

CASE NAME: State vs. Williams (S.C. Ct. App. Opinion No. 5405; Filed May 25, 2016)

FACTS:

On March 26, 2011, the South Carolina Highway Patrol set up a driver's license checkpoint in Greenville, South Carolina at the bottom of a hill. Around 3 a.m., Williams approached the checkpoint but made a U-turn after coming over the hill. Trooper David Robertson¹ notified his supervisor that a vehicle had made a U-turn and was told to pursue the car. Trooper Robertson drove over the hill and saw the vehicle stopped in the backside of a parking lot with its lights turned off. Trooper Robertson approached the vehicle, noticed the odor of alcohol, and observed the driver's—Williams's—eyes were glassy and his speech was slurred. Following field sobriety tests, Trooper Robertson charged Williams with DUI.

PROCEDURAL HISTORY:

Williams was scheduled for trial by a magistrate on the DUI charge. On March 14, 2013, prior to the swearing of the jury, the magistrate heard arguments on Williams's motion to require the State to demonstrate the checkpoint was constitutional. The State called Trooper Robertson to testify about the license checkpoint. Trooper Robertson gave some details about the checkpoint but indicated he was not at the checkpoint the entire time it was in place and he had not decided the location of the checkpoint. He testified Williams did not drive through the checkpoint but instead made a U-turn on the hill. The State argued it had established the constitutionality of the checkpoint but even if it had not, the stop was proper for other reasons. It asserted that once Williams made the U-turn, Trooper Robertson had probable cause or reasonable suspicion to suspect a traffic violation had occurred under section 56-5-2140 of the South Carolina Code. The State also argued the act of turning around upon seeing the checkpoint constituted reasonable suspicion.

Williams argued the State had not met the burden of proof for proving the checkpoint constitutional. Further, he asserted a person in the United States has no obligation to travel through a checkpoint. He argued the only evidence the State had presented for stopping him was his avoidance of the checkpoint because his U-turn was not unlawful as section 56-5-2140 provided "no person shall turn the vehicle in the opposite direction unless such movement can be made in safety without interfering with other traffic.

The State argued Williams only referred to subsection (a) of 56-5-2140 but subsection (b) provided "no vehicle shall be turned so as to proceed in the opposite directions upon any curb or upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching by either direction within 500 feet. "The State maintained because Williams was on a hill, that was the case here. The magistrate determined no testimony had been presented about the legality of the U-turn but the State could recall Trooper Robertson to testify about it. Trooper Robertson then testified Williams's U-turn was illegal because just as Williams came over the grade, he made the U-turn within at most two hundred feet of where the crest starts to grade down. On cross-examination, Trooper Robertson admitted he had not measured the distances and was guesstimating. He testified that at the crest of the hill, one could see in the other direction a distance of over five hundred feet.

The magistrate noted that while the State submitted reports constituting empirical data that could be used to justify the location of the checkpoint, it had not presented a sufficient foundation as to how the reports were prepared and whether they were considered as part of the decision to set up the checkpoint. Based on this lack of foundation, the magistrate determined the case would turn on whether the U-turn was sufficient cause for Williams to be stopped. The magistrate stated that without actual measurements, which he noted went to the weight of the evidence and not its admissibility, the evidence was insufficient to establish Williams made the U-turn within five hundred feet of the crest of the hill. The magistrate orally ruled it was "grant[ing] the defense motions." Following the hearing, the magistrate issued its return stating it had dismissed the case based on its finding the State lacked probable cause and had presented no admissible evidence regarding the constitutionality of the checkpoint.

The State made a motion for reconsideration on several grounds including the magistrate erred in (1) ruling pretrial the action should be dismissed or evidence suppressed because the State was not required to establish the constitutionality of a driver's license checkpoint when the driver committed an unlawful U-turn; (2) ruling pretrial the action should be dismissed or evidence suppressed because the testimony of Trooper Robertson established sufficient probable cause or reasonable suspicion Williams violated the U-turn code section; (3) ruling pretrial the action should be dismissed before the State had an opportunity to present its case in chief; and (4) holding what amounted to a preliminary hearing on the existence of probable cause for the stop and arrest.

The magistrate conducted a hearing on the reconsideration motion. The State asserted it still was challenging the magistrate's rulings on the legality of the checkpoint and Trooper Robertson having probable cause to stop Williams because of the violation of the U-turn statute. However, the State contended the magistrate had not ruled on its argument Trooper Robertson had a reasonable suspicion to stop Williams based on the totality of the circumstances. The State provided those circumstances were (1) Trooper Robertson found the U-turn unusual; (2) Williams turned into a parking lot; and (3) Williams turned off his headlights. Williams argued the State had not made the necessary objections to preserve most of its arguments.

The State also argued the magistrate had erred in the remedy it provided Williams. The State stated it believed the magistrate ruled the case was dismissed for lack of probable cause, and Williams concurred. The State argued "dismissal is a remedy authorized by statute," like the videotaping provision contained in section 56-5- 2953 of the South Carolina Code, which provides dismissal is appropriate when the State does not comply with the requirements of that section. The State argued that here, no authorizing provision allows dismissal. The State cited to *State v. Ramsey*, in which the supreme court found the magistrate erred in dismissing a case for lack of probable cause because magistrates are not entitled to hold preliminary hearings on charges within their trial jurisdiction. Williams responded the State did not make a contemporaneous objection to the dismissal at the initial hearing. The magistrate denied the motion for reconsideration, stating despite *Ramsey*, "the fundamental flaws in the State's case cannot be corrected upon retrial."

