THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No.: 2017-CP-28-00766

RECEIVED
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SC Court of Appeals

CITY OF CAMDEN.....Appellant,

v.

JERRY MICHAEL YATES.....Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court err in affirming the summary court's consideration of Respondent's pretrial motion to dismiss for lack of probable cause on a matter arising within its own trial jurisdiction?

II. Did the circuit court err in affirming the summary court's determination that the call to dispatch was not sufficiently reliable to comply with the Fourth Amendment to the United States Constitution?

STATEMENT OF CASE

On May 13, 2017, the Respondent was arrested and charged with alleged violations of Driving Under the Influence, .15% BAC, under section 56-5-2930(A)(1) of the South Carolina Code and Open Container of Beer or Wine in a Motor Vehicle under section 61-4-110 of the South Carolina Code. (Mun. Order, P. 1; Tr. P., 4 L. 2-7). Prior to trial, a hearing before The Honorable Roderick M. Todd, Jr., City of Camden Municipal Court Judge, occurred on July 12, 2017 in which Respondent made a motion "that the City of Camden lacked probable cause to stop the Defendant." (Cir. Ct. Order, P.1, Mun. Order, P. 1).

Following an Order by Judge Todd on August 24, 2017 dismissing the charges for the purported lack of probable cause to stop the Respondent, the City of Camden properly filed a Notice of Intent to Appeal on August 29, 2017. (Notice of Appeal, P. 1-3). The Municipal Court Return was filed on February 8, 2018 (Return, P. 1-2).[1] The Honorable Robert E. Hood entertained oral arguments on the City of Camden's appeal on July 28, 2018 and issued its order on August 21, 2018 affirming the lower court's ruling "that the City of Camden lacked probable cause to stop the Defendant." (Cir. Ct. Order, P.1). Appellant timely filed its Motion to Alter or Amend and for Reconsideration pursuant to Rules 52 and 59 of the South Carolina Rules of Civil

[1] . The parties to this action concede that the recording device operated by the City of Camden Clerk of Court was not functioning properly and therefore there is no transcript available of the underlying proceeding.

Procedure on August 30, 2018. (Motion to Reconsider). On August 31, 2018, Judge Hood issued a Form 4 Order denying Appellant's Motion for Reconsideration. (Form 4 Order).

Appellant timely filed its Notice of Appeal on September 19, 2018. This brief follows.

STATEMENT OF THE FACTS

On May 13, 2017, the City of Camden received an anonymous tip that was provided to the Kershaw County Central Communications' 9-1-1 dispatch system that the Respondent was dealing drugs at a local sports bar, that his driver's license was suspended, and that he was in the process of leaving the sports bar. (Tr. P., 6, L. 4-5; P. 7, L. 5-9). The caller further indicated the Respondent was driving a black Toyota Tacoma pick-up truck and correctly identified the license plate number of the truck. (Tr. P. 6, L. 21-24).

Ptl. George Barrett of the City of Camden Police Department observed the Respondent leave the sports bar and drive on the public highway within the City of Camden. (Tr. P. 6, L. 24-P. 7, L.1-3). Ptl Barrett initiated a traffic stop of the Respondent based upon the specific criteria and descriptions of the make and model of the vehicle, the correct license plate that matched the vehicle, and the place of business in which the Respondent left, and the tip that Respondent's driver's license was suspended. (Tr. P. 7, L. 2-16). As a result of the traffic stop, Cpl. Olson observed an open container of beer and smelled an odor of alcohol from the Respondent. After conducting a series of standard field sobriety tests, the Respondent was arrested and issued citations for Driving under the Influence. .15% BAC, and an Open Container of alcohol. (Tr. P. 7, L. 24-25).

STANDARD OF REVIEW

"In criminal appeals from a municipal court, the circuit court does not conduct a de novo review; rather, it reviews the case for preserved errors raised to it by an appropriate exception."

City of Cayce v. Norfolk S. Ry. Co., 391 S.C. 395, 399, 706 S.E.2d 6, 8 (2011); see S.C.Code Ann. § 14–25–105 (Supp. 2010) ("There shall be no trial de novo on any appeal from a municipal court."). Therefore, the appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law. City of Rock Hill v. Suchenski, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007).

ARGUMENT

I. The circuit court erred in affirming the summary court's pretrial dismissal of Respondent's charges for lack of probable cause on matters arising within its own trial jurisdiction.

