



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 7
February 21, 2024
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

NONE

UNPUBLISHED OPINIONS

NONE

PETITIONS - UNITED STATES SUPREME COURT

28145 – State v. Timothy Ray Jones, Jr. Pending

28149 – The State v. Mary Ann German Pending

EXTENSION TO FILE PETITION - UNITED STATES SUPREME COURT

None

PETITIONS FOR REHEARING

28184 – Applied Building Sciences v. SC Department of Commerce Pending

28185 – The State v. Tommy Lee Benton Pending

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

6050 – SCCCL v. Charleston County	10
6051 – Tyrone Anderson v. State of South Carolina	19

UNPUBLISHED OPINIONS

2024-UP-054 – SCDSS v. Merritt Miller (Filed February 14, 2024)	
2024-UP-055 – The State v. James E. Spencer	
2024-UP-056 – Joe Clemons v. Peggy H. Pinnell Agency, Inc.	
2024-UP-057 – Natalie Barfield v. Michael Barfield	
2024-UP-058 – Tamara Gaylord v. Ronnie Gainey	
2024-UP-059 – Michael Boykin v. State	
2024-UP-060 – The State v. Andres F. Posso	
2024-UP-061 – James Millholland, #367569 v. SCDC	
2024-UP-062 – Rachel Polite v. Karen Polite	
2024-UP-063 – Nathaniel Mitchell v. State	
2024-UP-064 – Douglas Kelsey v. House of Blues Myrtle Beach	

PETITIONS FOR REHEARING

5994 – Desa Ballard v. Admiral Insurance Company	Pending
--	---------

6017 – Noel Owens v. Mountain Air Heating & Cooling	Pending
6027 – Ex Parte: Trustgard Insurance Company	Pending
6034 – The State v. Charles Dent	Denied 2/12/2024
6037 – United States Fidelity and Guaranty Company v. Covil Corporation	Pending
6038 – Portrait Homes v. Pennsylvania National Mutual Casualty	Pending
6039 – Anita Chabek v. AnMed Health	Denied 2/14/2024
6042 – Renewable Water Resources v. Insurance Reserve Fund	Pending
6044 – Susan Brooks Knott Floyd v. Elizabeth Pope Knott Dross	Denied 2/15/2024
6046 – Jennings-Dill, Inc. v. Eric Israel	Denied 2/14/2024
6047 – Amazon Services v. SCDOR	Pending
6048 – Catherine Gandy v. John Gandy, Jr.	Pending
6049 – John Upson v. State	Pending

EXTENSIONS TO FILE PETITION FOR REHEARING

None

PETITIONS – SUPREME COURT OF SOUTH CAROLINA

5933 – The State v. Michael Cliff Eubanks	Pending
5946 – The State v. Frankie L. Davis, III	Pending
5963 – Solesbee v. Fundamental Clinical	Pending

5965 – National Trust for Historic Preservation v. City of North Charleston	Pending
5972 – McEntire Produce v. SCDOR	Pending
5974 – The State v. Calvin D. Ford	Pending
5975 – Rita Glenn v. 3M Company	Pending
5986 – The State v. James E. Daniels, Jr.	Pending
5987– The State v. Tammy C. Moorner	Pending
5988 – The State v. Sidney S. Moorner (2)	Pending
5992 – Rufus Rivers v. James Smith, Jr.	Pending
5995 – The State v. Kayla M. Cook	Pending
5996 – Palmetto Pointe v. Tri-County Roofing	Pending
5999 – Jerome Campbell v. State	Pending
6001 – Shannon P. Green v. Edward C. McGee	Pending
6004 – Joseph Abruzzo v. Bravo Media Productions, LLC	Pending
6007 – Dominic A. Leggette v. State	Pending
6008 – Tekayah Hamilton v. Regional Medical Center	Pending
6009 – John Doe v. Bishop of Charleston	Pending
6011 – James E. Carroll, Jr. v. Isle of Palms Pest Control, Inc.	Pending
6013 – Jamaine Holman v. SCELC	Pending
6016 – Vista Del Mar v. Vista Del Mar, LLC	Pending

