE COURT: I do. It just turned off.

11 (WHEREUPON, video is viewed; resuming as
12 follows:)

13 MR. PHIPPS: All right. Stop there.

14 BY MR. PHIPPS:

15 Q At 22:37:17 -- and we just passed it -- It's at 21.
16 You just saw the light blink, which indicated you cut
17 on your blue lights.

18 A Back up, back up, we're going to have to see that a
19 second. Because, it doesn't blink. It should -- If I
20 cut them on, it should've stayed on. That little red
21 dot like right up beside the lights, okay, we're
22 passing the turn -- Stop right there where it says
23 (Inaudible). All right, that's on. Yep, I did blink it
24 for the turn. I thought I was blinking my headlights.
25 What I did, I blinked blue lights trying to get her to

1 turn. She missed the turn.

2 Q And so, as a result of you hitting those blue lights,
3 she pulls over, but you're telling her not to.

4 A Yeah, because I didn't turn them on for her to stop.
5 I'm blinking the lights for, "Here's your turn, lady.
6 You're missing the turn." All right. I pull over on
7 the side of the road with her. At that point, I cut
8 the lights on and left them on.

9 MR. PHIPPS: Okay, stop.

10 THE WITNESS: Now, let me -- can I ask you a
11 question?

12 MR. PHIPPS: No. I apologize, I'm sorry. And
13 we can talk outside --

14 THE WITNESS: Well, can I make a statement?

15 MR. PHIPPS: No. He's got an opportunity to
16 cross-examine.

17 THE WITNESS: Okay.

18 MR. PHIPPS: You get to talk -- to answer his
19 questions. I hate to be formal, but we are getting a
20 record here.

21 THE WITNESS: Okay.

22 MR. PHIPPS: You and I can just chat outside
23 afterwards, absolutely.

24 BY MR. PHIPPS: (Continuing Direct)

25 Q So -- And, basically, your prior testimony is not

1 accurate.
2 A Okay. How?
3 Q Well, you testified that you never put on your blue
4 lights.
5 A I never initiated a traffic stop, is what you said.
6 Q You initiated a --
7 A I never initiated a traffic stop. I'll stick with that.
8 Q Did you hit blue lights?
9 A I blinked my lights because of the turn, yes.
10 Q And is --
11 A But, if we blink our lights, people do not pull over.
12 Q But isn't -- your blue lights is part of a traffic stop?
13 A Continually leaving your blue lights on can be a
14 traffic stop.
15 Q Sure.
16 A Like I say, if we clear an intersection, if we --
17 moving through traffic, or whatever, people --
18 people blink -- I never left the light on. I'm
19 blinking it telling her, "Don't miss your turn." It
20 was not turned on to initiate a traffic stop. And you
21 can see, when she pulled off on the side of the road
22 on down around the curve, I didn't cut them on till I
23 stopped, --
24 Q Right.
25 A -- after she'd already pulled all the way off the road.

1 Q But didn't she respond correctly to your blue lights?
2 A No. Because I think she actually went a little bit
3 too far.
4 Q So you were pursuing her.
5 A No. If I would've been on a traffic stop, I would've
6 wanted her to pull over the first opportunity, which
7 would've been that.
8 Q I --
9 A You can turn it around all you want. I didn't initiate
10 a traffic stop. I just blinked the lights to, "Hey,
11 woman, don't miss your turn."
12 Q I'm -- I didn't turn it around. But the video speaks
13 for itself. You said you didn't -- did turn them on,
14 and she pulled over properly, as a result.
15 A I don't agree with that, but that's why you --
16 Q That's fine. The video speaks for itself.
17 A Right.
18 MR. PHIPPS: Your witness.
19 BY THE WITNESS: (Continuing Direct)
20 A See, when we pull cars, we just blink our lights. We
21 don't turn them on anymore. That's some new --
22 That's some new procedure I don't know about.
23 Because, I thought I'd blinked the lights. I might've
24 turned --
25 CROSS-EXAMINATION - (By Mr. Hayes)

1 Deputy Haire.

2 THE COURT: Go ahead.

3 BY MR. HAYES: (Continuing Direct)

4 Q Deputy Haire, (inaudible) driving left of center.

5 A Yes. But that's my discretion whether I wanted
6 to --

7 Q That's your -- Okay. You had reasonable suspicion
8 to believe that that offense had occurred.

9 A Yeah, I mean, I had seen that during the driving
10 part of it. But, I mean, I'm not going to argue that
11 that's why I pulled her. I blinked my lights for the
12 turn. I didn't pull her over on a traffic stop.

13 Q Did you have reasonable suspicion that --
14 Regardless of whether you pulled her or not, after
15 she stopped on the side of the road the second
16 time, did you have reasonable suspicion to initiate
17 an investigation for DUI?

18 A Absolutely, one hundred percent.

19 MR. PHIPPS: Your Honor, again, I object to
20 the line of questioning. It's outside the scope.

21 THE COURT: Okay.

22 MR. HAYES: Thank you, Deputy Haire.

23 THE COURT: Deputy Haire.

24 (WHEREUPON, the witness was excused.)

