

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From York County  
Honorable Daniel D. Hall, Circuit Court Judge  
Appellate Case Tracking Number 2015-001409

---

State of South Carolina,

Appellant,

vs.

Charles Todd Burn,

Respondent.

---

**RECORD ON APPEAL**

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ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

KEVIN S. BRACKETT  
Solicitor, Sixteenth Judicial Circuit

ATTORNEYS FOR APPELLANT

JOHN MARTIN FOSTER, ESQUIRE

Post Office Box 106  
Rock Hill, South Carolina 29731  
(803) 324-8100

ATTORNEY FOR RESPONDENT

## INDEX

Magistrate's Return.....	1
Circuit Court Order .....	4
Magistrate Hearing Transcript February 19, 2015.....	10
Magistrate Hearing Transcript March 13, 2015.....	39
Circuit Court Transcript June 16, 2015.....	51
Uniform Traffic Tickets.....	67
Notice of Appeal to Circuit Court.....	69
State's Memorandum of Law in Support of Appeal.....	72
Allen v. City of Rock Hill unpublished Order.....	80

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2015 MAR 25 PM 3: 17

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF YORK

RETURN TO NOTICE OF APPEAL

CASE NUMBER: 2015-CP-46-824

STATE,

VS.

DEFENDANT,

Charles Todd Burns

Ticket: 38247GR

Charge: Driving Under the Influence, 1<sup>st</sup> offense

FILED-RECEIVED  
2015 MAR 25 PM 4: 48  
DAVID HAMILTON  
C.C.C.P. & G.S.  
YORK COUNTY, SC

The above action came before the Court on February 19, 2015 in a Pretrial Motion Hearing before the jury trial started. Assistant Solicitor Aaron Hayes was the prosecutor for the State and Deputy Osborne and River Hills Officer Foster were witnesses for the State. The defendant was represented by Attorney Michael Brown.

Testimony was taken from the arresting officer, Deputy Osborne, with the York County Sheriff's Office. Deputy Osborne testified when he arrived on the scene. The Defendant, Charles Burns, was sitting in the vehicle driver's seat and the vehicle was not in motion. The Defendant was asked if he had been drinking. No reply. The Defendant was asked to exit the vehicle. He was taken to the back of the vehicle and asked by Deputy Osborne if he had any problems with his eyes. The Defendant said he had tunnel vision. He was then asked by Deputy Osborne if he had any problems with his legs or his feet. The defendant said he had back problems and could not perform the walking test. Deputy Osborne asked if

he could or would take any field sobriety test and the defendant said no. The defendant was placed under arrest for suspicion of Driving under the Influence.

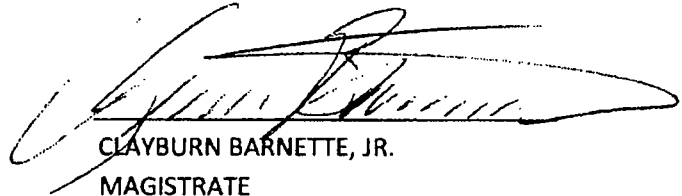
Testimony was also taken from River Hills Security Officer Foster. Officer Foster testified that the Defendant drove left of center. Office Foster activated the blue light and pulled the defendant over. The Officer then called York County Sheriff's Department to investigate the suspension of Driving under the Influence. The case was passed off from Officer Foster to Deputy Osborne.

A Motion to Dismiss was made by the Defendant's Attorney, Mr. Brown. The motion was based on an unpublished ruling by Judge Hayes. This case was James Delaney Allen III vs. City of Rock Hill. In this case, Officer Lambert with the Rock Hill Police Department failed to comply with 17-13-30 of the South Carolina 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 Defendant. Additionally, nothing in the record indicates that Officer Lambert upon arriving at the scene of the traffic stop observed the Defendant committing any acts which in and of themselves would give rise to an arrest for DUI without a warrant.

Based on the testimony from Deputy Osborne and Officer Foster, the case was "passed on." Deputy Osborne is the arresting officer on the DUI ticket. The crime of DUI was not committed in Deputy Osborne's presence. Deputy Osborne neither observed nor perceived any driving by the Defendant. Deputy Osborne should have had a warrant. The Defendant's Motion to Dismiss is hereby granted.

Please find enclosed documents, the tape, and a copy of Judge Hayes ruling.

If I can be of any further assistance, please do not hesitate to call.



CLAYBURN BARNETTE, JR.

MAGISTRATE

YORK COUNTY CENTRALIZED DUI COURT

March 23, 2015

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 State of South Carolina, )  
 )  
 Appellant, )  
 )  
 )  
 )  
 v. )  
 )  
 Charles Todd Burns, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 Civil Action No. 2015-CP-46-00824

ORDER

FILED-RECEIVED  
 2015 JUN 18 PM 12:04  
 DAVID HAMILTON  
 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

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.

Handwritten signature of Daniel D. Hall in black ink, written over a horizontal line.

Daniel D. Hall  
Sixteenth Judicial Circuit

June 18, 2015  
York, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

IN THE YORK COUNTY  
CENTRALIZED DUI COURT  
CASE NOS.: 38247GR and  
62273GS

State of South Carolina, )  
vs. )  
Charles Todd Burns. )

TRANSCRIPT OF PROCEEDINGS  
ROCK HILL, SOUTH CAROLINA  
FEBRUARY 19, 2015 and MARCH 13, 2015

THIS TRANSCRIPT WAS PREPARED FROM AN OPEN AUDIO RECORDING  
PROVIDED BY THE COURT. NO COURT REPORTER WAS PRESENT.  
THEREFORE, SOME PORTIONS ARE INDISCERNIBLE AND PROPER NAMES  
MAY NOT BE SPELLED CORRECTLY.

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## APPEARANCES:

Representing the State -

Aaron J. Hayes, Esquire  
Assistant Solicitor  
Sixteenth Judicial Circuit  
Solicitor's Office  
1070 Heckle Blvd., Ste 207  
Rock Hill, South Carolina 29730

Representing the Defendant -

Michael L. Brown, Jr., Esquire  
Attorney at Law  
223 East Main Street, Ste. 550  
Rock Hill, South Carolina 29730-4560

## INDEX

Testimony of Deputy Osborne	
Examination by Mr. Brown	Page 6
Examination by Mr. Hayes	Page 6
Testimony of Officer Foster	
Examination by Mr. Hayes	Page 17
Examination by Mr. Brown	Page 19

## EXHIBITS

State's -

No. 1: CD of video Page 12

1 PROCEEDINGS

2 THE COURT: It's 9:20 A.M., February 19,  
3 2015. This is the State of South Carolina  
4 versus Mr. Charles Todd Burns. Ticket Number  
5 38247GR is driving under the influence; and  
6 it seems like there is a Ticket Number 62273GS,  
7 driving left of center.

8 MR. HAYES: That's correct, Judge.

9 THE COURT: All right. Both of these  
10 tickets -- One of them has been issued by  
11 York County Sheriff's Department, one of  
12 them's been issued by River Hills. This  
13 Court has jurisdiction to handle companion  
14 charges on DUIs here in South Carolina, so  
15 I'll go ahead and put that on the record that  
16 I'm handling both tickets.

17 MR. BROWN: Without objection.

18 THE COURT: Okay. All right. It looks  
19 like these two tickets -- The driving left of  
20 center, as I said, issued by River Hills.  
21 And Officer Foster, with River Hills Police  
22 Department, is here. Looks like Deputy  
23 Osborne, with the York County Sheriff's  
24 Department, wrote the DUI; and, he is in the  
25 courtroom, at this time.

1           The State is represented by Mr. Aaron  
2 Hayes, of the Solicitor's Office, and the  
3 Defendant is represented by Mr. Michael  
4 Brown. Okay. My understanding is there's  
5 going to be some motions. Mr. Brown?

6           MR. BROWN: We're going to make a proffer,  
7 first.

8           MR. HAYES: Judge, the State has no  
9 pretrial motions, and we will wait to hear  
10 Mr. Brown's pretrial motions.

11          THE COURT: Okay. Mr. Brown?

12          MR. BROWN: Is this the witness stand, I  
13 assume?

14          THE COURT: Yes, sir. And, Mr. Brown,  
15 please make yourself very comfortable in  
16 here, because this is a little tight.

17          MR. BROWN: I call to the stand Deputy  
18 Osborne. Didn't know if you got promoted  
19 or not.

20          MR. HAYES: And, Judge, just for the  
21 record, I would like to hear Mr. Brown's  
22 motion, before we hear any testimony; so  
23 that, when I'm called upon --

24          MR. BROWN: It's my motion. I'll call  
25 the witness the way I want to call him.

1 MR. HAYES: But, Judge, if I have to ask  
2 him questions, I have to know what type of  
3 questions to ask him. But, based on the  
4 motion -- and, right now, we're having a  
5 proffer without a motion, so I request that  
6 Mr. Brown explain the motion that he's  
7 making, so that I know how to question the  
8 officer when it comes my turn to ask him  
9 questions. So I would just like Mr. Brown to  
10 state his motion, on the record.

11 MR. BROWN: There is no rule of evidence  
12 that requires me to do that. I'm calling  
13 Deputy Osborne to the stand.

14 THE COURT: Deputy, if you will, raise  
15 your right hand.

16 (WHEREUPON, the witness was duly sworn.)

17 THE COURT: Sir, if you will, have a  
18 seat. Just, for the record how much weight  
19 have you lost?

20 BY THE WITNESS: Fifteen pounds.

21 THE COURT: Go ahead and answer the  
22 questions.

23 BY THE WITNESS: Thank you, sir.

24 DEPUTY J. D. OSBORNE, having been duly sworn, was  
25 examined and testified as follows:

1 DIRECT EXAMINATION - (By Mr. Brown)

2 Q Did you arrest Mr. Burns, Deputy Osborne?

3 A I did, sir.

4 Q When you got there, his car was already  
5 stopped; is that correct?

6 A Yes, sir.

7 Q You did not see him driving; correct?

8 A I did not, no, sir.

9 Q And you were called there by River Hills  
10 Security; is that correct?

11 A Yes, sir.

12 MR. BROWN: Okay. I have no further  
13 questions.

14 THE COURT: Mr. Hayes?

15 MR. HAYES: And again, Your Honor, I'm  
16 going to ask Deputy Osborne questions,  
17 subject to my objection. I don't know what  
18 the motion is. So I would like the record to  
19 be left open, if I need to make an additional  
20 proffer, after Deputy Osborne gets off the  
21 stand, because I don't know what I'm  
22 responding to.

