

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2013CP4602634

James Delaney Allen III	Rock Hill City Of
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: **APPEAL IS GRANTED**  
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk: **ORDER (APPEAL IS GRANTED)**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*s/ John C. Hayes, III.*

2049

4/14/2014

Circuit Court Judge

Judge Code

Date

**RECEIVED**

OCT 27 2014

**SC Court of Appeals**

**For Clerk of Court Office Use Only**

This judgment was entered on **April 18, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **April 18, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

**Michael Langford Brown Jr.** PO Box 1025 Rock Hill, SC  
29731

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**Paula Knox Brown** 201 E. Main Street Third Floor Rock  
Hill, SC 29730

**ATTORNEY(S) FOR THE DEFENDANT(S)**

David Hamilton

**Court Reporter**

**David Hamilton - Clerk of Court**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
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COUNTY OF YORK )  
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James Delaney Allen III, )  
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Appellant, )  
 )  
-V- )  
 )  
City of Rock Hill, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

2014 MAR 18 PM 3:11  
DEPT. OF COURT CLERK  
YORK COUNTY, SC

File Number: 2013-CP-46-02634

This matter comes before the undersigned in the York County Court of Common Pleas on March 12, 2014. Appearing for the Appellant was Michael L. Brown, Esquire. Paula Knox Brown, Esquire, appeared for the City of Rock Hill. Appellant was arrested and charged with DUI First Offense on September 22, 2012. Appellant filed a Motion to Dismiss, which was subsequently denied. The case then proceeded to a bench trial. On August 21, 2013, The Honorable Judge Peter Lenzi found the Appellant guilty of DUI First Offense. Appellant now appeals this conviction.

Facts

On September 22, 2012, Sergeant Rivera, of the City of Rock Hill Police Department, came into contact with the Appellant's vehicle traveling down Ogden Road. Sgt. Rivera then began "pacing" the Appellant's vehicle in an unmarked police vehicle and testified that the Appellant was traveling at a speed of 58 miles per hour in a 35 mile per hour zone. Sgt. Rivera also testified that he witnessed the Appellant's vehicle swerve across the yellow line on several

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occasions. Sgt. Rivera then conducted a traffic stop, pulling over the Appellant and identifying himself as a City of Rock Hill Police Officer. Sgt. Rivera testified that he detected a strong odor of alcohol coming from the Appellant's vehicle and/or breath. The officer then inquired as to how much alcohol the Appellant had consumed whereby the Appellant responded that he had consumed "one beer." Sgt. Rivera then contacted the police traffic unit and Officer Lambert of the City of Rock Hill Police Department was dispatched to the scene.

Officer Lambert arrived approximately ten minutes upon being dispatched and "took over" the investigation. He testified that when he asked the Appellant how much alcohol he had consumed the Appellant was not sure. Officer Lambert additionally testified that he offered the Appellant three standard Field Sobriety Tests which disclosed clues concerning the Appellant's impairment level. The officer subsequently arrested the Appellant for DUI.

At the bench trial held by the Honorable Judge Lenzi, both Sgt. Rivera and Officer Lambert testified for the City. The only question posed to Sgt. Rivera by defense counsel during cross-examination was whether he had issued the Uniform Traffic Ticket charging the Appellant with DUI, to which he responded "No, Officer Lambert did." The only question posed by defense counsel during the cross examination of Officer Lambert was whether he had seen the Defendant driving on the night of the incident, to which Officer Lambert responded "no." The City entered five exhibits into evidence: the road side video, the Data Room video, advisement of the Implied Consent form, the Data Master Test results, and the notice of Suspension due to Appellant's failure to provide a breath sample.

#### Law

This appeal is based on the following ground:

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The Trial Court should have dismissed the charge against the Defendant because the arresting officer did not witness the conduct prescribed by the charge he was convicted of and arrested him on a uniform traffic ticket. The arresting officer should have obtained a warrant because he did not witness the crime.