25 THE COURT: Ms. Sisler.

1 A Yes, that was Harris (sic).

2 Q I always get this --

3 THE COURT: Don't worry about it. I'm going
4 to help you.

5 MR. PHIPPS: Thank you.

6 BY THE WITNESS:

7 A Yes, I did see Officer -- I was in contact with Officer
8 Harris (sic).

9 Q And after he helped you turn around and get going,
10 when you were stuck, --

11 A Yes, sir.

12 Q -- at some point in time, did he initiate his blue
13 lights?

14 A Yes, sir, when I missed the turn.

15 Q Okay. And so, as a result of him turning on those
16 blue lights, what did you do?

17 A I wanted to pull over.

18 Q And you did that because that's what the law
19 requires you to do.

20 A Yes, sir.

21 Q Okay.

22 (WHEREUPON, the witness was tendered.)

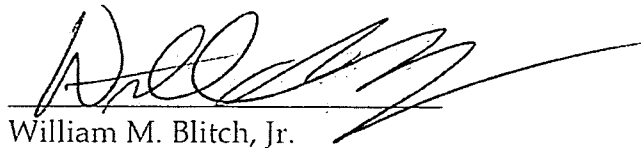
23 MR. HAYES: No questions for this witness, Your
24 Honor, at the time.

25 THE COURT: Ma'am, before you leave. Thank

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CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled "revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, appearing to read "William M. Blitch, Jr.", is written over a horizontal line.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEAL

Appeal from York County
Honorable J. Cordell Maddox, Jr., Circuit Court Judge
Appellate Case Tracking 2015-000604

THE STATE,

APPELLANT,

vs.

TAMI BAKER SISLER,

RESPONDENT.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served a true copy of the within Record on Appeal 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 23rd day of November, 2015.


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STATE OF SOUTH CAROLINA

IN THE 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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Magistrate erred in dismissing the case based on a lack of probable cause to stop Respondent. First, 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. Additionally, even if the officer's subjective intentions are considered and the "stop" is not considered a traffic stop, then Respondent was not unconstitutionally seized and the "stop" was more in the nature of a consensual encounter.

STATEMENT OF THE CASE

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. This appeal follows.

STATEMENT OF FACTS

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. (1/15T. 23-24; R.33-34). 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. (1/15T.44-45; R.54-55). 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. (1/15T.54-55; R. 64-65). Deputy Haire reiterated he saw her cross the center line of the lanes prior to flicking his blue lights and Respondent pulling over. (1/15T.58; R.68).

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." (1/15T.67; R.77).

ARGUMENT

- I. **The Magistrate erred in dismissing the case based on a lack of probable cause to stop Respondent. First, 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. Additionally, even if the officer's subjective intentions are considered and the "stop" is not considered a traffic stop, then Respondent was not unconstitutionally seized and the "stop" was more in the nature of a consensual encounter.**

The magistrate court erred in dismissing the case based on its finding there was no probable cause for a traffic stop. The magistrate improperly considered Deputy Haire's subjective intentions as opposed to the objective totality of the circumstances which justified the stop. Deputy Haire had probable cause to initiate a traffic stop based on Respondent's crossing of the line. Whether he intended to initiate the traffic stop and write a citation is irrelevant to the determination of whether the stop was lawful. Further, even if the stop is found not to be a traffic stop, then it is in the nature of a consensual encounter and no reasonable person in Respondent's position would have felt seized based on her prior interactions with Deputy Haire. Accordingly, this Court should reverse the dismissal of the case and remand for trial.

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).

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[.]”).

Traffic Stop

If Respondent’s pulling over was as a result of the flashing of Deputy Haire’s blue lights and can be construed as a traffic stop, then it was a valid traffic stop supported by probable cause and the magistrate and circuit court committed an error of law in relying on the subjective intent of the officer to determine whether the stop was reasonable and constitutional. 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.”).

In the instant case, Deputy Haire testified he witnessed Respondent commit traffic violations. (1/15T.39; R. 49). He witnessed her “riding on the middle line.” (1/15T.40; R. 50). Later Deputy Haire explains: “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.” He states the traffic violation was “[c]rossing the centerline” and continues “I believe she was driving on the centerline, over the centerline So we’ll see that on the video.” (1/15T.45; R. 55). Further, the video supports

Deputy Haire's testimony Respondent drove on and over the lane line. (Video From Deputy Haire at 22:32:00-22:32:10).

Section 56-5-1900 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). 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 found a traffic stop was lawful based on "a perceived violation of section 56-5-1900." Id. at 353.

Deputy Haire perceived a violation of section 56-5-1900, and this violation is sufficient to support a traffic stop and the seizure of Respondent. Further, as discussed above, the fact Deputy Haire had the subjective intent to assist Respondent as opposed to issue a traffic ticket for the violation is irrelevant in a determination of whether the totality of the circumstances support an objective basis for the traffic stop. As a result, the magistrate court and circuit court clearly erred in finding the traffic stop was not lawful and in dismissing the case based on the subjective intent of the officer.

Reasonable Seizure

Additionally, even if the traffic stop was not valid¹, 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).

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

¹ The State maintains if the stop of Respondent is construed a traffic stop, then it was supported by probable cause based on her riding on or over the lane line as can be seen clearly in the video provided by Deputy Haire. However, if the stop is not a traffic stop, then it was consensual as will be discussed.

