

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY

Court of Common Pleas

Case No. 2013-CP-46-02643

RECEIVED

JUL 20 2015

SC Court of Appeals

JOHN C. HAYES, III, Circuit Court Judge

Appellate Case No. 2014-002286

City of Rock Hill,

Appellant,

v.

James Delaney Allen, III,

Respondent.

FINAL BRIEF OF APPELLANT

CHRISTOPHER E. A. BARTON
Senior City Solicitor
S.C. Bar No. 65261

201 E. Main Street, 3rd Floor
Rock Hill, SC 29730
(803) 329-5619

ATTORNEY FOR APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

- I. The circuit court erred 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 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.

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 Respondent's motion to dismiss in an order dated June 17, 2013. Following the denial of the motion to dismiss, the case proceeded to a bench trial on August 20, 2013 at which time the trial judge found the Respondent guilty of driving under the influence.

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

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

STATEMENT OF FACTS

On September 22, 2013, Sergeant Rivera, of the City of Rock Hill Police Department, came into contact with the Respondent's vehicle traveling down Ogden Road in the city limits of Rock Hill. (R. p. 4, 9-10 & video of Sgt. Rivera) Sgt. Rivera began "pacing" the Respondent's vehicle in an unmarked police vehicle and testified that the Respondent was traveling at a speed of 58 miles per hour in an 35 mile per hour zone. Sgt. Rivera also testified that he witnessed the Respondent's vehicle swerve across the yellow line on several occasions. (R. p. 4-5, 9 & video of Sgt. Rivera) Sgt. Rivera then conducted a traffic stop, pulling over the Respondent. Sgt. Rivera approached the Respondent's vehicle and observed he was the only occupant of the vehicle and identified himself as a City of Rock Hill police officer. Sgt. Rivera testified that he detected a strong odor of alcohol coming from the Respondent's vehicle and/or breath. (R. p. 5, 9 & video of Sgt. Rivera) Sgt. Rivera asked the Respondent how much alcohol he had consumed and the Respondent stated "one beer". Sgt. Rivera advised the Respondent to stay in his vehicle and then contacted the City of Rock Hill Police Department traffic unit and Officer Lambert was dispatched to the scene. (R. p. 5, 9-10 & video of Sgt. Rivera)

Officer Lambert arrived within approximately ten minutes after being dispatched to the location and began his investigation of the Respondent. (R. p. 5 & 10) Upon his arrival, Officer Lambert was initially briefed by Sgt. Rivera on the Respondent's operation of his motor vehicle that Sgt. Rivera had just witnessed minutes before (speeding and failure to maintain lane) along with Sgt. Rivera's initial observations and interaction with the Respondent (admission of consuming alcohol, the odor of alcohol, bloodshot eyes, slightly slurred speech and the suspect was cooperative). (R. Video of Sgt. Rivera and Officer Lambert) Officer Lambert approached the vehicle where the Respondent was sitting on the driver's side behind the wheel and was the

sole occupant of the vehicle. (R. Video of Officer Lambert) Officer Lambert asked the Respondent if he was willing to perform some field sobriety tests and the Respondent indicated he would. Officer Lambert asked the Respondent to exit his vehicle and escorted the Respondent to an area directly in front of Officer Lambert's patrol vehicle.

Prior to beginning the field sobriety tests, Officer Lambert asked Respondent how much he had been drinking and Respondent indicated about two beers. (R. Video of Officer Lambert) Officer Lambert then offered the Respondent three field sobriety tests which disclosed numerous clues concerning Respondents level of impairment. (R. Video of Officer Lambert) Respondent admitted to Officer Lambert that he had just come from the Minute Grill (local bar) and also admitted that he was speeding (R. Video of Officer Lambert). Officer Lambert based on the information supplied to him by Sgt. Rivera and based on his direct observation of the Respondent placed him under arrest for driving under the influence and read Respondent his Miranda warnings. (R. Video of Officer Lambert) Officer Lambert subsequent to Respondent's arrest transported him to the City of Rock Hill Lawcenter and offered him a breath test which the Respondent refused. (R. p. 13-14 & BA room video)

