

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**SC Court of Appeals**

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Case No. 2013-CP-46-02643

JOHN C. HAYES, III, Circuit Court Judge

Appellate Case No. 2014-002286

City of Rock Hill,

Appellant,

v.

James Delaney Allen, III,

Respondent.

**INITIAL REPLY BRIEF OF APPELLANT**

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ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii

STATEMENT OF ISSUES ON REPLY.....1

ARGUMENT.....2

    I. THE CIRCUIT COURT ERRED IN REVERSING THE RESPONDENT'S  
    CONVICTION FOR DRIVING UNDER THE INFLUENCE WHERE OFFICER  
    LAMBERT PROPERLY ARRESTED THE RESPONDENT FOR A  
    MISDEMEANOR BASED ON THE FACTS AND CIRCUMSTANCES  
    OBSERVED BY OFFICER LAMBERT THAT GAVE HIM PROBABLE CAUSE  
    TO BELIEVE THAT THE CRIME OF DRIVING UNDER THE INFLUENCE HAD  
    BEEN FRESHLY COMMITTED.....2

    II. THE CIRCUIT COURT ERRED IN FINDING THAT THE TRAFFIC OFFENSE  
    OF DRIVING UNDER THE INFLUENCE WAS NOT PROPERLY CHARGED BY  
    THE USE OF A UNIFORM TRAFFIC TICKET.....5

CONCLUSION.....6

**TABLE OF AUTHORITIES**

**CASES**

State v. Padgett, 354 S.C. 268, 580 S.E.2d 159 (Ct. App. 2003) .....3  
S.C. DMV v. McC Carson, 391 S.C. 136, 705 S.E.2d 425 (2011) .....3  
State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980) .....4  
State v. Clark, 277 S.C. 333, 287 S.E.2d 143 (1982) .....4  
City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997) .....5

**STATUTES**

S.C. Code Ann. § 17-13-30 (2014) .....2  
S.C. Code Ann. § 17-13-40 (2014) .....2  
S.C. Code Ann. § 23-13-60 (Supp. 2014) .....6  
S.C. Code Ann. § 56-7-10 (Supp. 2014) .....5  
S.C. Code Ann. § 56-7-15 (Supp. 2014) .....5

## STATEMENT OF THE ISSUES ON REPLY

- I. THE CIRCUIT COURT ERRED IN REVERSING THE RESPONDENT'S CONVICTION FOR DRIVING UNDER THE INFLUENCE WHERE OFFICER LAMBERT PROPERLY ARRESTED THE RESPONDENT FOR A MISDEMEANOR BASED ON THE FACTS AND CIRCUMSTANCES OBSERVED BY OFFICER LAMBERT THAT GAVE HIM PROBABLE CAUSE TO BELIEVE THAT THE CRIME OF DRIVING UNDER THE INFLUENCE HAD BEEN FRESHLY COMMITTED.
  
- II. THE CIRCUIT COURT ERRED IN FINDING THAT THE TRAFFIC OFFENSE OF DRIVING UNDER THE INFLUENCE WAS NOT PROPERLY CHARGED BY THE USE OF A UNIFORM TRAFFIC TICKET.

## ARGUMENT

### I. THE CIRCUIT COURT ERRED IN REVERSING THE RESPONDENT'S CONVICTION FOR DRIVING UNDER THE INFLUENCE WHERE OFFICER LAMBERT PROPERLY ARRESTED THE RESPONDENT FOR A MISDEMEANOR BASED ON THE FACTS AND CIRCUMSTANCES OBSERVED BY OFFICER LAMBERT THAT GAVE HIM PROBABLE CAUSE TO BELIEVE THAT THE CRIME OF DRIVING UNDER THE INFLUENCE HAD BEEN FRESHLY COMMITTED.

Respondent argues that the circuit court was correct in granting Respondent's appeal and reversing the guilty verdict. Respondent cites to Section 17-13-30 of the South Carolina Code of Laws which applies to "sheriffs and deputy sheriffs of this State . . . "in support of the proposition that the arrest of the Respondent was improper. S.C. Code Ann. § 17-13-30 (2014).