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 immediately exited the vehicle to speak with Deputy Haire and did not act in any way as a person would if they believed they were being stopped for a traffic violation. It is clear when she pulled over, Respondent understands Deputy Haire intended to continue offering assistance and was not likely stopping her for a violation. 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.” (1/15 T. 67; R. 77). 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.

Community Caretaker

Finally, this case presents the opportunity for this Court to adopt the community caretaker exception, which has been adopted in numerous other jurisdictions. The “community caretaking function” was first announced by the United States Supreme Court in Cady v. Dombrowski, 413 U.S. 433, 441 (1973), in which the Court opined that

police officers, acting as “community caretakers,” did not violate the Fourth Amendment when they searched and seized the vehicle of a Chicago police officer without probable cause who had been pulled over for drunk driving. The police conducting the search were aware that Chicago police officers were required to carry a service revolver, and thus, had searched the vehicle in an attempt to locate the revolver. In upholding the search, the Court opined that the search was reasonable because it was “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute” and because the search was aimed at ensuring the safety of the general public, rather than uncovering evidence related to crime detection. Cady, 413 U.S. at 441. The Court explained:

Local police officers ... frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute ... Often [that] noncriminal contact with automobiles will bring ... officials in “plain view” of evidence, fruits, or instrumentalities of a crime.

Id. at 441–42. If, in the course of performing their community caretaker function, officers come across evidence of a crime, there is no unreasonable search and seizure and the evidence will not be suppressed. Id. at 447–48.

“Since Cady, a majority of states have acknowledged this community safety and welfare role of police officers and have adopted in some form or another a ‘community caretaker’ exception to the general warrant requirement present in such states.” Ullom v. Miller, 705 S.E.2d 111, 120 (W.Va. 2010).² Further, many federal circuits, including the

² It should be noted South Carolina is the only state in the Fourth Circuit that has not expressly adopted the community caretaker exception. See Wilson v. State, 975 A.2d 877 (Md. 2009); State v. Smathers, 753

Fourth Circuit Court of Appeals, have adopted the exception. See e.g., U.S. v. Garcia-Rivas, 86 F.3d 1153 (Table) (4th Cir. 1996); United States v. Pollard, 595 Fed. Appx. 204 (4th Cir. 2014).

The West Virginia Supreme Court elucidated:

The policeman, as a jack-of-all-emergencies, has “complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses;” by default or design he is also expected to “aid individuals who are in danger of physical harm,” “assist those who cannot care for themselves,” and “provide other services on an emergency basis.” If a reasonable and good faith search is made of a person for such a purpose, then the better view is that evidence of crime discovered thereby is admissible in court.

Ullom, 705 S.E.2d at 121 (citing Wagner v. Hedrick, 181 W.Va. 482, 383 S.E.2d 286 (1989)).

Virginia’s Court of Appeals explains the community caretaker exception:

Police officers have an obligation to aide citizens who are ill or in distress, as well as a duty to protect citizens from criminal activity. The two functions are unrelated but not exclusive of one another. Objective reasonableness remains the linchpin of determining the validity of action taken under the community caretaker doctrine.

Commonwealth v. Waters, 456 S.E.2d 527, 530 (Va. App. 1995). The court then provided an analytical framework for determining whether the community caretaker exception applies to a given situation:

The appropriateness of applying the community caretaker doctrine to a given factual scenario is determined by whether:

(1) The officer’s initial contact or investigation is reasonable;

S.E.2d 380, 386 (N.C. App. 2014); Commonwealth v. Waters, 456 S.E.2d 527, 530 (Va. App. 1995); Ullom v. Miller, 705 S.E.2d 111 (W.Va. 2010).

(2) The intrusion is limited; and

(3) The officer is not investigating criminal conduct under the pretext of exercising his community caretaker function.

Id. at 530.

The North Carolina Court of Appeals, after finding the community caretaker exception should be adopted, provided its own framework, which was modeled after Wisconsin:

[T]he State has the burden of proving that: (1) a search or seizure within the meaning of the Fourth Amendment has occurred; (2) if so, that under the totality of the circumstances an objectively reasonable basis for a community caretaking function is shown; and (3) if so, that the public need or interest outweighs the intrusion upon the privacy of the individual.

State v. Smathers, 753 S.E.2d 380, 386 (N.C. App. 2014).

In Leming v. State, 454 S.W.3d 78 (Tex. App. 2014), the Texas Court of Appeals explained: “As a part of his duty to ‘serve and protect,’ a police officer may stop and assist an individual whom a reasonable person—given the totality of the circumstances—would believe is in need of help.” Id. at 84 (citing Wright v. State, 7 S.W.3d 148, 151 (Tex.Crim.App.1999)). The Court continued: “‘Whether an officer properly invoked his community-caretaking function requires a two-step inquiry: (1) whether the officer was primarily motivated by a community-caretaking purpose; and (2) whether the officer’s belief that the individual needs help was reasonable.’” Id. (quoting Gonzales v. State, 369 S.W.3d 851, 854–55 (Tex. Crim. App. 2012)). The Court of Criminal Appeals listed four non-exclusive factors to determine whether an officer was legitimately acting to give assistance:

- (1) the nature and level of the distress exhibited by the individual;
- (2) the location of the individual;
- (3) whether or not the individual was alone and/or had access to assistance independent of that offered by the officer; and
- (4) to what extent the individual—if not assisted—presented a danger to himself or others.