6019 – Portfolio Recovery Associates, LLC v. Jennifer Campney	Pending
6020 – Joseph Kelsey, #217218 v. SCDPPPS	Pending
6021 – Stewart Buchanan, #69848 v. SCDPPPS	Pending
6022 – J&H Grading & Paving v. Clayton Construction	Pending
6025 – Gerald Nelson v. Christopher S. Harris	Pending
6028 – James Marlowe v. SCDOT	Pending
6029 – Mark Green v. Wayne B. Bauerle	Pending
6030 – James L. Carrier v. State	Pending
6031 – The State v. Terriel L. Mack	Pending
2022-UP-326 – Wells Fargo Bank v. Michelle Hodges	Pending
2022-UP-380 – Adonis Williams v. State	Pending
2022-UP-415 – J. Morgan Kears v. The Kears Family Education Trust	Pending
2022-UP-425 – Michele Blank v. Patricia Timmons (2)	Pending
2022-UP-429 – Bobby E. Leopard v. Perry W. Barbour	Pending
2023-UP-005 – David Abdo v. City of Charleston	Pending
2023-UP-037 – Diana Bright v. Craig Bright	Pending
2023-UP-055 – M. Baron Stanton v. Town of Pawleys Island	Pending
2023-UP-062 – Raglins Creek Farms, LLC v. Nancy D. Martin	Pending
2023-UP-070 – James Kincannon v. Ashely Griffith	Pending
2023-UP-087 – The State v. Seth H. Smith	Pending

2023-UP-091 – The State v. Dale E. King	Pending
2023-UP-096 – Viola M. Hackworth v. Bayview Manor LLC	Pending
2023-UP-119 – The State v. Angelita Wright	Pending
2023-UP-121 – Mathew C. Dwyer v. State	Pending
2023-UP-126 – Innovative Waste Management v. Crest Energy Partners	Pending
2023-UP-132 – Monica Brown-Gantt v. Centex Real Estate	Pending
2023-UP-138 – In the Matter of John S. Wells	Pending
2023-UP-143 – John Pendarvis v. SCLD	Pending
2023-UP-151 – Deborah Weeks v. David Weeks	Pending
2023-UP-158 – Herman Holcomb v. City of North Augusta	Pending
2023-UP-161 – The State v. Terrell D. Knighter	Pending
2023-UP-172 – The State v. Gary M. Wirtz	Pending
2023-UP-177 – John Mayers v. Konan Henthorn	Pending
2023-UP-178 – CRM of the Carolinas, LLC v. Trevor W. Steel	Pending
2023-UP-179 – Ronald Mims v. Diane Ray	Pending
2023-UP-180 – The State v. Samuel L. Burnside	Pending
2023-UP-201 – Nancy Morris v. State Fiscal Accountability Authority	Pending
2023-UP-202 – SCE&G v. Pitch Landing, LLC	Pending
2023-UP-206 – Andrew McIntire v. Red Bay Constructors Corp.	Pending

2023-UP-232 – Beachwalk Hotel & Condominiums Association, Inc. v. The Town of Hilton Head Island (2)	Pending
2023-UP-236 – U.S. Bank, NA v. Alyce F. Otto	Pending
2023-UP-239 – Wilmington Savings Fund Society v. Rex A. Field	Pending
2023-UP-241 – John Hine v. Timothy McCrory	Pending
2023-UP-243 – David J. Benjamin v. State	Pending
2023-UP-244 – Logan Wood v. Horry County School District	Pending
2023-UP-246 – Ironwork Productions, LLC v. Bobcat of Greenville, LLC	Pending
2023-UP-249 – Buck Investments, LLC v. ROA, LLC	Pending
2023-UP-254 – In the Matter of Lauren Martel	Pending
2023-UP-258 – The State v. Terry R. McClure	Pending
2023-UP-260 – Thomas C. Skelton v. First Baptist Church	Pending
2023-UP-261 – Mitchell Rivers v. State	Pending
2023-UP-263 – Rory M. Isaac v. Laura Kopchynski	Pending
2023-UP-264 – Kathleen A. Grant v. Nationstar Mortgage, LLC	Pending
2023-UP-272 – Estate of Barbara Owens v. Fundamental Clinical and Operational Services, LLC	Pending
2023-UP-274 – Terrence "Terry" Carroll v. Debra Mowery	Pending
2023-UP-281 – Armando Acevedo v. Hunt Valley Holdings, LLC	Pending
2023-UP-283 – Brigitte Hemming v. Jeffrey Hemming	Pending
2023-UP-289 – R-Anell Housing Group, LLC v. Homemax, LLC	Pending

