STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM OCONEE COUNTY
Alexander S. Macaulay, Circuit Court Judge

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THE STATE, .....APPELLANT

v.

NEZAR ABRAHAM,.....RESPONDENT.

Appellate Case No. 2012-213136

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# FINAL BRIEF OF APPELLANT

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## APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in reversing the denial of Respondent's motion for a directed verdict where the State presented sufficient independent evidence of the corpus delicti to corroborate Respondent's extra-judicial admissions and, together with such admissions, establish a jury question as to whether Respondent was guilty of driving under the influence?

## STATEMENT OF THE CASE

On July 7, 2011, Trooper K.N. Brown of the South Carolina Highway Patrol arrested Respondent (Abraham) for driving under the influence (DUI). The traffic ticket indicates the vehicle was an "08" [2008] "Niss" [Nissan] bearing "Il" [Illinois] license plate number A742293. (R. p.189). On April 17, 2012,

Abraham's case was called for trial before the Honorable William F. Derrick, Jr., Oconee County Magistrate Judge. Abraham was present and was represented by Austin McDaniel, Esquire, of the Oconee County Bar. Appellant (the State) was represented by Assistant Solicitor Bethany Ann Blundy of the Tenth Circuit Solicitor's Office. (R. p.4).

At trial, the State presented testimony from arresting officer Kevin N. Brown. (R. p.59, line 11-p.62, line 3; p.76, line 15-p.99, line 18; p.122, line 6-p.123, line 24). At the end of the State's case, Abraham moved for a directed verdict on grounds that the State had failed to present sufficient evidence to establish the corpus delicti of DUI. The trial court denied the motion. (R. p.126, line 17-p.131, line 23). After the jury charge, Abraham renewed his previous directed verdict motion and asked the trial court to reconsider its ruling in regard to corpus delicti. The motion was again denied. (R. p.152, lines 17-24). At the conclusion of trial, the six-person jury returned a unanimous verdict of "guilty of DUI sixteen one hundredths (.16) of one percent or more." Abraham was sentenced to ninety (90) days imprisonment suspended upon the service of one (1) day imprisonment and a fine of two thousand, two hundred and sixty-seven dollars ($2,267), with credit for time served of one (1) day. (R. p.173-204).

Abraham timely appealed his conviction to the Oconee County Court of Common Pleas. (Case No. 2012-CP-37-383). On September 4, 2012, a hearing was convened at

the Oconee County Courthouse before the Honorable Alexander S. Macaulay. Abraham was again represented by Mr. McDaniel, Esquire, and the State was represented by Assistant Solicitor Blair Stoudemire of the Tenth Circuit Solicitor's Office. (September 4, 2012, Tr.p.1) As grounds for appeal, Abraham argued that the magistrate judge erred in failing to direct a verdict of not guilty in light of the State's failure to prove the corpus delicti of the offense of driving under the influence. He relied primarily upon a published opinion from this Court, City of Easley v. Portman,[1] as well as the Court's discussion in Portman of a previously published opinion, State v. Osborne.[2] However, as indicated below, Osborne had been reversed by the South Carolina Supreme Court in 1999. Judge Macaulay was apparently not advised of this procedural history prior to orally finding: "I feel that Osborne is more closely, and Osborne addresses Townsend,[3] is more, well, it's more controlling than Townsend, so I would grant your motion [to reverse the conviction]." (R. p.169, lines 7-23). Judge Macaulay ruled the evidence at trial was insufficient to prove the corpus delicti of driving under the influence and granted Respondent's motion to dismiss his conviction. On September 13, 2012, Judge Macaulay issued a written order finding the magistrate erred in failing to grant Abraham's directed verdict motion for lack of evidence to establish the corpus delicti of the offense of driving under the influence, and reversed Abraham's conviction The State timely filed a notice of intent to appeal the Circuit Court's order. This Brief of Appellant follows.

[1] 327 S.C. 593, 490 S.E.2d 613 (Ct. App. 1997).
[2] 321 S.C. 196, 467 S.E.2d 454 (Ct. App. 1996), reversed, 335 S.C. 172, 516 S.E.2d 201 (1999).
[3] 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996).

## STATEMENT OF FACTS

Sometime before midnight on July 6, 2011, a 2008 Nissan sedan was involved in a single car accident in Oconee County. The car was driven off the right side of South Flagship Drive and into a tree, causing damage to the front end of the vehicle. (R. p.189; R. p.61, lines 4-25). A little after midnight on the morning of July 7, 2011, Trooper Kevin N. Brown, a seven-year veteran of the South Carolina Highway Patrol, first saw and had contact with Abraham. Brown was on duty that night and responded to the accident scene. When Brown arrived at the scene, he noticed emergency/fire department vehicles and a vehicle off the side of the road against a tree. He was able to determine who was driving the crashed vehicle; however at trial, Abraham objected before Brown explained how he made that determination, arguing Brown's determination would impermissibly rely on hearsay. (R. p.59, line 11-p.62, line 9).