Id. (quoting Wright).

Any of these possible frameworks are justifiable and provide a clear means of determining the reasonableness of Deputy Haire's actions, which is the touchstone of the Fourth Amendment. No matter which framework is used, Deputy Haire's actions clearly fell within the community caretaker function. He clearly expressed his intent to assist Respondent and there is no indication in the record he had any intent to investigate a criminal violation or collect evidence regarding a violation. Further, based on the first interaction with Respondent it was objectively reasonable for him to attempt to assist Respondent, whom Deputy Haire knew had just missed the turn she originally intended to take to head to Rock Hill.

Respondent was alone, at night, with two little children in the car with her. The officer makes clear his intention to assist her for the protection and safety of not only Respondent, but especially for her children. He knew her story of the GPS leading her down the wrong side of the road, and so it was clearly reasonable for him to believe she was in need of assistance. His second stop of Respondent would have only been for a very brief encounter to get her going in the right direction but for her stumbling, which caused him to suspect drinking may have been involved. As a result, the minimal

intrusion into her privacy by stopping her to ensure her safety, and the safety of her children, was not unreasonable under the community caretaker exception.

Officers have a duty to “protect and serve”³ and much of the actions taken by officers to fulfill this function are clearly separate and distinct from any detection, investigation, or collection of evidence related to violation of a criminal statute. An officer should not be punished for attempting to comply with his duty to assist an individual when that individual is later determined to be violating the law.

South Carolina should “join the majority of jurisdictions who recognize the community caretaker doctrine, formally recognizing the expectation in [South Carolina] that the role of law enforcement personnel is not limited to merely to the detection and prevention of criminal activity, but also encompasses a non-investigatory, non-criminal role of police officers to help to ensure the safety and welfare of our citizens.” See Ullom, 705 S.E.2d at 121. This Court should find the “seizure” in this case reasonable and falling within the community caretaker exception no matter which of the above criteria is selected as Deputy Haire clearly held no investigatory or crime related intent in determining whether Respondent had something wrong causing her to miss her turn; acted objectively reasonable; and did not unnecessarily burden Respondent.

³ The motto of the Los Angeles Police Department, among others, it is a clearly recognizable phrase in law enforcement. See <http://www.joinlapd.com/motto.html> last viewed July 28, 2015.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court affirming the magistrate court and the magistrate court's dismissal of the case should be reversed and this case remanded for trial.

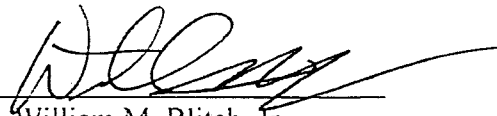
Respectfully submitted,

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May 12, 2016

STATE OF SOUTH CAROLINA

IN THE 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.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR APPELLANT

May 12, 2016

STATE OF SOUTH CAROLINA

IN THE 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.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Appellant on Respondent 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 12th day of May, 2016



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 22 2016

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.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The decision of the Magistrate should be affirmed based upon a lack of probable cause to stop Respondent. The State's initial position was that Deputy Haire was merely conducting essentially a 'welfare check' when Respondent voluntarily pulled over, claiming this to be a 'consensual encounter.' Then Deputy Haire changed his testimony and testified that he was not activating his lights for any traffic violation, that they were only turned on to alert Respondent to a missed turn. Respondent testified that she saw blue lights, believed she was being pulled over, and dutifully stopped. The State cannot simply create new reasoning to justify a traffic stop after the fact and after subjective review of the video at the Honorable Magistrate's motion to dismiss hearing

5-14

STATEMENT OF THE CASE

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 Honorable Magistrate Clayburn S. Barnette Jr. dismissed the charges finding a lack of probable cause for the traffic stop. The State filed a Motion for Rehearing and/or Reconsideration on January 16, 2014, 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 thereafter filed their Notice of appeal and submitted their Initial Brief on July 30, 2015.

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STATEMENT OF FACTS

On August 17, 2013, at approximately 10:24 pm, the Respondent had pulled to the side of Hwy Five (5) and got her vehicle stuck in the grass median after becoming lost. Deputy Chris Haire with the York County Sheriff's Office arrived on scene shortly after Respondent got stuck and stopped to help. After making contact, Deputy Haire and an unknown witness who had close personal contact with Respondent pushed Respondent's vehicle to get it unstuck while she drove. The Deputy then provided her with directions on how to reach her stated destination.

Deputy Haire, along with two witnesses, who never mentioned any concern that they thought Respondent was intoxicated, were with her in close contact for approximately eight (8) minutes while trying to help her get back onto the road. After making contact with Respondent, Deputy Haire is asked over the radio by another officer if she is intoxicated, to which he responds that she was not. (R. p. 59, line 12-13). Respondent then performed a three (3) point turn, began driving away, and Deputy Haire followed behind her.