23 THE COURT: Okay.

24 CROSS-EXAMINATION - (By Mr. Hayes)

25 Q Deputy Osborne, were you on duty on

1 January 4 -- excuse me -- July 4, 2014?

2 A I was, sir.

3 Q Whereabouts were you patrolling in the  
4 county?

5 A I'm assigned to a DUI enforcement unit, so I  
6 didn't have any specific location, in the  
7 county, that I had to be.

8 Q Okay. Did you ultimately -- I think you  
9 testified that you arrested Charles Burns for  
10 DUI on that date.

11 A I did.

12 Q How did you respond -- or how did you  
13 encounter him that night?

14 A I was notified -- I want to say I was  
15 notified through dispatch or either another  
16 deputy had called out. Because, due to the  
17 nature of where the -- Mr. Burns was at, we  
18 had multiple deputies in that location up  
19 there. I was called to that location, either  
20 through dispatch or another deputy, to report  
21 to River Hills front gate, in reference to a  
22 traffic stop for a possible impaired driver.

23 Q Okay. Tell us what you saw, when you drove  
24 up to the scene.

25 A There was other patrol cars on scene. Mr.

1 Burns's car was stopped at the front gate at  
2 River Hills. The other two patrol cars were  
3 on scene. I pulled up and, when I pulled up,  
4 they moved out of the way; and then I was  
5 approached by Mr. Foster -- Officer Foster,  
6 with River Hills security, which we walked in  
7 front of my car, and he explained to me why  
8 he had stopped Mr. Burns.

9 Q What did he tell you?

10 A He advised me that the vehicle failed to  
11 maintain lane and was driving left of center,  
12 and he stopped the vehicle at the front gate.  
13 When he stopped the vehicle at the front  
14 gate, he stated he could smell strong odor of  
15 alcoholic beverage coming from the vehicle,  
16 and that's when he notified us.

17 Q Okay. Where was Mr. Burns, when you first  
18 encountered him?

19 A Sitting in the driver's seat of the car.

20 Q Of what car?

21 A His car.

22 Q Okay. What did you decide to do after speaking  
23 with him, initially?

24 A Officer Foster or --

25 Q After speaking with Mr. Burns, initially.

1 A I approached the car. I advised Mr. Burns  
2 who I was and why I was called to the  
3 location. I asked him if he had been  
4 drinking. He did not respond to my question.  
5 I asked, again, if he had been drinking, at  
6 which time, he turned and he smiled at me. I  
7 had him exit the vehicle to offer a field  
8 sobriety test, because I could also a strong  
9 odor of alcoholic beverage.

10 Q Okay. And what happened, at that point?

11 A On bringing him to the back of the vehicle, I  
12 asked him if he had any physical problems.  
13 He stated that he had ruptured discs in his  
14 back, I believe; yes, sir, five ruptured  
15 discs in his back, and I asked him if he had  
16 any problem -- if it affected his ability to  
17 walk. And he said -- I want to say that he  
18 did state that it did affect his ability to  
19 walk. I asked him if he had any problem with  
20 his eyes. He stated that he had tunnel  
21 vision. At which time, I asked him if he was  
22 going to be able to perform any field  
23 sobriety test. He stated he was not, so I  
24 placed him under arrest for driving under the  
25 influence.

1 Q Okay. Can you tell us -- Just briefly run  
2 through everything that went into your  
3 decision to place handcuffs on him for DUI.

4 A At which point, my first initial contact  
5 interviewing the officer that had stopped  
6 him, taking into consideration of the driving  
7 that I had been advised of. Then, upon  
8 approaching the vehicle, being able to smell  
9 the odor of an alcoholic beverage coming out  
10 of the vehicle, and then just his reactions  
11 to questioning from me at all, the whole  
12 smiling about, you know, how much have you had  
13 to drink? And just, upon looking at him, he  
14 looked intoxicated to me. He looked as if he  
15 was intoxicated. So, when I -- That's when I  
16 pulled him out of the car to offer him field  
17 sobriety, to give him the benefit of the doubt,  
18 to see if he was impaired. If he didn't have  
19 any indications of impairment, he would've been  
20 placed back in the car and released. But, when  
21 he stated he wasn't, in any shape, form or  
22 fashion, able to comply with any field sobriety  
23 test -- And, I believe I asked him, can you  
24 take any field sobriety test, whatsoever? And  
25 he stated, no. At that point, I had no other

1           alternative but to charge him for driving under  
2           the influence.

3       Q     Did you get a good look at his face, while  
4           you were encountering him?

5       A     Being out there, in the dark, I mean, I could  
6           see his face, out there on the roadside.  
7           But, once we got to the detention center for  
8           the DataMaster, yes, I could see him. I  
9           observed him for almost 20 minutes. We  
10          actually aborted the 20-minute observation,  
11          due to him stating he was going to refuse the  
12          breath test.

13      Q     And did he indeed refuse the breath test?

14      A     He did.

15      Q     Does your vehicle have an in-car camera?

16      A     It does.

17      Q     Did you make a video of your encounter with  
18           Mr. Burns on the roadside?

19      A     I did.

20      Q     Have you reviewed that video, prior to today?

21      A     I have.

22                   MR. HAYES: Your Honor, at this time, I  
23           would ask defense counsel to stipulate that  
24           the video we have on the screen is the video  
25           of this encounter. We'll play the first

1           probably three minutes of it. As State's  
2           Exhibit 1 -- We proffer that as State's  
3           Exhibit 1 to this motion, whatever this  
4           motion is.

5           MR. BROWN: No objection.

6           THE COURT: All right.

7           (State's Exhibit No. 1 proffered and  
8           marked for identification.)

9           MR. HAYES: Now, Judge, I have it in my  
10          computer, but after the hearing, I'll give it  
11          to you for the record.

12          THE COURT: Thank you.

13          (WHEREUPON, the video is viewed.)

14          BY MR. HAYES: (Continuing cross-examination.)

15          Q     Deputy Osborne, who was that person we just  
16                heard you talking to on State's Exhibit 1?

17          A     Officer Foster.

18          Q     Okay. Did your conversation with Officer  
19                Foster take place before or after you  
20                encountered Mr. Burns?

21          A     Well, as soon as I pulled up, I -- as I exiting  
22                my car, yeah, I asked who actually stopped the  
23                vehicle, and they pointed to Officer Foster.  
24                He walked over to me, and I had him walk in  
25                front of the patrol car, so we could get all

1 the conversation on audio-video.

2 Q And you hadn't encountered Mr. Burns, at this  
3 point.

4 A No, I hadn't even walked up to the car.

5 (WHEREUPON, video is viewed.)

6 BY MR. HAYES:

7 Q Deputy Osborne, I don't think I have any  
8 further questions, at this time.

9 MR. HAYES: Your Honor, no questions of  
10 this witness. Again, I don't know what the  
11 motion is, so I request that the record be  
12 left open, if I need to proffer another  
13 witness or additional evidence to make the  
14 state's factual position. Because, again,  
15 Mr. Brown hasn't told us what his motion is,  
16 so I don't know what type of questions to  
17 ask. So --

18 THE COURT: All right.

19 MR. BROWN: Will you say, on the record,  
20 Stephanie didn't tell you what the motion  
21 was?

22 MR. HAYES: You haven't stated the  
23 motion, for the record.

24 MR. BROWN: Did Stephanie tell you what I  
25 was going to do?

1 MR. HAYES: I have a thought of what your  
2 motion might be, but I request that the  
3 record be left open, in case there's one or  
4 more motions --

5 MR. BROWN: Without objection. .

6 MR. HAYES: --- or changes to the motion.

7 MR. BROWN: Without objection. Your  
8 Honor, --

9 MR. HAYES: No further questions.

10 MR. BROWN: -- this case is identical --

11 MR. HAYES: Your Honor, I request that  
12 Deputy Osborne be allowed to step down from  
13 the stand.

14 THE COURT: No more questions?

15 MR. BROWN: I'm sorry. My fault, my bad.

16 THE COURT: sir, if you will, you can step  
17 down.

18 THE WITNESS: Thank you, sir.

19 (WHEREUPON, the witness was excused.)

20 MR. BROWN: Your Honor, this case is  
21 identical to James Delaney Allen, Appellant,  
22 versus City of Rock Hill, decided up by Judge  
23 Hayes, back in March -- excuse me -- April of  
24 2014. In the that case, Sergeant Rivera, of  
25 the City of Rock Hill, stopped Mr. Allen for

1 speeding, traveling 58 in 35. Rivera -- the  
2 same sort of facts here -- detained Mr.  
3 Allen, called Officer Lambert to come in and,  
4 subsequently, placed him under arrest.

5 Paragraph -- The second full paragraph on  
6 page two is the same set of questions I asked  
7 Officer Osborne, did you see the Defendant  
8 driving? No, I did not. Did you arrest him?  
9 No, he did not. The arresting officer, on the  
10 DUI ticket, is Officer Osborne, in this case.  
11 The same set of facts here; Officer Lambert  
12 issued the arrest warrant.

13 That charge was dismissed, Your Honor.  
14 And, in the analysis, on page four, Judge  
15 Hayes states, nor does the record indicate that  
16 Officer Lambert observed, with any of his  
17 sensory perceptions, any act of the  
18 appellant, which in itself would give rise an  
19 arrest for DUI first offense without a  
20 warrant. The crime here of DUI was not  
21 committed in Officer Lambert's presence.  
22 Officer Lambert neither observed nor  
23 perceived the appellant speeding or swerving  
24 his motor vehicle. Officer Lambert cannot  
25 justify an arrest simply by relying on the

1 hearsay of another police officer. The exact  
2 same identical facts we have here.

3 Deputy Osborne's relying on the hearsay  
4 of Officer Foster, of the Rock Hill -- River  
5 Hills Security, that places under arrest. He  
6 has not observed the crime of driving, which  
7 is the key issue -- excuse me -- the key  
8 element of the crime of driving under the  
9 influence. Therefore, this case is right on  
10 point. Behind that, is these subsequent  
11 cases that Judge Hayes relied on, in his  
12 opinion, dismissing the charge of Mr. Allen.

13 MR. HAYES: Your Honor, in response, I  
14 would like to make an additional proffer and  
15 then make an argument. So, should it please  
16 the Court, I proffer the testimony of Officer  
17 Foster.

18 THE COURT: Yes, sir

19 MR. HAYES: So, Officer Foster, take the  
20 stand, please.

21 THE COURT: Any objection? Officer  
22 Foster, raise your right hand.

23 (WHEREUPON, the witness was duly sworn.)

