STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Perry H. Gravely, Circuit Court Judge

Court of Appeals Case No. 2021-001189

Tyrone Anderson, Respondent,

v.

The State, Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF ISSUE ON APPEAL

State's 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 DELECTI RULE WAS SATISFIED?

Anderson's Statement of Issue on Appeal

> WHETHER THE CIRCUIT COURT ERRED IN REVERSING THE MAGISTRATE'S DENIAL OF ANDERSON'S MOTION FOR A DIRECTED VERDICT WHERE THE STATE FAILED TO PRESENT EVIDENCE OF EACH ELEMENT OF DRIVING UNDER THE INFLUENCE BUT MERELY PRESENTED SUSPICION OF THOSE ELEMENTS.

STATEMENT OF CASE

Defendant Tyrone Anderson ("Anderson") accepts the State's Statement of Case except to clarify that Anderson served his notice of intent to appeal on the Magistrate and the State on May 7, 2021, and filed it with the Court of Common Pleas on May 10, 2022. Anderson filed and served his petition in support of appeal May 11, 2021.

FACTS

On January 29, 2020, Deputy Dawn McGuire-Smith received a call to respond to a suspicious vehicle parked in a private driveway at 319 Townsend Road in Greenwood County. She arrived on the scene at approximately 11:30 p.m. and found Anderson asleep in a car. (Deputy McGuire-Smith's video.) The car's engine was running with the transmission in drive, and Anderson had his foot on the brake. (Trial Recording 52:30.)

The State failed to produce any evidence at trial as to when or how Anderson arrived at that location, how long he had been at the residence when Deputy McGuire-Smith arrived, or what time an unidentified person notified law enforcement about the Anderson's vehicle. The State produced no evidence of when or even if Anderson was driving, when Anderson drank any alcohol, or whether Anderson drank any alcohol prior to driving if in fact he drove the car. The State did not produce any evidence as to who notified law enforcement about the vehicle.

Deputy McGuire-Smith woke Anderson up after a few attempts, and Anderson put the car into park without the car moving. (Deputy McGuire-Smith's video.) Upon questioning from Deputy McGuire-Smith, Anderson stated, "I'm having a good time … here." (Deputy McGuire-Smith's video.) Deputy McGuire-Smith testified she did not see Anderson driving.

After talking with Anderson, Deputy McGuire-Smith called the South Carolina Highway Patrol to the scene because she testified she smelled the odor of an alcoholic beverage on Anderson's breath so she suspected driving under the influence. Trooper Jamie Edwards from the Highway Patrol arrived on the scene to take over the investigation with Anderson asleep in the car. (Trial Recording 1:17:00.) When Trooper Edwards asked Anderson where he was coming from, Anderson said "here." (Trooper Edwards video, 1:40.)

Trooper Edwards testified he had Anderson exit the car to perform standardized field sobriety tests and then arrested Anderson for driving under the influence after Anderson performed the horizontal gaze nystagmus test. (Trial Recording 1:18:00.) Trooper Edwards then poured out the contents of a beer can and a red cup with brown liquid that Trooper Edwards testified was liquor[1]. (Trooper Edwards' video.)

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[1] The Magistrate dismissed the open container charges against Anderson because of the State's failure to maintain the containers. The Magistrate denied Anderson's motion to suppress the

On the way to the detention center and Datamaster room, Anderson made various comments like "I fucked up," "I'm fucked up," and "You got me." (Trooper Edwards' video.) Anderson refused to submit to the breath test on the Datamaster instrument. Trooper Edwards testified he did not see Anderson driving.

At the close of the State's case, Anderson made a motion for a directed verdict as the State failed to produce any evidence that Anderson drove the motor vehicle while under the influence of alcohol. The Magistrate denied this motion because he found the State produced circumstantial evidence of Anderson driving while under the influence of alcohol. (Trial Recording 2:29:00.) The jury convicted Anderson, and the Magistrate sentenced him to twenty (20) days in jail or the payment of a $992.00 fine.

On appeal, the circuit court reversed the conviction. The circuit court agreed with Anderson that the State failed to produce direct or circumstantial evidence that Anderson put the car in motion while under the influence of alcohol. (Order p. 5, ¶ 8; p. 6, ¶ 13.)

STANDARD OF REVIEW

"On appeal from the denial of a directed verdict, [the appellate] court must view the evidence in the light most favorable to the State." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "[I]n ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight." State v. Peer, 320 S.C. 546, 551, 466 S.E.2d 375, 378 (Ct. App. 1995). "If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was

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evidence of the open containers, though, and allowed Trooper Edwards to testify about the open containers.

properly submitted to the jury." Odems, 395 S.C. at 586, 720 S.E.2d at 50. The trial court "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." Id.

