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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from York County
Honorable Daniel D. Hall, Circuit Court Judge
Appellate Case Tracking No. 2015-001409

State of South Carolina, Appellant,

vs.

Charles Todd Burns, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The magistrate erred in dismissing the charge of driving under the influence, and the circuit court erred in affirming this dismissal, when Respondent's warrantless arrest via Uniform Traffic Ticket was proper.

STATEMENT OF THE CASE

On July 4, 2014, Respondent was pulled over by Officer Foster with River Hills Security for driving left of center. Officer Foster contacted the York County Sheriff's Department for assistance and Deputy Osborne responded. Officer Foster issued Respondent a uniform traffic ticket for driving left of center. (Uniform Traffic Ticket number 62273GS; R. 67). Deputy Osborne arrested Respondent for DUI and issued a uniform traffic ticket for DUI. (Uniform Traffic Ticket number 38247GR; R. 68).

At a pretrial hearing on February 19, 2015, before the York County Magistrate's Centralized DUI Court, Respondent moved to dismiss the DUI charge alleging he was subjected to an improper warrantless arrest because the arresting officer did not witness him driving. After taking testimony from the officers involved and hearing argument, the magistrate reconvened the hearing on March 13, 2015, and dismissed the DUI charge on the record. (Magistrate's Return; R. 1-3).

The State served and filed a Notice of Appeal on March 15, 2015. (Notice of Appeal; R. 69-70). The Honorable Daniel D. Hall heard the appeal. He denied the State's appeal, thereby affirming the dismissal of the DUI charge by Order dated June 18, 2015. (Order of Judge Hall, R. 4-9). The State timely filed a Notice of Appeal on June 26, 2015, to the Court of Appeals and this appeal follows.

STATEMENT OF FACTS

On July 4, 2014, Officer Foster with River Hills Security witnessed Respondent driving in the wrong lane of traffic and then swerve into the correct lane. (2/19T. 17; R. 26). Officer Foster initiated a traffic stop for driving left of center. When he approached Respondent's vehicle, he could smell alcohol coming from his person. (2/19T.17; R. 28). Respondent would not answer any questions asked by Officer Foster, including whether he had been drinking. (2/19T.18; R. 27). Officer Foster notified his lieutenant who contacted York County Sheriff's Department for assistance. (2/19T.17-18; R. 26-27). Deputy Osborne arrived at the scene roughly 10-15 minutes later and was advised of all that Officer Foster observed. (2/19T.18-19; R. 28-29).

Deputy Osborne arrived at the scene at the River Hills front gate in reference to a traffic stop and a possibly impaired driver. (2/19T.7; R. 16). He indicated Respondent's vehicle was stopped at the front gate. Officer Foster explained why he stopped Respondent, and this explanation was captured on the video prior to Deputy Osborne encountering Respondent. (Video of Incident Site; 2/19T.12-13; R. 21-22). Deputy Osborne indicated Respondent was in the driver's seat when the deputy approached the car. (2/19T.8; R. 17). Deputy Osborne asked Respondent if he had been drinking and Respondent did not respond to the question. Deputy Osborne asked again and Respondent turned and smiled at the deputy but still said nothing. Deputy Osborne could smell a "strong odor" of alcohol. (2/19T.9; R. 18). Deputy Osborne explained he could smell the alcohol coming from the vehicle upon approach. (2/19T.10; R. 19). He indicated Respondent's reactions to his questions concerned him and also noted Respondent "looked intoxicated." (2/19T.10; R. 19).

Deputy Osborne had Respondent exit the vehicle and move to the back of the vehicle to perform field sobriety tests. Respondent indicated he had several medical issues and would not be able to perform any field sobriety tests. Deputy Osborne then placed Respondent under arrest for DUI. (2/19T.9; R. 18).[1]

[1] Officer Foster also wrote a uniform traffic ticket for Respondent's charge of driving left of center. (Uniform Traffic Ticket number 62273GS; R. 67).

ARGUMENT

I. The magistrate erred in dismissing the charge of driving under the influence, and the circuit court erred in affirming this dismissal, when Respondent's warrantless arrest via Uniform Traffic Ticket was proper.

