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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO THE COURT OF APPEALS
Appeal from Berkeley county
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

The State of South Carolina.....Appellant,

v.

Jennifer Lynn Alexander.....Respondent.

Appellate Case No. 2014-001919
Unpublished Opinion No. 2016-UP-377
Heard March 9, 2016 – Filed July 27, 2016; rehearing denied September 20, 2016

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Statement of Facts 2

Arguments

1. THE COURT OF APPEALS AND THE CIRCUIT COURT PROPERLY AFFIRMED THE MAGISTRATE COURT'S DISMISSAL OF RESPONDENT'S CHARGES 3

Conclusion 7

TABLE OF AUTHORITIES

CASES

State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) 1, 2, 5, 6

State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000) 1-4, 6, 7

State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011) 1, 4, 6, 7

Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) 6

State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct.App. 2005) 6

State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) 6

STATUTES

S.C. Code Ann. § 17-13-45 (2003) 5, 6

STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT OF APPEALS AND THE CIRCUIT COURT ERR IN AFFIRMING THE MAGISTRATE COURT'S DISMISSAL OF THE RESPONDENT'S CHARGES?

STATEMENT OF THE CASE

On July 29, 2013, the Respondent was detained by the Goose Creek Police Department, outside of their jurisdictional limits. She was later taken into custody by Trooper Paul Yacobozzi, of the South Carolina Highway Patrol, and charged with violation of S.C. Code sections 56-5-2930, Driving Under the Influence (DUI), Ticket Number G445153; 56-5-6520, Seatbelt Violation, Ticket Number G445154; 56-10-225, No Proof of Insurance, Ticket Number G445155; and 56-1-230, Failure to Change Address, Ticket Number G445156. (R. p. 4).

The case came before the magistrate's court for a jury trial, in accordance with the Respondent's request, on February 10, 2014.[1] (Order of Dismissal at 1; Return at 1) However, due to the impending Ice Storm and the ensuing State of Emergency, as declared by our governor, the parties agreed that the Respondent's motions should be heard at that time, and the trial would be held on another day. (R. p. 5)

The Respondent's motion to dismiss under State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) and State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), was subsequently granted and the case was dismissed with the court also citing State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). (Order of Dismissal pp 3-4; Return pp 5-6) The State appealed the dismissal to the Court of Common Pleas, The Hon. R. Markley

1 According to Appellant, the date was February 11, 2014. Brief of Appellant According to Appellant, the date was February 11, 2014. Brief of Appellant at 1. The date should not be an issue here.

Dennis, Jr., presiding, and the dismissal was affirmed. (Form order affirming decision) This appeal by the State followed.

STATEMENT OF FACTS

On July 29, 2013, the Respondent was outside of her vehicle, attending to a personal matter, when an officer with the Goose Creek Police Department arrived. At that time, the Respondent's vehicle was stuck in the mud, in a ditch, completely off the road, and inoperable. The aforementioned police officer had responded to a call for a vehicle in a ditch. No one saw the Respondent drive. It was never determined how long the vehicle had been in the ditch. The location of the vehicle was outside the Goose Creek city limits, as verified by the police officer and confirmed by the officer with his supervisor.

The vehicle's location being outside the city limits is not in dispute. The police officer requested that the Highway Patrol respond. Meanwhile, the Goose Creek officer detained the Respondent, as specifically testified to by the officer, and held her in her vehicle until the arrival of the Highway Patrol. Moreover, the officer testified that the Respondent was not free to leave, and that if the Respondent had attempted to leave on foot, he would have arrested her for public intoxication, even though he was outside of his jurisdictional limits.

It is undisputed that the vehicle was stuck and was inoperable upon the Goose Creek police officer's arrival. The Respondent was subsequently arrested by the Highway Patrol and charged with DUI, along with several other traffic charges. The Respondent filed several motions, including a motion to dismiss on the grounds of an

unlawful arrest based on State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) and State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000).

ARGUMENTS

I. THE COURT OF APPEALS AND THE CIRCUIT COURT PROPERLY AFFIRMED THE MAGISTRATE COURT'S DISMISSAL OF RESPONDENT'S CHARGES.

The Respondent was unlawfully detained by the initial responding officer, a Goose Creek municipal police officer. See State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000). In McAteer, a municipal police officer observed the Respondent drive his vehicle in a questionable manner, which led the officer to suspect the Respondent of DUI. Id. The officer stopped and detained the Respondent until the arrival of the Highway Patrol, who subsequently arrested the Respondent. Id. The Respondent appealed his arrest and conviction. Id. Our Supreme Court overturned our Court of Appeals and reversed the conviction, holding that "[s]ince the officer was outside the municipality's city limits when he first observed petitioner, he had no police authority to detain him." Id, 340 S.C. at 646. The Court then analyzed, in great detail, the authority for making a citizen's arrest and concluded that the DUI arrest did not pass muster. McAteer, id.

Here, with some exceptions more favorable to the Respondent, there are similar circumstances. The Respondent was first observed and detained outside of the municipal police officer's jurisdiction. No one saw the Respondent drive; she wasn't even in her vehicle until after she was detained, and her vehicle was inoperable. There was no evidence presented regarding how long the Respondent's vehicle had been stuck in the ditch, nor of any crime having been committed inside the city limits of Goose Creek.

Therefore, as in the McAteer case, there were no lawful grounds to justify the Respondent's detention by a Goose Creek municipal police officer outside of his jurisdiction.

