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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2021-001189

TYRONE ANDERSON, Respondent,

v.

THE STATE, Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the Circuit Court err in reversing Respondent's conviction for driving under the influence when the State presented evidence at trial to establish each element of the offense and that evidence independently corroborated Respondent's admission of driving such that the corpus delicti rule was satisfied?

STATEMENT OF THE CASE

On January 29, 2020, Trooper Jamey Edwards of the South Carolina Highway patrol issued three traffic citations to Respondent, Tyrone Anderson. Respondent was served with citation # 20202350019456 for driving under the influence, citation # 20202350019457 for open container of beer or wine in a vehicle, and citation # 20202350026009 for transport of liquor in a vehicle with the seal broken. Respondent proceeded to a jury trial before the Honorable Judge C. Ryan Johnson in the Greenwood County Magistrate Court on May 7, 2021. Respondent was represented by R. Jamison Tinsley, Jr., Esq. The State was represented by Trooper Edwards. Judge Johnson dismissed both open container charges, but denied Respondent's motion for a directed verdict on the DUI charge. The jury found Respondent guilty of driving under the influence. Respondent was sentenced to twenty days in jail or payment of a $992.00 fine. On May 11, 2021, Respondent appealed his conviction with the Greenwood County Court of Common Pleas. On September 8, 2021, a hearing took place in the Court of Common Pleas with the Honorable Perry H. Gravely presiding. Respondent was again represented by Tinsley and the State was represented by Deputy Solicitor Demetrios Andrews. On September 22, 2021, Judge Gravely reversed Respondent's DUI conviction and dismissed the charge against him. On October 15, 2021, the State appealed Judge Gravely's order to this Court.

STATEMENT OF FACTS

On January 29, 2020[1], Deputy Dawn McGuire-Smith of the Greenwood County Sheriff's Department responded to a call at a specific address in Greenwood County. Upon arrival, Deputy McGuire-Smith located a white Chevrolet Camero parked in the driveway of the residence. (State's Exhibit #1). The vehicle's engine was running, the transmission was in drive, and the driver appeared to be asleep. (Trial Recording 52:30). Deputy McGuire-Smith apparently knew the driver as Respondent because she addressed him by his first name and repeatedly asked him to place the vehicle in park. (State's Exhibit #1). Respondent admitted to driving and alternately claimed he was coming from "work", "here", "home", and "was just having a good time". (State's Exhibit #1, State's Exhibit #2). The owner of the residence[2], who was not Respondent, was present at the scene. (State's Exhibit #1).

Trooper Edwards of the Highway Patrol arrived to assist Deputy McGuire-Smith. Trooper Edwards approached the vehicle and detected a strong odor of alcohol. (Trial Recording 1:17:00). Trooper Edwards asked Respondent to exit his vehicle and perform a field sobriety test. Respondent was unsteady on his feet and had to lean against his own car to keep from falling. (Trial Recording 1:17:45, State's Exhibit #2). Trooper Edwards administered the horizontal gaze nystagmus test to Respondent, and Respondent failed it. (Trial recording 1:18:00, State's Exhibit #2). Respondent was placed under arrest for driving under the influence. Respondent waived his

[1] There are discrepancies within the record as to the date of offense. The Magistrate's return lists the date of offense as January 30, 2021. (Magistrates Return 1). Trooper Edwards' citation lists the date of offense as January 29, 2020. (Magistrates Return 5). At trial, Trooper Edwards and Deputy McGuire-Smith referenced the date of offense as January 30, 2020. (Trial recording 15:00).

[2] The record is unclear regarding who owned the residence at the address from which the call originated. However, the record plainly shows it was not Respondent's residence. Deputy McGuire-Smith references the homeowners being present at the scene and Respondent stated to law enforcement he lived at an entirely different address. (Trial recording 1:27:00, State's Exhibit #1, State's Exhibit #2).

Miranda rights and agreed to speak with Edwards. (State's Exhibit #2). Respondent was read his implied consent rights and was asked to provide a breath sample. Respondent declined to provide a sample. (Trial Recording 1:20:00). After being arrested, Respondent repeatedly told Edwards "I'm fucked up", "I fucked up" and "you got me." (State's Exhibit #2). At the close the State's case, Respondent moved for a directed verdict on the grounds that the State failed to establish the corpus delicti of driving under the influence because they had not proven Respondent was driving. The Magistrate denied Respondent's motion and held the State had produced circumstantial evidence of Respondent operating a motor vehicle while he was under the influence of alcohol. (Trial Recording 2:29:00).

