

**RECEIVED**

**May 27 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN COURT OF APPEALS

---

Appeal from Greenwood County  
Honorable Perry H. Gravely, Circuit Court Judge  
Appellate Case No. 2021-001189

---

TYRONE ANDERSON,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Appellant.

---

**RECORD ON APPEAL**

---

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

- STATE’S EXHIBIT 1 (DEPUTY DAWN MCGUIRE-SMITH BODY CAMERA)**
- STATE’S EXHIBIT 2 (TROOPER JAMEY EDWARDS DASH CAMERA)**
- AUDIO RECORDING OF TRIAL CONDUCTED (May 7, 2021)**



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENWOOD )  
 )  
 TYRONE ANDERSON )  
 APPELLANT )  
 -vs.- )  
 )  
 STATE OF SOUTH CAROLINA, )  
 RESPONDENT )  
 )

Filed CP 8th Judd Cr. Greenwood, SC  
 21 MAY 18 PM 3:02

IN THE EIGHTH CIRCUIT COURT  
 OF COMMON PLEAS

RETURN TO APPEAL

2021-CP-24-0415  
 20202350019456  
 CASE NUMBERS

In response to the Defendant's appeal, the Court provides the following return.

On January 30, 2021, Tyrone Anderson, the Defendant, received three traffic citations issued by SC Highway Patrol Trooper J Edwards. The citations were 20202350019456 for Driving under the Influence; 20202350019457 for Open Container of Beer or Wine in a Vehicle; and 20202350026009 for Transport of Liquor in a Vehicle with Seal Broken. The Defendant went through Bond Court and was given a court date of February 18, 2020. On February 20, 2020, attorney R. Jamison Tinsley, Jr, notified the court that he was representing the Defendant and requesting a jury trial.

The jury trial occurred on May 7, 2021 and the jury was selected on May 3, 2021. Present at the trial were Trooper Edwards, Greenwood County Sheriff's Deputy Dawn McGuire-Smith, the Defendant, and his attorney. Judge C. Ryan Johnson presided over the trial. All participants, including the jurors were required to wear face coverings and were distanced at least 6 feet apart. After the jury was sworn in, each party made an opening statement. The State then began their case by calling Deputy McGuire-Smith.

Deputy McGuire-Smith testified under oath that on January 30, 2020 she had received a call to respond to a suspicious vehicle at 319 Townsend Road in Greenwood County. Once she arrived, she found the Defendant passed out in the vehicle. The vehicle was running and in "drive." Mr.

Anderson was identified as the driver/occupant by a name tag he was wearing. His foot was on the brake. She made multiple attempts to wake the Defendant and get him to put the car in park. Eventually Mr. Anderson woke up and rolled the window down slightly. Once he rolled the window down, Deputy McGuire-Smith stated she noticed the smell of alcohol and radioed for dispatch to send a trooper to investigate a potential DUI.

Deputy McGuire-Smith was wearing a body-cam during the incident. The video recorded from her body-cam was admitted into evidence as State's Exhibit #1 without objection from the Defendant. The video was published to the jury. Before the playing of the video, the Deputy testified that the vehicle had rolled a little bit. After viewing the video, the Deputy stated she may not have remembered it correctly and did not see the vehicle move on the video.

During Deputy McGuire-Smith's testimony, the Defendant raised an objection and motion regarding the two alcohol charges. He argued that the State did nothing to preserve the beer can or cup of liquor and the two related charges should therefore be dismissed by the Court. In support of his argument, the Defendant provided a copy of State v Tellock (2013CP01096) in which Judge Addy dismissed an Open Container charge because the State did not at a minimum retain a beer can to show the percent alcohol by volume. The State responded that it is their standard practice to pour out and dispose of open containers. The Court agreed that the State had a burden to preserve evidence and therefore dismissed the two alcohol charges. The Defendant further moved that the discovery of the beer can and cup of liquor should be suppressed as they relate to the DUI charge. The Court denied the Defendant's motion.

The State next called Trooper Edwards to testify. The Trooper testified under oath that on January 29, 2020, he received a call through dispatch to assist with a DUI on Townsend Road in Greenwood County. When he approached the Defendant's vehicle, he observed Mr. Anderson to

be passed out. He also noticed an open beer can in the center counsel and could detect the odor of alcohol. He had the defendant exit the car and perform some standardized field sobriety tests. The HGN test was administered. Mr. Anderson was unstable on his feet and could not follow the trooper's pen as requested. The test was stopped and Mr. Anderson was placed under arrest for DUI. Mr. Anderson was offered to give a breath sample by the Datamaster. He refused.

Upon searching the Defendant's car, the Trooper found a red cup with a brown liquid in it that had the strong smell of liquor. Both the beer can and cup of liquor were poured out in front of the trooper's patrol vehicle.

The trooper's in car video was submitted into evidence as State's Exhibit #2. The parties had previously agreed to some redactions from the video. The video was published to the jury. On the video, Mr. Anderson is recorded stating he is "drunk" and "fucked up" and that he "fucked up bad."

The Defendant was asked multiple times where he was coming from. His answers included "here," "having a good time," "just driving," and "home." He also stated that his "old lady" said he should not have gone anywhere tonight.

The State rested its case at the close of Trooper Edward's testimony. The Defendant then moved for a Directed Verdict arguing that the State did not provide sufficient evidence to establish that Mr. Anderson was driving. He provided State v Graves in support of his argument. The State responded by pointing out that the Defendant admitted to driving the vehicle. The Trooper further argued that the vehicle had to get there somehow. The Court denied the Defendant's motion.