2023-UP-290 – Family Services Inc. v. Bridget D. Inman	Pending
2023-UP-293 – NCP Pilgrim, LLC v. Mary Lou Cercopely	Pending
2023-UP-295 – Mitchell L. Hinson v. State	Pending
2023-UP-300 – SCDSS v. Kristie Taylor and George Cleveland, III (2)	Pending
2023-UP-301 – Olivia M. Thompson v. College of Charleston	Pending
2023-UP-311 – The State v. Joey C. Reid	Pending
2023-UP-315 – Capital Bank, N.A. v. Rosewood Holdings, LLC	Pending
2023-UP-321 – Gregory Pencille, #312332 v. SCDC (2)	Pending
2023-UP-324 – Marvin Gipson v. Coffey & McKenzie, P.A.	Pending
2023-UP-326 – SCDSS v. Joseph Green (2)	Pending
2023-UP-343 – The State v. Jerome Smith	Pending
2023-UP-352 – The State v. Michael T. Means	Pending
2023-UP-365 – The State v. Levy L. Brown	Pending
2023-UP-366 – Ray D. Fowler v. Pilot Travel Centers, LLC	Pending
2023-UP-398 – The State v. Rashawn M. Little	Pending

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

South Carolina Coastal Conservation League, Inc.,
Elizabeth M. Smith, Abraham B. Jenkins, Jr., and South
Carolina Public Interest Foundation, Plaintiffs,

of which South Carolina Coastal Conservation League,
Inc., Elizabeth M. Smith, and Abraham B. Jenkins, Jr.,
are the Appellants.

v.

Charleston County, South Carolina, South Carolina
Transportation Infrastructure Bank, and South Carolina
Department of Transportation, Respondents.

Appellate Case No. 2020-001189

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Opinion No. 6050
Heard November 14, 2023 – Filed February 21, 2024

**AFFIRMED IN PART, REVERSED AND
REMANDED IN PART**

W. Andrew Gowder, Jr., of Austen & Gowder, LLC, of
Charleston, and Christopher Kaltman DeScherer, of
Southern Environmental Law Center, of Charleston, both
for Appellants.

Robert E. Tyson, Jr. and Jasmine Denise Smith, both of Robinson Gray Stepp & Laffitte, LLC, of Columbia, for Respondent South Carolina Transportation Infrastructure Bank.

Barbara Munig Wessinger and Linda C. McDonald, of the South Carolina Department of Transportation, and Andrew F. Lindemann, of Lindemann Law Firm, P.A., of Columbia, both for Respondent South Carolina Department of Transportation.

Michael A. Timbes, of Thurmond Kirchner & Timbes, P.A., of Charleston, and Natalie Armstrong Ham, Bernard E. Ferrara, Jr., and Edward L. Knisley, Jr., of the Charleston County Attorney's Office, all for Respondent Charleston County.

HEWITT, J.: This is an appeal by the South Carolina Coastal Conservation League and two individuals (collectively, Appellants). Appellants brought this case seeking declaratory and injunctive relief that would prohibit Charleston County from using "penny tax" funds for a project colloquially known as the "Mark Clark Extension." Appellants also alleged violations of the Freedom of Information Act (FOIA).

The circuit court granted Charleston County's motion to dismiss based on the court's finding that Appellants lacked standing, their claims were time-barred, and the claims also failed on the merits. Here, Appellants argue that they have taxpayer standing or public interest standing and that their claims were timely and adequately pled.