"The appellate court reviewing the 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).

ARGUMENT

THE CIRCUIT COURT PROPERLY REVERSED ANDERSON'S CONVICTION BECAUSE THE MAGISTRATE SHOULD HAVE DIRECTED A VERDICT IN ANDERSON'S FAVOR GIVEN THAT THE STATE DID NOT PRODUCE EVIDENCE OF ALL ELEMENTS OF DRIVING UNDER THE INFLUENCE BUT MERELY SHOWED SUSPICION OF THE CRIME.

The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. See State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001). A trial court should only deny a directed verdict motion and submit the case to the jury "if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776-77 (2011).

To convict someone of DUI, the State must prove that person "dr[o]ve 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 [were] materially and appreciably impaired...." S.C. Code Ann. § 56-5-

2930(A). The Court elaborated on what the State must prove to meet its burden of proving the element of driving in State v. Graves.

In Graves, the patrolman testified he was called out to an establishment called 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." State v. Graves, 269 S.C. 356, 359, 237 S.E.2d 584, 585 (S.C. 1977). When the patrolman asked the defendant to get out of the car, the car started moving so another patrolman had to stop it. Id. The patrolman in Graves admitted that he did not see the defendant driving. Id. The Supreme Court held that the "word 'drive' requires the vehicle to be in motion to constitute the offense." Id. at 364, 237 S.E.2d at 588. In Graves, 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 [the defendant] had placed his vehicle in motion while under the influence of intoxicants." Id.

In the present case, police responded to a call and saw Anderson in a private driveway asleep in the driver's seat with the car in gear. He placed the car into park without the car going into motion when Deputy McGuire-Smith woke him up. Like in Graves, the State did not produce any evidence of when or how Anderson got to the private driveway or whether Anderson was the person who drove the car to the driveway. The State did not produce any evidence of Anderson driving at all, much less driving while under the influence of alcohol.

The State relies on the State v. Osborne line of cases to argue that it produced statements from Anderson and corroborating evidence sufficient to convict Anderson of DUI. In Osborne, the supreme court specified the "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." State v. Osborne, 335 S.C. 172, 180, 516 S.E.2d 201, 205 (Ct. App. 1999.)

In Osborne, a state trooper arrived at the scene of an abandoned one-car wreck and noted that the hood was warm to the touch. Id. at 174, 516 S.E.2d at 202 (Ct. App. 1999). Another state trooper responded to the defendant at a gas station where the defendant was intoxicated and initially said his car was stolen before admitting he had wrecked it. Id. The defendant also stated he did not drink anything after the wreck. Id. at 175, 516 S.E.2d at 202. The supreme court held these facts constituted sufficient evidence to satisfy the corroboration rule and establish the corpus delecti of the crime of DUI so the defendant's conviction was upheld. Id. at 180, 516. S.E.2d at 205.

In State v. White, a state trooper made contact with a pedestrian on Interstate 95 who smelled of a strong odor of an alcoholic beverage, staggered as he walked, was bleeding, and showed signs of road rash on his right hand. State v. White, 311 S.C. 289, 291, 428 S.E.2d 740, 741 (Ct. App. 1993). The defendant told the trooper he had been in a fight, told a nurse on the scene that a truck had hit him, and then told a nurse at the hospital that he was driving and got into a car accident. Id. He then told another state trooper at the hospital that he had been driving when a truck hit him or ran him off the road. Id. at 292, 428 S.E.2d at 742. A passerby found the defendant's car in the woods off the side of the road the next morning at 7:00 a.m. about eight hours after the trooper's initial encounter with the defendant. Id. The car was a few hundred feet from that initial encounter. Id. A man's body was found three or four feet from the driver's side of the car. Id. After troopers read the defendant his Miranda rights, the defendant told them he was the driver of the car and had been drinking when a truck veered into his lane so he had to swerve to avoid it. Id. at 293, 428 S.E.2d at 742. When a trooper informed the defendant that his brother-

in-law was dead, the defendant began screaming, "Oh, my Lord, ... I've killed him. I've killed him." Id. The Court of Appeals held these inculpatory statements along with the evidence of the wreck provided proof aliunde of the corpus delecti of the crime of felony DUI so the trial court properly denied the defendant's motion for directed verdict. Id. at 295, 428 S.E.2d at 744.