Mr. Anderson was informed by the court about his right to testify and his right not to be compelled to testify. He was given the opportunity to discuss his rights with his attorney. The Defendant chose not to testify and no evidence was presented in his defense.

Both parties gave closing arguments and were afforded an opportunity to submit proposed jury instructions. The Defendant submitted seven requests for charge. The requests are attached. The Court refused to include requests 3 and 7. The remaining requests were already included in the regular charge given by the Court.

The jury found the Defendant guilty of Driving under the Influence. The State did not have any evidence to present regarding the Defendant's blood-alcohol level. The Court therefore did not present this issue to the jury and sentenced the Defendant at the minimum blood-alcohol level.

The Defendant was sentenced to 20 days in jail or the payment of a fine of \$992.00. The Defendant was set up on a scheduled time payment plan.

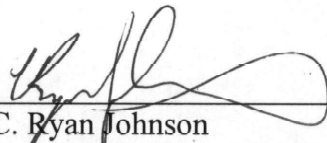
On May 7, 2021, the Defendant filed a Notice of Intent to Appeal with the Court. The Defendant's appeal was filed on May 11, 2021.

The trial was digitally recorded and a copy of such is available upon request.

Included with this return are copies of:

1. Uniform Traffic Ticket 20202350019456
2. The Defendant's Request to Charge
3. The Jury Instruction provided by the Court
4. The Verdict Form

Respectfully Submitted,

  
C. Ryan Johnson  
Magistrate, Greenwood County

May 13<sup>th</sup>, 2021

JT

EDWARDS

VOID   
NOTES

Form 5-438  
Rev. 08/2017

# UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA  
VERSUS

CITY/COUNTY OF: GREENWOOD

FIRST NAME: TYRONE MIDDLE NAME: LELAND LAST NAME: ANDERSON

STREET: 105 SHANNON ST

CITY: GREENWOOD STATE: SC ZIP CODE: 296468829

DL STATE: SC DRIVER'S LICENSE NO.: 0004295124 CLASS: D CDL:  YES  NO

RACE: B SEX: M BIRTH DATE: 09/17/1973 HGT.: 510 WGT.: 215 HAIR: BLK EYES: BRO

VEH. LIC. NO.: MMN125 STATE: SC MAKE OF VEH.: CHEV YEAR: 2012 VEHICLE TYPE:  AUTO

VEHICLE OWNER FIRST NAME: TYRONE MIDDLE NAME: LELAND LAST NAME: ANDERSON

OWNER STREET: 105 SHANNON ST CITY: GREENWOOD STATE: SC ZIP CODE: 296468829

### YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT: GREENWOOD MAGISTRATE 24101 STREET: 528 MONUMENT STREET

DATE OF TRIAL: 02/18/2020 TIME OF TRIAL: 09:00 CITY: GREENWOOD, SC STATE: SC ZIP CODE: 29646

VIOLATION SECTION NO.: 56-05-2930(A) VIOLATION - COURT APPEARANCE REQUIRED:  YES  NO  
Driving Under The Influence; 1st Offense; Refused Test

DATE OF VIOLATION: 01/29/2020 TIME OF VIOL.: 2349 SC POINTS: B.A. LEVEL: REFUSED

VIOLATION LOCATION: SEC 230 TOWNSEND RD E COUNTY: 24

LAT: N 34 16 5.02 LONG: W 82 13 16.49 CITY: HODGES

NAME AND RANK OF ARRESTING OFFICER: J. L. EDWARDS TPR SCCJA OFFICER NUMBER: 1711-7347

PR

BAIL DEPOSITED: JAIL DATE OF ARREST: 1/29/2020 BOND AMOUNT REQUESTED:

DATE BAIL REC'D.: BY:

CASE BEFORE: MAGISTRATE  MUN. COURT  CIRCUIT COURT  FAMILY COURT  FEDERAL COURT

TRIAL BY: TRIAL JUDGE  JURY  DEFENDANT: DID NOT APPEAR  APPEARED

DISPOSITION DATE: 5-7-21 DISPOSITION: NOLLE PROSSED  GUILTY  PLED: NOLO CONTENDERE   
FORFEITED BOND  NOT GUILTY  DETERMINED BAC:

CHARGE CONVICTED OF: SAME AS ORIGINAL  SC POINTS:

JAIL: 20 DAYS SUSPEND: 997 FINE: 1500 AMT. COLLECTED: AMT. SUSPENDED: COMMITTED TO: Vehicle Searched: NO

CERTIFIED CORRECT: [Signature] DATE: 5-7-21 Arrest as Result of NO

Trial Officer's Copy TICKET # 20202350019456



AGENCY: TROOP 2 SOUTH CAROLINA HIGHWAY PATROL TROOP 2

05/07/21

#450  
#300 = today  
STP 300 per month

20 days or 997 =

# UNIFORM TRAFFIC TICKET

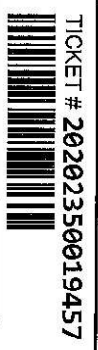
## STATE OF SOUTH CAROLINA

### VERSUS

FIRST NAME TYRONE	MIDDLE NAME LELAND	LAST NAME ANDERSON	
STREET 105 SHANNON ST		STATE SC	CITY GREENWOOD
CITY GREENWOOD		STATE SC	ZIP CODE 29668829
DL STATE SC	DRIVER'S LICENSE NO. 006429124	CLASS D	CDL YES <input type="checkbox"/> NO <input type="checkbox"/>
RACE B	SEX M	BIRTH DATE 09/17/1973	HGT 510
VEH. LIC. NO. MMN125	STATE SC	MAKE OF VEH CHEV	YEAR 2012
VEHICLE OWNER FIRST NAME TYRONE		MIDDLE NAME LELAND	LAST NAME ANDERSON
OWNER STREET 105 SHANNON ST		CITY GREENWOOD	STATE SC
<b>YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT</b>			
NAME OF TRIAL COURT GREENWOOD MAGISTRATE		24101 STREET 529 MONUMENT STREET	
DATE OF TRIAL 02/16/2020	TIME OF TRIAL 09:30	CITY GREENWOOD	STATE SC
VIOLATION SECTION NO. 61-04-0119		VIOLATION - COURT APPEARANCE REQUIRED Open Container Of Beer Or Wine In Motor Vehicle	
DATE OF VIOLATION 01/29/2020	TIME OF VIOL. 2349	SC POINTS 0	B.A. LEVEL ND
VIOLATION LOCATION SEC 230 TOWNSEND RD E		COUNTY 24	
LAT N 24 16 5.02	LONG W 82 13 16.48	HODGES	CITY
NAME AND RANK OF ARRESTING OFFICER J. L. EDWARDS		SOCIA OFFICER NUMBER 1711-7247	
BAIL DEPOSITED JAIL	DATE OF ARREST 1/29/2020	BOND AMOUNT REQUESTED	

PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE BE SURE YOU UNDERSTAND FROM THE ARRESTING OFFICER THE EXACT TIME AND BEFORE WHOM YOU ARE TO APPEAR. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR Nolo Contendere, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. POINTS FOR OUT OF STATE VIOLATOR WILL BE ASSESSED BY YOUR HOME STATE LICENSING AUTHORITY AND MAY DIFFER FROM STATE TO STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVER'S LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET



### NOTICE

THE PRIMARY AIM OF TRAFFIC LAW ENFORCEMENT IS TO REDUCE TRAFFIC ACCIDENTS, INJURIES AND DEATHS THROUGH FAIR, IMPARTIAL, AND REASONABLE ENFORCEMENT OF THE LAWS.

You must settle the case hereby made against you in one of the following ways:

1. You must appear in court at the appointed time with your South Carolina driver's license if indicated in the violation block on the front side of this summons.
2. You may post a cash bond with the appropriate trial court prior to the assigned date of trial. If you decide to mail in your bond rather than go to the office, MAIL MONEY ORDER, CASHIER'S CHECK OR CERTIFIED CHECK DIRECTLY TO THE TRIAL COURT OFFICE BEFORE WHOM YOU ARE SUMMONED TO APPEAR. The trial court name and address shown on the front side of this summons. DO NOT MAIL CASH OR PERSONAL CHECK. Be sure to enclose with the bond the arresting officer's name and the summons number.
3. If a court appearance is not mandatory, you may pay your fine online with a credit card for citations issued in participating counties. Go to <http://sc.gov/OnlineServices/Pages/CourtPayments.aspx> to determine if online payments are available in the county the citation was issued.
4. You may appear in court on the assigned date and time and have a trial conducted by the Trial Judge.

**THE POSTING OF BOND BEFORE YOUR ASSIGNED TRIAL DATE IN NO WAY AFFECTS YOUR RIGHT TO HAVE A FAIR TRIAL BY THE JUDGE OR IF YOU MAKE A WRITTEN REQUEST BEFORE YOUR SCHEDULED TRIAL BY JURY.**

However, if you are NOT required to appear in court on the assigned trial date and have previously posted bond and do not appear on the trial date, your bond may be forfeited unless the judge has agreed to have your case heard at another time.

If you fail to post bond or personally appear in court on the assigned trial date, you will be tried in your absence and, if convicted, your home state's Motor Vehicle Division will be notified to suspend your license until you have cleared this matter with the trial court. Additionally, a willful failure to appear or post bond is punishable as a separate offense by a fine of up to \$200.00 or imprisonment of up to 30 days.

# UNIFORM TRAFFIC TICKET

## STATE OF SOUTH CAROLINA

### VERSUS

**FIRST NAME** MIDDLE NAME LAST NAME  
 TYRONE LELAND ANDERSON

**STREET** 105 SHANNON ST  
**CITY** GREENWOOD **STATE** SC **ZIP CODE** 296468929

**DL STATE ID/DRIVERS LICENSE NO.** NONE  CLASS  **CDL**   
 SC 0004295124

**RACE** M **SEX** M **BIRTH DATE** 09/17/1973 **HGT.** 510 **WGT.** 215 **HAIR** BLK **EYES** BRO

**VEH. LIC. NO./NONE** SC **STATE** SC **MAKE OF VEH.** CHEV **YEAR** 2012 **REG. VEH.**  **SALES TAX**  **SALES TAX**  **SALES TAX**

**VEHICLE OWNER FIRST NAME** MIDDLE NAME LAST NAME  
 TYRONE LELAND ANDERSON

**OWNER STREET** 105 SHANNON ST **CITY** GREENWOOD **STATE** SC **ZIP CODE** 296468929

**NAME OF TRIAL COURT** 24101 STREET  
 GREENWOOD MAGISTRATE 928 MONUMENT STREET

**DATE OF TRIAL** 09/30 **TIME OF TRIAL** GREENWOOD, SC 29646 **STATE** SC **ZIP CODE** 296468929

**VIOLATION SECTION NO.** 61-06-4020 **VIOLATION - COURT APPEARANCE REQUIRED** YES  NO   
 Transport Alcohol in Motor Vehicle With Seal Broken