24 DEPUTY FOSTER, having been duly sworn, was examined  
25 and testified as follows:

1 DIRECT EXAMINATION - (By Mr. Hayes)

2 Q Officer Foster, who's your employer?

3 A River Hills Plantation.

4 Q What do you do for River Hills Plantation?

5 A Officer for River Hills Security.

6 Q Okay. Did you encounter a Charles Burns on  
7 July 4, 2014?

8 A I did.

9 Q How did you encounter him?

10 A He was traveling to exit out of River Hills  
11 and was actually in my lane coming out the  
12 inward-bound; and, at the last minute,  
13 swerved to go out the outward-bound, at which  
14 point, I initiated a traffic stop and stopped  
15 him for driving left of center.

16 Q Okay. What did you notice, when you initially  
17 encountered him?

18 A. I could -- when I walked up to the car, I  
19 could smell alcohol coming from his person.  
20 And, when I asked him questions, he wouldn't  
21 answer the questions I was asking him.

22 Q Did you alert the sheriff's department?

23 A I did. Hold on. I personally did not. I  
24 alerted my lieutenant that was on duty to  
25 call the sheriff's department for me.

1 Q why do y'all have to call the sheriff's  
2 department, in these type circumstances?

3 A well, we're not -- If we end up arresting  
4 someone, we can't transport them. And also,  
5 I'm not FST certified.

6 Q Okay. Who responded from the sheriff's  
7 office to the River Hills Police Office  
8 request for assistance?

9 A Initially, it was Officer Dean; and then,  
10 after Officer Dean arrived, it was Deputy  
11 Osborne.

12 Q Did you speak with Deputy Osborne, when he  
13 came on scene?

14 A I did.

15 Q What did you advise him?

16 A Just basically what I had seen and what had  
17 happened, that he -- this gentleman here was  
18 traveling in my lane, coming out, swerved. I  
19 turned around on him, initiated blue lights,  
20 where he made a u-turn and ended up stopping  
21 in the middle of the road, as we saw in the  
22 video. And then I approached the vehicle and  
23 asked him if he had been drinking, and he  
24 wouldn't answer my questions. And I asked  
25 him again if he was going to answer my

1 question, to which he responded, I thought I  
2 already had. And then I asked him again if he  
3 had been drinking, and he just sat there and  
4 stared at me; then I walked back to my vehicle.

5 Q Does River Hills have in-car cameras?

6 A No, sir.

7 Q Were you present, in the courtroom, when we  
8 published State's Exhibit Number 1 to this  
9 hearing?

10 A Yes, sir.

11 Q About how long is this video taking place  
12 from when you initiated the traffic stop on  
13 Mr. Burns?

14 A I'd say approximately 10, 15 minutes.

15 MR. HAYES: Officer Foster, I have no  
16 further questions.

17 (WHEREUPON, the witness was tendered for  
18 cross-examination.)

19 CROSS-EXAMINATION - (By Mr. Brown)

20 Q Have you requested in-car cameras?

21 A I couldn't tell you. I don't know.

22 Q So you don't know if they'd been requested or  
23 not, even though that's been a law since 1998.

24 A Yes, sir. I'm not a supervisor.

25 MR. BROWN: I have no further questions.

1 MR. HAYES: Your Honor, I request that  
2 Officer Foster be allowed to step down from  
3 the stand.

4 THE COURT: Sir, you can step down.

5 MR. BROWN: Without objection.

6 MR. HAYES: Your Honor, with those two  
7 witnesses and State's Exhibit 1, the State's  
8 proffer on this motion is complete, and now  
9 we would like to make argument on that  
10 motion.

11 First of all, I would object to Mr.  
12 Brown's reliance on Allen versus City of Rock  
13 Hill. That is a circuit court order, from  
14 Judge Hayes, that has no precedential value.  
15 I mean, we all respect Judge Hayes, but Judge  
16 Hayes is, you know, a trial judge, like  
17 yourself; so these issues -- these orders  
18 that he issues, in this capacity, are not  
19 binding on Your Honor or anybody else. What is  
20 binding is Ferdella versus Town of Mount  
21 Pleasant, which comes from the Court of  
22 Appeals -- our Court of Appeals.

23 I'm handing Your Honor a copy. I've  
24 handed Mr. Brown a copy. I've highlighted  
25 all three of them identically. What Ferdella

1 has done is it talks about the side of the  
2 issue that, with due respect to Judge Hayes,  
3 that Judge Hayes ignored, in his Allen order.

4 So, if Your Honor would turn to page three  
5 of the Ferdella case to the large highlighted  
6 chunk there, I would like to read this for Your  
7 Honor, into the record.

8 South Carolina Code 17-13-30, which Allen  
9 is based on, states that sheriffs and deputy  
10 sheriffs may arrest, without a warrant, any  
11 and all person who, within the officer's  
12 view, violate any of the criminal laws, if  
13 such arrest to be made at the time of such  
14 violation of law or immediately thereafter.

15 But our supreme court has interpreted that  
16 alongside of another statute, 23-13-60, which  
17 goes along with -- which works hand-in-hand  
18 with 17-13-30, which provides that such  
19 officers may, for any suspected freshly  
20 committed crime, whether upon view or upon  
21 prompt information or complaint, arrest  
22 without a warrant. Thus, Martin, which is a  
23 supreme court case, holds an officer can arrest  
24 for a misdemeanor not committed within his  
25 presence, when the facts and circumstances

1 observed by the officer give him probable  
2 cause to believe that a crime has been  
3 freshly committed.

4 That is binding law from our Court of  
5 Appeals and our Supreme Court, an officer may  
6 arrest, without a warrant, for a misdemeanor  
7 that has been freshly committed, even if it  
8 wasn't committed in that officer's presence.  
9 That's binding law from the Court of Appeals,  
10 Supreme Court and our statutes.

11 And I would like to hand up some  
12 statutes to Your Honor for your  
13 consideration.

14 As Your Honor has before you, part of the  
15 record, this arrest was done without a warrant  
16 and was done with a uniform traffic ticket.  
17 The statutes governing uniform traffic tickets  
18 indicate that Deputy Osborne did exactly what  
19 he was supposed to do, in this situation. This  
20 situation does not call for a warrant. The  
21 statutes of our state allow for a uniform  
22 traffic ticket to be issued in this  
23 circumstance.

24 I'm handing up three statutes, which I've  
25 highlighted the operative language, and

1 I'm providing a copy to Mr. Brown, as well.

2 Judge, the first statute I would read is  
3 the one that was quoted in Fradella,  
4 23-13-60, the deputy sheriff may, for any  
5 suspected freshly committed crime, whether  
6 upon view or upon prompt information or  
7 complaint, arrest without a warrant. And  
8 then the specific authorization for traffic  
9 tickets comes from 56-7-10. I've highlighted  
10 that top line. There will be a uniform traffic  
11 ticket used by all law enforcement officers in  
12 arrests for traffic offenses. So that's  
13 certainly what we're dealing with here. I  
14 don't think anybody disputes that DUI is  
15 probably the chief traffic offense.

16 And then, specifically, the rule on  
17 freshly committed crimes and uniform traffic  
18 tickets, comes from 56-7-15, the uniform  
19 traffic ticket established pursuant to the  
20 provisions of section 56-7-10 may be used by  
21 law enforcement officers to arrest a person  
22 for an offense that has been freshly committed.

23 So, Judge, what we have here -- and with  
24 all due respect to Judge Hayes and with all  
25 due respect to the ruling in Allen, Allen,

1 for some reason, completely omitted the  
2 analysis of the binding law. And the binding  
3 law is these three statutes that I just read  
4 and the Fradella case from the court of  
5 appeals. This case is directly on point with  
6 the rule for Fradella, in these statutes.

7 Fradella was actually a wreck case, and  
8 that's a case where the officers arrested the  
9 defendant for DUI, based on witness  
10 statements at the scene, and the guy was the  
11 driver. And the Court of Appeals says that's  
12 fine. And that's exactly what we have here,  
13 Judge. We have -- It's not a wreck case.  
14 It's a traffic stop. But Officer Foster is  
15 the on-scene witness who points Deputy  
16 Osborne, the eventual arresting officer -- who  
17 points out the driver to him.

18 Now, I don't see any difference between a  
19 wreck case and a blue light case, where, in the  
20 wreck case, the investigating officer is going  
21 to show up and the witnesses are going to say,  
22 that guy's the driver. Well, in this case, the  
23 arresting officer -- the investigating officer  
24 showed up and another officer happened to say,  
25 that guy's the driver. I just don't think

1 there's a meaningful distinction that makes one  
2 proper and the other improper. I think they're  
3 both proper, both of those situations are  
4 proper, under our law. So --

5 And Your Honor has heard Deputy Osborne  
6 articulate all of the facts that he took into  
7 consideration before he arrested Mr. Burns  
8 for DUI. And he articulated his probable  
9 cause for the driving element; I showed up.  
10 There was an on-scene witness who told me  
11 that he was driving dangerously. That's the  
12 same thing as an officer responding to a  
13 wreck, and a wreck witness saying, that guy's  
14 the driver. He was driving dangerously.  
15 That's the precise situation we have here,  
16 Judge.

17 So, for all of these reasons, the State  
18 relies on Fradella versus Town of Mount  
19 pleasant, which is 325 South Carolina 469;  
20 23-13-60, 56-7-10, and 56-7-15, we submit  
21 that this arrest was properly done on a  
22 uniform traffic ticket without a warrant, and  
23 we request that Mr. Brown's motion be denied.

24 MR. BROWN: Very briefly, in reply, Your  
25 Honor. (Indiscernible) like the City of Rock

1 Hill (Indiscernible) Judge Hayes and Judge  
2 Hayes should come (Indiscernible), because it's  
3 not applicable. In this case, the arresting  
4 officer is the same officer who did the  
5 investigation. That's not true, in this  
6 case. You can't hand off probable cause, as  
7 Judge Hayes pointed out in his opinion. You  
8 can't take the hearsay testimony of one  
9 officer and make probable cause out of that  
10 and arrest somebody, if you're not the  
11 officer who witnessed the events. Fradella's  
12 not applicable, and Judge Hayes ruled that.

13 MR. HAYES: No further argument, Judge.

14 THE COURT: I'm going to sit on this for  
15 just a bit. I've got some -- Unless y'all just  
16 want to sit here, if I can do a little bit of  
17 my own -- I'd like to have a little time to  
18 make a decision on this. I'm not going to --

19 MR. BROWN: Whatever you want to do.

20 THE COURT: -- I'm not going to make it  
21 right now.

22 MR. HAYES: No objection, Judge.

23 THE COURT: Any problem with that?

24 MR. BROWN: No, sir.

25 MR. HAYES: Would you just like to -

1           Maybe --

2           THE COURT: I'll just do an --

3           MR. HAYES: -- have Amber e-mail us or --

4           THE COURT: Yeah. I'll go ahead and give  
5 you up something -- Give me a couple of days.  
6 I don't need much.