The magistrate erred in dismissing the DUI charge because the warrantless arrest for DUI using a uniform traffic ticket is clearly supported by South Carolina statute and case law. The circuit court erred in its affirmance of the dismissal. Deputy Osborne perceived sufficient facts and circumstances sufficient to establish probable cause that a crime had been freshly committed crime, and therefore, had the right to arrest for DUI using a uniform traffic ticket.

Freshly Committed

The first question is whether a warrantless arrest using a uniform traffic ticket may be made in a circumstance where the defendant's driving did not happen in the view of the officer making the arrest, but instead was freshly committed and of which the officer has received information. The issue at hand involves statutory construction. "The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

> All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted). Additionally, "statutes dealing with the same subject matter are in *pari materia* and must be

construed together, if possible, to produce a single, harmonious result." Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control, 407 S.C. 583, 598, 757 S.E.2d 408, 416 (2014).

Multiple statutes play a role in a determination of whether Deputy Osborne's arrest of Respondent was proper. First, section 17-13-30 allows for a warrantless arrest when a crime is committed in view:

> 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 be made at the time of such violation of law or immediately thereafter.

S.C. Code Ann. § 17-13-30 (1976). Next is section 23-13-60:

> The deputy sheriffs may for any suspected **freshly committed crime**, whether upon view or **upon prompt information** or complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county.

S.C. Code Ann. § 23-13-60 (1976) (emphasis added). Finally, the specific statute related to the use of the uniform traffic ticket to effectuate an arrest:

> The uniform traffic ticket, established pursuant to the provisions of Section 56-7-10, may be used by law enforcement officers to arrest a person for an offense that has been **freshly committed** or is committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court.

S.C. Code Ann. § 56-7-15(A) (Supp. 2014) (emphasis added).

The Courts have had opportunity to address the interplay of several of these statutes. In State v. Martin, the South Carolina Supreme Court held section 17-13-30 must be interpreted and construed in connection with section 23-13-60 and not read in insolation to prevent warrantless arrest except in the view of the officer. State v. Martin, 275 S.C. 141, 145, 268 S.E.2d 105, 107

(1980). The misinterpretation warned against in Martin is exactly how the magistrate and circuit court ruled in the instant case, and constitutes a clear error of law.

In Martin, a State Highway Patrolman found two vehicles on the side of the road with damage. The officer observed skid marks but noticed no debris in the road. There were no witnesses to the accident. A woman at the scene identified two individuals as the drivers. The officer found the defendant highly intoxicated and, upon his admission that he was driving one of the vehicles, placed him under arrest for DUI. Id. at 143, 268 S.E.2d at 106. The Supreme Court found the trial court erroneously concluded the warrantless arrest was illegal. Id. at 145-146, 268 S.E.2d at 107. The Supreme Court articulated:

> We, therefore, conclude from the foregoing statutes and decisions that, while generally an officer cannot arrest, without a warrant, for a misdemeanor not committed in his presence, an officer can arrest for a misdemeanor when the facts and circumstances observed by the officer give him probable cause to believe that a crime has been freshly committed.

Id. (Emphasis added). The Supreme Court also recognized the need for an immediate arrest because the intoxicated driver of a still operable vehicle posed a "clear and present danger to the community." Id.

This Court recognized the holding of Martin and the connection between sections 17-13-30 and 23-13-60 in Fradella v. Town of Mount Pleasant, 325 S.C. 469, 482 S.E.2d 53 (Ct. App. 1997). This Court explained:

> Here, the officers arrived shortly after being summoned to the scene, and found Fradella's car involved in a single car accident. The officers received information from Copeland who claimed he drove the driver home and reported the driver smelled of alcohol. Copeland identified Fradella as the driver. The officers arrived at Fradella's residence about twenty minutes after they arrived at the scene of the wreck. Importantly, Fradella reported to the dispatcher that he was involved in the accident, and he admitted to the officers and Copeland that he was the driver of the wrecked car.

> Both officers testified that it was obvious Fradella was impaired after administration of field sobriety tests and their conversation with him. 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.

Id. at 476, 482 S.E.2d at 56-57 (emphasis added).