**DATE OF VIOLATION** 07/29/2020 **TIME OF VIOL.** 2340 **SC POINTS** B. A. LEVEL

**VIOLATION LOCATION** SEC 230 TOWNSEND RD E **CITY** GREENWOOD **STATE** SC **ZIP CODE** 296468929

**NAME AND RANK OF ARRESTING OFFICER** J. L. EDWARDS **TPR** **SOCCA OFFICER NUMBER** 1714-1347

**BAIL DEPOSITED** JAIL **DATE OF ARREST** 1/29/2020 **BOND AMOUNT REQUESTED**

PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE  
 BE SURE YOU UNDERSTAND FROM THE ARRESTING OFFICER THE EXACT  
 TIME AND BEFORE WHOM YOU ARE TO APPEAR. IF THIS TICKET IS  
 WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD  
 GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS  
 VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR  
 FORWARDED TO YOUR HOME STATE. POINTS FOR OUT OF STATE  
 VIOLATOR WILL BE ASSESSED BY YOUR HOME STATE LICENSING  
 AUTHORITY AND MAY DIFFER FROM STATE TO STATE. FAILURE TO  
 COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE  
 SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU  
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 SEE IMPORTANT INFORMATION ON THE REVERSE SIDE OF THIS TICKET

TICKET # 20202350026009



## NOTICE

THE PRIMARY AIM OF TRAFFIC LAW ENFORCEMENT IS TO  
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 ENFORCEMENT OF THE LAWS.

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4. You may appear in court on the assigned date and time and have a trial conducted by the Trial Judge.

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However, if you are NOT required to appear in court on the assigned trial date and have previously posted bond and do not appear on the trial date, your bond may be forfeited unless the judge has agreed to have your case heard at another time.

If you fail to post bond or personally appear in court on the assigned trial date, you will be tried in your absence and, if convicted, your home states Motor Vehicle Division will be notified to suspend your license until you have cleared this matter with the trial court. Additionally, a willful failure to appear or post bond is punishable as a separate offense by a fine of up to \$200.00 or imprisonment of up to 30 days.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Ticket Nos. 20202350019456, -19457, &
	)	-26009
vs.	)	
	)	<b>DEFENDANT'S REQUESTS TO</b>
Tyrone Anderson,	)	<b>CHARGE</b>
	)	
Defendant.	)	
_____	)	

REQUEST NO. 1:

I charge you, ladies and gentleman of the jury, that if you have a reasonable doubt not a substantial doubt, but a reasonable doubt about the defendant's guilt, you must resolve that doubt in favor of the defendant and find him/her not guilty.

REQUEST NO. 2:

I charge you, ladies and gentlemen of the jury, that the defendant comes into this courtroom presumed to be innocent. No defendant, in any criminal case, has the burden of proving his or her innocence, which might be impossible to do in any number of cases. However, that presumption of innocence surrounds the defendant like a cloak and is only removed from the defendant after you have been convinced beyond a reasonable doubt on every element of the offense that the defendant is, in fact guilty.

REQUEST NO. 3:

I charge you, ladies and gentlemen of the jury, that failure of a defendant to take a DataMaster test is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the guilt or innocence of the accuse. It must not be considered by you in any manner whatsoever against the defendant or mitigate against him in any respect whatsoever.

A defendant has a statutory right to not take a DataMaster test and the assertion of such statutory right cannot and must not be considered by you in your deliberations.

Under your oath then, you are to reach no inference or draw no conclusion whatsoever from the fact that a defendant in this case did not take a DataMaster test. The failure of this defendant to take a DataMaster test should not even be discussed in the jury room. The burden of proof as I have stated to you, is upon the State. The burden of proof is upon the State to prove guilt beyond a reasonable doubt and the failure of a defendant to take a DataMaster test is not a factor to be considered by you in determining the guilt or the innocence of a defendant.

REQUEST NO. 4:

I charge you that you have heard some evidence of what is commonly called field sobriety tests that were administered to the defendant. These tests are merely evidence for you to consider along with all the other evidence that you have heard or seen in the trial of this case. These tests do not create any inference to establish a specific degree of Blood Alcohol Content and cannot be inferred to establish conclusive proof in and of themselves of driving under the influence. State v. Sullivan, 426 S.E.2d 766 (1993).

REQUEST NO. 5:

I charge you, ladies and gentlemen of the jury, that no police officer in investigating a traffic accident shall necessarily deem the fact that an accident has occurred as giving rise to the presumption that a violation of law has occurred. S.C. Code § 56-5-6170.

REQUEST NO. 6:

I charge you that the failure of the defendant to take the witness stand and testify on his own behalf must not weigh in the slightest degree against the defendant, nor should this fact enter into the discussion or deliberation of the jury in any manner. State v. Robinson, 283 S.C. 140, 119 S.E.2d 671 (S.C. 1961) overruled on other grounds by State v. Torrance, 305 S.C. 45, 406 S.E.2d 315 (1991).

REQUEST NO. 7:

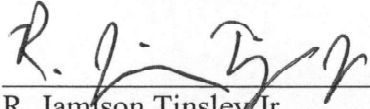
I charge you that the State must prove beyond a reasonable doubt that the defendant was driving while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. Driving requires the vehicle to be in motion to constitute the offense. State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977).

REQUEST NO. 7:

I charge you that, suspicion, however strong, is not enough to sustain a conviction. State v. Woods, 273 S.C. 266, 255 S.E.2d 680 (S.C. 1979).