When the Respondent did not take the turn he had informed her she should take, Deputy Haire turned on his marked cruiser's blue lights, causing Respondent to pull over. At a pre-trial hearing, Deputy Haire testified that he "wasn't initiating a traffic stop for any other purpose than

to 'Lady, you're going the wrong way.'" (R. p. 46, line 8-10) Deputy Haire stated multiple times that he did not turn on his blue lights. Upon review of the dashcam video and seeing that he obviously did activate his blue lights, only then did he change his testimony. Deputy Haire repeatedly testified at the hearing that it was not his intent to conduct a traffic stop on Respondent.

Also at that hearing, Respondent testified that, after the first contact with the Deputy, she observed blue lights behind her and immediately pulled her vehicle to the side of the road, as she is legally obligated to do. (R. p. 82, line 12-20) A reasonable person in Respondent's position, having just been ordered to pull over by a police officer displaying blue lights, would reasonably and justifiably feel seized and not free to leave.

During this secondary encounter, Deputy Haire requested Deputy Fowler to respond to the scene and investigate Respondent for Driving Under the Influence. After approximately six (6) minutes of investigation, Respondent was arrested for DUI and Child Endangerment.

ARGUMENT

The decision of the Magistrate should be affirmed based upon a lack of probable cause to stop Respondent. The State's initial position was that Deputy Haire was merely conducting essentially a 'welfare check' when Respondent voluntarily pulled over, claiming this to be a 'consensual encounter.' Then Deputy Haire changed his testimony and testified that he was not activating his lights for any traffic violation, that they were only turned on to alert Respondent to a missed turn. Respondent testified that she saw blue lights, believed she was being pulled over, and dutifully stopped. The State cannot simply create new reasoning to justify a traffic stop after the fact and after subjective review of the video at the Honorable Magistrate's motion to dismiss hearing.

In criminal cases, appellate courts sit to review errors of law only. *State v. Johnson*, 396 S.C. 182, 186 (S.C.App. 2011) In Fourth Amendment search and seizure cases, the appellate court may only reverse the lower court's rulings due to "clear error." *State v. Flowers*, 360 S.C. 1, 5 (2004). Restated, "[a]n appellate court must affirm the [circuit] court's ruling if there is any evidence to support the ruling." *State v. Pinchardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct.App. 2005)(emphasis in original).

It is undisputed that traffic stops implicate the "seizure" provisions of the Fourth Amendment, and therefore such stops must not be "unreasonable" under the circumstances. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). Additionally, an officer may only pull a

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vehicle over when he has probable cause to believe that a traffic violation has occurred or has reasonable suspicion to believe that any of the vehicle's occupants are involved in criminal activity. *State v. Burgess*, 394 S.C. 407, 412.

The stop of a motor vehicle must be justified by probable cause or reasonable suspicion based upon specific and articulable facts of unlawful conduct. "To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion 'would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.'" *Delaware v. Prouse*, 440 U.S. 648, 661 (citing *Terry v. Ohio*, 392 U.S. 1, 22).

The State initially had taken two positions regarding the traffic stop by Deputy Haire: *First*, that the second contact by Deputy Haire with Respondent was a lawful contact because he was performing a welfare check, as the State's position was that she voluntarily pulled over. At the pre-trial motion hearing, Deputy Haire testified that his second contact with the Respondent was not a traffic stop and denied even turning on his blue lights prior to her pulling over to support the State's first position of lawful contact with Respondent under the auspice of a

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'welfare check.' His justification for the encounter was that he was conducting a safety check of the Respondent due to her pulling over on her own. (R. p. 46, line 11-25).

Deputy Haire testified several times that he did not initiate a traffic stop. The instances wherein he insisted he did not intend to stop the Respondent are exhaustive and evidenced as follows:

- "I wasn't initiating a traffic stop for any other purpose than to, 'Lady, you're going the wrong way.'" (R. p. 46, line 8-10);
- "... the blue lights were not initiated to stop her on a traffic offense" (R. p. 47, line 4-5);
- "I didn't turn the blue lights on" (R. p. 47, line 10);
- Question from counsel for Sisler (hereinafter "Phipps"): "And so you're saying you didn't turn on your blue lights until after she pulled over?" Deputy Haire responded, "If I had stopped her, that would be my reason for the stop: because I didn't want her to get lost again," (R. p. 47, line 17-19);
- Question from Phipps: "There is no statute for missing a turn?" Deputy Haire responded, "I just had to get her stopped, or had to get her basically reminding her to turn" (R. p. 50, line 14-15); "I was trying to get her back towards Rock Hill" (R. p. 50, line 22).

Once the video was published during the motion hearing and Deputy Haire had the opportunity to re-view it, he changed his testimony and admitted to turning on his blue lights, evidenced as follows:

- "...I did blink it for the turn. I thought I was blinking my headlights. What I did, I blinked blue lights trying to get her to turn. She missed the turn." (R. p. 64, line 23-25 – p. 65, line 1);

After Deputy Haire changed his testimony to admit that he did turn on his blue lights prior to Respondent pulling over, he continued to deny that it was a traffic stop, which was evidenced as follows:

- "I never initiated a traffic stop. I'll stick with that" (R. p. 66, line 7); and
- "You can turn it around all you want. I didn't initiate a traffic stop. I just blinked the lights to, 'Hey woman, don't miss your turn'" (R. p. 67, line 9-11).