At trial, in addition to the testimony of both Sgt. Rivera and Officer Lambert, the City entered the following exhibits into evidence; the road side video, the breath alcohol testing video, the advisement of implied consent rights form, the breath alcohol testing results showing a refusal and the notice of driver's license suspension form. (R. p. 5 & 10)

The City rested its case and the Respondent renewed his motion to dismiss. The trial court denied the motion to dismiss and the Respondent elected not to present any case. Based on a review of the evidence and testimony of the officers, the trial court found the Respondent guilty of driving under the influence. (R. p. 10)

The Respondent filed a timely appeal of his conviction and the circuit court issued an order reversing the conviction and dismissing the case. This appeal follows.

ARGUMENT

I. 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.

The circuit court erred in reversing the Respondent's conviction and dismissing the case. In South Carolina 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).

The South Carolina Supreme Court dealt with the issue of whether a highway patrolman had lawfully arrested Martin and charged him with driving under the influence; where the highway patrolmen did not see Martin operating the vehicle. The Martin Court found that Section 17-13-130 of the South Carolina Code "and our holding in State v. Mims, 263 S.C. 45, 208 S.E.2d 288 (1974) must be interpreted and construed in connection with Code Section 23-13-60 and other of our decisions which recognize that the general rule stated in Mims is subject to certain qualifications." Id. at 145.

First the Martin Court noted that South Carolina Code Section 23-13-60 "clearly grants the authority to the officer in this case to arrest without warrant for any suspected freshly committed crime. The power of an officer to arrest, without a warrant, for a misdemeanor upon fresh and immediate pursuit was recognized in this State as early as 1881." Id. at 145 (internal quotes omitted).

Next the Martin Court noted the principle that “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.” Id.

The Martin Court concluded that “an officer can arrest for a misdemeanor when the facts and circumstances observed by the officer give him probable cause to believe that a crime has been freshly committed.” Id. at 146. The Court went on to find that the facts and circumstances observed by the highway patrolman after he arrived at the scene of an accident that included “two cars, each damaged on the front and rear and showing paint flecks corresponding to the color of the other. Martin was highly intoxicated and admitted that he was the driver of one of the vehicles. A group of fifteen to twenty people had gathered at the scene” permitted the highway patrolman to conclude “that a collision between the two vehicles had just occurred and that the crime had been freshly committed.” Id.

Officer Lambert observed more facts and circumstances than did the highway patrolman in Martin. Officer Lambert was informed by Sgt. Rivera that he had just stopped the Respondent for speeding and crossing the double yellow line. Sgt. Rivera also indicated that Respondent was operating the vehicle, had an odor of alcohol about his person, his eyes were bloodshot, that he admitted to consuming alcohol and had slightly slurred speech. Officer Lambert was able to directly observe that the Respondent was the only person in the vehicle, he was sitting in the driver’s seat, he admitted to drinking a couple of beers, he admitted he was driving and that he had been speeding. Officer Lambert directly observed Respondent’s performance on the field sobriety tests

and determined that he was under the influence of alcohol and had been operating a motor vehicle within the city limits of Rock Hill, South Carolina.

Based on the facts and circumstances observed by Officer Lambert his decision to arrest and charge the Respondent with driving under the influence was supported by probable cause that the crime had been freshly committed. His arrest of the Respondent without a warrant was proper.

A little over a year after the South Carolina Supreme Court decided the Martin case, the issue of a warrantless arrest by a town policeman was addressed in State v. Retford, 276 S.C. 657, 281 S.E.2d 471 (1981). Retford found that “it is settled that peace officers, including town police, could lawfully arrest without a warrant persons (1) reasonably suspected of having committed a felony or (2) when the facts and circumstances observed by them give them probable cause to believe that a crime has been freshly committed.” Id. at 660.