At the conclusion of trial, the jury found Respondent guilty of driving under the influence. Respondent appealed his conviction to the Court of Common Pleas on the basis that the Magistrate should have granted his motion for a directed verdict at the close of the State's case. Respondent argued that the State had failed to produce sufficient independent evidence of driving to establish the corpus delicti requirement of driving under the influence. Respondent solely relied on our Supreme Court's holding in State v. Graves[3] to support his argument. (Common Pleas transcript 2-3). The State argued that Graves was distinguishable because the defendant in Graves did not admit to driving. (Common Pleas transcript 5). Judge Gravely took the matter under advisement. On September 22, 2021, the Circuit Court reversed Respondent's conviction and found the State failed to produce any evidence, either direct or circumstantial, that Respondent "put his car into motion while under the influence of intoxicants." (Gravely Order 5).

[3] State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977).

STANDARD OF REVIEW

In criminal appeals from magistrate court, the circuit court does not conduct a de novo review and is limited to reviewing for preserved errors raised to it by appropriate objections. City of Landrum v. Sarratt, 352 S.C. 139, 141, 572 S.E.2d 476, 477 (Ct. App. 2002). An appellate court reviewing a criminal appeal from the circuit court may review for errors of law only. City of Aiken v. Koontz, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006).

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Morgan, 352 S.C. 359, 364, 574 S.E.2d 203, 205 (Ct. App. 2002). When reviewing a denial of a directed verdict at the trial level, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). "If there is any evidence tending to establish the corpus delicti of the offense charged against the accused, then it is the duty of the trial court to submit the question of whether the offense occurred to the jury." City of Easley v. Portman, 327 S.C. 593, 596, 490 S.E.2d 613, 615 (Ct. App. 1997).

ARGUMENT

The Circuit Court erred by reversing Respondent's conviction for driving under the influence because the State presented evidence at trial to establish each element of the offense and that evidence independently corroborated Respondent's admission of driving such that the corpus delicti rule was satisfied.

The Circuit Court erred by finding the Magistrate incorrectly denied Respondent's motion for a directed verdict. The Circuit Court erroneously found the State "did not produce any independent evidence of driving, whether direct or circumstantial, that [Respondent] put the car in motion while under the influence of alcohol." (Gravley order 6). On the contrary, the State presented evidence at trial to establish each element of the offense of driving under the influence, and that evidence was sufficient to independently corroborate Respondent's admission to driving the vehicle such that the corpus delicti rule was satisfied. Accordingly, the Magistrate properly denied Respondent's motion for a directed verdict. The Circuit Court's order reversing Respondent's conviction and dismissing the charges against him should be reversed and Respondent's conviction should be reinstated.

"It is well-settled law that a conviction cannot be had on the extrajudicial confessions of a defendant unless they are corroborated by proof aliunde of the corpus delicti." State v. Osborne, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999). "The requirement that the corpus delicti be sufficiently corroborated by independent evidence is rooted in the premise that the examination of this additional evidence will avert the danger that a crime was confessed when in fact no such crime was committed. Thus, the rule exists to prevent the conviction of an innocent person." Portman, 327 S.C. at 602-603, 490 S.E.2d at 618 (Anderson, J., concurring). "While evidence of the corpus delicti in a particular case must be established by the best proof attainable, direct evidence is not essential. The corpus delicti may be sufficiently proved by presumptive or

circumstantial evidence when that is the best obtainable." State v. Townsend, 321 S.C. 55, 57, 467 S.E.2d 138, 140 (Ct. App. 1996).

"[T]he corroborative evidence *need not be sufficient*, independent of the statements, to establish the corpus delicti." Opper v. United States, 348 U.S. 84, 93 (1954) (emphasis added). However, "[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, *together with such statements*, permits a reasonable belief that the crime occurred." Osborne, 335 S.C. at 180, 516 S.E.2d at 205 (emphasis added). Thus, "[i]f the statement is independently corroborated, then *the combination of* the statement and the State's remaining evidence may be considered by the trial court to determine if there is any evidence tending to establish the corpus delicti." State v. Russell, 345 S.C. 128, 132-133, 546 S.E.2d 202, 205 (Ct. App. 2001) (emphasis added). "The corpus delicti of DUI based upon alcohol is: (1) driving a motor vehicle; (2) within this state; (3) while under the influence of alcohol to the extent that the person's faculties to drive are material and appreciably impaired." Id.