The jury was excused and during the ensuing arguments Abraham explained he was objecting to Brown testifying as to any hearsay statements from emergency personnel who might identify Abraham as the driver of the wrecked car. Abraham argued that without such statements he believed the State would be unable to prove the corpus delicti of the offense of driving under the influence, which would in turn prohibit introduction of Abraham's extra-judicial admission that he was in fact the driver, and would entitle Abraham to a directed verdict of not guilty. After hearing arguments from both parties and reviewing several cases on corpus delicti, the trial judge determined he could not rule on a motion for a directed verdict until the close of the State's case, and Trooper Brown's testimony resumed. (R. p.62, line 4-p.76, line 12).

When Brown arrived at the accident scene, the vehicle was still against the tree, and it had front end damage consistent with running into a tree. The only people present

When Brown arrived at the accident scene, the vehicle was still against the tree, and it had front end damage consistent with running into a tree. The only people present at the scene were medical personnel and Abraham, so Brown determined Abraham was the driver. (R. p.76, line 15-p.78, line 7). Brown then had a conversation with Abraham. Abraham told Brown he had been coming from the Lake Keowee Country Club, was on his way home to a residence inside Keowee Key, and admitted he had been driving the car that was wrecked into the tree. Brown smelled a strong odor of alcohol and noted Abraham was unsteady on his feet and his speech was slurred. Abraham admitted he had two to three glasses of wine at the club before driving home. (R. p.78, line 12-p.79, line 15).

Brown then conducted three standard field sobriety tests, all of which were recorded by the dashboard camera in Brown's car. One test could not be used because of Abraham's congenital eye condition; however, the two other tests showed significant signs of impairment, and Abraham was placed under arrest. (R. p.80, line 5-p.88, line 13). Abraham was subsequently taken to the police station, advised of his implied consent rights, and given a breath test. His breath sample registered at a ".22%." (R. p.92, lines 2-6). At the end of the State's case Abraham moved for a directed verdict and the motion was denied. (R. p.126, line 17-p.131, line 23; p.152, lines 17-24). The jury returned a guilty verdict for DUI.

## ARGUMENT

**The circuit court erred in reversing the denial of Respondent's motion for a directed verdict where the State presented sufficient independent evidence of the corpus delicti to corroborate Respondent's extra-judicial admissions and, together with such admissions, establish a jury question as to whether Respondent was guilty of driving under the influence.**

The trial judge properly denied Abraham's directed verdict motion because sufficient evidence, aside from Abraham's extra-judicial admission, was presented illustrating Abraham's impairment while driving a vehicle in this State, and from which his guilt could be fairly and logically deduced. The case was properly submitted for jury resolution by the trial judge. Viewing the evidence and all reasonable inferences in a light most favorable to the State, the circuit court erred in reversing the denial of Abraham's directed verdict motion and in reversing Abraham's conviction. There was no basis to disturb the trial judge's ruling and the jury's verdict. Therefore, the order of the circuit court should be reversed and Abraham's conviction should be reinstated.

When applied to a particular offense, corpus delicti means that the specific crime has been committed. State v. Dodd, 354 S.C. 13, 17, 579 S.E.2d 331, 333 (Ct. App. 2003). The "corroboration rule" requires that extra-judicial confessions or admissions of a defendant be corroborated by proof aliunde of the corpus delicti. State v. Osborne, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999). "The [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 a crime occurred." Id. at 180, 516 S.E.2d at 205. "While evidence of the corpus delicti in a particular case must be established by the best proof attainable, direct evidence is not essential." State v. Townsend, 321 S.C. 55, 57, 467 S.E.2d 138, 140 (Ct. App. 1996).

"The corpus delicti may be sufficiently proved by presumptive or circumstantial evidence when that is the best obtainable." Id. at 57, 467 S.E.2d at 140.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004). When presented with a motion for a directed verdict, the trial judge is concerned with the existence or non-existence of evidence, not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial judge should deny the directed verdict and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992).

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). The appellate court may only reverse the trial judge's denial of a motion for a directed verdict if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288

S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (citing State v. Fogle, 256 S.C. 149, 153, 181 S.E.2d 483, 484 (1971)).