Six months after Retford, the South Carolina Supreme Court found that the City of Lancaster properly arrested an individual for disorderly conduct and discharging a weapon within the city limits even though the city officers were not present when the weapon was fired. In State v. Clark, 277 S.C. 333, 287 S.E.2d 143 (1982) the Court reiterated that a police officer 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.

In State v. Sawyer, 283 S.C. 127, 322 S.E.2d 449 (1984) the South Carolina Supreme Court reinstated the driving under the influence conviction and reversed the

circuit court's granting of a new trial. The facts in Sawyer included the following: "a patrolman arrived at the scene fifteen minutes after the accident finding Sawyer trapped in his car. The patrolman testified Sawyer's eyes were bloodshot and his speech slurred. Sawyer admitted he was the driver of the car." Id. at 128. Sawyer found that the arrest of the defendant was proper and held that "the driver's admission should be treated as part of the officer's sensory awareness of the commission of the offense which satisfies the presence requirement." Id. at 129.

This Court addressed the presence issue in Fradella v. Town of Mt. Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997) and extended the rule announced in Martin. Fradella involved a driver who wrecked his vehicle on the Cooper River Bridge and subsequently began walking off the bridge until he was given a ride to his home in Mount Pleasant by another driver. The driver then drove back to the scene of the accident.

Officers with the Mount Pleasant police department were dispatched to the scene of the accident and ran the tag on Fradella's vehicle to obtain the phone number of the registered owner. The owner provided Fradella's phone number and told the officers that Fradella was in possession of the car. Officers subsequently were able to discover Fradella's address.

The driver who drove Fradella home upon his return to the scene of the accident approached the Mount Pleasant officers and informed them that he gave a ride to the driver of the wrecked vehicle and that the driver smelled of alcohol. He also agreed to lead the officers to the address where he left the driver. In the meantime, Fradella called 911 and reported that he had been involved in an accident. Officers went to Fradella's

residence about twenty minutes after responding to the accident scene. Outside his home Fradella admitted he was driving the vehicle when it wrecked. The other driver who gave a ride to Fradella identified him as the man he had picked-up walking on the bridge.

A Mount Pleasant officer began an investigation and informed Fradella he was suspected of driving under the influence. The investigation showed that Fradella admitted to drinking three beers, failed his field sobriety tests and that the officer formed the opinion that Fradella was definitely impaired. Fradella was arrested for DUI and offered a breath test which he refused.

At trial Fradella moved to dismiss the charge based on a lack of probable cause. The motion was denied and Fradella was convicted of DUI. On appeal the circuit court reversed the conviction ruling in part that “the warrantless arrest of Fradella violated the ‘presence requirement’ of S.C Code Ann. § 17-13-30 (1985).” Id. at 474. This Court reversed the ruling of the circuit court and reinstated the conviction finding “the facts of this case fall within the rule in Martin.” Id. at 476.

In reversing the circuit court, this Court found “that our decision is an extension of Martin. However, neither Martin nor subsequent cases interpreting Martin expressly mandated that the officer observe all of the facts and circumstances at the scene. We believe such a holding would construe Martin too narrowly. Therefore, we hold that as long as the facts and circumstances observed or perceived by an officer justify the conclusion that a crime has been freshly committed, then the Martin rule is satisfied.” Id. at 476-477.

Officer Lambert did not see the Respondent drive the vehicle, however, it is reasonable that Officer Lambert could rely on the information provided to him by Sgt.

Rivera who had just witnessed the Respondent driving over the speed limit and crossing the dividing line before conducting the traffic stop of his vehicle. This coupled with Sgt. Rivera's observations of the Respondent (his admission of consuming alcohol, the odor of alcohol emanating around him, his bloodshot eyes, that his speech was slightly slurred and he was cooperative) all of which he told to Officer Lambert, provided Officer Lambert with a reasonable belief that the Respondent had been driving a motor vehicle and may be impaired.