We affirm the circuit court's order dismissing all claims with the exception of one alleged FOIA violation. We agree with the circuit court that the majority of Appellants' claims are barred as late protests of the referenda authorizing the taxes in question. For different reasons, the other non-FOIA claims fail as well. As explained below, we affirm the bulk of the order dismissing this case and reverse and remand one FOIA claim for additional proceedings.

FACTS

The following background is taken from Appellants' second amended complaint. Charleston voters approved a one-half cent tax to be used for transportation and greenbelt projects in 2004. They approved a second-half cent tax in 2016. We will occasionally refer to proceeds from these taxes as "penny tax funds" even though this case involves the levying and allocation of two separate one-half cent taxes.

Appellants brought this lawsuit after Charleston County, the South Carolina Department of Transportation (DOT), and the South Carolina Transportation Infrastructure Bank (the Bank) amended their three-party Intergovernmental Agreement under which the parties agreed to fund the Mark Clark Extension. In the amended agreement, Charleston County pledged penny tax revenue to fund its local match obligation for the Mark Clark Extension. Appellants claim that Charleston's pledge violated the law in two ways: first, that it violated the ordinances and referenda authorizing the two taxes; and second, that the amended agreement is an unlawful appropriation.

Appellants further claim that, in February 2019, Charleston County improperly allocated penny tax funds for the Mark Clark Extension in violation of FOIA, and that its rescinding of the February 2019 allocation also violated the executive session requirements of FOIA.

After a hearing, the circuit court granted Charleston County's motion to dismiss all claims. The court denied Appellants' motion to alter or amend the dismissal. This appeal followed.

STANDARD OF REVIEW

"In reviewing the dismissal of a claim for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCPP, the appellate court applies the same standard of review as the trial court." *Sloan Const. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008), *holding modified by Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013). The court must resolve every doubt in a light most favorable to the nonmovant to determine whether the facts alleged on the face of the complaint state "any valid claim for relief." *Id.* at 112-13, 659 S.E.2d at 161 (citing *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)). Dismissal based on Rule 12(b)(6) is improper when "facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any

relief on any theory of the case." *Id.* at 113, 659 S.E.2d at 161 (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995)).

The court typically evaluates a pleading by focusing on the pleading itself, but review is expanded and may include other documents when a plaintiff attaches documents to the complaint and incorporates them by reference. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). The 2019 amended agreement, the enabling ordinances, and the 2004 and 2016 referenda ballot questions were attached as exhibits to the second amended complaint. For that reason, we have considered those documents here.

ELECTION CHALLENGE

The statutes authorizing the penny tax are found in Chapter 37 of Title 4 of the South Carolina Code. Counties may impose this tax after adopting an enabling ordinance that voters approve by referendum. *See* S.C. Code Ann. § 4-37-30(A)(1) (2021). Charleston voters approved the first-half cent tax in 2004 and the second-half cent tax in 2016.

The enabling statute requires that each ordinance identifies the transportation related projects that will be funded by the tax proceeds if the referendum on the ordinance is successful. § 4-37-30(A)(1)(a)(i)-(iii). Each enabling ordinance must also identify the anticipated cost and timeline for completion of the project or projects. § 4-37-30(A)(1)(a)-(b). Appellants' primary argument to the circuit court, and to this court, is that Charleston County may not spend penny tax dollars on the Mark Clark Extension because that project was not listed in either the 2004 or 2016 ordinances and was therefore not contemplated in the referenda that voters approved.

We agree with the circuit court that this argument is an untimely challenge to both the 2004 and 2016 elections, when the voters approved the penny taxes.

Charleston voters approved broad language in 2004 and 2016. Though the 2004 ordinance listed a number of transportation related projects that the proposed tax would fund, it also explained the penny tax proceeds would go to "financing the costs of highways, roads, streets, bridges, and other transportation-related projects, facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities" The 2016 ordinance and referendum similarly explained that penny

tax proceeds would fund transportation projects that "may include, but [were] not limited to" various projects of regional and local significance.