Finally, the South Carolina Supreme Court addressed the prior version of section 56-7-15 in State v. Ramsey, 409 S.C. 206, 762 S.E.2d 15 (2014). The prior version, amended in 2013 prior to Respondent's arrest, only allowed the use of a uniform traffic ticket for arrest of a crime committed in the presence of the officer. The Court explained an offense committed in the presence is different than one freshly committed. Id. at 210, 762 S.E.2d at 17. The legislature amended the statute after Ramsey's arrest to specifically include the ability to arrest for a "freshly committed" crime.

Based on the plain language of the statutes involved as well as the interpretations of those statutes and their interplay by the Courts of this state, the magistrate and circuit court clearly erred in their analysis requiring Respondent's actions occur in the presence of the arresting officer. Deputy Osborne, under the above statutes, had the right to arrest Respondent on probable cause for a "freshly committed" offense of DUI.

Probable Cause

The next determination which must be made is whether Deputy Osborne had probable cause to arrest Respondent for DUI even without seeing him driving. The magistrate and circuit court erred in requiring Deputy Osborne to see the driving in order to establish probable cause for an arrest for DUI, or in requiring Officer Foster to be the arresting officer on the charge.

Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime had been

committed by the person being arrested. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216, 220 (2006). "[P]robable cause for arrest in misdemeanor cases without a warrant is something more than a mere suspicion of the guilt of the accused and ... an arrest made on a hunch, or on a mere belief or guess unsupported by facts, circumstances or credible information pointing to the guilt of the person arrested cannot be justified as having been made on probable cause." Thompson v. Smith, 289 S.C. 334, 336–37, 345 S.E.2d 500, 502 (Ct. App. 1986), *overruled in part on other grounds by* Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990). "Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer's disposal." Id. In determining whether probable cause exists, "all the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received." South Carolina Dept. of Motor Vehicles v. McCarson, 391 S.C. 136, 146, 705 S.E.2d 425, 430 (2011); State v. Roper, 274 S.C. 14, 17, 260 S.E.2d 705, 706 (1979).

The magistrate and circuit court erred in requiring Officer Foster to be the arresting officer on the DUI because he was the officer who perceived the events giving rise to the traffic stop. Officer Foster initiated the traffic stop of Respondent because he witnessed Respondent driving left of center. Respondent has never challenged the propriety of the underlying stop. Respondent's violation of the traffic laws happened in Officer Foster's view and constituted an offense for which a uniform traffic ticket may be issued. Officer Foster issued a uniform traffic ticket to Respondent for the offense of driving left of center.

Officer Foster correctly wrote the uniform traffic ticket on the driving left of center charge, the traffic stop's validity has never been challenged[2], and the charge related to the DUI

[2] Respondent has never challenged Officer Foster's ability to stop him for the driving left of center. He also has never challenged the prolonging of the traffic stop to have Deputy Osborne assist. Certainly there is probable cause

stemmed from the separate probable cause obtained by Deputy Osborne once he was called to the scene. Deputy Osborne was the officer who interacted with Respondent, offered the field sobriety tests, and concluded Respondent was intoxicated. He did not need to be the officer who initiated the traffic stop in order to develop probable cause to arrest Respondent for DUI.

Significantly, based on his own personal observations of the scene, Deputy Osborne had probable cause to arrest Respondent for DUI.[3] First, he encountered Respondent in the driver's seat of his vehicle. When referencing the other individuals in the vehicle, Respondent referred to them as his passengers. The vehicle was not parked at Respondent's residence, but instead was on the road near a gated subdivision. Deputy Osborne smelled the alcohol coming from Respondent, who refused to answer any of Deputy Osborne's questions regarding what Respondent had to drink that night. Respondent refused to perform field sobriety tests after smiling at Deputy Osborne instead of answering questions regarding whether he had been drinking. (2/19T.9; R. 18); Incident Site Video). As a result, Deputy Osborne, without receiving information from anyone, had probable cause to believe Respondent unlawfully drove a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. See S.C. Code Ann. § 56-5-2930 (Supp. 2014).

The knowledge on the part of the arresting officer in this case is very similar to the facts known by the arresting officers in Martin and Fradella. In all cases, the officer making the arrest did not see the defendant driving. However, in all three cases the officer had facts indicating the

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to extend the stop once Officer Foster smelled the alcohol coming from Respondent's vehicle and person coupled with the way in which Respondent answered Officer Foster's questions regarding his drinking that night.