The State appealed to the circuit court, arguing the magistrate court erred in (1) holding a preliminary hearing on a charge within its jurisdiction and dismissing the case for lack of

probable cause; (2) ruling reasonable suspicion did not exist to justify the stop based on the totality of the circumstances; (3) dismissing the action because Trooper Robertson's testimony established sufficient probable cause or reasonable suspicion Williams violated section 56-5-2140 to justify the stop; and (4) ruling the State failed to present sufficient evidence and competent witnesses to establish the constitutionality of the checkpoint.

The circuit court held a hearing on the matter. Williams asserted that at the initial hearing before the magistrate the State never objected to the propriety of the motion or the magistrate's authority to hear and make a ruling on it, so the State's issues were unpreserved. The State asserted it did object on the record at the hearing to having to prove the constitutionality of the checkpoint prior to trial, citing page 8 of the transcript, stating "we don't agree with [Williams] that we have not shown the constitutionality of the checkpoint, but it doesn't matter in this case because [Williams] did not go to the checkpoint." The State also argued the magistrate erred in finding the State did not have probable cause to arrest Williams because the State has no burden to prove probable cause pretrial and the State's burden is to show the officer had a reasonable suspicion to stop Williams. The State asserted it had reasonable suspicion because Williams made a U-turn once he saw the checkpoint, fleeing the scene; drove into a parking lot away from the scene; pulled to the backside of the parking lot; and turned off his lights.

The circuit court issued an order affirming the magistrate. It found the State appealed two issues: (1) whether the State had a pretrial burden to prove the constitutionality of the checkpoint and (2) whether the State had a pretrial burden to show probable cause for Williams's arrest. As to the checkpoint, the circuit court found no error because the magistrate reviewed the testimony and evidence presented by the State and concluded the State had not established a proper foundation. As to the probable cause versus reasonable suspicion standard, the circuit court found that even if a reasonable suspicion standard applied, the State could not meet its burden because the stop and arrest were premised on the validity of the checkpoint, which the magistrate correctly determined was without foundation. The circuit court noted the State was unable to prove the U-turn was illegal and only showed it appeared evasive. The circuit court further determined the magistrate properly considered Ramsey.

The State filed a motion for reconsideration, which the circuit court denied. This appeal followed.

ISSUE:

1. Was the Magistrate Judge correct in requiring the State to provide evidence to support the constitutionality of the checkpoint?
2. Was the Magistrate Trial Judge correct in finding that the State lacked probable cause to stop Mr. Williams?
3. Was dismissal of the case a proper remedy exercised by the Magistrate Judge?

OPINION:

1. No; because the validity of the checkpoint was irrelevant. The state was not required to prove the constitutionality of the checkpoint. In the present case, the magistrate erred in

finding the State had to establish the constitutionality of the checkpoint. Both Scheetz, 293 F.3d at 183, and Griffin, 749 S.E.2d at 447, hold the analysis for determining if a checkpoint is constitutional only applies when a vehicle is stopped at the checkpoint and does not apply when the vehicle does not actually make it to the checkpoint. Here, Williams turned around before he got to the checkpoint; thus, he was never actually stopped by the checkpoint. Accordingly, the magistrate erred in requiring the State to prove the checkpoint was constitutional.

2. No; because the State established it had reasonable suspicion and because police can stop a vehicle for either reasonable suspicion or probable cause, it was error for the magistrate to dismiss the case for lack of probable cause. The State had both probable cause and reasonable suspicion. Police can stop a car based on either probable cause that a traffic violation has occurred or reasonable suspicion an occupant is involved in criminal activity. Like in Smith, 396 F.3d at 585-87, and Griffin, 749 S.E.2d at 447, Williams's behavior indicated he was trying to hide from the police. All of the circumstances combined—his evasiveness; the time, 3 a.m.; the U-turn upon seeing the checkpoint; the turning into a parking lot; his turning off his headlights; and his pulling to the back of the parking lot—gave Trooper Robertson a reasonable suspicion that criminal activity was afoot. Accordingly, the State had to demonstrate it had either reasonable suspicion the suspect was involved in criminal activity or probable cause to believe a traffic violation had occurred. Because the State showed it had reasonable suspicion, it was not required to also show it had probable cause. Therefore, the magistrate erred in dismissing the case for lack of probable cause to believe a traffic violation had occurred.
3. No. The magistrate exceeded its authority in considering Williams's motion to dismiss because dismissal was not a proper remedy and magistrates do not have the power to hold pretrial preliminary hearings for charges that fall within their jurisdiction. The magistrate erred in dismissing the case. The proper remedy for evidence obtained in violation of the Fourth Amendment is suppression. See *State v. Gamble*, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013) ("The Fourth Amendment prohibits unreasonable search and seizure, and requires that evidence seized in violation of the Amendment be excluded from trial."). Accordingly, the magistrate erred in dismissing the DUI case against Williams because even if the stop had been unconstitutional, the magistrate only had the authority to suppress the evidence.

CONCLUSION:

The magistrate court and circuit court erred in dismissing the case. Accordingly, those orders are **REVERSED AND REMANDED**.