

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
Tyrone Anderson,)
)
)
Appellant,)
)
vs.)
)
State of South Carolina,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Case No. 2021-CP-24-415

**ORDER REVERSING CONVICTION
AND DISMISSING CASE**

RECEIVED

Oct 19 2021

SC Court of Appeals

APPELLATE JUDGE:
COURT REPORTER:
PROSECUTING ATTORNEY:
DEFENDANT’S ATTORNEY:
DATE OF HEARING:

HON. PERRY H. GRAVLEY
YVESTRE TORRES
DEMETRIOS G. ANDREWS
R. JAMISON TINSLEY JR.
SEPTEMBER 8, 2021

This matter came before the Court on Tyrone Anderson’s appeal of his conviction for driving under the influence in a jury trial in the Greenwood County Magistrate Court on May 7, 2021. Anderson contends that the Magistrate erred in denying his motion for a directed verdict at the close of the State’s case. Based on a review of the return to appeal, the record in the case and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. On January 29, 2020¹, Deputy Dawn McGuire-Smith received a call to respond to a suspicious vehicle in a private driveway at 319 Townsend Road in Greenwood County.
2. She arrived to the scene at approximately 11:30 p.m. When she arrived on the scene, she found Anderson asleep in the driver’s seat of the vehicle.
3. The vehicle was running and in drive with Mr. Anderson’s foot on the brake.

¹ The Magistrate’s return says the call was made on January 30, 2021, but the ticket indicates the date of arrest was January 29, 2020.

4. The State presented no evidence as to when Mr. Anderson arrived to that private driveway or how long he had been there when Deputy McGuire-Smith responded to that location. The state presented no evidence as to who notified law enforcement about Mr. Anderson's vehicle and when such notification was made.
5. After a few attempts, Deputy McGuire-Smith woke up Anderson, and Anderson put the car into park.
6. Deputy McGuire-Smith initially testified at trial that Anderson's motor vehicle rolled a little bit as he put it into park. After watching her body-cam video, she testified that she must not have remembered it correctly as the video did not show any rolling by Anderson's motor vehicle.
7. At that point Deputy McGuire-Smith called in the South Carolina Highway Patrol to investigate because she testified that she smelled the odor of an alcoholic beverage so she suspected driving under the influence.
8. Trooper Jamie Edwards of the South Carolina Highway Patrol then arrived at the scene and took over the investigation.
9. Trooper Edwards testified that Anderson was passed out in the car when he arrived on the scene.
10. Trooper Edwards had Anderson exit the car to perform standardized field sobriety tests.
11. Trooper Edwards testified that he observed an open beer can in the center console and smelled the odor of an alcoholic beverage.
12. After administering the horizontal gaze nystagmus test to Anderson, Trooper Edwards arrested Anderson for driving under the influence.
13. Trooper Edwards then searched Anderson's car and found a red cup with a brown

- liquor that Trooper Edwards testified was liquor.
14. Trooper Edwards poured out the beer can and the red cup in front of his patrol car.
Trooper Edwards testified that he disposed of the two containers.
 15. Trooper Edwards then transported Anderson to the jail where he offered Anderson a breath test on the Datamaster instrument. Anderson refused to give a breath sample.
 16. Trooper Edwards charged Anderson with driving under the influence, open container of beer, and transporting liquor in a vehicle with a broken seal.
 17. Both officers admitted they did not see Anderson driving. The State did not produce any evidence of Anderson driving other than comments Anderson made that indirectly admitted to driving.
 18. During the jury trial, Anderson made a motion to dismiss the open container and transporting liquor with a broken seal charges because the State had the burden to at least maintain the containers. The Court granted this motion because of the State's failure to preserve evidence.
 19. Anderson also made a motion that the Court suppress the evidence of the open containers as it related to the driving under the influence charge. The Court denied this motion and allowed Trooper Edwards to testify about the open containers.
 20. At the close of the State's case, Anderson made a motion for a directed verdict based on the State's failure to produce sufficient evidence of driving. Anderson pointed the Court to the case of State v. Graves. The Court denied this motion.
 21. Anderson did not testify, produce any evidence, or call any witnesses.
 22. The jury found Anderson guilty of driving under the influence, and the Court sentenced him to twenty days in jail or the payment of a \$992.00 fine.

