

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
Case No. 2014-CP-46-2643

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2014-002286

The City of Rock Hill,

v.

James Delaney Allen, III,

Appellant,
SC Court of Appeals

Respondent.

INITIAL BRIEF OF RESPONDENT

Michael L. Brown, Jr.
Attorney for Respondent
Post Office Box 1025
Rock Hill, SC 29731
(803) 328-8822

Other Counsel of Record:
Christopher E. Barton
Senior City Solicitor
201 E. Main St., 3rd Floor
Rock Hill, SC 29730
(803)329-5641
Attorney for Appellant

RECEIVED

MAY 17 2015

S.C. Supreme Court

RECEIVED

MAY 19 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 2

ARGUMENT 3

CONCLUSION7

TABLE OF AUTHORITIES

Cases:

<u>Percival v. Bailey</u> , 70 S.C. 72, 49 S.E. 7 (1965)	3
<u>Prosser v. Parsons</u> , 245 S.C. 493, 141 S.E.2d 342 (1965)	4, 5, 6
<u>State v. Martin</u> , 275 S.C. 141, 268 S.E.2d 105 (1980)	4, 6
<u>Fradella v. Town of Mt. Pleasant</u> , 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997) ..	5
<u>State v. Sawyer</u> , 283 S.C. 127, 322 S.E.2d 449(1984)	5
<u>State v. Ramsey</u> , 409 S.C. 206, 762 S.E.2d 15 (2014)	6

Statutes:

S.C. Code Ann. § 17-13-30 (2014)	3
S.C. Code Ann. § 56-5-2930 (1976)	4

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court commit error in reversing the Respondent's conviction for driving under the influence where the arresting officer was aware of facts and circumstances observed by the arresting officer that gave him probable cause to believe that the crime of driving under the influence had been freshly committed?
2. Did the circuit court commit error in finding that the traffic offense of driving under the influence was not properly charged by the use of uniform traffic ticket?

STATEMENT OF THE CASE

Respondent was arrested for driving under the influence in the City of Rock Hill, South Carolina. Prior to trial the Respondent moved to dismiss the charge on the ground that the officer who issued the uniform traffic ticket did not observe the Respondent operating the motor vehicle. The trial court denied the motion and at the bench trial on August 20, 2013, the Respondent was found guilty of driving under the influence.

On August 27, 2013, Respondent filed a timely Notice of Appeal from the city court's conviction. The appeal was heard on March 12, 2014 by the Honorable John C. Hayes, III. Judge Hayes reversed the ruling of the city court and dismissed the charges in an order dated April 14, 2014 which was filed on April 18, 2014.

The City of Rock Hill filed a timely Notice of Appeal from the ruling of the circuit court bringing this appeal.

STATEMENT OF FACTS

On September 22, 2012, Respondent was stopped and questioned by Sgt. Rivera of the City of Rock Hill Police Department (R __). Sgt. Rivera testified that he witnessed Respondent's car travelling 58 miles per hour in a 35 mile per hour zone (R __) and that he had seen Respondent's car swerve across the yellow line on several occasions (R __).

After initiating the traffic stop, Sgt. Rivera contacted the Rock Hill Police Department Traffic Unit and officer Lambert was dispatched to the scene, arriving about ten minutes later (R __). Officer Lambert conducted three standard field sobriety tests, after which the Respondent was placed under arrest (R __).

Officer Lambert issued the Uniform Traffic Ticket charging Respondent with driving under the influence (R __). At trial Officer Lambert testified that he did not see the Respondent driving the vehicle (R __).

ARGUMENT

The Circuit Court was proper in granting the Respondent's appeal and overturning the guilty verdict from the bench trial. §17-13-30 of the S.C. Code of Law states that:

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.

An arrest for a misdemeanor that is not committed in view of the officer is unlawful if without warrant. *Percival v. Bailey*, 70 S.C. 72, 49 S.E. 7 (1965). South Carolina courts

have held that in order to arrest without warrant, the criminal acts must “become known to the officer, at the time of their commission, through his sensory perception” Prosser v. Parsons, 245 S.C. 493, 141 S.E.2d 342 (1965).

The Appellant argues that “a law enforcement officer has the power to arrest an individual for a misdemeanor not committed in his presence ‘without a warrant, where the facts and circumstances within his observation give him probable cause to believe that the crime has been freshly committed.’” State v. Martin, 275 S.C. 141, 144, 268 S.E.2d 105, 107 (1980).

In the Martin case the arresting officer was the first officer on the scene and the Court stated, with respect to the facts determined by the arresting officer, that “these facts were observed by the officer and the only reasonable conclusion to be drawn was that a collision between the two vehicles had just occurred and that the crime had been freshly committed.” State v. Martin, 275 S.C. 141, 146, 268 S.E.2d 105, ___ (1980).

The *South Carolina Code §56-5-2930(A)*, the offense that Respondent was arrested for, states that:

“it is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired”.

Officer Lambert is listed as the Arresting Officer on the Uniform Traffic Ticket. Officer Lambert did not witness, through his own sensory perceptions, the Respondent driving under the influence, which would constitute an offense subject to arrest by way of Uniform Traffic Ticket.