Respectfully submitted,

**TINSLEY & TINSLEY, P.C.**  
Attorney for Defendant

  
\_\_\_\_\_  
R. Jamison Tinsley Jr.  
109 Oak Ave.  
Greenwood, SC 29646  
(864) 223-0770

Fax: (864) 377-8278  
Tinslerj@gmail.com  
S.C. Bar No. 79903

Greenwood, South Carolina

May 6, 2021

## Jury Charge

~~The word "verdict" emanates from two words in Latin meaning to speak the truth. Under your oath as a juror, the verdict in this case must speak the truth.~~

The State of South Carolina charges the defendant with [insert charge(s) here]. That is the pending charge contained in this warrant/ticket. This is not evidence and does not prove anything in the case. The warrant/ticket is simply the charging paper used to bring the matter for court action.

This defendant has pled not guilty. That plea of not guilty places the burden of proof upon the State of South Carolina to prove the defendant guilty beyond a reasonable doubt. The defendant is presumed to be innocent unless and until the State has established guilt beyond a reasonable doubt.

A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. The defendant in a criminal trial must always be presumed innocent, unless and until his guilt has been proven beyond a reasonable doubt. This presumption of innocence is legal proof of innocence and remains with the defendant at all times from the moment of his arrest, throughout the trial proceeding, and goes into the jury room until you, the jury, reach a verdict of guilty based on evidence which the State has presented satisfying you of the defendant's guilt beyond a reasonable doubt.

By the Constitution and laws of the State of South Carolina, you, the jury, are the sole judges of the facts and evidence in this case. I am not permitted to render any opinion that I may have in the case or to show any feeling to you as to what I think about the facts, evidence, or the guilt or innocence of this defendant.

I have made numerous trial rulings on matters of evidence and law in your presence. Please do not derive any inference from any rulings I have made as to any opinion or feeling that I might have on the facts. I do not have an opinion or a feeling on the facts.

In determining what the facts are in this case, you must pass upon the credibility of the witnesses who have testified. You are the sole judges of the credibility of the witnesses who took the witness stand. Credibility in the law

means believability. The value and weight to be given to their testimony is in your sound discretion. You alone must decide the force and effect and the truth of the testimony. As jurors, you have the right to believe a small portion of a witness's testimony and disregard the larger portion. Or you may believe a larger portion of a witness's testimony and disregard the smaller portion. You may believe a witness's testimony in its entirety or you may completely reject a witness's testimony in totality. You may believe the testimony of a single witness against that of many witnesses or the many witnesses as against the one. However, you must not determine the matter of credibility or believability merely by counting the number of witnesses for either side.

By the very same Constitution and laws which make you the finders of the facts and evidence in this case, I am, as the trial judge, made the sole and only instructor in the law. You must accept as correct the law as I charge it to. Neither you nor I should be concerned with what the law ought to be, but rather what the law is as I charge it.

The defendant is entitled to every inference in his favor which can reasonably be drawn from the evidence. When two inferences may be drawn from the same set of facts, one consistent with a verdict of guilty and the other consistent with a verdict of not guilty, the defendant is entitled to the inference which is consistent with a verdict of not guilty. You cannot find the defendant guilty based upon suspicion, conjecture, or speculation, no matter how strong. A conviction can only be based upon proof of guilt beyond a reasonable doubt. If the proof does not meet that standard, you must find the defendant not guilty.

The State is required to prove every element of the charged offense by evidence which satisfies you the jury of guilt beyond a reasonable doubt. The defendant is not required to prove his innocence. The burden of proof always remains upon the State.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt, but rather every reasonable doubt.

The defendant in this case has not testified. This is his constitutional right. It is not a circumstance you can take into consideration, or even allow to enter into your discussion in the jury room. Under the Constitution of South Carolina and the United States Constitution, it is the defendant's constitutional right not to testify. The burden of proof is upon the State of South Carolina to establish his guilt by competent evidence beyond a reasonable doubt.

Under the Constitution of this State, the jury verdict must be unanimous. Every single juror must agree on the jury verdict. There cannot be any split or divided vote in any form or fashion, such as 2 to 4 or 5 to 1.

**§ 56-5-2930. Operating motor vehicle while under influence of alcohol or drugs.**

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;

~~(2) under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired; or~~

~~(3) under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired.~~

**Under the Influence**

A driver is under the influence if he/she ingests drugs or alcohol and the ingestion (1) impairs his/her faculties, (2) impairs his/her ability to operate the vehicle with reasonable care, or (3) impairs his/her ability to drive as a prudent driver would operate the vehicle. To be under the influence, does not require a finding that the defendant was drunk, passed out, or even intoxicated. The State need only prove, beyond a reasonable doubt that, (1) defendant's ability to drive was materially and appreciably impaired; and (2) this impairment was caused by the use of ~~drugs or~~ alcohol.

## **Drive**

For a driver to be "driving" a vehicle, the vehicle is required to be in motion. Evidence of such motion can be proved by either direct or circumstantial evidence.

## **Breath-Alcohol Machine Testimony**

You have heard testimony from the operator of a breath-alcohol machine, a device designed and used to measure the amount of alcohol in a person's blood by chemical analysis of the breath. The operator of the machine has testified as to the results of such a test given to the defendant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, shortly after arrest.

The machine operator testified to his qualifications and the conditions under which the test was given. Upon that testimony, I declared him to be qualified and the testimony admissible. However, you, as the jury are the sole judges of credibility of both the evidence and testimony and may accept or disregard the machine operator's testimony however you see fit. Do not make any inferences from my rulings regarding his testimony. They were only made to allow the evidence to be presented before you for your consideration.