23. Anderson timely filed and served his notice of appeal.

CONCLUSIONS OF LAW

1. “It is unlawful for a person to drive a motor vehicle within this State while: (1) under the influence of alcohol to the extent that the person’s faculties to drive are materially and appreciably impaired.” S.C. Code Ann. 56-5-2930.
2. The issue before the Court on appeal is whether the State produced sufficient evidence of Anderson’s driving to survive Anderson’s motion for a directed verdict.
3. In State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (S.C. 1977), the Court held that the State failed to prove the element of driving so the Magistrate erred in denying the defendant’s motion for a directed verdict.
4. In Graves, the patrolman testified he was called out to the Pink House at approximately 5:00 a.m. where “he saw a 1972 Pontiac, with the engine running and the transmission in gear, occupied by [the defendant] who was leaning over the steering wheel asleep.” Id. at 359, 237 S.E.2d at 585. When the patrolman asked the defendant in Graves to get out of the car, the car started moving so another patrolman had to stop it. Id. The patrolman admitted that he did not see the defendant driving in Graves. Id.
5. The Supreme Court held that the “the word ‘drive’ requires the vehicle to be in motion to constitute the offense.” Id. at 364, 237 S.E.2d at 588. The Supreme Court held that the defendant’s “actions did not constitute ‘driving’ within the meaning of Section 56-5-2930, since there was no showing by direct or circumstantial evidence that respondent had placed his vehicle in motion while under the influence of intoxicants.” Id.
6. The case at bar is factually similar to State v. Graves. Here, the police responded to a

- call where they saw Anderson in a private driveway in the driver's seat while asleep with the car in gear.
7. The State did not produce any evidence of when or how Anderson got to that private driveway. The State did not produce evidence of anyone who saw Anderson driving.
 8. The State, therefore, failed to produce direct or circumstantial evidence that Anderson put his car into motion while under the influence of intoxicants.
 9. The State argues that the Court should affirm Anderson's conviction relying on State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (S.C. 1999.)
 10. In Osborne, the Supreme Court affirmed a conviction for driving under the influence where the officers responded to a one-car wreck. Id. The defendant admitted to the officers that he was the driver of the car that was involved in the wreck, and the officers observed evidence of intoxication. Id. at 174, 516 S.E.2d at 203.
 11. The defendant in Osborne argued that the State failed to prove the corpus delicti of the crime because it did not have sufficient evidence of driving. The Court disagreed because the law in S.C. is that the "corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extrajudicial statements, and together with such statements, permits a reasonable belief that the crime occurred." Id. at 180, 516 S.E.2d at 205. The Supreme Court found that the evidence of the one-car wreck combined with the defendant's admission to being the driver of the wrecked car was sufficient evidence to withstand a directed verdict.
 12. The present case is distinguishable from Osborne and its progeny of cases. Those cases contained sufficient evidence of driving independent of the defendant's admission because those cases have independent evidence of a car wreck.

13. Here, the State did not produce any independent evidence of driving, whether direct or circumstantial, that Anderson put the car in motion while under the influence of alcohol. Without evidence independent of Anderson's statements, the State did not have sufficient evidence that the crime of driving under the influence occurred.
14. The State failed to produce sufficient evidence of driving by Anderson, so the Magistrate erred in denying Anderson's motion for a directed verdict.

ORDER

The State failed to sufficiently prove the element of driving so the Magistrate erred in denying Anderson's motion for a directed verdict on the charge of driving under the influence. The Court hereby reverses the conviction against Anderson for driving under the influence and dismisses the case against Anderson.

IT IS SO ORDERED!

(ELECTRONIC SIGNATURE PAGE TO FOLLOW)



Greenwood Common Pleas

Case Caption: Tyrone Anderson VS State Of South Carolina

Case Number: 2021CP2400415

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755