The South Carolina Code provides in part that: "It is unlawful for a person to drive 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 are materially and appreciably impaired." S.C. Code Ann. § 56–5–2930 (Supp. 2012). Thus, the act of operating a motor vehicle with impaired faculties is the gravamen of the offense. Townsend, at 58, 467 S.E.2d at 140; State v. Sheppard, 248 S.C. 464, 150 S.E.2d 916 (1966). The corpus delicti of DUI is: (1) driving a motor vehicle; (2) within this State; (3) while under the influence of alcohol [or any other drug, or combination of other drugs and substances, or combination of alcohol and any other drug or drugs or substances]. S.C.Code Ann. § 56–5–2930 (Supp. 2012); see Townsend at 58, 467 S.E.2d at 140 (setting forth the corpus delicti of DUI under a previous but substantially similar version of Section 56-5-2930 of the South Carolina Code). Thus, "evidence showing the accused in a DUI case to be the driver of the vehicle is unnecessary to the determination of whether the State sufficiently proved the corpus delicti." City of Easley v. Portman, 327 S.C. 593, 596, 490 S.E.2d 613, 615 (Ct. App. 1997). "All that the first element requires is that the State sufficiently prove that *someone* drove the automobile." Id. at 596, 490 S.E.2d at 615.

Here, substantial circumstantial evidence was presented establishing both Abraham's level of impairment due to the influence of alcohol, and that he was driving the recently wrecked vehicle discovered by Trooper Brown off the road and up against a tree. Abraham was at the scene of a single car wreck and was the only person present besides emergency personnel. He smelled like alcohol, failed several field sobriety tests,

and appeared to be intoxicated. A breathalyzer test showed Respondent's blood alcohol level to be .22 approximately one hour after his arrest. As in Townsend, this is enough circumstantial evidence to submit the case to the jury. See also Portman, at 596-97, 490 S.E.2d at 615 (Ct. App. 1997) (finding that "the following circumstances constituted sufficient evidence to establish the corpus delicti of the offense of DUI: the Bronco had left the road; it rested up against a tree; the manner in which the Bronco had left the road indicated the driver's operation of the vehicle had been somehow impaired; Portman rested his head against the vehicle; he smelled of alcohol; he slurred his speech, a characteristic associated with one who is intoxicated; and the investigating officer believed Portman was under the influence of alcohol."). In addition, as in Osborne, the State provided sufficient independent evidence to support the trustworthiness of Abraham's subsequent extra-judicial admissions to the police, and the independent evidence taken together with those admissions allowed a reasonable inference that the crime of driving under the influence was committed. See Osborne at 180, 215 S.E.2d at 205 (finding sufficient evidence of the corpus delicti of driving under the influence where the officer arrived at the scene of a one-car accident, the car had gone off the road and hit a speed limit sign, the car was abandoned, and the car hood was warm to the touch, and where two hours after the discovery Osborne was very intoxicated, admitted he wrecked his car, and returned to the accident scene).

Clearly, there was substantial evidence presented establishing Abraham's faculties and coordination were materially and appreciably impaired due to the influence of alcohol. See, e.g., State v. Salisbury, 343 S.C. 520, 524, 541 S.E.2d 247, 248-49 (2001) ("In South Carolina, the corpus delicti of DUI must be established by proof that a

person's ability to drive has been materially and appreciably impaired by the use of alcohol and/or drugs."); State v. Kerr, 330 S.C. at 132, 143-44, 498 S.E.2d 212, 217 (Ct. App.1998) ("One is under the influence, within the meaning of the statute, when the ingestion of one or more substances listed therein has resulted in the impairment of his faculties. . . . One may be under the influence as contemplated by the traffic laws without being drunk or passed out, or even intoxicated."). Therefore, viewing the evidence and all reasonable inferences therefrom in a light most favorable to the State, the trial judge properly denied the directed verdict motion and submitted the case to the jury. As there was not a complete failure of evidence tending to establish Abraham's guilt, the circuit court erred in reversing his conviction. See State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007) ("On a directed verdict motion in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight."). For these reasons, the State respectfully submits the circuit court should be reversed, and Abraham's conviction for DUI should be reinstated.

## CONCLUSION

For all of the reasons set forth above, Appellant respectfully that this Court reverse the decision of the circuit court and reinstate Respondent's conviction for DUI.

Respectfully submitted,

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April 11, 2013

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(including social security numbers, names of minor children, financial account numbers, and home addresses).

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**PROOF OF SERVICE**

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I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Record on Appeal and Final Brief of Appellant*, both dated April 11, 2013, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 11th, day of April, 2013.

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