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Mar 07 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Court of Appeals Case No. 2021-001189

Tyrone Anderson,

Respondent,

v.

State of South Carolina,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

Respondent Tyrone Anderson ("Anderson") respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR, of Anderson v. State, Op. No 6051 (S.C. Ct. App. filed February 21, 2024) (Howard Adv. Sh. No. 7 at 19.) This petition is submitted on the grounds that this Court misapprehended that no evidence existed that Anderson committed the crime of driving under the influence outside of his purported admission. For the reasons set forth below, Anderson respectfully asks this Court to grant this Petition for Rehearing and affirm the circuit court's reversal of Anderson's DUI conviction in the magistrate's court.

OVERLOOKED OR MISAPPREHENDED MATTERS

A petition for rehearing shall "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221, SCACR. Accordingly, Anderson respectfully submits that in affirming the circuit court, this Court overlooked or misapprehended certain material matters as follows:

THE STATE FAILED TO PRODUCE EVIDENCE THAT EVEN WHEN COMBINED WITH ANDERSON'S PURPORTED ADMISSION PROVED THAT ANDERSON COMMITTED THE CRIME OF DRIVING UNDER THE INFLUENCE.

This Court reversed the circuit court's reversal of Anderson's conviction for driving under the influence in magistrate's court. The Court agreed with the State that it had produced substantial circumstantial evidence that Anderson had committed the crime of driving under the influence to satisfy the corroboration rule and overcome a directed verdict based upon State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999), and its progeny of cases.

The Court acknowledged that "a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof aliunde of the corpus delicti." Id. at 175, 516 S.E.2d at 202. "Corroboration requires 'substantial independent evidence,' which is sufficient 'if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth.'" State v. Russell, 345 S.C. 128, 132, 546 S.E.2d 202, 205 (Ct. App. 2001). The corpus delicti of the crime of DUI is "(1) driving a vehicle; (2) within this state; (3) while under the influence of intoxicating liquors, drugs, or any other substance of like character." State v. Townsend, 321 S.C. 55, 58, 467 S.E.2d 138, 140 (Ct. App. 1996).

The Court relied on the following statements by Anderson to constitute his admission of driving under the influence: (1) When asked by Trooper Edwards where he was coming from, Anderson stated "home," "here," "I'm driving," and "driving;" (2) "I f***ed up;" and (3) Anderson asked Trooper Edwards to call his wife and tell her he was "drunk" and "messed up."

To corroborate these vague, generalized statements in compliance with the corroboration rule, the Court found the State produced evidence of driving because Deputy McGuire-Smith testified that she observed Anderson passed out in the front seat with his foot on the brake, while the car was on, and the transmission was in drive. The Court also found that the private residence

was not Anderson's residence despite the State not producing any evidence of who the residence belonged to at trial. These facts are identical to State v. Graves, 269 S.C. 356, 237 S.E.2d. 584 (1977), where the supreme court held that such facts did not constitute the element of driving because motion is required. It does not matter whose driveway Anderson was in because these facts do not constitute the element of driving.

In finding that the State met its burden for the element of "while under the influence of intoxicating liquors," the Court relied on the following evidence: (1) Deputy McGuire-Smith testified that Anderson smelled of alcohol; (2) Deputy McGuire-Smith had to bang on the window to get Anderson to wake up and had to repeatedly tell him to put the car in park; (3) Trooper Edwards testified that Anderson had to lean against the car to keep from falling and could not complete field sobriety tests; and (4) Trooper Edwards testified that he found a brown cup that smelled like liquor.

This evidence standing alone does not constitute proof that Anderson committed the crime of driving under the influence because it is nearly identical to the evidence from Graves. The statements made by Anderson in totality do not constitute admissions that he was under the influence when he drove. The State does not have sufficient proof of guilt when combined with Anderson's statements to survive a directed verdict. None of Anderson's statements state when he drove or when he drank alcohol. The evidence produced at trial also does not prove or even suggest when Anderson drove or drank alcohol. Without proving the nexus between Anderson driving after consuming alcohol, the State failed to prove a prima facie case of driving under the influence. The trial court, therefore, had an obligation to direct a verdict in Anderson's favor.

CONCLUSION

WHEREFORE, for the foregoing reasons, Anderson respectfully asks this Court to grant this Petition for Rehearing and issue a substituted opinion that affirms the circuit court's reversal of Anderson's conviction.

Respectfully Submitted,



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Attorney for Respondent

This 7th day of March, 2024.

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Proof of Service

I certify that I have filed and served Respondent's Petition for Rehearing on the below date by e-mailing a copy to the S.C. Court of Appeals at ctappfilings@sccourts.org and to Joshua Abraham Edwards at jedwards@scag.gov and Demetri Andrews at dandrews@greenwoodsc.gov. This method of service and filing is based upon the Supreme Court's order dated May 6, 2022.



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March 7, 2024



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Tyrone Anderson v. State, Case No. 2021-001189 -- Respondent's Petition for Rehearing

1 message


Jamison Tinsley <tinslerj@gmail.com>

Thu, Mar 7, 2024 at 12:56 PM

To: jedwards@scag.gov, Demetri Andrews <dandrews@greenwoodsc.gov>

I have attached a copy of the Appellant's Petition for Rehearing along with a proof of service. I will be filing these documents with the court of appeals shortly. Thanks.

Jamison Tinsley
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SC Court of Appeals

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March 7, 2024

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Columbia, SC 29201
Via e-mail: ctappfilings@sccourts.org

Re: Tyrone Anderson v. The State – Respondent’s Petition for Rehearing
Case No. 2021-001189

Please find attached a copy of Respondent’s Petition for Rehearing in the above-referenced matter along with a proof of service. I am serving the appellant simultaneously via e-mail.

Thank you for your assistance in this matter.

Yours truly,



R. Jamison Tinsley Jr.

cc: Joshua Abraham Edwards (jedwards@scag.gov)
Demetri G. Andrews (dandrews@greenwoodsc.gov)

Enclosures as indicated