State election law requires any protest or contest of a countywide election be filed by noon on the Wednesday following the election's certification. S.C. Code Ann. § 7-17-30 (2019). The deadlines to challenge these referenda passed long ago. Appellants may not now argue that the broad language approved by Charleston voters does not comply with the enabling statute. As Appellants' second amended complaint recognized, the referenda authorized the collection of taxes far in excess of the amount required to fund the projects listed in the enabling ordinances, and the ordinances advertised that the list of projects was not exclusive. These were known and knowable at the time the ordinances were adopted and at the time of the referenda elections. Thus, this challenge is untimely.

History and context bolster this reasoning. The 2004 referendum that Charleston voters approved came about after our supreme court invalidated a 2002 referendum on the same subject matter. *W.J. Douan v. Charleston Cnty. Council*, 357 S.C. 601, 594 S.E.2d 261 (2003). There, our supreme court held that the printed instructions to voters that appeared on the ballot were not neutral and that this affected the fundamental integrity of the election. *Id.* at 612, 594 S.E.2d at 266. Unlike this case, that case began as a timely protest to the election. *Id.* at 606, 594 S.E.2d at 263. If the deadline for an election protest is to mean anything, it must mean that Appellants cannot now claim, as they do in their complaint, that "the referenda and ordinances that authorized [the taxes in question] do not comply with [the enabling statute]." The alleged deficiencies that Appellants point to in the ordinances and referenda ballot questions were apparent at the time of the adoption of the ordinance and the referenda elections and were ripe for challenge then.

Appellants also urge the court to apply the "Contract with the Voters Doctrine," arguing that at various times Charleston County councilmembers assured the public that penny tax funds would not be used to fund the Mark Clark Extension. Long-settled precedent establishes that this is not a viable claim—if political bodies or office holders renege on their public positions, it is not for the court to mandate compliance, and the voter's best recourse is at the ballot box. *See, e.g., State v. Whitesides*, 30 S.C. 579, 585, 9 S.E. 661, 663 (1889) ("And, even without this expressed desire, there is high authority for saying that such legislation would be valid with or without the consent of the people, the only check to an unwise exercise thereof, as we have said above, being, not the courts, but the intelligence of the general assembly and the ballot-box."); *see also, e.g., Sarrat v. Cash*, 103 S.C. 531,

88 S.E. 256 (1916) (addressing the allegation that voters approved a bond referendum based on representations made by public officials that a school would be built in a specific location, but upon passage, the school trustees decided to build the school elsewhere; further finding that the trustees had a right to exercise discretion).

Based on this reasoning, and in light of the fact that using penny tax funds for the Mark Clark Extension fits plainly within the broad language presented to and approved by Charleston voters, the circuit court correctly dismissed this claim as one for which relief could not be granted.

INTERGOVERNMENTAL AGREEMENT

Appellants claim the 2019 amended agreement between Charleston County, DOT, and the Bank illegally binds future councils and is an improper contracting of a legislative governmental power (budgeting), as opposed to proprietary power (business dealings). As noted earlier, the amended agreement was attached to Appellants' pleading. The terms of the agreement and the controlling law lead us to the conclusion that this claim was properly dismissed.

The test that controls this court's inquiry of whether an action is legislative or business in nature is whether the contract in question "deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired." *City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 180, 480 S.E.2d 728, 731 (1997) (quoting *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 133, 459 S.E.2d 876, 881 (Ct. App. 1995)).

We see the amended agreement as a straightforward business function of Charleston County. The plain terms of the agreement do not deprive future county councils of budgetary discretion. In pertinent part, the agreement contains a pledge by Charleston County to pay its share of the future costs for the Mark Clark Extension from penny tax proceeds, "or any lawful source," and provides that the county council will adopt future budgets to fund its payment obligations under the agreement. It is evident that this is not an actual appropriation, but rather an agreement to make future appropriations with funds from the penny tax or any other lawful source. Equally evident is that the agreement does not mandate that future councils spend a specific amount of funds each year on the Mark Clark Extension. Therefore, the agreement does not bind the legislative budgetary function of future councils.