The circuit court committed an error of law in affirming the municipal court's order dismissing Respondent's charges on a pretrial motion to dismiss for lack of probable cause in what amounted to a pretrial probable cause hearing in contravention of State v. Williams, 417 S.C. 209, 417 S.C. 209 (Ct. App. 2016) and State v. Ramsey, 381 S.C. 375, 673 S.E.2d 428 (2009).

a. Summary Courts may not make preliminary determinations of probable cause for matters arising within its own trial jurisdiction.

In affirming the summary court's pretrial ruling that the City of Camden lacked probable cause to stop the Defendant for alleged violations of Driving Under the Influence and Open Container of Beer or Wine in a Motor Vehicle, the circuit court ignores established case law, statutes, and the South Carolina Rules of Criminal Procedure ("SCRCrimP").

"[T]here is no authority for the proposition that magistrates are authorized to conduct preliminary hearings on matters within their own trial jurisdiction. To hold otherwise would undermine the summary nature of magistrate proceedings and unduly expand magistrate dockets." Williams, 417 S.C. at 230, 789 S.E.2d at 594 (citing Ramsey, 381 S.C. at 376-77, 673 S.E.2d at 428-29) (holding the magistrate judge should have declined Respondent's request for a

probable cause hearing and instead brought the trial for summary disposition). Accordingly, the City of Camden has no **pretrial** burden to prove probable cause in matters presented to the summary court. Id. (emphasis added); see also State v. Williams, 321 S.C. 381, 385, 468 S.E.2d 656, 658 (1996)("We agree with the State that the trial judge abused his discretion by dismissing the charges without first allowing the State to present its case. Clearly, the trial judge substituted himself for the finder of fact during this unusual and unnecessary pre-trial hearing.").

In Ramsey, the "Respondent filed with the magistrate a motion to dismiss the CDV charge for lack of probable cause." Id. at 376, 673 S.E. 2d at 428. Subsequently, the "magistrate held a hearing to determine probable cause and granted Respondent's motion to dismiss." Id. The South Carolina Supreme Court reversed the lower court, holding that because the "CDV charge was within the magistrate's jurisdiction, [ ] we find there is no authority for the proposition that magistrates are authorized to conduct preliminary hearings on matters within their own trial jurisdiction." Id. at 377, 673 S.E.2d at 429; See S.C. Code Ann. § 22-3-550 (2007) (Criminal Domestic Violence, First Offense is a charge triable in summary court). Moreover, the Court held that "the magistrate judge should have declined Respondent's request for a probable cause hearing and instead brought the charge to trial for summary disposition [because] for those matters within [the] magistrate's jurisdiction, preliminary determinations of probable cause are not authorized by statute." Id.

In Williams, 417 S.C. 209, 789 S.E.2d 582 (Ct. App. 2016), the South Carolina Court of Appeals relied heavily upon the precedent set and analysis by the Ramsey court. In Williams, the Respondent was charged with Driving Under the Influence. Prior to the swearing of the jury, the magistrate heard arguments on Williams's motion to demonstrate the checkpoint was constitutional and whether the highway patrolman had probable cause to stop the Respondent.

Williams, 417 S.C. at 214, 789 S.E.2d at 585. The magistrate judge in Williams dismissed the case "for lack of probable cause." Id. at 216, 789 S.E.2d at 586. Citing Ramsey, the Williams court held that the magistrate judge "erred in holding a pretrial probable cause hearing instead of proceeding to trial because this matter was within its jurisdiction." Id. at 230, 789 S.E.2d 594.

As in Williams, the Respondent in the instant matter was charged with Driving Under the Influence. (Mun. Order, P. 1; Tr. P. 4, L. 2-4). Additionally, the Respondent in the instant matter was charged with another misdemeanor level offense of Open Container of Beer or Wine in a Motor Vehicle. (Tr. P. 4, L. 2-4). Both offenses are triable in summary court. See S.C. Code Ann. § 22-3-550 (2007). Just as in the cases cited herein, Respondent's counsel made a Motion to Dismiss the charges for a lack of probable cause. (Mun. Order, P. 1; Cir. Ct. Order, P. 1). Put quite simply: the municipal court judge erred in holding a pretrial probable cause hearing, instead of proceeding to trial, because these two charges are within its trial jurisdiction. Accordingly, the circuit court committed error in affirming the municipal court's dismissal as a summary court judge cannot entertain such a motion. See Williams, 417 S.C. at 230, 789 S.E.2d at 594 ("Magistrates are not authorized to conduct preliminary hearings on matters within their own trial jurisdiction."); see also Ramsey, 381 S.C. at 377, 673 S.E.2d at 429 ("[W]e hold that the magistrate judge should have declined Respondent's request for a probable cause hearing and instead brought the charge to trial for summary disposition."); S.C. Code Ann. § 22-3-730 (1976)("All proceedings before magistrates shall be summary or with only such delays as a fair and just examination of the case requires.").

b. The circuit court confuses the distinction between a pretrial hearing on a Motion to Dismiss and a Preliminary Hearing as authorized by Rule 2, SCRCrimP.