7           MR. BROWN: I have one subsequent motion,  
8 too --

9           MR. HAYES: Okay.

10          MR. BROWN: -- based on the testimony  
11 presented here today, 56-5-2953 requires that  
12 the video recording of the incident site must  
13 not begin later than the officer's --  
14 activation of the officer's blue lights. In  
15 this case, Officer Foster activated his blue  
16 lights, but there is no recordation from  
17 that.

18          Town of Mount Pleasant v Roberts states  
19 that it's been 17 years. That's not an  
20 excuse anymore.

21          MR. HAYES: Judge, I don't think we need  
22 to proffer any additional testimony on this  
23 point, because this is controlled under our  
24 law by State versus Landis, which states that  
25 the arresting officer in a DUI case is the

1 one who ultimately does the field sobriety  
2 test and puts the cuffs on. That's clearly  
3 Deputy Osborne, in this case, and the video  
4 must come from his car.

5 State v Landis was one of those  
6 situations where you got two cars on scene.  
7 One does the blue light, the other does the  
8 arrest. State versus Landis held that that's  
9 not a problem, because the arresting officer,  
10 under 56-5-2953, is the one who must produce  
11 the video. So, in this case, the arresting  
12 officer was Deputy Osborne. Under the law,  
13 State versus Landis, and 56-5-2953, there was  
14 no video requirement on Officer Foster.

15 MR. BROWN: I would like to just send you  
16 a copy --

17 THE COURT: Put in on the record.

18 MR. BROWN: No. No. I'm going to send  
19 you a copy, timely of Pleasant v Roberts.  
20 Landis is not applicable here at all.

21 THE COURT: I got it.

22 MR. BROWN: He was the arresting officer.  
23 He wrote a ticket for driving left of center.

24 THE COURT: Anything else?

25 MR. BROWN: Which is the probable cause

1 of why we're here.

2 MR. HAYES: Your Honor, I think, if you  
3 would incorporate, for the record, on that  
4 particular motion, if you would incorporate  
5 the record on the prior motion, the testimony  
6 and the video exhibit, I think we're covered  
7 on that for you to make a ruling.

8 And then let me get you the cite, for  
9 State versus Landis, Judge, so that I can  
10 read that into the record.

11 MR. BROWN: I'll just fax you a copy.

12 THE COURT: I got it.

13 MR. BROWN: All right.

14 THE COURT: I think, for the record, --

15 MR. BROWN: You've got Town of Mount  
16 Pleasant versus Roberts?

17 THE COURT: I do.

18 MR. BROWN: Yes, sir. Okay.

19 MR. HAYES: Judge for the State's  
20 purposes, State v Landis is 362 South  
21 Carolina 97. And the State would argue that  
22 since Deputy Osborne is the arresting  
23 officer, he was the one that was required to  
24 comply with 56-5-2953 and create a video, and  
25 Officer Foster was not. So, Your Honor has

1 Deputy Osborne's video which we submit  
2 complies with 56-5-2953, and State versus  
3 Landis.

4 THE COURT: Anything else?

5 MR. BROWN: No, sir.

6 THE COURT: Mr. Hayes anything?

7 MR. HAYES: Nothing Judge. And I have  
8 State's Exhibit 1, which is Deputy Osborne's  
9 video. So that's part of the record. I'm  
10 going to turn that over to you now, Judge.

11 THE COURT: Thank you.

12 MR. BROWN: Without objection.

13 MR. HAYES: I'll write the ticket number  
14 on there, because we've got a lot of these  
15 videos floating around.

16 THE COURT: I thank you, sir.

17 MR. HAYES: Thank you, Judge.

18 THE COURT: All right.

19 MR. HAYES: Thank you, Judge.

20 THE COURT: Thank y'all. Appreciate you  
21 working with me in my little courtroom.

22 \* \* \* \* \*

23 MARCH 13, 2015

24 THE COURT: Okay. We're on the record  
25 at 1:21 P.M., March 13, 2015. This is a

1           continuance of a motion hearing that -- could  
2           y'all give me the date? That was on  
3           February 19, 2015, is when we heard that,  
4           when we were down in the makeshift courtroom.  
5           Aaron Hayes, from the Solicitor's Office;  
6           Michael Brown, here as the defense attorney.

7                     This is Case Number 38247GR, State of  
8           South Carolina versus Charles Todd Burns. When  
9           I say a continuation, I like to put my rulings  
10          on the recorder and so they are -- so they  
11          will be preserved.

12                    Could I get -- Mr. Brown, I know that we  
13          already have this on the record from down  
14          there. But, would you mind going ahead and  
15          making your motion again today? would it  
16          just be absolutely too much to ask?

17                    MR.

18                    BROWN: No, sir. No, sir. No, sir.  
19                    I mean, I'll --

20                    THE COURT: Just give a quick synopsis  
21                    please.

22                    MR. BROWN: Without trying not to get  
23                    into the facts too much, which I have to do,  
24                    but, in a nutshell, this case -- Mr. Burns,  
25                    the defendant in this matter, was stopped -- I  
                    can't remember the officer's name, but he was

1 a River Hills -- Is that right, Aaron --  
2 Security.

3 MR. HAYES: Yes, sir.

4 MR. BROWN: -- was a River Hills security  
5 officer. He stopped and detained Mr. Burns.  
6 He's the only person that observed him  
7 driving. He called Deputy Osborne, J. D.  
8 Osborne, of the York County Sheriff's  
9 Department, who came out and made the arrest.

10 In my case of James Delaney Allen,  
11 Appellant, versus City of Rock Hill, my  
12 motion is basically this, in a nutshell. You  
13 can't hand off probable cause. Obviously,  
14 one of the elements of driving under the  
15 influence is that someone's driving a motor  
16 vehicle.

17 The officer has to observe that through  
18 either direct or circumstantial evidence, the  
19 arresting officer. Okay? In this case, J. D.  
20 Osborne did not observe this defendant driving.  
21 And, as Judge Hayes stated in his opinion, the  
22 record -- in this case, Officer Lambert was the  
23 arresting officer, and he did not see Mr. Allen  
24 driving, the defendant in that case. The  
25 record does not indicate the Officer Lambert,

1 in any way, perceived the acts which  
2 allegedly gave probable cause to conduct the  
3 initial stop on the Appellant's vehicle.  
4 Same thing here, Your Honor.

5 And he also cites, I am giving the court  
6 these cases without proposition, City of  
7 Easley v Portman, Prosser v Parsons, State v  
8 Williams, and State v Ploof (phonetic).

9 THE COURT: Thank you, sir.

10 MR. BROWN: That's it, in a nutshell,  
11 Judge.

12 THE COURT: That was it. Mr. Hayes?

13 MR. HAYES: Judge, the State opposed that  
14 motion on the basis of Fradella versus Town  
15 of Mount Pleasant, which is 325 South  
16 Carolina 469, court of appeals decision,  
17 which stands for the proposition that an  
18 officer doesn't have to witness somebody  
19 driving to arrest them -- to do a warrantless  
20 arrest for DUI, if the facts and circumstance  
21 known to the officer indicate that it's been  
22 freshly committed. So we cited Fradella for  
23 that.

24 We also cited to three statutes, 56-7-10,  
25 which allows for uniform traffic ticket in

1           DUI cases; 56-7-15, which allows for uniform  
2           traffic ticket for arrests in cases that have  
3           been freshly committed, and then we cited to  
4           3-13-60, which specifically says that deputy  
5           sheriffs may arrest for any suspected freshly  
6           committed crime, whether upon view or upon  
7           prompt information or complaint.

8           So, as far as the facts -- so that's our  
9           law, Judge. And then, as far as the facts  
10          go, we proffered Officer Foster, who  
11          testified that he pulled Mr. Burns over for  
12          driving left of center and then called Deputy  
13          Osborne. And then we also proffered Deputy  
14          Osborne, who testified that, when he walked  
15          up, he saw Mr. Burns sitting in the driver's  
16          seat of his car. He got the oral report from  
17          Officer Foster and then everything else in  
18          his investigation led him to believe that the  
19          crime of DUI had been freshly committed. So  
20          that was the facts that the state proffered,  
21          and we would just make sure that that's  
22          incorporated over from our prior hearing date  
23          into today's purposes.

24          MR. BROWN: Without objection, I'd like  
25          to very briefly respond to that.

1           Fradella, in a subsequent case, stands  
2           for the same proposition. Judge Hayes  
3           addressed that in phase three of his order, the  
4           Prosecution in this case, City of Rock Hill,  
5           relied on the argument that the corpus delicti  
6           of a DUI may be established through  
7           circumstantial evidence, citing City of Easley  
8           v Foreman, almost identical facts as Fradella,  
9           which is a wreck case. Officer comes up, were  
10          you driving? Yes, sir. Judge Hayes addresses  
11          that on page four of his opinion, last  
12          sentence: The issue, in this case is outside  
13          the scope of Portman and concerns whether the  
14          arresting officer - in this case, J. D. Osborne  
15          - actually perceived the acts giving rise to  
16          establishment of probable cause to initial a  
17          traffic stop on the Appellant.

18                 In this case, Osborne did not witness the  
19                 driving that caused the probable cause. The  
20                 officer from River Hills Security did. And  
21                 Judge Hayes addresses that exact point, on  
22                 page 4 of his opinion, last sentence.

23                 THE COURT: Anything else?

24                 MR. HAYES: Nothing further from the  
25                 State, except we believe this case falls

1 squarely within the rule from Fradella.

2 Thank you, Judge.

3 THE COURT: I'm going to base -- I'm  
4 going to go ahead and grant the motion to  
5 dismiss, and I'm working straight off of the  
6 same thinking that Judge Hayes used. I know  
7 that it's not imperative or has too much of  
8 an effect on me -- on my ruling. However, I  
9 will say that it is a persuasive argument  
10 from his court.

11 The other thing that I would base it on  
12 is -- Hold on just a minute. I'm hoping to  
13 find -- On 17-13-30, of South Carolina Code,  
14 officers may arrest without a warrant for  
15 offenses committed in view. The sheriff and  
16 the sheriff deputies of this state may  
17 arrest, without warrant, any and all persons  
18 who, within their view, violate any of the  
19 criminal laws of this state, if such arrest  
20 be made at that time of such violation of law  
21 or immediately thereafter.

