

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal from York County  
Hon. J. Cordell Maddox, Circuit Court Judge  
Appellate Case Tracking No. 2015-000604  
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APR 16 2018

S.C. SUPREME COURT

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

Petitioner

v.

Tami Baker Sisler,

Respondent.

\_\_\_\_\_  
**RETURN TO PETITION FOR A WRIT OF CERTIORARI  
TO THE COURT OF APPEALS**  
\_\_\_\_\_

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ATTORNEYS FOR RESPONDENT

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## **COUNTERSTATEMENT OF QUESTIONS PRESENTED**

- I. 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 a 'welfare check' when Respondent voluntarily pulled over, claiming this to be a 'consensual encounter.' After being shown the fact that he had initiated his blue lights, 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 subjective reasoning to justify a traffic stop after the fact and after an objective review of the video at the Honorable Magistrate's motion to dismiss hearing.

## COUNTERSTATEMENT OF THE CASE

### Procedural History

Respondent was charged with DUI and Child Endangerment. Prior to trial in Magistrate's Court, Respondent moved to dismiss the charges alleging the officer had no probable cause to stop Respondent. On January 15, 2014, the 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.

The South Carolina Court of Appeals after reading briefs and hearing oral argument affirmed the dismissal of the Magistrate on December 6, 2017. The State filed a Petition for Rehearing on December 15, 2017. The Court of Appeals denied the Petition for Rehearing by Order filed January 23, 2018. The State then filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on February 21, 2018. On March 23, 2018 the Respondent was granted an extension to file the Return. This Return to the Petition for Writ of Certiorari follows.

### **Factual Background**

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. Upon Deputy Fowler's arrival Deputy Haire failed to mention that Respondent crossed the centerline. Additionally, Deputy Fowler's arrest report stated, "She was swerving *in her lane* and then abruptly pulled over." (emphasis added). After approximately six (6) minutes of investigation, Respondent was arrested for DUI and Child Endangerment.

## ARGUMENT

- I. **The Court of Appeals correctly affirmed the dismissal of this case based upon a lack of probable cause to stop Respondent. The State's initial position was that Deputy Haire was merely conducting a 'welfare check' when Respondent voluntarily pulled over, claiming this to be a 'consensual encounter.' After being shown the fact that he had initiated his blue lights, 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.**

### Standard of Review

In criminal cases, appellate courts sit to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2<sup>nd</sup> 216, 220 (2006). 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 trial 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); citing *State v. Brockman*, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000).

### **Analysis**

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).

### **Unlawful Traffic Stop**

The State initially had taken two positions regarding the traffic stop by Deputy Haire. The **first** position taken by the State is the second stop was a valid, lawful stop because the Deputy had probable cause. However, at the motion hearing this position was taken only after Deputy Haire testified repeatedly that he only pulled her over for missing the turn. 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).

The entirety of Deputy Haire’s testimony waivered back and forth, continually denying he pulled Respondent over for a traffic violation. 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 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 has continually attempted to push the narrative that the 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 the first hearing. The Court of Appeals noted:

It is likewise unclear to this court whether Deputy Haire *actually* observed Sisler crossing the centerline on the night of the incident. [emphasis added] *Contra (State v.) Vinson*, 400 S.C. 347, 353-54, 734 S.E.2d 182, 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").

(App. 194), *State v. Sisler*, Op. No. 2017-UP-458 (S.C. Ct. App. Filed December 6, 2017).

The Supreme Court of the United States has determined "reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." *Pullman-Standard v. Swint*, 456 U.S. 273, 289, n.19, 102 S.Ct. 1781, 1791, n.19, 72 L.Ed.2d 66 (1982). This Court has specifically stated "a particularized and objective basis" is required for an officer to have reasonable suspicion the person stopped was involved in criminal activity. *State v. Anderson*, 415 S.C. 441, 447, 783 S.E.2d 51, 54 (2016). Further, as S.C. Code Ann. § 56-5-1900(a) (2006) states, "[a] vehicle shall be driven as nearly as practicable entirely within a single lane..." As noted above, the first time Deputy Haire appears to state any particularized, objective basis for stopping the Respondent is at the motion hearing. Even on the night in question, Deputy Haire never relayed to Deputy Fowler the Respondent crossed the centerline. Deputy Fowler's arrest report, as noted above, only mentions "swerving in her lane," which is never once testified to by Deputy Haire at the motion hearing, clarified by Deputy Haire in a supplemental report to the arrest report, nor is swerving ever noted or seen in Deputy Haire's dash cam video.

## Unreasonable Seizure

The second position the State has taken is that the second contact by Deputy Haire with Respondent was lawful still because he was performing a “welfare check” because the Respondent pulled over voluntarily (i.e. Reasonable Seizure). 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 ‘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). As noted above, Deputy Haire never realized he initiated his blue lights until after viewing the video.

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

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. Deputy Haire from the date in question all the way up to the motion hearing never once mentioned the Respondent crossed the centerline. Deputy Haire waived back and forth on his justification for the stop and only mentioned crossing the centerline when it became apparent that he neither had reasonable suspicion, nor probable cause for stopping the Respondent. The State cannot justify a stop after the fact; an officer is required to have a particularized and objective reasoning, which includes actually observing the supposed traffic violation at the time of the traffic stop.

### CONCLUSION

For the foregoing reasons, Respondent asserts that the Court of Appeals 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 and that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

**RESPECTFULLY SUBMITTED,**

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April 12, 2018

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APR 16 2018

S.C. SUPREME COURT

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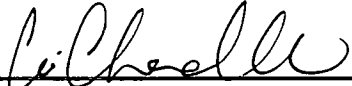
Respondent.

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PROOF OF SERVICE  
\_\_\_\_\_

I, Cori Chandler, certify that I have served the within Return to Petition for Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Office of the Attorney General  
Attn: Alan Wilson, Esq.  
William M. Blicht, Jr., Esq.  
P.O. Box 11549  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.  
This 12<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
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