Per South Carolina Code of Laws § 56-5-750, a driver is required to stop when signaled via either siren or flashing light by a law enforcement vehicle. At the pre-trial motion hearing, Respondent testified that she observed blue lights behind her and immediately pulled her vehicle to the side of the road as she was legally obligated to do. (R. p. 82, line 12-20). Deputy Haire admitted to the legal requirement to pull over when blue lights are observed. (R. p. 48, line 19).

Deputy Haire testifies over and over that he did not stop her, that it was not a traffic stop, and that the only reason he would have stopped the Respondent is because she missed her turn. Missing a turn is not a violation of any statute in the State of South Carolina, and it does not provide reasonable suspicion or probable cause to justify stopping the Respondent, as confirmed by both Deputies. Police are not authorized to use their blue lights to stop someone for merely

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missing their turn, and anything gained from that unlawful stop is inadmissible as a matter of law.

The State's new position was then that Respondent committed some violation prior to the activation of Deputy Haire's blue lights – a violation that was subjectively discovered, remotely testified to, and arguably not accurate, and not accounted for until only after the Deputy allegedly saw it on the published video during the hearing. Even after allegedly seeing a violation on the video, it was not conclusive.

Second, it was still lawful because the Deputy had probable cause to stop. Deputy Haire continued to deny that it was the reason he pulled her over. Assistant Solicitor Hayes asks Deputy Haire if he had noticed the Respondent driving left of center prior to flashing his blue lights, to which Haire responds, "I'm not going to argue that that's why I pulled her. I blinked my lights for the turn. I didn't pull her over on a traffic stop." (R. p. 80, line 9-12). Even after Solicitor Hayes tried to legitimize the stop, the Deputy continued to deny that was why he stopped her.

The State "now" proposes that this Court adopt a "community caretaker doctrine" in this case. This argument is without merit, because the instant case involves the enforcement action of

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a traffic stop. The State, after flip-flopping positions, is now resorting to going back to a welfare check justification for the contact, and are merely calling it by a different name.

The State cannot make up new subjective reasoning to justify a traffic stop when said reasoning did not exist at the time of the stop. The State has continued to go back and forth, changing their position/reasoning in this case to try to justify the unlawful stop. There are/were no specific and/or articulable facts of unlawful conduct by Respondent to justify same.

CONCLUSION

For the foregoing reasons, Respondent asserts that the Circuit Court was correct in their decision to affirm the Magistrate's decision to dismiss this case for lack of probable cause to initiate the traffic stop. The Respondent would respectfully request an Order affirming the Circuit Court's decision.

RESPECTFULLY SUBMITTED,

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843-216-9797
Attorney for Respondent

Charleston, South Carolina
January 19, 2016

14-14

STATE OF SOUTH CAROLINA
IN THE 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.

PROOF OF SERVICE

I, Shelley C. Hough, certify and I have served the within Final Brief of Respondent on Appellant by depositing three (3) copies of the same in the United States Mail, postage prepaid, addressed to:

Office of the Attorney General
Attn: William M. Blich, Jr., Esq.
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I further certify that all parties required by Rule 211 to be served have been served.

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January 19, 2016

STATE OF SOUTH CAROLINA
IN THE 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.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Appellant's Brief of Appellant complies with Rule 211(b) of the South Carolina Appellant Court Rules.

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January 19, 2016

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD
NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY
PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Tami Baker Sisler, Respondent.

Appellate Case No. 2015-000604

Appeal From York County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-458
Heard September 20, 2017 – Filed December 6, 2017

AFFIRMED

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., of Columbia;
and Solicitor Kevin Scott Brackett, of York, for
Appellant.

Edward L. Phipps, of Phipps Law Firm, LLC, of
Charleston, for Respondent.

PER CURIAM: The State of South Carolina appeals the circuit court's order
affirming the magistrate court's dismissal of Tami Baker Sisler's charges for

driving under the influence (DUI) and child endangerment. The State asserts that if this court construes Sisler's second encounter with Deputy Christopher Haire, of the York County Sheriff's Office, as a "traffic stop," it was a valid traffic stop supported by probable cause. Thus, the State contends the magistrate court erred in relying on Deputy Haire's subjective intent in finding the stop unconstitutional. Alternatively, the State posits Deputy Haire did not unreasonably "seize" Sisler. Therefore, the State contends that even if this court determines the traffic stop was improper, there was still no Fourth Amendment violation. Finally, the State argues this case presents this court with the opportunity to adopt the community caretaker exception.¹ We affirm.

At approximately 10:25 p.m. on August 17, 2013, Deputy Haire came upon Sisler's vehicle lodged in the grass median and facing the wrong direction on South Anderson Road/Highway 5 in. According to Sisler, who was traveling with her two minor children, once she realized she was driving down the wrong side of the four lane highway, she pulled into the median to avoid oncoming traffic and her vehicle became stuck. Deputy Haire and an unnamed individual worked for approximately eight minutes to free Sisler's vehicle. Deputy Haire then provided Sisler with directions, specifying she needed to take the first right to get to Rock Hill.²

When Sisler missed the turn, Deputy Haire, who was traveling behind her, flashed his headlights and blue lights. Sisler then pulled over and as she exited her vehicle, she grabbed the door for stability. Upon questioning by Deputy Haire, Sisler admitted she had been drinking. Thereafter, Deputy Haire obtained Sisler's driver's license, performed the horizontal gaze nystagmus test, and called Deputy David Fowler to perform field sobriety tests. Deputy Fowler subsequently arrested Sisler for DUI and child endangerment.