It need not concern you whether or not the results of the breath-alcohol machine test may be used in court. Our law says that such results may be used. So you should pass over that question should it be raised. This does not mean that you must believe the results of the test; it means that you have a right to consider such results along with all the other evidence in the case.

As to the weight that may be given to the breath-alcohol test results, our Law has this to say:

- (1) If there was at the time five one hundredths of one percent (.05) or less by weight of alcohol in the defendant's blood, it shall be conclusively presumed that the defendant was not under the influence of intoxication liquors;
- (2) If there was at the time in excess of five one hundredths of one percent (.05) but less than eight one hundredths of one percent (.08) by weight of alcohol in the defendant's blood, such fact shall not give rise to any inference that the defendant was or was not under the influence of intoxicating liquors, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant; and
- (3) If there was at the time eight one hundredths of one percent (.08) or more by weight of alcohol in the defendant's blood, it may be inferred that the defendant was under the influence of intoxicating liquors.

### Refusal to Take Test

There has been testimony that the defendant refused to take the breath-alcohol test when it was offered to him under lawful conditions. It was the right of the defendant to so refuse; but it is also the right of the State to tell you that he did refuse. You may give whatever weight you wish to that fact in your deliberations.

*or 48 hrs Com. Sec.  
48 hrs - 30 days  
or  
#99700*

State of South Carolina  
County of Greenwood

In the Magistrate's Court

State of South Carolina

Verdict

v.

Tyrone Anderson

Charge 20202350019456 DUI

We the Jury, find the Defendant

Tyrone Anderson / Guilty

Sara Williams  
Foreperson

5/7/2021

Date

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENWOOD )  
 )  
 State of South Carolina, )  
 )  
 vs. )  
 )  
 Tyrone Anderson, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

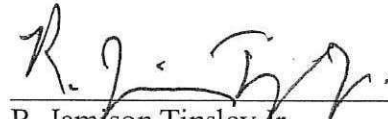
IN THE MAGISTRATE COURT  
 EIGHTH JUDICIAL CIRCUIT  
 Ticket No. 20202350019456 (DUI 1<sup>st</sup>)  
**DEFENDANT'S NOTICE OF INTENT  
 TO APPEAL**

**TO: HON. C. RYAN JOHNSON, GREENWOOD COUNTY MAGISTRATE**

YOU WILL PLEASE TAKE NOTICE that the Defendant, through his undersigned attorney, intends to appeal the jury's guilty verdict from the trial on Friday, May 7, 2021, in the above-referenced matter.

RESPECTFULLY SUBMITTED.

**TINSLEY & TINSLEY, P.C.**  
 Attorney for Defendant

  
 \_\_\_\_\_  
 R. Jamison Tinsley Jr.  
 109 Oak Ave.  
 Greenwood, SC 29646  
 (864) 223-0770  
 Fax: (864) 377-8278  
 Tinslerj@gmail.com  
 S.C. Bar No. 79903

Greenwood, South Carolina

May 7, 2021

**COPY**

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JH

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENWOOD )  
State of South Carolina, )  
vs. )  
Tyrone Leland Anderson, )  
Defendant. )

IN THE MAGISTRATE COURT  
EIGHTH JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE  
BY HAND DELIVERY**

Ticket No.: 20202350019456

The undersigned employee of Tinsley & Tinsley, P.C., does hereby certify that on the 7th day of May, 2021, she served the pleadings specified below, via manner specified, to: Honorable C. Ryan Johnson and Trooper Jamie Edwards, at the addresses referenced below:

**SERVED VIA HAND DELIVERY:**

Honorable C. Ryan Johnson  
Greenwood County Magistrate Court  
528 Monument Street, Room 100  
Greenwood, SC 29646

**SERVED VIA US MAIL DELIVERY:**

Trooper Jamie Edwards  
SCHP  
1803 Bypass 25 SE  
Greenwood, SC 29646

- 1. Defendant's Notice Of Intent To Appeal

**TINSLEY & TINSLEY, P.C.**

Attorneys for the Defendant

*Candice C. Tinsley*

Candice C. Tinsley  
109 Oak Avenue  
Greenwood, SC 29646  
Phone: (864) 223-0770  
FAX: (864) 377-8278

May 7, 2021,

Greenwood, South Carolina.

**APPEAL TO THE COURT OF COMMON PLEAS FOR GREENWOOD COUNTY  
FROM THE GREENWOOD MAGISTRATE’S COURT**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
Tyrone Anderson,	)	Case No. 2021-CP-24-_____
	)	
Appellant,	)	<b>APPELLANT’S PETITION IN</b>
	)	<b>SUPPORT OF APPEAL</b>
vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Appellant Tyrone Anderson appeals the jury’s guilty verdict from the trial on Friday May 7, 2021, on Ticket #20202350019456 (DUI 1<sup>st</sup>).

Appellant sets forth the following grounds for appeal:

1. The Magistrate erred in denying Appellant’s motion for a directed verdict where there was no direct or circumstantial evidence of Appellant driving beyond Appellant’s admission of driving.
2. The Magistrate erred in allowing the State to introduce evidence of an untested, unkept cup with “liquor” found in Appellant’s car. This evidence was not reliable and unfairly prejudiced Appellant.
3. Such other grounds as may be set forth after Appellant receives the recording from the trial and the Magistrate’s return.

RESPECTFULLY SUBMITTED.

