

**CASE NAME:** South Carolina v Burns; 16<sup>th</sup> Judicial Circuit, case number 2015-CP-46-00824 (June 18, 2015)

**FACTS:**

On July 4, 2014, River Hills Security Officer Foster witnessed Respondent Burns 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 Sheriffs 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 SC v. Burns (2015-CP-46-00824)

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.

**PROCEDURAL HISTORY:**

In the Pretrial Motion on February 19, 2015 held by the Magistrate Judge, testimony was taken from York County Sheriffs 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. Accordingly, the York County Magistrate granted Burns' "Motion to Dismiss."

The State's appeal to the circuit court followed.

**ISSUE:**

Did the Trial *Court* err in dismissing the charge of Driving Under the Influence for an allegedly improper warrantless arrest?

**HOLDING:**

No. Based upon the record and the law, as discussed more fully below, the magistrate was correct in granting the defendant's motion to dismiss.

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 SC v. Burns (2015-CP-46-824)

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.

**ACCORDINGLY**, the magistrate's order dismissing the DUI case against the Respondent is upheld.