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. "An act taking place within the view of one officer was in legal effect within the view of the other cooperating officers and, if the combination of acts committed within the view of the cooperating officers furnished probable cause for believing that the offense of night hunting was being committed in their presence, then the arrest was lawful." Prosser v. Parsons, 245 S.C. 493, 500-01, 141 S.E.2d 342, 346 (1965). In this case the sensory perceptions of Sgt. Rivera that he informed Officer Lambert of supplement Officer Lambert's investigation at the scene and satisfy the presence requirement of Officer Lambert.

Officer Lambert was able through his own investigation to determine that the Respondent was the only individual in the vehicle, he admitted to drinking, he admitted he was coming from a bar and heading home, he admitted he was speeding and in Officer Lambert's opinion he was impaired based on his performance on the field sobriety tests. Given the totality of the information told to Officer Lambert by Sgt. Rivera and the information directly perceived by Officer Lambert, there is overwhelming support for

Officer Lambert's decision to make a warrantless arrest of the Respondent for driving under the influence and that the offense had been freshly committed.

The circuit court erred in applying Section 17-13-30 of the South Carolina code which applies to sheriffs and deputy sheriffs. S.C. Code Ann. § 17-13-30 (2014). The circuit court should have applied Section 17-13-40 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."

Officer Lambert arrested the Respondent following a pursuit and traffic stop conducted by Sgt. Rivera. Officer Lambert was authorized to arrest Respondent without a warrant as the location of the pursuit, traffic stop and arrest occurred within the city limits of Rock Hill, South Carolina.

II. THE TRAFFIC OFFENSE OF DRIVING UNDER THE INFLUENCE WAS PROPERLY CHARGED BY THE USE OF A UNIFORM TRAFFIC TICKET.

The circuit court erred in finding that the arrest of Respondent by Officer Lambert required an arrest warrant. Officer Lambert charged Respondent with driving under the influence first offense by use of uniform traffic ticket (35592 GE). "Since this action was commenced by the issuance of a [uniform traffic ticket] UTT, an arrest warrant was not required under S.C. Code § 22-3-710 (1976)." City of Goose Creek v. Brady, 288 S.C. 20, 21, 339 S.E.2d 509, 510 (1986).

In State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978) the South Carolina Supreme Court reversed the ruling of the circuit court which dismissed the driving under the influence conviction finding the magistrate court was without jurisdiction to hear charge of driving under the influence where the arresting officer did not witness the defendant driving the vehicle. The Supreme Court in Biehl found that section 22-3-710 of the South Carolina code must be read in conjunction with section 56-7-10 which “merely provides a method of acquiring jurisdiction in traffic cases tried in all traffic courts.” Id. at 203.

Section 56-7-10 of the South Carolina code 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).

Section 56-7-15 of the South Carolina code provides 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).

It should be noted that at the time of Respondent's arrest, Section 56-7-15 did not include the term "that has been freshly committed or is" in the statute, however, Section 56-7-10 did mandate the use of uniform traffic tickets for driving under the influence first offense and did permit the use of a uniform traffic ticket for "freshly committed" misdemeanor offenses that fall within the jurisdiction of magistrates court. Unlike the case where a charge of criminal domestic violence (CDV) first offense on a uniform traffic ticket (UTT) in State v. Ramsey, 409 S.C. 206, 762 S.E.2d 15 (2014) was found to be fatally flawed where the offense was not committed in the presence of the officer. The Ramsey court noted that "Section 56-7-10 provides an exception to the warrant requirement by allowing the issuance of a uniform traffic ticket to initiate proceedings before the magistrate for specified offenses." Id. at 210. The Ramsey Court cited approvingly to State v. Martin, for the continued vitality of the principle that a police officer can arrest and charge an individual with driving under the influence on a uniform traffic ticket "when the facts and circumstances observed by the officer give him probable cause to believe that a crime has been freshly committed." Id. at 211.