¹ Because the "community caretaker" theory was neither raised to nor ruled on by the magistrate court or the circuit court, we find it is not preserved for our review. *See State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (explaining that an argument advanced on appeal but not raised and ruled on below is not preserved for review).

² During the initial encounter with Sisler, another officer radioed Deputy Haire to ask whether she was intoxicated; he responded she was not.

"The Fourth Amendment guarantees '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *Whren v. United States*, 517 U.S. 806, 809 (1996) (quoting U.S. Const. amend. IV); *see also* S.C. Const. art. I, § 10 (protecting "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures"). "This guarantee 'protects against unreasonable searches and seizures, including seizures that only involve a brief detention.'" *Robinson v. State*, 407 S.C. 169, 181, 754 S.E.2d 862, 868 (2014) (quoting *State v. Pichardo*, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005)). "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991).

"Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision." *Whren*, 517 U.S. at 809–10. "An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances." *Id.* at 810. "Accordingly, a police officer may stop a vehicle when the officer has probable cause to believe a traffic violation has occurred, or when the officer has reasonable suspicion the occupants are involved in criminal activity." *State v. Burgess*, 394 S.C. 407, 412, 714 S.E.2d 917, 919 (Ct. App. 2011) (citations omitted). "Reasonable suspicion is something more than an 'inchoate and unparticularized suspicion' or hunch." *Robinson*, 407 S.C. at 182, 754 S.E.2d at 868 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). "Instead, looking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity." *Id.* "Moreover, a police officer's 'subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.'" *State v. Vinson*, 400 S.C. 347, 352, 734 S.E.2d 182, 184 (Ct. App. 2012) (quoting *State v. Corley*, 383 S.C. 232, 241, 679 S.E.2d 187, 192 (Ct. App. 2009)).

In granting Sisler's motion to dismiss, the magistrate court found Deputy Haire lacked either probable cause to believe Sisler committed a traffic violation or the reasonable suspicion necessary to validate the traffic stop. The circuit court affirmed the dismissal.

Our review of the record and the dashboard camera (dash cam) recording reveals Deputy Haire initiated his blue lights and stopped Sisler when she missed the turn to Rock Hill. While maintaining he neither activated his blue lights before Sisler pulled over nor initiated a traffic stop, 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. Thereafter, Deputy Haire admitted he "stopped"

Sisler for missing the turn but continued to argue he did not initiate a traffic stop. Deputy Haire then again revised his testimony, stating that although Sisler did commit a traffic violation by crossing the centerline, he "may not have initiat[ed] a stop for that; because, she pulled over on her own when she passed the point of where she was supposed to turn." He later testified, "It's not a traffic stop, but I witnessed her on the roadway." After the dash cam recording was published at the suppression motion hearing before the magistrate court, Deputy Haire admitted he flashed his blue lights but testified he did not activate them and leave them on until Sisler began to pull over on the side of the road. Nevertheless, he continued to maintain the encounter was not a traffic stop.

We find no clear error in the circuit court's determination that Deputy Haire "seized" Sisler within the meaning of the Fourth Amendment when he flashed and then activated his blue lights as he pulled over behind Sisler's vehicle. *See State v. Morris*, 411 S.C. 571, 578, 769 S.E.2d 854, 857 (2015) ("The appellate court will reverse only when there is clear error." (quoting *State v. Missouri*, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004))). Sisler testified she pulled over because Deputy Haire activated his blue lights when she missed the turn he instructed her to take. At that point, a reasonable person in Sisler's position would not have felt free to leave. *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (concluding "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave"). Because section 56-5-750(A) of the South Carolina Code (2006) requires drivers to stop when signaled by law enforcement, we agree that Deputy Haire seized Sisler when he flashed his blue lights and further activated them as he pulled over behind her.³ Despite his conflicting testimony, Deputy Haire eventually admitted drivers are legally required to pull over when they observe blue lights. Yet, he lacked the requisite probable cause or reasonable suspicion to initiate a stop at that time. *See Burgess*, 394 S.C. at 412, 714 S.E.2d at 919 (explaining an officer may stop a vehicle when he has either probable cause to believe a traffic violation has occurred or reasonable suspicion to believe the occupants are involved in criminal activity). 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.

³ Section 56-5-750(A) states in pertinent part, "In the absence of mitigating circumstances, it is unlawful for a motor vehicle driver, while driving on a road, street, or highway of the State, to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light."

After Deputy Haire testified he stopped Sisler for missing the turn and not for crossing the centerline, the State continued to argue that whatever his reason for the stop, it was lawful because he observed Sisler crossing the centerline. However, the magistrate and circuit courts ultimately found the dash cam recording to be inconclusive regarding the alleged traffic violation. For example, in its return, the magistrate court explained,

Even though the State argues that Sisler crossed the line, Sisler argued no. Granted, it appeared she crossed over, [but] it was not conclusive. Also [Deputy] Haire's testimony wavered back and forth whether this was a traffic stop or checking on Sisler. This all occurred within one mile of the first incident and the second incident with Sisler.