[3] This assumes, certainly without agreeing, that he could not rely on the statements from fellow law enforcement to establish any part of the probable cause to arrest Respondent for DUI.

defendant was the driver, especially the vehicles being on the road or beside the road and the individual being seen operating as the driver.[4]

Even if the above facts and circumstances are not alone sufficient to establish probable cause, Deputy Osborne had additional "prompt information" provided by Officer Foster. "In ascertaining the presence of probable cause, '**all** the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received.'" Lapp v. S. Carolina Dep't of Motor Vehicles, 387 S.C. 500, 505, 692 S.E.2d 565, 568 (Ct. App. 2010) (citing State v. Roper, 274 S.C. 14, 17, 260 S.E.2d 705, 706 (1979); State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996)) (emphasis added). Deputy Osborne is allowed to rely on the statements and determinations made by a fellow law enforcement officer in reaching his conclusion on probable cause to arrest Respondent. See State v. Manning, 400 S.C. 257, 268, 734 S.E.2d 314, 319 (Ct. App. 2012) (finding probable cause can be based on the statements of other officers); United States v. Horne, 4 F.3d 579, 585 (8th Cir. 1993) ("probable cause may be based on the collective knowledge of all law enforcement officers involved in an investigation and need not be based solely upon the information within the knowledge of the officer on the scene if there is some degree of communication").

As an analogy, officers frequently rely on the statements of other officers for inclusion in an affidavit for a warrant, which will issue only upon probable cause. See U.S. v. Ventresca, 380 U.S. 102, 108 (1965) ("Observations of fellow officers . . . engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number."). If the hearsay

[4] In Martin, this information came from a "lady at the scene." Martin, 275 S.C. at 143, 268 S.E.2d at 106. In Fradella, this information came from a bystander who gave the defendant a ride home after the accident. Fradella, 325 S.C. at 471-72, 482 S.E.2d at 54. In the instant case, the information came from a fellow law enforcement officer, Officer Foster, whose reliability is assumed. See e.g., United States v. Horne, 4 F.3d 579, 585 (8th Cir. 1993) ("probable cause may be based on the collective knowledge of all law enforcement officers involved in an investigation and need not be based solely upon the information within the knowledge of the officer on the scene if there is some degree of communication").

statements are sufficient to establish probable cause for a warrant, they should be sufficient to be considered as part of "all the evidence within the arresting officer's knowledge" in formulating probable cause related to an arrest. Finally, the statements of others, and in particular other law enforcement officers, are allowed to establish probable cause during preliminary hearings. See State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983) (holding an officer may present hearsay testimony in a preliminary hearing to establish probable cause for arrest), *abrogated on other grounds by* Horton v. California, 496 U.S. 128 (1990); see also State v. Thompson, 276 S.C. 616, 281 S.E.2d 216 (1981) (concluding the State, during a preliminary hearing, was permitted to offer hearsay testimony to establish probable cause for arrest). Again, relying on information provided by fellow law enforcement to provide only a portion of the relevant knowledge to establish probable cause of a crime is certainly warranted.

Further, as both Martin and Fradella explain, Deputy Osborne did not need to witness Respondent driving the vehicle in order to have probable cause to arrest for an offense of DUI which was freshly committed. In both cases, the incident had already occurred and the driver was never witnessed driving the vehicles involved in the crash. Further, in Fradella, the officers did not make contact with the driver for twenty minutes following the crash, and did so at his residence not at the vehicle. In the instant case, Officer Foster stopped Respondent while he was driving and smelled of alcohol. Neither Officer Foster nor Respondent left the scene and within 10-15 minutes Deputy Osborne arrived to find Respondent still in the driver's seat of the vehicle and still smelling of alcohol. Accordingly, Deputy Osborne had sufficient probable cause to arrest Respondent for DUI even without witnessing his driving first hand.

Therefore, the magistrate and circuit court erred in requiring Deputy Osborne to witness Respondent driving in order to subsequently arrest him using a uniform traffic ticket for DUI. The dismissal should be reversed and the case remanded for trial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the dismissal of the DUI offense should be reversed and this case remanded for trial.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the April 15, 2014, order from the South Carolina Supreme Court entitled, "revised Order Concerning Personal Identifying Information and other Sensitive Information in Appellate Court Fillings."

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