22 What that means to me, when it says within  
23 their view, is within their view. One of the  
24 elements of driving under the influence is  
25 driving in the State of South Carolina. So

1 that's what I'm basing, strictly, my ruling on,  
2 is -- as far as I'm concerned, is the violation  
3 of 17-13-30. So I want to make sure that it's  
4 on the record, and I left it for review.

5 Any other questions?

6 MR. HAYES: Judge, just to clarify, are  
7 you finding that Fradella and the statute cited  
8 by the State do not apply, in this case?

9 THE COURT: I'm finding that, in this  
10 particular instance, in my way of looking at  
11 it, I think that Officer Osborne - I'm talking  
12 about the arresting officer - should've had a  
13 warrant in his hand, when he arrested that  
14 individual.

15 MR. HAYES: Thank you, Judge.

16 THE COURT: Yes, sir.

17 MR. BROWN: I just want to make -- And I  
18 think I put this on the record last time.  
19 This wasn't the crux of the argument, but I  
20 had additional sustaining ground that, under  
21 56-5-2953, in-car video, site video, the blue  
22 lights must begin no later than activation of  
23 blue lights. This did not happen, in this  
24 case, at all. There was no affidavit saying  
25 that they have been equipped, or whatever.

1 Just an additional sustaining ground.

2 THE COURT: Okay.

3 MR. BROWN: And I think I raised that last  
4 time, didn't I?

5 MR. HAYES: You did.

6 MR. BROWN: Okay. Just wanted to make  
7 sure it was on the record.

8 THE COURT: Landis was brought up in the  
9 last situation, also. And I don't mind  
10 addressing Landis, because I don't think Landis  
11 applied, in this case. Because, the officer,  
12 in Landis, the second officer did see -- he  
13 viewed the bad driver, so I'm not talking  
14 about Landis. I'm strictly going to address  
15 this on the officer not seeing the driving,  
16 and it was passed on. If it's passed on, I  
17 think a warrant needs to be issued.

18 MR. HAYES: So, Judge, just for  
19 clarification there, you're not ruling on the  
20 video motion that he just brought up;  
21 because, you've already dismissed it --

22 THE COURT: I've already dismissed it on  
23 the element, right.

24 MR. BROWN: Right. I just wanted --

25 THE COURT: That was just something that

1 he added.

2 MR. BROWN: -- to make sure I'm covered.

3 THE COURT: And I don't have any problem  
4 with that.

5 MR. BROWN: Yes, sir.

6 THE COURT: I didn't know --

7 MR. BROWN: Just wanted to make sure it  
8 was on the record.

9 THE COURT: I didn't rule on that.

10 MR. BROWN: One of the appellant rules,  
11 if you have additional stating grounds out  
12 there.

13 THE COURT: But I do want to --

14 MR. BROWN: You want to shoot me an  
15 affidavit for me this afternoon?

16 MR. HAYES: I will. I will.

17 MR. BROWN: I'll probably have it back to  
18 you today. That's how desperate she is to --

19 THE COURT: Listen gentleman.

20 MR. BROWN: Yes, sir.

21 THE COURT: There is another ticket here  
22 and this was issued by --

23 MR. BROWN: How much we owe you on that?

24 THE COURT: Sir?

25 MR. BROWN: Open container; right?

1 MR. HAYES: Left of center.

2 THE COURT: No, sir, driving left of  
3 center.

4 MR. BROWN: How much we owe you on that?

5 THE COURT: I can't take it. This ticket  
6 is not mine. This is a River Hills ticket --

7 MR. BROWN: That's right, it's --

8 THE COURT: -- and this has to be taken  
9 care of by Grayson.

10 MR. BROWN: -- River Hills officer's.  
11 We'll pay it up there. Don't worry about it.  
12 I'll take care of that.

13 MR. HAYES: And that's fine, Judge,  
14 because it's completely separate. It wasn't  
15 covered under his motion, so, if they want to  
16 go pay it or something, then --

17 MR. BROWN: No. They other officer  
18 wrote that ticket, is my understanding.

19 THE COURT: He did, Foster wrote that  
20 ticket. I got nothing to do with it.

21 MR. BROWN: Osborne didn't write that  
22 ticket.

23 MR. HAYES: No, he's not here.

24 THE COURT: I don't know why it's even  
25 here.

1 MR. BROWN: Because, under that rule, I  
2 assume they just thought it all came here.

3 MR. HAYES: Did they send you the green,  
4 Judge?

5 THE COURT: Yes.

6 MR. HAYES: Well, I mean, then Amber  
7 could probably sign it off, if --

8 THE COURT: We'll go down there and talk  
9 to them.

10 MR. BROWN: We're not waiving -- We're  
11 not objecting to any jurisdictional defects  
12 on that. How much we owe you?

13 THE COURT: Hundred and fifty-five.

14 MR. HAYES: One fifty-five.

15 MR. BROWN: I'll have that to you not  
16 later than next week.

17 THE COURT: That'll work out good. Just  
18 have Laurie call me --

19 MR. BROWN: I will.

20 THE COURT: -- before you send it. And  
21 the reason I'm saying that, I got a bad  
22 feeling that's got to go to --

23 \* \* \* END OF AUDIO \* \* \*

24

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
                                  ) SIXTEENTH JUDICIAL CIRCUIT  
COUNTY OF YORK                  ) CASE NO.: 2015-CP-14-0824

STATE OF SOUTH CAROLINA )  
                                  )  
vs.                                  ) TRANSCRIPT OF RECORD  
                                  )  
CHARLES TODD BURNS              )

JUNE 16, 2015  
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE DANIEL HALL

APPEARANCES:

AARON JAMESON HAYES, ASSISTANT SOLICITOR  
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

MICHAEL BROWN, ESQUIRE  
ROCK HILL, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM  
16<sup>TH</sup> Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Transcript of Record	10	

1 THE COURT - All right, that brings us to Mr.  
2 Burns. Right? This is your appeal -- right -- Mr. Hayes?

3 MR. HAYES - Yes, sir, this is the State's appeal  
4 and the Court's indulgence for just a second. I've got  
5 some stuff to organize here. This one's a little more  
6 substantive.

7 (BRIEF PAUSE)

8 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL  
9 WHICH WAS NOT REPORTED.)

10 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT  
11 AND COUNSEL WHICH WAS OFF THE RECORD.)

12 THE COURT - Are you ready?

13 MR. HAYES - I'm ready if you are.

14 THE COURT - All right, tell me about Mr. Burns.

15 MR. HAYES - Yes, sir. This the State's appeal  
16 from the Magistrate's pre-trial dismissal of Mr. Burn's DUI  
17 charge. The underlying motion that was granted by the  
18 Magistrate was a motion to dismiss for an allegedly  
19 improper warrant-less arrest. I wrote a brief and I e-  
20 mailed it to Mr. Duncan last week. I have a hard copy here  
21 for the Court and everybody if y'all want it.

22 THE COURT - We have those.

23 MR. HAYES - Okay, I'll give one to Mr. Brown  
24 then. Just a quick sketch of the facts ---

1 THE COURT - Did you e-mail a copy to Mr. Brown --

2 -

3 MR. HAYES - I did, Your Honor.

4 THE COURT - You sent it to ---

5 MR. HAYES - I cc-d his paralegal, Lori, on that.

6 THE COURT - That's good.

7 MR. HAYES - I did just hand him a copy right now.

8 THE COURT - But you cc-d him when you sent it to  
9 us.

10 MR. HAYES - I cc-d his paralegal, Lori, based on  
11 prior experience and e-mail exchange with Ms. Rogers that  
12 she's ---

13 THE COURT - Okay, all right.

14 MR. HAYES - --- the primary e-mail interface with  
15 his firm. And I also filed it with the Court and mailed it  
16 to Mr. Brown as well.

17 THE COURT - Okay. All right, go ahead.

18 MR. HAYES - Just a quick sketch of the facts, on  
19 July 4<sup>th</sup>, 2014, a River Hills security officer observed a  
20 vehicle going left of center in the neighborhood and  
21 initiated blue-lights. They don't have cameras in their  
22 vehicle. They're also not sworn police officers, so they  
23 call in the York County Sheriff's office to assist. They  
24 call in the DUI team specifically; Deputy John Osborne  
25 responds; River Hills security officer walks up to him and

1 says, got a guy pulled over, saw him driving left of  
2 center, think he's been drinking; Deputy Osborne approaches  
3 the car and begins the traditional DUI investigation  
4 process that culminates in the respondent's arrest for DUI.  
5 And the issue below was, was Deputy Osborne entitled to  
6 arrest Mr. Burns using uniform traffic ticket and without a  
7 warrant when Deputy Osborne did not personally observe the  
8 driving of the defendant. Now, we concede that Deputy  
9 Osborne was the arresting officer and he did not witness  
10 the driving. So it's our position that the Magistrate --  
11 where the Magistrate erred is reviewing this under an  
12 improper standard and under the improper legal lens. The  
13 Magistrate dismissed this based on an alleged violation of  
14 the in-view warrant-less arrest statute which is 17-13-30,  
15 and I have a copy of that for the Court if you want one.

16 THE COURT - Yeah, pass that up.

17 MR. HAYES - This is the in-view arrest warrant-  
18 less statute -- excuse me -- in-view arrest statute -- I  
19 didn't realize you were going to have two clerks today ---

20 THE COURT - That's all right.

21 MR. HAYES - Thank you. So the Magistrate held  
22 that there was a violation of this statute. And what we  
23 argue is that this statute has to be construed with three  
24 other statutes, plus the case law which clearly state that  
25 an officer is allowed to arrest somebody for DUI using a

1 uniform traffic ticket and without an warrant even if that  
2 officer didn't see the driving. So the statutes that go  
3 along side it are 56-7-10, 56-7-15 and 23-13-60, and I have  
4 copies of those for the Court. I hand these up. (Pause)  
5 So the Magistrate looked at this case solely through the  
6 lens of 17-13-30, but when you look at 56-7-10, that  
7 expressly authorizes a uniform traffic ticket for all  
8 traffic offenses which DUI certainly is a traffic offense.  
9 Then you look at 56-7-15, which authorizes a uniform  
10 traffic ticket for any offense that has been, quote,  
11 freshly committed, end quote, in the presence of a law  
12 enforcement officer, or excuse me, freshly committed or is  
13 committed in the presence of a law enforcement officer. So  
14 that authorizes officers who arrest with a uniform traffic  
15 ticket based on something that they didn't see, because  
16 freshly committed implies it didn't happen when the officer  
17 was standing there. And then finally we could cite to 23-  
18 13-60, which I also handed, Your Honor, and that's just a  
19 general warrant-less arrest statute that allows deputy  
20 sheriffs to arrest for something that has been freshly  
21 committed. And then finally, and most importantly, there's  
22 a case on all this that puts this together in the DUI  
23 context, and that's Fradella vs. Town of Mount Pleasant,  
24 which was a wreck case, and the officers did a warrant-less  
25 arrest after they found the defendant later, because the