(SIGNATURE BLOCK ON FOLLOWING PAGE)

**TINSLEY & TINSLEY, P.C.**  
Attorney for Defendant

s/R. Jamison Tinsley Jr.  
R. Jamison Tinsley Jr.  
109 Oak Ave.  
Greenwood, SC 29646  
(864) 223-0770  
Fax: (864) 377-8278  
Tinslerj@gmail.com  
S.C. Bar No. 79903

Greenwood, South Carolina

May 7, 2021

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**

**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, 2020<sup>1</sup>, 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.

<sup>1</sup> 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

Electronically signed on 2021-09-22 13:18:34 page 7 of 7

STATE OF SOUTH CAROLINA  
COUNTY OF GREENWOOD

COURT OF COMMON PLEAS  
2021-CP-24-00415

Tyrone Anderson

)

) TRANSCRIPT OF RECORD

-vs-

)

) September 8, 2021

State of South Carolina )

) Greenwood, South Carolina

B E F O R E:

The Honorable Perry H. Gravely, Judge

A P P E A R A N C E S:

Demetrios G. Andrews, Esquire  
Attorney for the State

Robert Jamison Tinsley, Esquire  
Attorney for the Applicant

Reported By:

Yvestre Torres, OCR  
Circuit Court Reporter for the  
First Judicial Circuit

1 THE COURT: Next appeal is Anderson v.  
2 State. All right. Now who's who?

3 MR. TINSLEY: Your Honor, this is Jamison  
4 Tinsley on behalf of Mr. Anderson.

5 THE COURT: All right. I gather then you  
6 are?

7 MR. ANDREWS: Demetrios Andrews.

8 THE COURT: All right.

9 MR. ANDREWS: I'm with the solicitor's  
10 office.

11 THE COURT: All right. I'll be glad to hear  
12 from you. Mr. Tinsley.

13 MR. TINSLEY: Thank you, Your Honor. May  
14 it please the Court. I represent Mr. Tyrone Anderson,  
15 who was tried for a DUI downstairs in magistrate court  
16 back in May and was convicted, and we are appealing  
17 because we believe the magistrate court erred in failing  
18 to direct a verdict in Mr. Anderson's favor.

19 And the issue really is whether the State  
20 proved the element of driving. If you look at the  
21 Graves case, which I will hand up a copy of, our case  
22 is pretty much directly on point with Graves, State v.  
23 Graves, from 1977.

24 In the Graves case, the police, the highway  
25 patrol, came up to a man, five in the morning, his

1 engine was running, he was slumped over the steering  
2 wheel with the transmission in gear. The trooper asked  
3 the Defendant to get out of the car, and the car start  
4 -- as he does, the car starts rolling.

5 Another trooper has to stop the car,  
6 and the trooper said he smelled a strong odor of  
7 alcohol and observed physical impairment in that case.  
8 And the trooper did -- admittedly, did not see  
9 the Defendant driving, but thought he was in control  
10 of the car.

11 In our case, my client was similarly  
12 slumped over the wheel, car in gear, when a deputy  
13 came on the scene, and he was in a private driveway,  
14 and she had to bang on the door. But after two minutes  
15 or so, looking at the video, he does come to, puts  
16 the car in park. So, I see the exact same fact pattern  
17 as you see in Graves there.

18 In Graves, the magistrate court convicted,  
19 then that conviction was overturned. The Supreme Court  
20 basically said that after a lengthy statutory  
21 interpretation saying that it was driving, that's  
22 described by the statute, not operating. So driving  
23 requires movement of the vehicle in some direction,  
24 whereas operating would be a broader term.

25 And in here, I don't think the State

1 produced adequate evidence of driving. It's -- you  
2 know, there's a mention in the return that the trooper  
3 said that the car had to get there somehow. Well,  
4 that's true. The car had to get there somehow in Graves  
5 as well, and I understand that ---

6 THE COURT: Kind of like a res ipsa type  
7 of argument. Well, let me ask you this too: I think  
8 in looking at the return, didn't the officer originally  
9 testify that the car was moving, but then on  
10 cross-examination maybe he realized he was mistaken  
11 or something?

12 MR. TINSLEY: That's correct.  
13 She backtracked. And I do also have for the Court  
14 a copy of the initial stop that I'll also hand up.  
15 The first two minutes are really the only ---

16 THE COURT: Okay.

17 MR. TINSLEY: --- part that's relevant.

18 THE COURT: Okay.

19 MR. ANDREWS: Your Honor, I haven't seen  
20 that, but I don't have any objection.

21 THE COURT: All right. We usually have  
22 trouble figuring out some way to play it anyway.  
23 All this stuff doesn't always play on our systems.

24 MR. TINSLEY: I understand. But --  
25 and I understand that the State can prove a case

1 by circumstantial evidence. But that would be --  
2 an example of that would be if my client had been  
3 seen -- my client and the car had been seen at point  
4 A, that there was some evidence of intoxication on  
5 my client's part, and then an hour later he's seen  
6 in the car at point B, then I would grant you that's  
7 circumstantial evidence of driving. That's not the case  
8 here.

9 This is the officer has come up on a parked  
10 car, just like in Graves, which was not sufficient  
11 to survive summary -- a directed verdict there.  
12 So, I would ask that the Court reverse the magistrate's  
13 ruling and reverse the conviction. Thank you, Your  
14 Honor.

15 THE COURT: All right. Yes, Mr. Andrews.

16 MR. ANDREWS: Thank you, Your Honor.  
17 This case is a little different from Graves because  
18 Mr. Anderson did admit to driving. That was on  
19 the trooper's video, and we would point to Page 3  
20 of the magistrate's return. I believe the last two  
21 sentences -- the State rested its case at the close  
22 of Trooper Edwards' testimony.