The circuit court erred in applying Section 17-13-30 of the South Carolina Code which applies to sheriffs and deputy sheriffs as the arrest in this case was made by a city police officer following a pursuit of the Respondent. The circuit court should have applied Section 17-13-40 of the South Carolina Code of Laws which applies when police authorities of a town or city are in pursuit of an offender. S.C. Code Ann. § 17-13-40 (2014) provides that "when police authorities of a town or city are in pursuit of an offender for a violation of a municipal ordinance or statute of this State committed within the corporate limits, the authorities may arrest the offender, with or without a warrant, at a place within the corporate limits, at a place within the county in which the town or city is located, or at a place within a radius of three miles of the corporate limits."

Where a traffic stop was initiated based on reasonable suspicion of a traffic violation within the city limits, the arrest was proper under Section 17-13-40 of the South Carolina Code of Laws. State v. Padgett, 354 S.C. 268, 580 S.E.2d 159 (Ct. App. 2003). Officer Lambert arrested the Respondent following a pursuit and traffic stop initiated within the city limits by

Sergeant Rivera based on reasonable suspicion that the Respondent was speeding and crossing the center line. Officer Lambert's arrest of the Respondent was supported by probable cause to believe that the Respondent had been operating a motor vehicle in the city limits of Rock Hill and that he was under the influence of alcohol based on his investigation which included the information related to him by Sergeant Rivera.

"Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime had been committed by the person being arrested. Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal. In determining whether probable cause exists, all the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received." S.C. DMV v. McCarson, 391 S.C. 136, 146, 705 S.E.2d 425, 430 (2011). In McCarson the driver was charged with driving under the influence by Trooper Jones who did not observe any driving, following the initial traffic stop by First Sergeant Kimbrell who "observed McCarson drive his vehicle over a curb, fail to yield the right of way, make an improper turn, and make a wide turn on an entrance ramp of I-385 near a divider wall." Id. at 137.

Respondent argues that Officer Lambert improperly relied on the observations of Sergeant Rivera who reported to Officer Lambert that he initially stopped the vehicle for speeding and swerving across the center line. Officer Lambert as 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 State v. Clark, 277 S.C. 333, 287 S.E.2d 143 (1982) the South Carolina Supreme Court cited to Martin in holding that the officers warrantless arrest in that case was proper where they relied in part on hearsay from the defendant's mother as part of the basis for making the arrest. Clark held that the officers had "the right to make a warrantless arrest for a misdemeanor not committed in his presence, if the facts and circumstances observed by the officer provided probable cause to believe a crime had been freshly committed." Id. at 334. The officers in Clark relied in part on hearsay from the defendant's mother who "told them Johnny (appellant) had a gun, was making threats, and was acting funny . . . like he was going nutty or something and had fired the gun into the air shortly before the officers arrive." Id. at 335 (internal quotation omitted).

Officer Lambert directly observed that the Respondent was the only individual in the vehicle, that he was sitting in the driver's seat, that he admitted to drinking, that he admitted he was driving and coming from a bar and heading home, that he admitted he was speeding and in Officer Lambert's opinion impaired based on his performance on the field sobriety tests. Given the totality of the information at Officer Lambert's disposal, including the information received from Sgt. Rivera and the information directly perceived by Officer Lambert, there is prodigious support for Officer Lambert's decision that probable cause existed for his warrantless arrest of the Respondent for driving under the influence and that the offense had been freshly committed. The Respondent had been driving the vehicle just minutes before Officer Lambert was dispatched and arrived on scene, following the traffic stop by Sergeant Rivera who observed the Respondent driving erratically and initiated the traffic stop.