1 defendant was no longer on scene. And the Court of Appeals  
2 took 17-13-30 and 23-13-60 and blended them together to  
3 give us the rule on warrant-less arrest in DUI cases when  
4 the officer did not see the driving. The Court of Appeals  
5 just stated very simply, it's not a problem if the officer  
6 has probable cause to believe that the offense has been  
7 freshly committed. It doesn't have to happen in the  
8 presence of the officer. So I'm going to hand that case  
9 up, and that's Fradella vs. Town of Mount Pleasant, 325  
10 South Carolina 469. (Pause) And I would direct the Court  
11 to -- and this is cited in our brief -- but the third page  
12 of the Westlaw printout and the Court does exactly what I  
13 just described, they take 17-13-30 and 23-13-60, they  
14 construe them together to give us the rule that an officer  
15 does not have to witness the driving in order to do a  
16 warrant-less arrest for DUI. If they have probable cause  
17 to believe it's been freshly committed, they can do a  
18 warrant-less arrest. And then 56-7-10 and 56-7-15  
19 expressly authorize a uniform traffic ticket in those  
20 situations. So what we have here in this case with Mr.  
21 Burns is an officer applying the law exactly as is written.  
22 He didn't see the driving, but he had probable cause that  
23 the driving had been freshly committed. He, as he  
24 testified in the Court below, heard the River Hills  
25 security officer's report that the guy had been driving

1 left of center; he observed the defendant sitting behind  
2 the driver's seat of his own car, and it'd only been about  
3 10 to 15 minutes since the traffic stop between the  
4 original call for assistance and when Deputy Osborne  
5 arrived on the scene. So, Your Honor, I'm going to stop  
6 talking. I realize I've thrown out a lot of law here. We  
7 would incorporate our brief into the record; that  
8 summarizes our arguments probably better than I just said  
9 them out-loud, and then the last thing for the record,  
10 Judge, I -- the Court should have an audio recording of the  
11 trial -- of the pre-trial hearings that took place. I had  
12 a court reporter transcribe those for the Court's ease of  
13 reference. I attached certain excerpts to my brief, but  
14 I'd also hand up the transcript to the Court right now and  
15 request that the Court make it Court's Exhibit 1. Again,  
16 the official audio should be in the record, but this is  
17 just a transcription of that, so y'all don't have to listen  
18 to the disk.

19 THE COURT - I have a -- I have a copy of that in  
20 the file.

21 MR. HAYES - Would you like the transcript, Your  
22 Honor?

23 THE COURT - Yes, you can -- you can give that to  
24 us.

1 MR. HAYES - May I have that marked as Court's  
2 Exhibit 1?

3 THE COURT - That's correct. We'll make that part  
4 of the Court's Exhibit.

5 (WHEREUPON, TRANSCRIPT IS MARKED AS COURT'S  
6 EXHIBIT NUMBER 1.)

7 THE COURT - Anything else, Mr. Hayes?

8 MR. HAYES - So for the reasons I just stated and  
9 for the reasons included in our brief, we would ask that  
10 the Magistrate's order of dismissal be reversed and that  
11 this case be remanded for trial. Thank you, Judge.

12 THE COURT - Mr. Brown, be glad to hear from you.

13 MR. BROWN - Your Honor, my argument is two-prong.  
14 I'd like to address his argument first. I'm handing up to  
15 the Court certain documents which is stating my position.  
16 The -- not this finding on this Court when I stretch  
17 imagination, the exact identical issue was before Judge  
18 Hayes back in 2013. The issue here in Fradella is a  
19 circumstantial evidence case. It's a wreck case. This is  
20 not a circumstantial evidence case. And I would like to  
21 put on the record that nowhere in this transcript or  
22 throughout this record does it say that River Hills  
23 security officers are not licensed law enforcement. Matter  
24 of fact, it's my understanding they have the powers of  
25 arrest and are licensed by SLED. In this particular case,

1 and the record will bear it out, a River Hills security  
2 officer stops this defendant, holds him and detains him at  
3 that point in time, calls in Officer Osborne who  
4 subsequently does the arrest. This is not a circumstantial  
5 evidence case which Fradella deals with. This is  
6 concerning the 17-13-30 as whether or not the case law says  
7 that his sensory perceptions can ID or determine the  
8 elements of the crime. In this particular case he cannot.  
9 State vs. Williams, although a person may actually be  
10 committing a criminal offense thus attached to this order,  
11 it is not committed with the meaning of the statute if the  
12 officer does not know it. Where the officer could not  
13 observe nor become cognizant of the act constituting the  
14 offense by use of his senses, it could not be committed in  
15 his presence to authorize an arrest without a warrant.  
16 That's exactly what happened here. If the State or the  
17 prosecution at the arrest had put the River Hills detention  
18 officer and Officer Osborne on the ticket, we wouldn't be  
19 having this discussion. That would be a valid arrest,  
20 because they both had the right to do that; they both  
21 participated in the arrest. In this particular case, the  
22 State did not do that. They designated Officer Osborne as  
23 the arresting officer. He did not observe the salient  
24 conduct, the driving, which is a key element under driving  
25 under the influence statute. The only person that saw that

1 was the River Hills security officer were acting under the  
2 color of authority in uniform and in a River Hills security  
3 car that is lit up with all the indicia of law enforcement  
4 stops this defendant, details him until such time as  
5 Officer Osborne comes. On page 4 of Judge Hayes's Opinion,  
6 last 5, 6 lines, he quotes, and I would reiterate this  
7 opinion, the crime here of DUI was not committed in Officer  
8 Lambert's presence. Officer Lambert neither observed nor  
9 perceived the appellant speeding or swerving his motor  
10 vehicle. Officer Lambert cannot justify an arrest simply  
11 by relying on the hearsay of another police officer. The  
12 issue in this case is at the scope of Pulman and concerns  
13 whether the arresting officer actually perceived the acts  
14 giving rise to probable cause to initiate a traffic stop of  
15 the appellant and not whether circumstantial evidence can  
16 be used to establish the corpus delicti of DUI. And that's  
17 right on point, Your Honor, because that is the point in  
18 this case. It's not a circumstantial evidence case. It's  
19 whether or not it complies with the statutory scheme for  
20 the powers of arrest. Like I said earlier, if they had put  
21 the River Hills police officer on this ticket, we don't  
22 have this discussion, but Trooper Osborne did not observe  
23 driving and none of his sensory perceptions would allow him  
24 to see or hear or know anything about the driving. He took  
25 it as to hearsay from another police officer. Second point

1 is, Your Honor, additional sustaining ground -- I've handed  
2 you up a copy of Town of Mt. Pleasant v. Roberts. There is  
3 no affidavit in this file or in the record whatsoever from  
4 the River Hills security officer stating that his vehicle  
5 was not equipped with a camera at that point in time or no  
6 evidence stating that at that point in time this camera was  
7 malfunctioning. 56-5-2953 Subsection (a) a person who  
8 violates Section 56-5-2930, 56-5-2933 or 2945 must have his  
9 conduct at the incident site and bring up test (sic) site  
10 video-recorded. The video recording of the incident site  
11 must not begin later than the activation of the officer's  
12 blue-lights. That didn't happen here. I have no affidavit  
13 saying River Hills is supplied for these cameras or that  
14 they've even requested them or that the camera was  
15 malfunctioning, so the exceptions to Subsection (a) of that  
16 statute do not apply and they're enumerated in (b). I  
17 basically just paraphrased all the exceptions to that  
18 statute. So for those two reasons, I submit the ruling of  
19 the Magistrate -- or excuse me -- the DUI Court Judge was  
20 correct, and this case should remain dismissed.

21 THE COURT - Anything in response, Mr. Hayes?

22 MR. HAYES - Just a brief reply, Your Honor. I  
23 think the phrase that Mr. Brown just uttered is what really  
24 allots this case. This case is about the, quote, statutory  
25 scheme for powers of arrest, end quote. That was how Mr.

1 Brown phrased this case, and I agree, and our contention is  
2 that the Magistrate expressly ignored the statutory scheme  
3 for powers of arrest, because the statutory scheme for  
4 powers of arrest is more than just 17-13-30. It involves  
5 23-13-60, 56-7-10 and 56-7-15, along with the accompanying  
6 case law like Fradella vs. Town of Mt. Pleasant. So this  
7 case is about the statutory scheme of powers of arrest, and  
8 that scheme was not properly construed by the Magistrate,  
9 and that's why we ask Your Honor to reverse the  
10 Magistrate's Order. Then on the second point raised by Mr.  
11 Brown, he -- he just argued that an additional sustaining  
12 ground for the appeal would be his position that the DUI  
13 video recording statute was violated, and it's our position  
14 that that's not ripe for appeal; the Magistrate didn't rule  
15 on that issue; that issue is not included in his Return and  
16 then if you look at pages 38 and 39 of the transcript that  
17 we handed up, the Magistrate expressly did not rule on that  
18 issue. In fact, his words are on page ---

19 MR. BROWN - Your Honor, I'm going to object to  
20 this argument. I'm not the appellant here; I'm the  
21 respondent.

22 THE COURT - I'll listen to him.

23 MR. HAYES - I'm just saying, Your Honor, I  
24 appreciate his second additional sustaining ground, and I'm  
25 just letting Your Honor know, it's our position that's not

1 ripe for consideration, because the Magistrate hadn't ruled  
2 on it yet. The Magistrate dismissed this case on the  
3 arrest issue alone, didn't touch any possible DUI video  
4 recording statute issues, so we ask that Your Honor just  
5 consider that as the scope of this appeal, one issue, not  
6 both. I understand he's putting an additional sustaining  
7 ground into the record. It's our position that we're not  
8 there yet because the Magistrate hasn't looked at it.

9 MR. BROWN - Your Honor, I'm going to object to  
10 that whole line of argument. Common appellant practice is  
11 any additional sustaining ground I'm going to submit as the  
12 respondent I'm entitled to.

13 THE COURT - I note your objection. Anything else  
14 from either side?

15 MR. HAYES - Nothing from the appellant, Judge.

16 THE COURT - Mr. Brown?

17 MR. BROWN - No, sir.

18 THE COURT - All right, I'm going to take it under  
19 advisement and I'll e-mail you the Court's decision in --  
20 by the end of the week.