On the Uniform Traffic Ticket included in the Return, Officer Lambert is listed under the "Name of Arresting Officer." At trial, the prosecution agreed that Officer Lambert did not observe the Appellant operating the motor vehicle on the night in question. The prosecution relied on the argument that the "corpus delicti" of a DUI may be established through circumstantial evidence, citing City of Easley v. Portman, 490 S.E.2d, 613 (Court of Appeals 1997). Appellant relies on §17-13-30 of the S.C. Code of Laws, which states:

The sheriffs and deputy sheriffs of this state may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest may be made at the time of such violation of law or immediately thereafter.

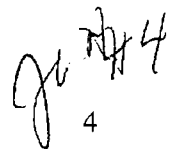
South Carolina courts have held that the acts "must become known to the officer, at the time of their commission, through his sensory perception, and he must infer that they constitute an offense." Prosser v. Parsons, 245 S.C. 493, 141 S.E. 2d 342. " A crime is committed in the presence of an officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case." State v. Williams, 237 S.C. 252, 116 S.E.2d 858. In Williams, the South Carolina Supreme Court cited with approval that:

Although a person may actually be committing a criminal offense, it is not committed within the meaning of the statute, if the officer does not know it. And where, the officer could not observe nor become cognizant of the act constituting the offense by the use of his senses it could not be committed in his presence so as to authorize an arrest without a warrant. State v. Pluth, 157 Minn. 145, 195 N.W. 789, 791.

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Analysis

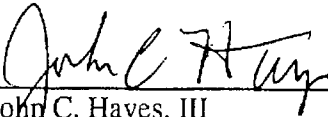
Here, we have an officer who made an arrest, but did not witness or perceive any of the events giving probable cause for the initial traffic stop which resulted in the arrest. Sgt. Rivera began "pacing" the Appellants' vehicle and conducted a traffic stop upon perceiving the Appellant speeding as well as seeing the Appellant's vehicle swerve across yellow lines. Thus, under the statute and applicable South Carolina case law, Sgt. Rivera, and not Officer Lambert, perceived the Appellant committing the criminal acts giving rise to the traffic stop and therefore Sgt. Rivera, rather than Officer Lambert, should have been the arresting officer. Officer Lambert arrived at the scene of the traffic stop approximately ten minutes upon being dispatched and therefore could not have observed the acts of Appellant speeding and swerving across the median. The record indicates that Officer Lambert "took over the investigation" once he arrived at the scene. The record does not indicate that Officer Lambert in any way perceived the acts which allegedly gave Sgt. Rivera probable cause to conduct the initial traffic stop on Appellant's vehicle (speeding or swerving). Nor does the record indicate that Officer Lambert observed, with any of his sensory perceptions, any act of Appellant which, in itself, would give rise to an arrest for DUI First Offense without a warrant. The crime here of DUI was not committed in Officer Lambert's presence. Officer Lambert neither observed nor perceived the Appellant speeding and or swerving his motor vehicle. Officer Lambert cannot justify an arrest simply by relying on the hearsay of another police officer. The issue in this case is outside the scope of Portman and concerns whether the arresting officer actually perceived the acts giving rise to establish probable cause to initiate a traffic stop of the Appellant, and not whether circumstantial evidence can be used to establish the "corpus delicti" of DUI.

  
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Conclusion

For the above stated reasons, the Court hereby reverses Appellant's conviction for DUI First Offense on the basis that the arresting officer, Officer Lambert, of the City of Rock Hill Police Department, failed to comply with §17-13-30 of the SC Code of Laws. Officer Lambert did not perceive any of the acts giving rise to establishing probable cause to engage in an initial traffic stop of the Appellant. Additionally, nothing in the record indicates that Officer Lambert, upon arriving at the scene of the traffic stop, observed the Appellant commit any acts, which in and of themselves, would give rise to an arrest for DUI without a warrant. The Appellant's motion is hereby GRANTED.

IT IS SO ORDERED.

  
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John C. Hayes, III  
Presiding Judge HS

~~April~~ 14<sup>th</sup>  
~~March~~, 2014  
York, South Carolina