**II. THE CIRCUIT COURT ERRED IN FINDING THAT THE TRAFFIC OFFENSE OF DRIVING UNDER THE INFLUENCE WAS NOT PROPERLY CHARGED BY THE USE OF A UNIFORM TRAFFIC TICKET.**

Respondent argues that the circuit court did not err in finding that the arrest of Respondent by Officer Lambert required an arrest warrant; however, it would have been proper for Sergeant Rivera to arrest and charge the Respondent with a uniform traffic ticket.

In South Carolina the “offense of driving under the influence of intoxicants is a traffic offense”. City of Camden v. Brassell, 326 S.C. 556, 564, 486 S.E.2d 492 (Ct. App. 1997). South Carolina Code of Law section 56-7-10 provides for uniform traffic tickets to be “used by all law enforcement officers in arrests for traffic offenses.” S.C. Code Ann. § 56-7-10(A) (Supp. 2014). “A uniform traffic ticket may be used in an arrest for a misdemeanor offense within the jurisdiction of magistrates court that has been freshly committed or is committed in the presence of a law enforcement officer.” S.C. Code Ann. § 56-7-10(B) (Supp. 2014). “The service of the uniform traffic ticket shall vest all traffic, recorders’, and magistrates’ courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served.” S.C. Code Ann. § 56-7-10(C) (Supp. 2014).

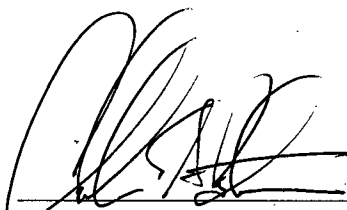
South Carolina Code of Law section 56-7-15 states that “the uniform traffic ticket, established pursuant to the provisions of Section 56-7-10, may be used by law enforcement officers to arrest a person for an offense that has been freshly committed or is committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court.” S.C. Code Ann. § 56-7-15(A) (Supp. 2014).

The uniform traffic ticket issued by Officer Lambert charging the Respondent with driving under the influence first offense was proper. Section 56-7-10(A) mandates the use of a uniform traffic ticket for arrests in traffic offenses. There is no dispute that driving under the influence is a traffic offense. Section 56-7-10(B) permits the use of a uniform traffic ticket for arrests within the jurisdiction of magistrates court, including “freshly committed” offenses. Section 23-13-60 also permits an arrest without warrant “for any suspected freshly committed crime.” S.C. Code Ann. § 23-13-60 (Supp. 2014). Officer Lambert arrived on the scene of the traffic stop approximately ten minutes after the Respondent had been observed driving erratically by Sergeant Rivera. Given all the information available to Officer Lambert prior to the arrest, it is clear that the offense of driving under the influence had been freshly committed by the Respondent.

### CONCLUSION

For all the foregoing reasons, the Appellant respectfully submits that the decision of the circuit court reversing Respondent’s conviction and dismissing the charge should be reversed and the conviction reinstated.

Respectfully submitted,



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May 28, 2015

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
Case No. 2013-CP-46-02643

JOHN C. HAYES, III, Circuit Court Judge

Appellate Case No. 2014-002286

City of Rock Hill,

Appellant,

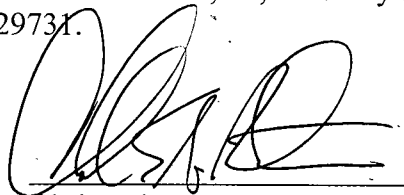
v.

James Delaney Allen, III,

Respondent.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the Initial Reply Brief of Appellant and Designation of Matter has been served upon opposing counsel by mailing a copy via regular U.S. Mail to him on the 28<sup>th</sup> day of May, 2015, to Michael L. Brown, Jr., Attorney for Respondent, Post Office Box 1025, Rock Hill, South Carolina 29731.



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May 28, 2015

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: City of Rock Hill, Appellant v. James Delaney Allen, III, Respondent  
Case No. 2014-CP-46-002286

Dear Ms. Kitchings:

Enclosed for filing is the original and 2 copies of our Initial Reply Brief of Appellant and Designation of Matter in regards to the above reference case.

Truly yours,

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