21 MR. HAYES - Thank you, Judge.

22 THE COURT - All right. Thank y'all.

23 (END OF TRANSCRIPT)

24

25

## C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 16 pages is a true, accurate and complete Transcript of Record of the proceedings held in the case of State of South Carolina vs. Charles Todd Burns, as taken by me in the Court of Common Pleas for the Sixteenth Judicial Circuit on June 16<sup>th</sup>, 2015, and provided by me this the 29<sup>th</sup> day of July, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M  
Official Court Reporter,  
Certified Verbatim Reporter, In and  
for the State of South Carolina

Form S-438  
Rev. 9/10

STATE OF SOUTH CAROLINA  
**UNIFORM TRAFFIC TICKET**

CITY OR COUNTY OF Greenville VERSUS  
 FIRST NAME Charles MIDDLE NAME Todd LAST NAME Burns  
 STREET AND NO. \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

STATE LICENSED  DRIVER'S LICENSE NO. \_\_\_\_\_ CDL  YES  NO  
 DRI. LIC. CLASS D

VEH. LIC. NO. \_\_\_\_\_ STATE SC MAKE OF VEH Btc YEAR \_\_\_\_\_ COMB. VEH.  16PSGR VEH. \_\_\_\_\_ COMB.  
 HAZ. MT. \_\_\_\_\_ MOPED \_\_\_\_\_ MTRCYCL \_\_\_\_\_ OTHER \_\_\_\_\_

**YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT**

NAME OF TRIAL COURT \_\_\_\_\_ STREET AND NO. 201 S Main St  
 DATE OF TRIAL 08/20/14 TIME OF TRIAL 3:00PM CITY Greenville STATE SC ZIP CODE 29710  
 VIOLATION - COURT APPEARANCE REQUIRED  YES  NO VIOLATION SECTION NO. 17-5-1810

OWNER OF VEHICLE \_\_\_\_\_ DATE OF ARREST 07/04/14  
 ADDRESS OF OWNER \_\_\_\_\_ DATE OF VIOLATION 07/04/14

BAIL DEPOSITED N/A NAME OF ARRESTING OFFICER K. D. Foster RANK P1  
 DESCRIPTION OF ACCUSED \_\_\_\_\_ COUNTY York NUMBER 46  
 RACE M SEX M HT. 5'7 HAIR Blk WT. 160 EYES Brn BADGE 401 TROOP D  
 DATE BAIL REC'D. BY \_\_\_\_\_

CASE BEFORE MAGISTRATE  MUN. COURT   
 CIRCUIT COURT  FAMILY COURT  FEDERAL COURT   
 NAME OF TRIAL COURT \_\_\_\_\_ TIME OF VIOLATION 10:56 AM WEATHER Clear  
 IF DIFFERENT FROM ABOVE. DISTANCE IN FEET FROM INTERSECTION OF Highway 02

DEFENDANT: DID NOT APPEAR  APPEARED   
 NOLLE PROSSED  DISPOSITION \_\_\_\_\_ MILES \_\_\_\_\_ WEATHER \_\_\_\_\_  
 FORFEITED BOND  GUILTY  PLED: NOLO CONTENDERE  MILES \_\_\_\_\_ N \_\_\_\_\_ E \_\_\_\_\_ S \_\_\_\_\_ W \_\_\_\_\_  
 TRIAL BY: TRIAL JUDGE  JURY

VERDICT OF TRIAL IF ANY \_\_\_\_\_ DATE OF TRIAL IF ANY \_\_\_\_\_  
 GUILTY  NOT GUILTY  Lat \_\_\_\_\_  
 JAIL \_\_\_\_\_ SUSPEND \_\_\_\_\_ FINE \_\_\_\_\_ AMT. COLLECTED \_\_\_\_\_ AMT. SUSPENDED \_\_\_\_\_ Long \_\_\_\_\_

COMMITTED TO: \_\_\_\_\_ Vehicle Searched NI Arrest/As Result of Collision NO OFFENSE CODE 45 B.A. LEVEL \_\_\_\_\_  
 CERTIFIED CORRECT \_\_\_\_\_ DATE \_\_\_\_\_  
**62273 GS**

TRIAL COURT COPY

DOCKET NO.

**STATE OF SOUTH CAROLINA  
UNIFORM TRAFFIC TICKET**

YORK COUNTY OF York VERSUS

FIRST NAME Charles MIDDLE NAME Todd LAST NAME Burns

STREET AND NO. \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

STATE LICENSED SC DRIVER'S LICENSE NO. \_\_\_\_\_ CDL  YES  NO DRI. LIC. CLASS D

VEH. LIC. NO. \_\_\_\_\_ STATE SC MAKE OF VEH. Buick YEAR 01 COMM. VEH.  AUTO  18 PSGR. VEH.  COMB. HAZ. MT.  MOPED  MTRCYCL.  OTHER

**YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT**

NAME OF TRIAL COURT DUI Court STREET AND NO. 529 Cherry Rd

DATE OF TRIAL 9:05 TIME OF TRIAL 8AM CITY Rock Hill STATE SC ZIP CODE 29730

VIOLATION - COURT APPEARANCE REQUIRED (YES/NO) Driving Under Influence 1st VIOLATION SECTION NO. 56.5.2930

OWNER OF VEHICLE Annette Vaughn DATE OF ARREST 07/04/14

ADDRESS OF OWNER Spartan Rd RHSC DATE OF VIOLATION 07/04/14

BAIL DEPOSITED SAIL NAME OF ARRESTING OFFICER Osborne RANK MPT

DESCRIPTION OF ACCUSED 5'10" 150 140BW COUNTY York NUMBER 46

RACE W SEX M BIRTH DATE \_\_\_\_\_ HT. 5'10" HAIR B WT. 150 EYES B BADGE 02485 TROOP 2

DATE BAIL REC'D. BY \_\_\_\_\_ DATE \_\_\_\_\_

CASE BEFORE MAGISTRATE  MUN. COURT  CIRCUIT COURT  FAMILY COURT  FEDERAL COURT

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE \_\_\_\_\_

DEFENDANT: DID NOT APPEAR  APPEARED

DISPOSITION NOLLE PROSSED  GUILTY  FORFEITED BOND  PLED: NOLO CONTENDERE

TRIAL BY: TRIAL JUDGE  JURY

VERDICT OF TRIAL IF ANY GUILTY  NOT GUILTY  DATE OF TRIAL IF ANY \_\_\_\_\_

JAIL \_\_\_\_\_ SUSPEND \_\_\_\_\_ FINE \_\_\_\_\_ AMT. COLLECTED \_\_\_\_\_ AMT. SUSPENDED \_\_\_\_\_

COMMITTED TO: Vehicle Searched No Arrest as Result of Collision No OFFENSE CODE 99 B.A. LEVEL Refused

CERTIFIED CORRECT \_\_\_\_\_ DATE \_\_\_\_\_

**38247 GR**

DOCKET NO. \_\_\_\_\_

TRIAL COURT COPY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 State of South Carolina, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Charles Todd Burns, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 Case No. 2015-CP-46- 824  
 Former Ticket No. 38247GR

NOTICE OF APPEAL

FILED - RECEIVED  
 2015 MAR 16 3 4: 15 PM  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

TO: MICHAEL LANGFORD BROWN, JR., ESQUIRE, ATTORNEY FOR THE RESPONDENT, AND TO THE RESPONDENT ABOVE-NAMED:

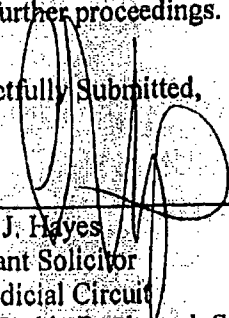
THE STATE OF SOUTH CAROLINA in the Sixteenth Judicial Circuit, by and through Assistant Solicitor Aaron J. Hayes, hereby appeals, to the Court of Common Pleas for York County, the ruling of York County Centralized DUI Court Magistrate Clayburn Barnette dismissing the Driving Under the Influence (Ticket No. 38247GR) charge against Charles Todd Burns ("Respondent"). Respondent is represented by Michael L. Brown, Jr., Esquire. The ruling was made by Judge Barnette at a pretrial motions hearing on March 13, 2015.

This appeal is made on the following grounds:

1. The Magistrate erred in dismissing the above-referenced charge for an allegedly improper warrantless arrest. The arresting officer was entitled to make a warrantless arrest pursuant to S.C. CODE ANN. §§ 23-13-60, 56-7-10, and 56-7-15, as well as Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997). Therefore, the Magistrate's order of dismissal should be reversed and this case remanded for further proceedings.
2. To the extent that the Magistrate also dismissed the above-reference charge for an alleged violation of S.C. CODE ANN. § 56-5-2953, the Magistrate committed reversible error. Pursuant to State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004), only the arresting officer, Former Deputy Jon Osborne, was required to produce a video in accordance with S.C. CODE ANN. § 56-5-2953. River Hills Officer Foster was not required to produce such a video, and therefore, to the extent that the Magistrate

granted this Motion in favor of Respondent, the Magistrate's order of dismissal should be reversed and this case remanded for further proceedings.

Respectfully Submitted,



---

Aaron J. Hayes  
Assistant Solicitor  
16<sup>th</sup> Judicial Circuit  
1070 Heckle Boulevard, Ste. 207  
Rock Hill, SC 29732  
(803) 909-7582

Rock Hill, South Carolina

March 15, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF YORK )

State of South Carolina, )

Appellant, )

v. )

Charles Todd Burns, )

Respondent. )

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-46- 824

Former Ticket No. 38247GR

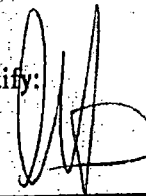
CERTIFICATE OF SERVICE

I hereby certify that I have served upon Respondent a copy of the foregoing Notice of Appeal by United States Mail, postage prepaid, to his Counsel of Record in this matter:

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

FILED - RECEIVED  
2015 MAR 16 PM 4: 15  
DAVID HAMILTON  
C. C. P. & G. S.  
YORK COUNTY, SC

I so certify:



Aaron J. Hayes  
Assistant Solicitor

Date:

3/15/15



of Pretrial Audio Recording, 17:10-15 (excerpts attached hereto as **Exhibit A**).<sup>1</sup> Officer Foster initiated a traffic stop, and smelled alcohol coming from Respondent's person. (Id. at 17:14-19.) Officer Foster's supervisor contacted the York County Sheriff's Office to request assistance, and Deputies Dean and Osborne responded. (Id. at 17-18.) 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. (Id. at 18:12-19:4.) According to Officer Foster, Deputy Osborne arrived approximately 10 to 15 minutes after the traffic stop. (Id. at 19:14.)