Here, the Circuit Court found the State failed to produce any evidence that Respondent drove his car while he was under the influence of alcohol. In reaching its erroneous conclusion, the Circuit Court likened the factual scenario in Respondent's case to the scenario considered by our Supreme Court in State v. Graves[4] and incorrectly distinguished Respondent's case from our Supreme Court's holding in State v. Osborne and its progeny. While the Circuit Court correctly held that Respondent's case is factually similar to Graves, the question addressed by the Supreme Court in Graves is completely different than the question presented to this Court in Respondent's case. In Graves, the defendant did not admit to driving the vehicle. Thus, the

[4] State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977).

question presented to the Supreme Court was not whether the State had presented sufficient evidence independent of the defendant's admission to satisfy the corpus delicti of the offense, but rather whether the brief movement of Graves' car constituted driving within the meaning of S.C. Code § 56-5-2930. Graves, 269 S.C. at 360, 237 S.E.2d at 586. Like in Respondent's case, Graves was found asleep behind the wheel of a car with the transmission in gear across the highway from "the Pink House." Graves, 269 S.C. at 359, 237 S.E.2d at 585. When law enforcement woke up Graves, his vehicle began to move and had to be stopped by an officer. Id. However, Graves never admitted to driving the vehicle. The Supreme Court ultimately held that the movement of Graves' car was "incidental to the officer's instruction and is not the type of movement proscribed by the statute." Graves, 269 S.C. at 364, 237 S.E.2d at 588. However, the Court did not provide any guidance as to what evidence would be sufficient to corroborate a defendant's admission of driving to satisfy the corpus delicti rule because that question was not presented to the Court.

Fortunately, both this Court and the Supreme Court have addressed the question of what constitutes sufficient evidence independent of a defendant's confession of driving to satisfy the corpus delicti of DUI on multiple occasions. Notably, one such example is State v. Osborne, which the Circuit Court attempted to distinguish from Respondent's case. Contrary to the Circuit Court's conclusion, Respondent's case is not meaningfully distinguishable from Osborne and its progeny of cases. In Osborne, the Supreme Court considered whether the State had sufficiently corroborated Osborne's admission to driving his vehicle when law enforcement located an abandoned vehicle at the scene of a one-car accident. The vehicle's hood was warm to the touch and Osborne was located at a nearby gas station where he admitted that he wrecked the car. Osborne, 335 S.C. at 174, 516 S.E.2d at 202.The Court held the State provided sufficient

independent evidence to support Osborne's admission to the police and allowed a reasonable inference that Osborne drove while under the influence of alcohol. Osborne, 335 S.C. at 180, 516 S.E.2d at 205.

Similarly, this Court has also addressed what constitutes sufficient independent evidence to satisfy the corpus delicti rule in State v. White, 311 S.C. 289, 428 S.E.2d 740 (Ct. App. 1993) and more recently in State v. Abraham, 408 S.C. 589, 759 S.E.2d 440 (Ct. App. 2014). In White, this Court addressed whether the State corroborated White's confession to driving when he was located by law enforcement walking along the interstate highway with various injuries and his wrecked car was not found until approximately eight hours later. This Court held the State provided sufficient evidence independent of White's statements to prove the corpus delicti of driving under the influence. White, 311 S.C. at 295, 428 S.E.2d at 744. This Court further held that the question of whether White drove the vehicle was properly left to the jury. White, 311 S.C. at 295-296, 428 S.E.2d at 744.

More recently this Court reached a similar conclusion in State v. Abraham. In Abraham this Court considered the following scenario: Abraham was found at the scene of one-car accident, he admitted to driving, he smelled strongly of alcohol, he failed two field sobriety tests, and he was unsteady on his feet. Abraham, 408 S.C. at 591, 759 S.E.2d at 441. This Court noted the facts in Abraham's case were similar to State v. Townsend where this Court reversed a circuit court's dismissal of a DUI conviction when the State produced sufficient independent evidence of the corpus delicti. Abraham, 408 S.C. at 593-594, 759 S.E.2d at 442, See State v. Townsend, 321 S.C. 55, 58, 467 S.E.2d 138, 140-41 (Ct. App. 1996) (holding Townsend's case was properly submitted to the jury when the State produced evidence Townsend was at the scene of a one car wreck, he smelled like alcohol, failed field sobriety tests, and appeared to be

intoxicated). Citing to Tonwsend, this Court held the State provided sufficient independent evidence to prove the corpus delicti of DUI and that Abraham's case was properly submitted to the jury. Abraham, 408 S.C. at 594, 759 S.E.2d at 442-443.