The circuit court erred in affirming the municipal court's order by confusing the

distinctions between a pretrial hearing on a Motion to Dismiss for lack of probable cause and a Preliminary Hearing as authorized by Rule 2, SCRCrimP. At the municipal court level, Respondent made an oral Motion to Dismiss, pretrial, based on the premise that law enforcement for the City of Camden lacked probable cause to stop the Defendant. (Mun. Order, P. 1). This pretrial motion to dismiss was not a Preliminary Hearing as authorized by Rule 2, SCRCrimP. Respondent did not request a Preliminary Hearing at his bond court nor did he do so within ten (10) days of his bond hearing as required by Rule 2, SCRCrimP.

In general, summary court judges only have criminal jurisdiction "of all offenses which may be subject to the penalties of either fine or forfeiture not exceeding five hundred dollars or imprisonment in the jail or workhouse not exceeding thirty days." S.C. Code Ann. § 22-3-550 (2007). Additionally, Rule 2, SCRCrimP provides, in pertinent part:

> Any defendant charged with a crime **not triable** by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial.

(emphasis added). Accordingly, Magistrate and Municipal court judges can absolutely conduct Preliminary Hearings to determine if probable cause exists, but **only** for matters that will be tried in General Sessions. Respondent's underlying charges are misdemeanor offenses that fall squarely within the jurisdiction of a summary court judge. (Tr. P. 5, L. 8-11).

As an initial matter, it is important to note that the circuit court erred in stating that the facts of State v. Ramsey can be distinguished from the underlying matter because the trial court in Ramsey held a Preliminary Hearing (Cir. Ct. Order, P. 3). This statement is incorrect. The magistrate did not hold a Preliminary Hearing as envisioned by Rule 2, SCRCrimP. This was not a General Sessions level charge; the Respondent was charged with Criminal Domestic Violence,

First Offense. The magistrate judge was not trying to make a determination whether the charge would "be bound over to the Court of General Sessions." See Rule 2(c), SCRCrimP. Instead, the trial court in Ramsey conducted a pretrial hearing to determine probable cause on Respondent's motion to dismiss and ultimately dismissed the charge. Ramsey, 381 S.C. at 376, 673 S.E.2d at 428. A position contrary to these facts is simply inaccurate.

The fact patterns of both the Ramsey and Williams cases are instructive and provide a basis for this Honorable Court to correct the error of law committed by the summary court and affirmed by the circuit court. In the instant matter, just as in Ramsey and Williams, the Respondent made a pretrial Motion to Dismiss for lack of probable cause. The procedural postures of all three cases are identical. The summary court's preliminary determination on the lack of probable cause—as in Ramsey and Williams—exceeded its authority as summary court judges do not have the authority to do so on matters that fall within their own jurisdiction. Ramsey, 381 S.C. at 377, 673 S.E.2d 428 at 429; Williams, 417 S.C. at 230, 789 S.E.2d 594. Indeed, "South Carolina law requires that all magistrate proceedings 'shall be summary or with only such delay as a fair and just examination of the case requires.'" Ramsey, 381 S.C. at 377, 673 S.E.2d at 429 quoting S.C. Code Ann. § 22-3-730 (2007). Accordingly, as in Ramsey and Williams, this Honorable Court should conclude that the summary court judge did not have the authority to make a probable cause determination at a pretrial hearing and that the circuit court erred in affirming the same.

It is important to note Respondent's position that precluding a municipal court judge from conducting a pretrial hearing on probable cause will result in the erosion of all pretrial hearings is both nonsensical and a misstatement of the law. A summary court judge is empowered to conduct a litany of pretrial hearings on matters that may either be dispositive of

the case or result in an evidentiary ruling to suppress certain material. For instance, section 56-5-2953 of the South Carolina Code provides that dismissal of a Driving Under the Influence Charge may be appropriate when the State does not comply with the requirements of that section. The summary court must, however, have a statute granting the court the power to dismiss a matter. See State v. Ridge, 269 S.C. 61, 65, 236 S.E.2d 401, 402 (1977)("A statute may authorize the court, either of its own motion or on the application of the prosecuting officer, to order an indictment or prosecution dismissed. But in the absence of such a statute, a court has no power ... to dismiss a criminal prosecution except at the instance of the prosecutor . . . ."). Additionally, summary courts are empowered to conduct a pretrial evidentiary hearing under Jackson v. Denno, 378 U.S. 368 (1964) to determine the voluntariness of statements made by the defendant prior to submission of such statements to the jury. While the summary court in the instant matter improperly dismissed Respondent's charges when concluding law enforcement did not have probable cause, summary court judges are able to conduct a variety of pretrial hearings, thus abrogating the circuit court's concern that the court would never be able to conduct pretrial hearings. (Cir. Ct. Order, P. 3).