Deputy Osborne conceded that he did not witness Respondent driving on the night Respondent was arrested. (Ex. A at 6:7-8.) Deputy Osborne testified concerning all of his observations of the scene:

- When he arrived, Respondent's car was stopped at the front gate of the neighborhood. Respondent was sitting in the driver's seat. (Id. at 8:1, 8:19.)
- Upon his arrival, Officer Foster relayed to him the basis for the traffic stop conducted on Respondent, including Respondent's poor driving. (Id. at 8:4-16.)
- Respondent refused to answer Deputy Osborne's questions about whether he had been drinking. Instead, Respondent smiled at Deputy Osborne. (Id. at 9:1-9.)
- Deputy Osborne noticed a strong odor of an alcoholic beverage coming from Respondent. (Id. at 9:8-9.) Respondent appeared intoxicated. (Id. at 10:13-14.)
- Respondent refused field sobriety testing, citing alleged medical problems. (Id. at 9:11-23.)

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<sup>1</sup> Both days of the pretrial hearing were recorded on the Magistrate's digital audio recorder. For ease of reference, the State commissioned a transcription of the original audio recording.

- Deputy Osborne then arrested Respondent for DUI, and he later refused the breathalyzer test. (Id. at 11:13-14; see also id. at 10:1-11:2 (Deputy Osborne’s summary of his pre-arrest encounter with Respondent).)

Respondent was arrested without a warrant, and was issued South Carolina Uniform Traffic Ticket Number 38247GR. Deputy Osborne created a video of this encounter pursuant to S.C. CODE ANN. § 56-5-2953, and this video was made part of the magistrate court’s record during the pretrial hearing.

#### **STANDARD OF REVIEW**

“In a criminal appeal from the magistrate’s court . . . the court reviews the case for preserved errors raised by appropriate exception.” State v. Hoyle, 397 S.C. 622, 624, 725 S.E.2d 720, 721-22 (Ct. App. 2012) (citing Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011)). Further, “[i]n criminal cases, an appellate court only reviews errors of law . . . [w]e are bound by the circuit court’s factual findings *unless they are clearly erroneous*. This standard of review also applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases.” State v. Adams, 377 S.C. 334, 338, 659 S.E.2d 272, 274 (Ct. App. 2008) (citations omitted) (emphasis added). “A deferential standard of review likewise applies in the context of a Fourth Amendment challenge to a trial court’s fact-driven affirmation of probable cause.” State v. Gentile, 373 S.C. 506, 512, 646 S.E.2d 171, 173-74 (Ct. App. 2007) (quoting State v. Thompson, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Ct. App. 2005)).

#### **LEGAL ARGUMENT**

**IT WAS A CLEAR ERROR OF LAW FOR THE MAGISTRATE TO DISMISS THIS CHARGE FOR AN ALLEGEDLY IMPROPER WARRANTLESS ARREST. RESPONDENT’S WARRANTLESS ARREST VIA UNIFORM TRAFFIC TICKET WAS PROPER AS A MATTER OF LAW.**

In his Return to this Notice of Appeal, the Magistrate held as follows:

Based on the testimony from Deputy Osborne and Officer Foster, the case was “passed on.” Deputy Osborne is the arresting officer on the DUI ticket. The crime of DUI was not committed in Deputy Osborne’s presence. Deputy Osborne neither observed nor perceived any driving by the Defendant. Deputy Osborne should have had a warrant. The Defendant’s Motion to Dismiss is hereby granted.

(Return to Notice of Appeal, p. 2.) Presumably, the Magistrate agreed with the Circuit Court’s reasoning in Allen v. City of Rock Hill, and based his dismissal of this case on Allen’s interpretation of the in-view warrantless arrest statute, S.C. CODE ANN. § 17-13-30. (See Return, p.2; see also Ex. A at 36-37.) The State contends—as it argued before the court below—that the Magistrate’s ruling ignores binding South Carolina law concerning warrantless arrests in DUI cases.

The use of the uniform traffic ticket in this case was appropriate under South Carolina law. According to statute, “[t]here will be a uniform traffic ticket used by all law enforcement officers *in arrests for traffic offenses . . .*” S.C. CODE ANN. § 56-7-10(A) (emphasis added). Further, “[t]he 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 . . .” S.C. CODE ANN. § 56-7-15(A) (emphasis added). § 56-7-15 mirrors the language of a more general warrantless arrest statute: “[t]he deputy sheriffs may for any suspected *freshly committed* crime, *whether upon view or upon prompt information or complaint*, arrest without a warrant . . .” S.C. CODE ANN. § 23-13-60 (emphasis added). Of course, an officer may always make an arrest for a crime committed in-view: “[t]he sheriffs and deputy sheriffs of this State may arrest without arrant any and all persons who, within their view, violate any of the criminal laws of this State if such arrest

be made at the time of such violation of law or immediately thereafter.” S.C. CODE ANN. § 17-13-30.

Contrary to Respondent’s position, the Court of Appeals has explained the relationship between § 23-13-60 and § 17-13-30 in cases of warrantless DUI arrests. In Fradella v. Town of Mount Pleasant, 2 officers were investigating a single-vehicle wreck, and the driver (Fradella) was no longer at the scene when they arrived. 325 S.C. 469, 472, 482 S.E.2d 53, 54 (Ct. App. 1997). While they were investigating, another driver approached them and told them he had transported Fradella away from the scene. Id. The driver led the officers to where he had dropped off Fradella, and the officers began to investigate Fradella for suspicion of DUI. Id. The officers arrived at Fradella’s house about 20 minutes after they had arrived at the scene of the wreck. Id. at 476, 482 S.E.2d at 56. After field sobriety testing, Fradella was arrested—without a warrant—for DUI, and he later refused a breathalyzer test. Id. at 472, 482 S.E.2d at 54-55. A municipal jury convicted Fradella of DUI, but the circuit court reversed, holding that the warrantless arrest ran afoul of the requirements of § 17-13-30. Id. at 474, 482 S.E.2d at 55.

The Court of Appeals reinstated the conviction, reasoning as follows:

South Carolina Code Ann. § 17-13-30 (1985), states that sheriffs and deputy sheriffs “may arrest without warrant any and all persons who, within [the officers’] view, violate any of the criminal laws ... if such arrest be made at the time of such violation of law or immediately thereafter.” However, in State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980), the court noted that the rule in § 17-13-30 must be interpreted in light of S.C. Code Ann. § 23-13-60 (1989), which provides that such officers “may for any suspected freshly committed crime, whether upon view or upon prompt information or complaint, arrest without warrant...” Thus, Martin holds “an officer can arrest for a misdemeanor [not committed within his presence] when the facts and circumstances *observed by the officer* give him probable cause to believe that a crime has been freshly committed.” 275 S.C. at 146, 268 S.E.2d at 107 (emphasis in original).

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Based on the facts and circumstances observed by these officers within their sensory awareness, we hold they had probable cause to believe Fradella had “freshly committed” the crime of DUI . . . 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.

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We hold that Fradella’s warrantless arrest was lawful despite the fact that none of the officers witnessed Fradella driving . . . Thus, we reinstate Fradella’s conviction.

Fradella, 325 S.C. at 474-75, 476-77, 480, 482 S.E.2d at 56, 57, 58 (emphasis in original).

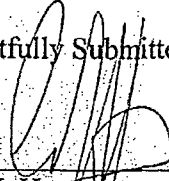
Applying § 17-13-30, § 23-13-60, § 56-7-10, § 56-7-15, and Fradella to the facts of this case, it is clear that Deputy Osborne was entitled to arrest Respondent without a warrant, and with a Uniform Traffic Ticket instead. Deputy Osborne observed “facts and circumstances” with his “sensory awareness” sufficient to give him probable cause to believe that Respondent had “freshly committed” the crime of DUI. Contrary to the Magistrate’s ruling, the fact the Deputy Osborne did not witness Respondent driving is not dispositive. Deputy Osborne arrived 10 to 15 minutes after Respondent’s traffic stop, and received an immediate report from Officer Foster about Respondent’s poor driving. Further, Deputy Osborne directly observed Respondent sitting in the driver’s seat of his own car. Finally, after conducting additional investigation, Deputy Osborne determined—through his own observation—that Respondent appeared intoxicated to him. Without question, Deputy Osborne had more than enough probable cause to believe that Respondent had “freshly committed” a DUI, and therefore he was entitled to arrest Respondent and issue him a Uniform Traffic Ticket for the violation.

#### CONCLUSION

For the foregoing reasons, the State asserts that it was an error of law for the Magistrate to dismiss this charge. Accordingly, the State requests that this Court enter an Order reversing

the Magistrate's decision and remanding this case for trial. This Memorandum may be further supplemented by the oral arguments of counsel at the hearing on this Appeal.

Respectfully Submitted,



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Aaron J. Hayes  
Assistant Solicitor  
Sixteenth Judicial Circuit  
1070 Heckle Boulevard, Ste. 207  
Rock Hill, SC 29732  
(803) 909-7582

Rock Hill, South Carolina

June 12, 2015

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 State of South Carolina, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Charles Todd Burns, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-46-00824

Former Ticket No. 38247GR

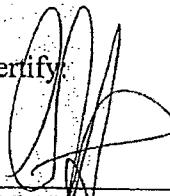
**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that I have filed the original of the foregoing Memorandum in Support of the State's Appeal by depositing same in inter-departmental delivery to the Clerk of Court for the Court of Common Pleas, Sixteenth Judicial Circuit, 300 W. Liberty Street, York, South Carolina 29745.

I hereby further certify that I have served upon Respondent a copy of the foregoing Notice of Appeal by email and by United States Mail, postage prepaid, to his Counsel of Record in this matter:

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

I so certify:



\_\_\_\_\_  
 Aaron J. Hayes  
 Assistant Solicitor

Date: 6-12-15

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

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

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 CLERK OF COURT  
 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

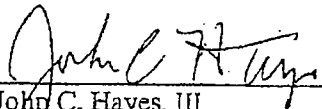
Here, we have an officer who made an arrest, but did not witness or perceive any of the events giving probable cause for the initial traffic stop which resulted in the arrest. Sgt. Rivera began "pacing" the Appellants' vehicle and conducted a traffic stop upon perceiving the Appellant speeding as well 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.

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge HES

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

**CERTIFICATE OF COUNSEL**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

WILLIAM M. BLITCH, JR.  
Assistant Attorney General  
S.C. Bar Number 15608  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR APPELLANT

August 15, 2016

**CERTIFICATE OF COUNSEL**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By:



WILLIAM M. BLITCH, JR.  
Assistant Attorney General  
S.C. Bar Number 15608  
Office of Attorney General  
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Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR APPELLANT

August 15, 2016