The final case the State relies on is State v. Abraham. 408 S.C. 589, 759 S.E.2d 440 (Ct. App. 2014). In Abraham, a trooper arrived to find a car wrecked into a tree. Id. at 591, 759 S.E.2d at 441. The defendant was the only person at the scene other than emergency medical personnel and admitted to the trooper that he drove the car after drinking wine. Id. The car was on the route the defendant told the trooper he was traveling that night. He was unsteady on his feet, had slurred speech, smelled of an alcoholic beverage, showed clues of impairment on two field sobriety tests, and registered a .22% blood alcohol content on the breath test. Id. The Court of Appeals held the magistrate properly submitted that case to the jury because the facts proved by the State satisfied the corroboration rule because those facts supported the trustworthiness of the defendant's statements to the police. Id. at 594, 759 S.E.2d at 442-43.

The present case is distinguishable from the Osborne line of cases relied upon by the State. Those cases all involved admissions of driving and evidence of a wrecked motor vehicle, which provided the proof aliunde of the corpus delecti of the crime of DUI. No such evidence exists in this case as Anderson was found sitting in a non-moving car asleep in a driveway. These facts are much more similar to the facts from Graves.

In this case, the State failed to prove a nexus between law enforcement's encounter with an impaired person and a driving event such as a wrecked motor vehicle. In all of the Osborne line of cases, the State proved an accident, which gave circumstantial evidence of bad driving in close proximity to a police encounter with an intoxicated person. Those cases, therefore, had a

reasonable suspicion of driving under the influence combined with admissions by the defendants. No such reasonable suspicion exists in this present case as the State produced no proof tying Anderson to any driving in proximity to when law enforcement found him in an intoxicated state.

The present case also does not include an admission of driving while under the influence of alcohol like the Osborne line of cases. Those cases all included admissions of driving in proximity to the troopers finding the defendants in an intoxicated state. The State argues Anderson admitted to driving while under the influence because of comments he made such as "I'm fucked up," "I fucked up," and "you got me." (State's Brief p. 10, Trooper Edwards' video.) These statements are admissions by Anderson that he was intoxicated, but none of them are admissions of driving or prove he ever drove while intoxicated. Anderson even said "here" when Trooper Edwards asked where Anderson was coming from. (Trooper Edwards' video 1:40.) The State did not prove by direct or circumstantial evidence that Anderson drove a motor vehicle while intoxicated, or drove a motor vehicle at all. The State's case, instead, relies on mere suspicion that Anderson committed the offense of DUI. The circuit court, therefore, correctly reversed Anderson's conviction for DUI because mere suspicion of a crime is not sufficient to overcome a directed verdict motion. See State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004).

To convict someone of DUI, the State must prove that person drove in South Carolina while under the influence of alcohol to the extent that person's faculties to drive were materially and appreciably impaired. See S.C. Code Ann. § 56-5-2930(A). To meet this burden, the State must provide proof to answer two prima facie questions: (1) When did the defendant drive before being found? (2) When did the defendant become impaired?

In the present case, the State did not produce any evidence of when Anderson drove his motor vehicle, if at all. Deputy McGuire and Trooper Edwards found him asleep in a non-moving

car in a private driveway. The State produced no evidence of when or how Anderson got to that driveway. The State's reliance on Anderson being in a driveway the State claims was not his residence is irrelevant. The State did not produce any evidence that Anderson was not allowed to be there and did not call the property owner to testify. The State did not produce any evidence that Anderson even drove to that driveway. Pursuant to Graves, someone sitting in a running car does not prove driving.

The State also did not prove when Anderson became impaired. The State has no evidence of any impairment at any time that Anderson drove, if he drove at all. Pursuant to Graves, someone sitting in a running car under the influence of alcohol is not sufficient to convict someone of DUI. The State failed to prove any nexus between the law enforcement officers' encounter with Anderson in an impaired condition and any driving event by Anderson. The State cannot answer either requisite question to prove its DUI case, so the circuit court properly reversed Anderson's conviction.

CONCLUSION

The State failed to produce any evidence Anderson drove a motor vehicle while impaired but based its case on mere suspicion. The circuit court, therefore, properly reversed Anderson's conviction for DUI.

Respectfully Submitted,

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This 11th day of May, 2022.

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May 11 2022
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Proof of Service

I certify that I have filed and served the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal on the below date by e-mailing a copy to the S.C. Court of Appeals at ctappfilings@sccourts.org and to Jonathan Scott Matthews at smatthews2@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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Re: Tyrone Anderson v. The State – Initial Brief of Respo
Case No. 2021-001189

Please find attached a copy of Respondent's Initial Brief and Designation of Matter in the above-referenced matter along with proof of service. I am serving appellant simultaneously via e-mail.

Thank you for your assistance in this matter.

Yours truly,

R. Jamison Tinsley Jr.

cc: Jonathan Scott Matthews (smatthews2@scag.gov)
Demetri G. Andrews (dandrews@greenwoodsc.gov)

Enclosures as indicated