Officer Lambert properly charged the Respondent with a uniform traffic ticket for a violation of the traffic offense of driving under the influence as mandated by Section 56-7-10 and Section 56-7-15. The uniform traffic ticket served as the charging document to the Respondent and "informed him that he was charged with driving under the influence in violation of S.C. Code § 56-5-2930 (1976). It further informed him of the time, date and place the offense allegedly occurred. In our opinion, this was more than sufficient to adequately inform [Respondent] of the charge against him." City of Goose Creek v. Brady, 288 S.C. 20, 21, 339 S.E.2d 509, 510 (1986).

The issue of the use of a uniform traffic ticket as a charging document was more recently addressed in Bayly v. State, 397 S.C. 290, 724 S.E.2d 182 (2012). In Bayly the South Carolina Supreme Court reviewed the history of Sections 56-7-10 and 56-7-15 regarding the use of a uniform traffic ticket as a charging document, finding that “in 1990, the General Assembly enacted section 56-7-15, which specifically references section 56-7-10, to expand the list of offenses for which a uniform traffic ticket may be used to arrest a person and to authorize the magistrate court to hear these offenses.” Id. at 300.

The Bayly Court described the evolution of the use of the uniform traffic ticket and found that the lack of a warrant did not impact on the jurisdiction of the court to hear a driving under the influence charge was recognized as early as State v. Prince, 262 S.C. 89, 202 S.E.2d 645 (1974) where the Court rejected the “defendant’s contention that the magistrate court was without jurisdiction of his person to hear [the] DUI case because no arrest warrant had been issued as the statute expressly provides that service of the uniform traffic summons shall vest all traffic courts with jurisdiction to hear and dispose of the charge for which such ticket was issued and served.” Bayly v. State, 397 S.C. 290, 299, 724 S.E.2d 182, 186 (2012) (internal citations omitted).

The charge of driving under the influence for which the Respondent was arrested and issued a uniform traffic ticket “was sufficient and an arrest warrant unnecessary under section 22-3-710 in order to charge and try [the] defendant in municipal court with DUI and driving left of center; recognizing that a uniform traffic ticket complied with constitutional mandates where it apprised the defendant of the charge as well as the time, date and place the offense allegedly occurred.” Id. (citing with approval to City of Goose

Creek v. Brady, 288 S.C. 20, 339 S.E.2d 509 (1986) and State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978)).

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).

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,

A handwritten signature in black ink, appearing to read 'C. E. Barton', written over a horizontal line.

July 16, 2015

Christopher E. A. Barton
Senior City Solicitor
201 E. Main St., 3rd Floor
Rock Hill, South Carolina 29730
(803) 329-5692
ATTORNEY FOR APPELLANT

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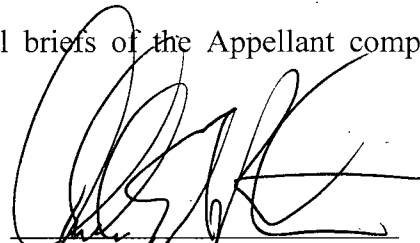
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Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that final briefs of the Appellant comply with Rule 211(b) of the South Carolina Appellate Court Rule.

July 16, 2015



Christopher E. A. Barton
201 E Main Street, 3rd Floor
Rock Hill, South Carolina 29730
(803) 329-5692
ATTORNEY FOR APPELLANT

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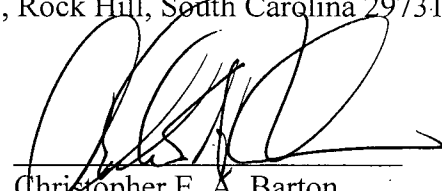
v.

James Delaney Allen, III,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Final Brief, Final Reply Brief of Appellant and Certificate of Compliance with Rule 211(b) was served upon opposing counsel by mailing a copy via regular U.S. Mail to him on the 16th day of July, 2015, to Michael L. Brown, Jr., Attorney for Respondent, Post Office Box 1025, Rock Hill, South Carolina 29731.


Christopher E. A. Barton
201 E Main Street, 3rd Floor
Rock Hill, South Carolina 29730
(803) 329-5692
ATTORNEY FOR APPELLANT