The facts of Respondent's case are similar to the facts considered by our appellate courts in Osborne, White, Townsend, and Abraham. Here, Respondent was located at a residential address asleep behind the wheel of a running car with the transmission in drive. (Trial Recording 52:30, State's Exhibit #1, State's Exhibit #2). Respondent admitted to driving and provided law enforcement with a home address that was different than the residence where he was found. (Trial Recording 1:27:00). Respondent smelled of alcohol, was unsteady on his feet, and was unable to complete a field sobriety test. (Trial Recording 1:17:00, State's Exhibit #1, State's Exhibit #2). Furthermore, Respondent made several incriminating statements such as: "I'm fucked up", "I fucked up", and "you got me." (State's Exhibit #2).

While the aforementioned facts are not identical to the facts considered by our appellate courts in Osborne, White, Townsend, and Abraham, the facts in Respondent's case corroborate his admission of driving even more than the facts considered by our appellate courts in the previously discussed cases. For example, while Respondent was not involved in a single car wreck like the defendants in Osborne, White, Townsend, and Abraham, Respondent was found in a running car with the transmission in drive. Respondent being behind the wheel of a running car in drive at a residence other than his own is more corroboration of driving than a recently wrecked car with a warm engine that was deemed sufficient in Osborne or a car that had been wrecked eight hours previously that was deemed sufficient in White. Osborne, 335 S.C. at 174, 516 S.E.2d at 202; White, 311 S.C. at 292, 428 S.E.2d at 742. In addition to the strong corroborating evidence of Respondent driving, the facts establishing Respondent's intoxication

while driving also compare favorably with this Court's recent decisions. For example, like the defendant's in Abraham and Townsend, Respondent smelled of alcohol, he was unable to complete at least one field sobriety test, and was unsteady on his feet. While Respondent did not provide a breath sample as the defendants in Abraham and Townsend did, Respondent's incriminating statements combined with his generally combative demeanor with Trooper Edwards allow more than a reasonable inference that Respondent was impaired. Abraham, 408 S.C. at 594, 759 S.E.2d at 442; Townsend, 321 S.C. at 58, 467 S.E.2d at 140.

The Circuit Court improperly relied on State v. Graves in reaching its conclusion that the State failed to present any independent evidence of driving. As previously argued, State v. Graves is not relevant to this Court's consideration because the defendant in Graves did not admit to driving. Here, Respondent admitted to driving. Beyond that admission, the State presented evidence that Respondent was asleep behind the wheel of a car with the transmission in drive in the driveway of a residence that was not his own. Respondent showed signs of intoxication, including being unsteady on his feet, being unable to complete a field sobriety test, and making incriminating statements. The aforementioned evidence corroborates Respondent's admission of driving even more so than evidence that has previously been deemed sufficient by this Court and the South Carolina Supreme Court in State v. Osborne and its progeny. Therefore, the Magistrate correctly denied Respondent's motion for a directed verdict and submitted the case to the jury and allowed them to consider the weight of the States evidence. This Court should reverse the decision of the Circuit Court and reinstate Respondent's conviction and sentence for driving under the influence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment of the lower court be reversed and Respondent's conviction be reinstated.

Respectfully submitted,

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February 8, 2022

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STATE OF SOUTH CAROLINA
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Appeal from Greenwood County
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Appellate Case No. 2021-001189

TYRONE ANDERSON, Respondent,

v.

THE STATE, Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Initial Brief of Appellant and Designation of Matter on Respondent by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

Robert Jamison Tinsley, Jr., Esquire
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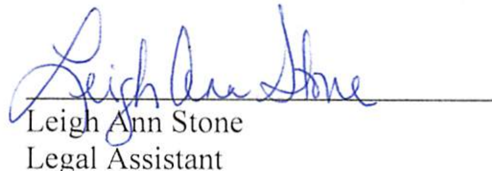
I further certify that all parties required by Rule to be served have been served.
This eighth day of February, 2022.



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Good Morning Mr. Tinsley,

Attached please find a copy of an Initial Brief of Appellant and Designation of Matter in Tyrone Anderson v. State of South Carolina (2021-001189). Also, a hard copy will be put in the mail. This will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

Thank you,

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