At the hearing before the circuit court, the court inquired when, if not pretrial, a summary court judge would be empowered to weigh whether the State lacked probable cause for an arrest. (Tr. P. 16, L. 12-25). As counsel for the City of Camden responded at the hearing, the court could entertain a motion for directed verdict at the close of the City of Camden's case. (Tr. P. 17, L. 1-12). See Williams, 321 S.C. at 386, 468 S.E.2d at 658 ("We agree with the State that the trial judge abused his discretion by dismissing the charges without first allowing the State to present its case. Clearly, the trial judge substituted himself for the finder of fact during this unusual and unnecessary pre-trial hearing . . . **At the conclusion of the State's case, the judge**

could have directed a verdict in favor of the defendants if he deemed such a ruling appropriate.")(emphasis added). Moreover, the actions of the court in this case are similar to the dismissal of an indictment pretrial. A solicitor may choose to dismiss a properly obtained indictment, but the court does not have such power. See State v. Needs, 333 S.C. 134, 146 508 S.E.2d 857, 863 (1998)("[A] trial court generally has no power to dismiss a properly drawn indictment issued by a properly constituted grand jury before trial unless a statute grants that power to the court. The prosecutor may, of course, request the dismissal of an indictment or charge.").

In affirming the summary court's dismissal of Respondent's charges for a lack of probable cause at a pretrial hearing, the circuit court confused the distinctions between a pretrial hearing on a Motion to Dismiss for lack of probable cause and a Preliminary Hearing as authorized by Rule 2, SCRCrimP.

Accordingly, based on the errors of law committed by the summary court and affirmed by the circuit court, this Honorable Court should reverse the lower court's decision dismissing this case for lack of probable cause and remand the case for trial.

II. The circuit court erred as a matter of law in affirming the summary court's determination that the anonymous tip to dispatch did not contain sufficient reliability—including the content of the information and its degree of reliability—to comply with the Fourth Amendment to the United States Constitution.

Appellant contends if this Honorable Court determines the circuit court erred in affirming the summary court's decision to conduct a pretrial determination of probable cause, it is not necessary to address whether the anonymous tip to dispatch was sufficiently reliable to comply with the Fourth Amendment to the United States Constitution. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when disposition of prior issue is dispositive").

Nevertheless, assuming *arguendo*, the summary court is empowered to conduct pretrial hearings to determine probable cause for matters arising within its own jurisdiction, the municipal court erred as a matter of law in determining that the anonymous tip to dispatch was not sufficiently reliable to comply with the Fourth Amendment to the United States Constitution despite the credible content of the tip indicating the Respondent was committing a criminal offense and law enforcement's corroboration of the vehicle's description, location, and direction the Respondent was traveling. The determinations of the magistrate and circuit courts should be reversed and this case remanded for trial.

The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." United States v. Cortez, 449 U.S. 411, 417–418, 101 S.Ct. 690 (1981); see also Terry v. Ohio, 392 U.S. 1, 21–22, 88 S.Ct. 1868 (1968). The "reasonable suspicion" necessary to justify such a stop "is dependent upon both the content of information possessed by police and its degree of reliability." Alabama v. White, 496 U.S. 325, 330, 110 S.Ct. 2412 (1990). The standard takes into account "the totality of the circumstances—the whole picture." Cortez, *supra,* at 417, 101 S.Ct. at 690. Although a mere "hunch" does not create reasonable suspicion, Terry, *supra,* at 27, 88 S.Ct. at 1868, the level of suspicion the standard requires is "considerably less than proof of wrongdoing by a preponderance of the evidence," and **"obviously less" than is necessary for probable cause**. United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. at 1581 (1989) (emphasis added). Additionally, under appropriate circumstances, an anonymous tip can demonstrate "sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop." White, 496 U.S. at 327, 110 S.Ct. at 2412.

Appellant relies upon the analysis of the United States Supreme Court's decision in Navarette v. California, 572 U.S. 393, 134 S. Ct. 1683 (2014) in support of its position that law enforcement properly stopped the Respondent on May 13, 2017. In Navarette, the 911 caller reported she had been run off the road by "a specific vehicle—a silver Ford F-150 pickup, license plate 8D94925." Id. at 399, 134 S.Ct. at 1689. The Court concluded that the "basis of knowledge lends significant support to the tip's reliability." See Gates, *supra,* at 234, 103 S.Ct. at 2317 ("[An informant's] explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case").