23 The Defendant then moved for a directed  
24 verdict, arguing the State did not provide sufficient  
25 evidence of establishing Mr. Anderson was driving.

1 He provided State v. Graves. The State responded  
2 by pointing out that the Defendant admitted to driving  
3 the vehicle. And then the trooper added the vehicle  
4 had to get there somehow, and the motion for a directed  
5 verdict was then denied, Your Honor.

6 THE COURT: Let me ask you this:  
7 Were the -- and, again, would Miranda warnings apply  
8 at that point, or wouldn't they?

9 MR. ANDREWS: Really, Your Honor -- man,  
10 I wish you hadn't asked me that question because now  
11 I'm going to have to trip over myself remembering that  
12 stuff.

13 THE COURT: Because I assume at that point  
14 they hadn't given -- usually that's a little bit early.

15 MR. ANDREWS: Yeah, I don't think they've  
16 been given -- and I'm reaching here. It's been a while  
17 since I've tried a DUI. I was not the trial attorney  
18 on this case, but for some reason I seem to remember  
19 that a traffic stop is not custody. Further, we would  
20 argue that the defense did not raise that issue at  
21 trial.

22 THE COURT: All right.

23 MR. TINSLEY: If they're relying on the  
24 trooper's cam, I would say that Miranda does apply  
25 because there was -- a deputy originally went to the --

1 had the initial interaction, made him put it in park,  
2 said hold on, and called in the highway patrol. So --  
3 but I don't think an admission -- I still don't think  
4 there's evidence of driving so that the corpus delecti,  
5 the body of the crime, the State has got to have some  
6 evidence of it.

7           And just like in Graves, yeah, that car  
8 had to get there somehow, as did Mr. Anderson's.  
9 An admission that he was driving at some point doesn't  
10 tie to when he's intoxicated. I'll grant that there's  
11 evidence in the record of intoxication ---

12           THE COURT: In their case -- was it  
13 the Mount Pleasant case that talks about the Defendant  
14 admitting whether they were driving or not, and they  
15 had to have more than that or something? I'm trying  
16 to remember what that was.

17           MR. TINSLEY: There is this corpus delecti  
18 line of cases. There's an Osborne case, and they had  
19 sufficient proof of the corpus delecti there because  
20 there was a wreck that he had admitted to being the  
21 driver. The wreck gave them that evidence.

22           THE COURT: Well, let me ask you this:  
23 What exactly -- and, again, I'll listen to the tape.  
24 What exactly did the guy say?

25           MR. TINSLEY: He said ---

1 THE COURT: And was it in response  
2 to a question? Just -- and, again, I'm not going to  
3 hold you definitely, but, generally, what do you recall?

4 MR. ANDREWS: And, Your Honor, I'm going  
5 from Page 3 of the magistrate's return, and this was  
6 from the magistrate's summary of the trooper's body  
7 cam. The Defendant was asked multiple times where  
8 he was coming from. His answers included here, having  
9 a good time, just driving and home.

10 THE COURT: Okay.

11 MR. ANDREWS: He also stated that his  
12 "old lady" said he should not have gone anywhere.

13 MR. TINSLEY: That's probably all pretty  
14 accurate, actually.

15 THE COURT: Okay. All right. Anything  
16 else?

17 MR. ANDREWS: Your Honor, Mr. Tinsley  
18 did mention the Osborne case; I've got a copy of  
19 the Osborne. It deals with uncorroborated confession  
20 and the corroboration rule.

21 THE COURT: All right.

22 MR. ANDREWS: And the part that I believe  
23 is most relevant, Your Honor, would be on Page 8.  
24 It's going to be around the second paragraph.  
25 We clarified the law in this state that consistently

1 with -- its progeny, the "Corroboration rule is  
2 satisfied if the State provides sufficient independent  
3 evidence which serves to corroborate the defendant's  
4 extrajudicial statements, and together with such  
5 statements, permits a reasonable belief that the crime  
6 occurred."

7           The Defendant, Your Honor, in this case,  
8 was in the driver's seat with his foot on the brake.  
9 The car was not even in drive, according to the  
10 magistrate's return. When the deputy comes up to  
11 the vehicle, the deputy had to get Mr. Anderson to lower  
12 his car window. She had to tell him to put the car  
13 in drive. That, taken along with his later statement  
14 that he was just driving, we feel that's adequate corpus  
15 delecti, Your Honor.

16           THE COURT: All right. Final word.

17           MR. TINSLEY: And my response would be  
18 that in Osborne, there's evidence of the corpus delecti  
19 because of the wreck. Sitting in a car, that might  
20 raise suspension. That's not sufficient evidence  
21 of the crime occurring of DUI.

22           THE COURT: All right. Let me -- I'm going  
23 to look at the recording and consider both these cases,  
24 and then I'll take it under advisement, and let y'all  
25 know what I've come up with.

1 MR. TINSLEY: Thank you, Your Honor.

2 THE COURT: All right.

3 MR. ANDREWS: Thank you, Your Honor.

4 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

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State of South Carolina            )  
County of Greenwood            )

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 8th of September, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 10, 2021



Yvestre Torres  
Circuit Court Reporter

**RECEIVED**

**May 27 2022**

**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: *Scott Matthews*

SCOTT MATTHEWS

Assistant Deputy Attorney General

S.C. Bar Number 101464

Office of Attorney General

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(803) 734-3727

ATTORNEY FOR APPELLANT

May 27, 2022