The circuit court noted that even after seeing the inconclusive video,

Deputy Haire continued to deny that it was the reason he "pulled" her. [The assistant solicitor] asked Deputy Haire if he had noticed [Sisler] driving left of center prior to flashing his blue lights, to which Deputy Haire responded, "Yeah, I mean, I had seen that during the driving part of it. But, I mean, I'm not going to argue that that's why I pulled her. I blinked my lights for the turn. I didn't pull her over on a traffic stop."

The State cannot create new reasoning to justify a traffic stop when said reasoning did not exist at the time of the stop. The State has continued to go back and forth, changing their position/reasoning in this case to try to justify the unlawful stop. There are/were no specific and/or articulable facts of unlawful conduct.

(citation omitted).

We recognize that it would be error to inject an officer's subjective intent into the analysis of a traffic stop. *See, e.g., State v. Bash*, 419 S.C. 263, 276, 797 S.E.2d 721, 728 (2017) (explaining that a court must focus on "the objective purpose of the officers' actions" in considering a Fourth Amendment search or seizure). Here, however, like the magistrate and circuit courts, our review of the dash cam recording provides no conclusive objective basis for this traffic stop. *See Morris*,

411 S.C. at 578, 769 S.E.2d at 858 ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling." (quoting *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011))). It is likewise unclear to this court whether Deputy Haire actually observed Sisler crossing the centerline on the night of the incident. *Contra Vinson*, 400 S.C. at 353–54, 734 S.E.2d at 185 (affirming the circuit court's ruling that an officer was justified in stopping a driver for a perceived violation of section 56-5-1900 of the South Carolina Code (2006) when the officer testified the driver drifted between the double yellow lines and he suspected the driver was under the influence of alcohol). Significantly, Deputy Haire never informed Deputy Fowler that he observed Sisler crossing the centerline. In fact, Deputy Fowler's arrest report stated, "She was swerving in *her lane* and then abruptly pulled over." (emphasis added). Considering the totality of the circumstances, we find no clear error in the circuit court's affirmance of the magistrate court's determination that Deputy Haire lacked the requisite probable cause to initiate the traffic stop. See *State v. George*, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996) ("Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer['s] disposal.").

We further agree Deputy Haire lacked the requisite reasonable suspicion to believe Sisler was involved in criminal activity prior to initiating the traffic stop. See *Robinson*, 407 S.C. at 182, 754 S.E.2d at 868 ("Instead, looking at the totality of the circumstances, reasonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity."). Upon his initial encounter with Sisler, Deputy Haire radioed that she was not intoxicated; he testified she did not smell of alcohol and was not acting erratically; and after interacting with her for approximately twenty minutes, he sent her on her way. Deputy Haire admitted that his suspicion that Sisler was under the influence did not develop until the second interaction when she exited her car and grabbed the door for stability. Accordingly, we find no clear error in the circuit court's affirmance of the magistrate court's determination that Deputy Haire lacked the requisite reasonable suspicion for a traffic stop.

Conclusion

For the foregoing reasons, the circuit court's order affirming the magistrate court's dismissal of Tami Baker Sisler's charges for DUI and child endangerment is

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE 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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ATTORNEYS FOR APPELLANT

December 15, 2017

STATE OF SOUTH CAROLINA
IN THE 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,

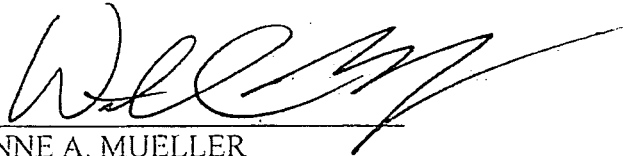
Respondent.

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
155 King Street, 2nd Floor
Charleston, SC 29401

I further certify that all parties required by Rule to be served have been served.
This 15th day of December, 2017.



ANNE A. MUELLER
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The South Carolina Court of Appeals

The State, Appellant,

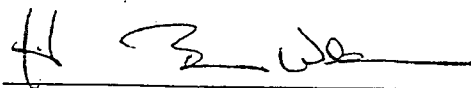
v.

Tami Baker Sisler, Respondent.

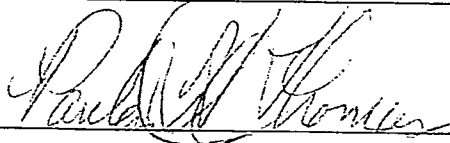
Appellate Case No. 2015-000604

ORDER

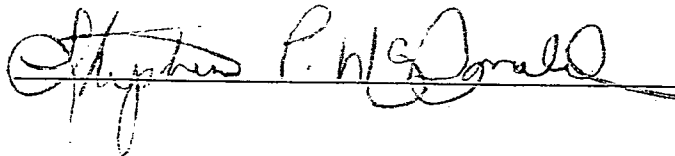
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Edward L. Phipps, Esquire

Alan McCrory Wilson, Esquire

~~William M. Blitch, Jr., Esquire~~

Kevin Scott Brackett, Esquire

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