The initial question in the instant matter, as in Navarette, is whether the 911 call was sufficiently reliable to credit the allegations of the Respondent dealing in heroin and methamphetamine at the business and that his driver's license was suspended. The summary court and the circuit court erred in concluding that the 911 call did not provide adequate indica of reliability for the officer to make an investigative stop. In this case, the 911 caller provided an accurate description of the vehicle, to include the license plate. (Mun. Order, P. 1; Tr. P. 6, L. 21-24). Additionally, the caller identified the specific location of the vehicle, which was subsequently confirmed by law enforcement. (Mun. Order, P. 1; Tr. P. 6, L. 24). Finally, the caller informed dispatch that the driver's license was suspended and that he was dealing drugs at the sport's bar. (Tr. P. 7, L. 5-9). As in Navarette, this eyewitness account of information provided to law enforcement demonstrates a basis of knowledge that lends significant support to the tip's reliability. See Gates, *supra,* at 234, 103 S.Ct. at 2317.

The Navarette Court further held "[e]ven a reliable tip will justify an investigative stop only if it creates reasonable suspicion that 'criminal activity may be afoot.'" Terry, 392 U.S. at

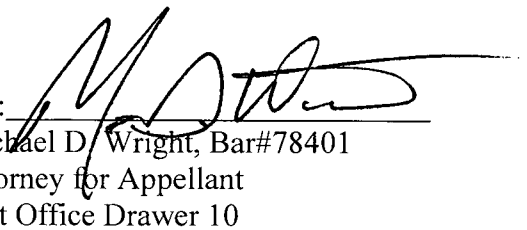
30, 88 S.Ct. at 1868. Here, an investigative stop of the Respondent by law enforcement was warranted because the caller's report created reasonable suspicion of an ongoing crime—driving under suspension. See Cortez, 449 U.S. at 417, 101 S.Ct. at 690 ("An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be engaged in criminal activity."). Viewed from the standpoint of an objectively reasonable police officer, the Respondent's behavior alleged by the caller as well as the specific detail of the vehicle amounts to reasonable suspicion of criminal activity to justify the stop.

Additionally, the analysis of whether law enforcement had a reasonable suspicion to stop Respondent is based on a totality of the circumstances. In viewing the totality of the circumstances and the reasonable inferences at the time of the stop: 1) The caller detailed the make, model, and license plate number of Respondent's vehicle; 2) The caller identified the specific location of the Respondent and his vehicle; 3) The caller stated that the Respondent's driver's license was suspended and that he was dealing drugs at the sports bar; and 4) Law enforcement observed the Respondent leave the sports bar and begin driving on a public highway. The facts as presented to law enforcement at the time certainly provided them reasonable suspicion to believe criminal activity may be afoot. See Cortez, *supra,* at 417, 101 S.Ct. at 690. As a result, the summary court and circuit court erred in concluding law enforcement did not have probable cause for the stop and in further dismissing the instant matter.

CONCLUSION

For the reasons stated herein, Appellant respectfully submits that the decision of the circuit court affirming the dismissal of the summary court is an error of law. Accordingly, Appellant requests this Honorable Court reverse the lower court's order and remand this case for trial before the summary court.

Respectfully submitted,



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CITY OF CAMDEN.....Appellant,

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JERRY MICHAEL YATES.....Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for Respondent with a copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal by hand-delivering copies of the same to the following address:

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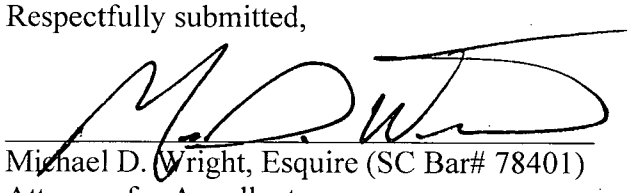
Respectfully submitted,



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VIA HAND-DELIVERY
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OCT 18 2018
SC Court of Appeals

RE: City of Camden v. Jerry Michael Yates
Appellate Case No.: 2018-001710

Dear Mrs. Kitchings:

I hope this correspondence finds you doing well.

Please find enclosed the original and one (1) copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal. I have also enclosed a proof of service of this upon counsel for Respondent.

I ask that you have someone from your office file the original and return the additional filed copy to me via our courier.

If you have any questions, please do not hesitate to contact me.

Very truly,

Michael D. Wright

Enclosures as Stated

cc: George Speedy, Esquire (with enclosures)