Our Supreme Court revisited and reaffirmed the McAteer case in State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011). In Boswell, the Respondent was convicted of first degree burglary and sentenced to life without parole. Boswell, id. The Respondent appealed his conviction, alleging inter alia, an unlawful arrest in Calhoun County, by deputy sheriffs from Lexington County, who were investigating a burglary that had occurred there. Id. Although the State tries to couch the Boswell case as inapplicable and merely one involving a multijurisdictional agreement, Brief of Appellant, at 4, to the contrary, it is the absence of any such valid agreement that makes Boswell and McAteer very pertinent to the case, sub judice. As our Supreme Court noted,

> In view of our finding that the 1999 agreement did not authorize the Lexington County officers to arrest Boswell outside of their territorial jurisdiction, the question becomes whether the officers acting as "private citizens" could have effectuated the arrest.
>
> The key case in this determination is State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000).

Boswell, 707 S.E.2d at 271.

Although some distinctions can be drawn between the facts of Boswell and those of McAteer, the overall similarities are much more compelling. The Boswell Court, citing McAteer with approval, found that the only offense observed by the Lexington County officers to have been committed was a misdemeanor and that since these officers were outside of their jurisdiction, they had no authority to detain and arrest the Respondent. Boswell, id. The Court held that it was therefore error on the part of the

trial court not to have suppressed the evidence that came from the unlawful arrest and the Court reversed the conviction. Id. at 272. Here, as in Boswell and McAteer, there was an arrest and detention outside the jurisdictional limits of the officer, for a misdemeanor not committed in the officer's presence.

There was no danger to the community nor special circumstances in the present case because the Respondent's vehicle was stuck in a ditch and could not be driven. In State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980), the Respondent's vehicle was still operable and there was a risk that the Respondent could continue to drive, if not detained. Id. There were also multiple witnesses to the accident. Id. Here, not only was there no way for the Respondent get in her car and drive away (because the vehicle was inoperable), but there were no witnesses to the Respondent having driven the vehicle; it was stuck in a ditch, and there was no evidence regarding how long it had been there.

The State attempts to dispose of the case by characterizing the call to the Goose Creek Police as "a distress call or request for assistance in an adjacent jurisdiction." Brief of Appellant at 4. The State goes on to cite S.C. Code section 17-13-45 for the proposition that an officer responding to such a call, outside his or her jurisdiction, would have the same authority as an officer of that jurisdiction. Id. The full text of section 17-13-45 reads as follows:

> When a law enforcement officer responds to a distress call or a request for assistance in an adjacent jurisdiction, the authority, rights, privileges, and immunities, **including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provision of Chapter 78, Title 15,** that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction.

S.C. Code Ann. § 17-13-45 (2003) (emphasis added).

Here, the call to the Goose Creek Police was one merely informing the police of a vehicle in a ditch. There was no request for assistance by another law enforcement agency having jurisdiction, or even of a citizen in distress asking to see an officer. Without more, S.C. Code § 17-13-45 is inapplicable to the case at bar.

Moreover, such an overly broad interpretation of S.C. Code § 17-13-45 could very well have the effect of the exception swallowing up any rule of jurisdictional boundaries altogether. It should also be noted that the portion of the aforementioned law not quoted in the State's Appeal pertains to worker's compensation and tort liability coverage, which suggests an entirely different context for 17-13-45, than that being ascribed to it by the State.

Even if the Court finds that S.C. Code section 17-13-45 may be applicable to the case, sub judice, the matter still turns on whether the police had probable cause to detain the Respondent in the first place. See State v. Martin, supra. Upon arrival of the initial, Goose Creek police officer, there was only an unoccupied vehicle in a ditch. The Respondent was outside of her vehicle, not behind the wheel of the vehicle. The vehicle was stuck in a ditch and incapable of being operated. There was no evidence of any timeframe for how long the vehicle had been in the ditch and there was no immediate threat to public safety. Thus, there were no reasonable grounds upon which to detain the Respondent and the subsequent arrest was unlawful.

In the seminal case of Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), the U. S. Supreme Court ruled that any evidence obtained as a result of an illegal arrest must be suppressed as "fruit of the poisonous tree" and cannot be used against the Respondent. See also, State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840

(Ct.App. 2005), State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) ("The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of the illegality."). Here, as in the McAteer and Boswell cases, the and unlawful detention of the Respondent by the Goose Creek municipal police officer, outside of his jurisdiction, directly led to Respondent's arrest, as well as to any evidence obtained, and her subsequent prosecution by the Highway Patrol. Thus, the "fruit of the poisonous tree" doctrine applies here. Id.

In State v. Pichardo, 367 S.C. 84, 96, citing Easley v. Cromartie, 532 U.S. 234 (2001), our Court of appeals pointed out that "[t]he 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently. Id. Rather, "[a]n appellate court must affirm the trial court's ruling if there is any evidence to support the ruling. Id., citing State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (emphasis in the original). Respondent is informed and believes that the Record contains sufficient evidence to support the trial court's decision to grant her motion to dismiss. The magistrate judge properly dismissed the case and the circuit court judge properly affirmed that dismissal.

CONCLUSION

For the foregoing reasons, the Respondent is informed and believes that the magistrate judge correctly dismissed the charges against the Respondent and that the Circuit Court, and Court of Appeals, properly affirmed the dismissal. The Respondent therefore respectfully prays this Honorable Court to also affirm the dismissal of the Respondent's case and all charges.

Respectfully submitted,

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At Summerville, South Carolina

This 21st Day of November, 2017

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PROOF OF SERVICE

I certify that I have served the Brief of Respondent on the Appellant, the State of South Carolina, addressed to its attorney of record, Marcus K. Gore, Esq., at the South Carolina Department of Public Safety, Office of General Counsel, P.O. Box 1993, Blythewood, South Carolina, 29016, via United States Mail, postage prepaid, in this day, November 21, 2017.

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This 21 Day of November, 2017