The arresting officer in Martin was not relying on hearsay, as Lambert did, but on “facts and circumstances within his observation.” Officer Lambert was not the first on the scene and did not witness Respondent driving, speeding, or crossing the yellow line,

but relied on hearsay in making his arrest. Lambert could not have determined if the Respondent's driving was appreciably and materially impaired because Lambert did not see the operation of the motor vehicle, and therefore could not conclude, to the exclusion of all other reasonable inferences, that the crime of driving under the influence was freshly committed.

In Fradella v. Town of Mt. Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997), the defendant was arrested for driving under the influence when his car was involved in an accident on the Cooper River Bridge and abandoned. The arresting officer was able to determine that the defendant was driving, and that defendant's alcohol consumption was a factor in the accident prior to arresting defendant. In this case there was no accident so Officer Lambert could not conclude, based upon what he observed with his own senses, that the Respondent's ability to drive was appreciably and materially impaired.

The Appellant also cites State v. Sawyer, 283 S.C. 127, 322 S.E.2d 449(1984) in which a driving under the influence conviction was upheld when the arresting officer did not witness the defendant driving. That case, however, dealt with the admission of breathalyzer evidence that was admitted over the objection of the defendant. In that case, the arresting officer was the first at the scene and found the defendant in the car which had been in an accident immediately prior to the arresting officer's arrival. There is no dispute in the immediate case as to the admission of evidence.

The Appellant contends that when "multiple officers are involved in an investigation of a crime, the sensory perceptions of one officer are deemed to occur in the presence of all cooperating officers" (Initial Brief of Appellant, p. 10) and cites Prosser v. Parsons, 245 S.C. 493, 500-01, 141 S.E.2d 342, 346 (1965). The Court in Prosser

specifically states that “an act taking place within the view of one officer was in effect within the view of the other cooperating officers” but qualified by the circumstances that the officers “were working together in the same general area, keeping each other informed by radio” *Id.* at 500.. Lambert and Rivera were not working together on the same investigation in the same general area and keeping each other informed by radio. Lambert did not arrive on the scene until at least 10 minutes after the traffic stop had commenced.

The Appellant also contests the circuit court finding that the arrest of Respondent by Officer Lambert required an arrest warrant and contends that the traffic offense of driving under the influence was properly charged by the use of a Uniform Traffic Ticket (Initial Brief of Appellant, p. 11). In support of his argument, Appellant cites authority, particularly *State v. Ramsey*, 409 S.C. 206, 762 S.E.2d 15 (2014) and its approving citation of *Martin*, which allows for the user of a Uniform Traffic Ticket as a method for the magistrate to obtain jurisdiction when “facts and circumstances observed by the officer give him probable cause to believe that a crime has been freshly committed” *Ramsey* at 211. The Circuit Court, in this matter, found that under the facts and circumstances of the instant case Officer Lambert would require a warrant to arrest Respondent but that Sergeant Rivera could have used the Uniform Traffic Ticket to arrest Respondent as Sergeant Rivera was the officer that witnessed the Respondent’s driving which gave him probable cause to initiate the stop. Rivera also, presumably witnessed the defendant’s conduct at the roadside stop while officer Lambert was present, to include the field sobriety tests that were administered. This information provided the facts and circumstances within Rivera’s observation that would allow him to arrest Respondent by

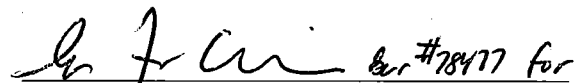
use of a uniform traffic ticket, which would have been, the circuit court concluded, a proper warrantless arrest.

CONCLUSION

For all of the foregoing reasons, the Respondent respectfully submits that the decision of the circuit court reversing Respondent's conviction and dismissing the charge should be upheld.

Respectfully submitted,

May 18, 2015



Michael L. Brown, Jr.
Attorney for Respondent
P.O. Box 1025
Rock Hill, SC 29731
(803)328-8822

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
Case No. 2014-CP-46-2643

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2014-002286

The City of Rock Hill,

v.

James Delaney Allen, III,

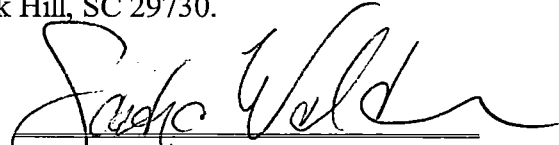
Appellant, **SC Court of Appeals**

Respondent.

PROOF OF SERVICE

I certify that I have served the INITIAL BRIEF OF RESPONDENT on Christopher E. Barton by depositing a copy of it in the United States Mail, postage prepaid, on May 18, 2015, addressed to him at 201 E. Main St., 3rd Floor, Rock Hill, SC 29730.

May 15, 2015



Sandra S. Walden
Post Office Box 1025
Rock Hill, SC 29731
(803) 328-8822
Assistant to Michael L. Brown, Jr.

RECEIVED
MAY 1 2015
S.C. Supreme Court

RECEIVED
MAY 19 2015