

Exhibit A

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

SIXTEENTH JUDICIAL CIRCUIT

State of South Carolina,)

RECEIVED

Appellant,)

JUN 29 2015

Civil Action No. 2015-CP-46-00824

SC Court of Appeals

v.)

ORDER

Charles Todd Burns,)

Respondent.)

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2015 JUN 18 15 PM 12: 04
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

This matter comes before the undersigned in the York County Court of Common Pleas on June 16, 2015. Appearing for the Appellant was Aaron J. Hayes, Esquire. Michael L. Brown, Esquire, appeared for the Respondent. Respondent was arrested and charged with DUI First Offense on July 4, 2014. Respondent filed a Motion to Dismiss in York County Magistrate Court, which was taken under advisement and subsequently granted on March 23, 2015. Appellant now appeals this dismissal.

Facts

On July 4, 2014, River Hills Security Officer Foster witnessed Respondent driving left of center in the River Hills neighborhood in Lake Wylie, York County, South Carolina. River Hills Security Officer Foster initiated a traffic stop, and smelled alcohol coming from the Respondent's person. Officer Foster's supervisor contacted the York County Sheriff's Office to request assistance, and Sheriff Deputy Osborne responded. Officer Foster relayed his observations of Respondent to Deputy Osborne, including Foster's witnessing of bad driving, as well as Respondent's refusal to answer Foster's questions. According to Officer Foster, Deputy

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Osborne arrived approximately ten to fifteen minutes after the traffic stop. Deputy Osborn conceded that he did not witness Respondent driving on the night of the arrest. Deputy Osborne testified concerning all of his observations of the scene of the stop. He testified that when he arrived, Respondent's car was stopped at the front gate of the neighborhood, and Respondent was sitting in the driver's seat. Officer Foster further testified that he relayed to Respondent Burns the basis for the traffic stop, including Respondent's poor driving. Deputy Osborne also testified that Respondent Burns refused to answer Deputy Osborne's questions about whether he had been drinking. He also stated that he noticed a strong odor of alcoholic beverage coming from the Respondent. Finally, Deputy Osborne testified that Respondent refused field sobriety testing, citing alleged inability to perform the tests due to medical problems. Deputy Osborne subsequently arrested Burns for DUI. Burns later refused the breathalyzer test.

In the Pretrial Motion on February 19, 2015 held by the Magistrate Judge, testimony was taken from York County Sheriff's Deputy Osborne and River Hills Security Officer Foster. Security Officer Foster testified that Defendant drove left of center, so he activated his blue lights and pulled the defendant over. The Security Officer then called the York County Sheriff's Department to investigate the suspicion of DUI. The case was passed off from Officer Foster to Deputy Osborne. Deputy Osborne testified that when he arrived on the scene, Defendant Burns was sitting in the vehicle driver's seat and the vehicle was not in motion. Based on testimony from Deputy Osborne and Security Officer Foster, the case was "passed on" to Deputy Osborne, who did not witness or perceive any of the events giving probable cause for the initial traffic stop, which resulted in arrest.

Law

This appeal is based on the following ground:

The Trial Court erred in dismissing the charge of Driving Under the Influence for an allegedly improper warrantless arrest. Respondent's warrantless arrest via uniform traffic ticket was proper as a matter of law.

On the Uniform Traffic Ticket included in the Return, Deputy Osborne is listed under the "Name of Arresting Officer." At trial, testimony of the arresting officer indicated that he did not observe Respondent Burns operating the motor vehicle on the night in question. In their argument, the prosecution relies on the S.C. Code of Laws § 56-17-15, which states:

The uniform traffic ticket . . . 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 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.

The appellant further relies on § 23-13-60 of the S.C. Code of Laws, which states: "deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant" The prosecution explains his argument through Fradella v. Town of Mount Pleasant, in which two officers were investigating a single automobile wreck, and the driver had fled the scene of the accident. 325 S.C. 469, 472, 482 S.E.2d 53, 54 (Ct. App. 1997). Another driver informed the officers that Fradella smelled of alcohol and helped the officers locate the defendant. Id. The officers administer field sobriety tests to the defendant, and based on their observation of pertinent "facts and circumstances at the scene of the accident," the Court of Appeals found Fradella's warrantless arrest lawful despite that none of the officers witnessed Fradella driving. Id. at 477, 482 S.E.2d at 57.

Appellant relies on a third statute §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 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 (1965). 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 (1960). 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 (1923).

Analysis

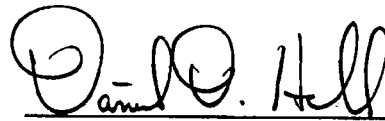
Here, we have an officer who made an arrest, but did not witness or perceive any of the events giving probable cause for the initial traffic stop, which resulted in arrest. Security Officer Foster testified that he witnessed the Respondent drive left of center, and then initiated the traffic stop. Thus, under the statute and applicable South Carolina case law, Security Officer Foster, and not Deputy Osborne, perceived the Respondent committing the criminal acts giving rise to the traffic stop. Therefore, Security Officer Foster, rather than Deputy Osborne, should have been the arresting officer. Deputy Osborne arrived at the scene of the traffic stop approximately ten to fifteen minutes after Security Officer Foster initiated the stop; therefore, the deputy could not have observed the act of Respondent driving left of center. The record indicates that Security Officer Foster "passed on" the case to Detective Osborne once he arrived at the scene. The record does not indicate that Deputy Osborne in any way perceived the acts which allegedly gave

Security Officer Foster probable cause to conduct the initial traffic stop on Respondent's vehicle (driving left of center). Nor does the record indicate that Deputy Foster observed, with any of his sensory perceptions, any act of Respondent 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 Deputy Osborne's presence. Deputy Osborne neither observed nor perceived the Respondent driving left of center. He did not even observe the Respondent driving at all. Deputy Osborne cannot justify an arrest simply by relying on the hearsay of another police officer. The issue in this case is outside the scope of Fradella, in which officers based their observations on pertinent facts and circumstances at the scene of the accident. This case concerns whether the *arresting* officer actually perceived acts that gave rise to establish probable cause to initiate a traffic stop of the Respondent, and not whether circumstantial evidence can be used to establish the "corpus delicti" of DUI.

Conclusion

For the above stated reasons, the Court hereby affirms the Magistrate's dismissal for DUI First Offense on the basis that the arresting officer, Deputy Osborne, of the York County Sheriff's Office, failed to comply with §17-13-30 of the S.C. Code of Laws. Deputy Osborne did not perceive any of the acts giving rise to probable cause to engage in an initial traffic stop of the Appellant. Additionally, nothing in the record indicates that Deputy Osborne, upon arriving at the scene of the traffic stop, observed the Respondent 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 DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Daniel D. Hall". The signature is written in a cursive style with a horizontal line underneath it.

Daniel D. Hall
Sixteenth Judicial Circuit

June 18, 2015
York, South Carolina