NO. COA09-1603

NORTH CAROLINA COURT OF APPEALS

Filed: 20 July 2010

STATE OF NORTH CAROLINA

v. Brunswick County
No. 06 CRS 3819

SARA HARGROVE LANDETA-SOTO

Appeal by defendant from judgments entered 2 September 2009 by Judge Franklin F. Lanier in Brunswick County Superior Court. Heard in the Court of Appeals 19 July 2010.

Attorney General Roy Cooper, by Assistant Attorney General Jess D. Mekeel, for the State.

J. Clark Fischer for defendant-appellant.

BRYANT, Judge.

On 12 July 2006, defendant Sara Hargrove Landeta-Soto was cited for impaired driving and reckless driving to endanger. Defendant was convicted in district court, appealed, and a trial *de novo* was held in Brunswick County Superior Court.

The facts relevant to defendant's appeal are as follows: On 12 July 2006, Trooper David Inman of the North Carolina Highway Patrol was called to the scene of an accident on NC 130 in Brunswick County. Upon arriving, Trooper Inman observed a Mercury automobile with "sideswiping damage" on the driver's side of the car. Trooper Inman also noticed "lots of pieces of vehicle laying

in the roadway[.]" Among the debris was a headlight housing which had "VW" stamped onto it. Additionally, Trooper Inman found a piece of beige or champagne colored molding. Trooper Inman testified that the piece of molding did not match the color of the Mercury that was still at the scene, and that the other vehicle involved in the accident was not present. Trooper Inman stated that he determined the second vehicle involved in the accident had continued westbound.

Within thirty minutes of Trooper Inman's arrival at the scene of the accident, he received a call of a hit and run accident "two to three miles farther west" from the first accident. Upon arriving at the scene of the second accident, he observed a "tan and champagne" Volkswagen vehicle. Trooper Inman testified that the driver's side of the vehicle had been sideswiped in a manner consistent with the first accident. Upon investigation, Trooper Inman discovered that molding from the driver's side door was missing, and the front headlight was "busted." Trooper Inman concluded that the Volkswagen found at the second accident scene was the same vehicle involved in the first accident.

Trooper Inman interviewed the defendant and asked her what had occurred in the collision. Defendant told him that a black SUV had struck her vehicle and then continued on. Trooper Inman testified that, based on defendant's story, that the purported black SUV would have been heading eastbound, toward the scene of the first accident. Trooper Inman further testified that the vehicle would have come directly by the scene of the first accident. Trooper

Inman stated, however, that he never encountered any black SUV with damage of the type that would be sustained in a sideswiping accident.

While Trooper Inman was interviewing the defendant, he noticed that:

> she couldn't stand up. She kept wobbling and had to actually rest herself on the ambulance with her arm to keep from falling. I also observed that it was raining and cloudy outside and she had a pair of sunglasses on and a hat pulled down, pretty low, over her brow.

When Trooper Inman asked defendant to remove her sunglasses, he observed that "she was extremely squinty eyed as if I was shining a light directly in her eyes or like the sun was directly in her eyes. She appeared to be having an extremely tough time with the light situation." Trooper Inman further testified that defendant's speech was "very drawn out, slurred" and she was "having trouble articulating what happened in the wreck and being consistent about it[.]"

Trooper Inman began looking for signs of impairment from the defendant, because he did not believe she was exhibiting signs consistent with a person who had just been in an automobile accident. When Trooper Inman inquired into defendant's condition, she stated that she was "okay, that she didn't receive any kind of injury, any kind of bump to the head." When Trooper Inman remarked that defendant appeared to be having difficulties "standing still and with the light situation," defendant responded that "she had had a nerve pill earlier in the day." Defendant then denied taking

any "nerve pills or any alcohol" since the time of her accident. It was later determined that EMS personnel had removed prescription bottles of pills from defendant's car, but Trooper Inman failed to note their contents. About thirty minutes later, Trooper Inman interviewed defendant for a second time, this time at the hospital. However, defendant did not recognize Trooper Inman and did not recall previously speaking with him. Trooper Inman described defendant as "extremely disoriented[.]"

Defendant was convicted of impaired driving and reckless driving to endanger. The trial court sentenced defendant to two years imprisonment for impaired driving, and a consecutive term of sixty days imprisonment for reckless driving to endanger. Defendant appeals.

On appeal, defendant argues that there was insufficient evidence to sustain her conviction for impaired driving and that the trial court erred in denying Defendant's motion to dismiss. Specifically, defendant contends that the evidence created no more than mere suspicion that she was impaired at the time of her accident. Defendant asserts that the State "offered absolutely no evidence of what substance supposedly caused the impairment to which Trooper Inman testified." Defendant notes that there was no evidence of alcohol consumption, and the "nerve pill" she admitted using was never identified. While a pill bottle was taken from defendant's car by EMS workers, it was never seized by police, and Trooper Inman failed to note the type of medication listed on the

bottle. Furthermore, no analysis of defendant's blood was conducted.

Upon review of the record, briefs, and contentions of the parties, we find no error. In ruling on a motion to dismiss, "[t]he question is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that the defendant is the perpetrator of the offense. *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). "'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" *State v. Cross,* 345 N.C. 713, 717, 483 S.E.2d 432, 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). When reviewing the sufficiency of the evidence, "[t]he trial court must consider such evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Patterson*, 335 N.C. 437, 450, 439 S.E.2d 578, 585 (1994)(citing *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991)). "The defendant's evidence, unless favorable to the State, is not taken into consideration. However, the defendant may be permitted to present evidence to explain or clarify some evidence presented by the State upon showing it is consistent with the State's evidence. *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 448 (2009).

Defendant was convicted of impaired driving. Pursuant to N.C. Gen. Stat. § 20-138.1(a):

> A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

> (1) While under the influence of an impairing substance; or
>
> (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more.

N.C. Gen. Stat. § 20-138.1(a).

In this case, the evidence tended to show that defendant had been involved in a collision with another vehicle. Defendant admitted she did not suffer any head injury, but nevertheless was wobbly and had to lean against an ambulance to balance herself. Trooper Inman noticed that Defendant's speech was slurred, drawn out, and that Defendant had difficulty explaining what had happened. According to Trooper Inman, defendant's eyes were sensitive to the light, even though it was a cloudy and rainy day. Also, EMS workers had removed bottles of prescription pills from defendant's car. Most importantly, when Trooper Inman questioned defendant as to why she was having difficulties "standing still and with the light situation," defendant admitted to taking a "nerve pill." Thus, defendant herself directly linked her impaired condition to nerve pills she had previously taken.

Defendant argues that the State's case fails because the State failed to present any evidence regarding the substance which caused defendant's impairment. However, this Court held in *State v. Tedder* that, "a law enforcement officer may express an opinion that a defendant is impaired." *See State v. Tedder*, 169 N.C. App. 446, 450, 610 S.E.2d 774, 777 (2005). "If there is substantial evidence--whether direct, circumstantial, or both--to support a

finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied." *See State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009). Therefore, we hold that a jury could conclude that defendant operated a vehicle while impaired, and thus the trial court properly denied defendant's motion to dismiss. Accordingly, we find no error.

No error.

Judges HUNTER, Robert C. and STEELMAN concur.

Report per Rule 30(e).