Furthermore, the Transportation Infrastructure Bank Act explicitly contemplates this type of agreement. *See* S.C. Code Ann. §§ 11-43-120, -180, & -190 (2021) (explaining the Act's purpose as financing "major" projects, authorizing the Bank to require borrowers to enter agreements, and authorizing borrowers to pledge revenues to fulfill their obligations). If this type of agreement were an illegal allocation, it would be impossible for the State, the Bank, and local governments to carry out the sort of complex, multi-year transportation projects the Act specifically contemplates.

THE FEBRUARY 2019 APPROPRIATION

The claim that Charleston County violated the law by appropriating penny tax funds at a February 2019 meeting is not preserved for our review. The circuit court did not specifically rule on this issue in the order dismissing this case. This omission was the sole argument Appellants raised to the circuit court in their motion to reconsider. The court denied the motion to reconsider because Appellants did not provide the court with a copy of the motion within ten days, as required by Rule 59(g), SCRPC. The court cited our decision in *Smith v. Fedor*, which involved the exact same error, as support for its ruling. 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017).

If a party has raised an issue and the circuit court has not ruled upon it, a motion to alter or amend is required to preserve the issue for appellate review. *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 85, 529 S.E.2d 6, 9 (2000). An unaddressed issue remains unpreserved when a motion to reconsider is denied on the basis of procedural defect under Rule 59(g). *Fedor*, 422 S.C. at 126, 809 S.E.2d at 616 ("Because the trial court did not err in denying [plaintiff's] motion for reconsideration, the arguments presented in that motion are unpreserved."). It was within the circuit court's discretion to deny the motion to reconsider for failing to comply with Rule 59(g). Because this resulted in the circuit court never having ruled on the claim involving the February 2019 appropriation, that claim is not preserved for appeal.

FOIA

The final pair of claims we address are the alleged FOIA violations. Appellants allege Charleston County Council's special finance committee violated FOIA when it went into executive session and when the committee subsequently voted to rescind an earlier appropriation following that executive session. Appellants argue the announced reason for going into executive session was improper and that the

committee failed to give proper notice to the public of a potential vote. As explained below, the claim related to the reason for executive session was properly dismissed, but Appellants have alleged sufficient facts to maintain their claim that Charleston County gave insufficient notice that the committee would take official action after the executive session.

FOIA allows executive session for the discussion of legal advice related to pending litigation. S.C. Code Ann. § 30-4-70(a)(2) (Supp. 2023). Though the printed agenda listed the reason for the executive session as "Transportation Sales Tax Budget," Charleston County was in active litigation related to the penny tax and its transportation budget at the time of this meeting. The Charleston County attorney announced that the purpose of the executive session was for the county to receive legal advice related to that litigation. Precedent suggests the announced purpose before the executive session began was sufficient to satisfy FOIA's requirement that a public body disclose the "specific purpose" of any executive session. *Compare Donohue v. N. Augusta*, 412 S.C. 526, 532–33, 773 S.E.2d 140, 143 (2015) (noting that vague statements like "contractual matter" or "contractual recommendation" are insufficient topics for closed session). We emphasize that this analysis does not venture beyond Appellants' pleading. The announced reasons the Charleston County attorney gave for the executive session are taken from Appellants' second amended complaint and, facially, the county adequately announced this session.

Immediately after returning from the executive session, the special finance committee voted to reallocate penny tax dollars without any public debate. We read the relevant precedent to hold that any vote pursuant to matters discussed in executive session must be announced in advance. *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 631, 785 S.E.2d 198, 202 (2016) ("[I]n special meetings, 'nothing can be done beyond the objects specified for the call.'" (citation omitted)). As pled, this case fits squarely within *Brock*, which held that any action taken by a public body must be properly noticed and that "it is sufficient for the agenda to reflect that, upon returning to open session, action may be taken on the items discussed during the executive session." *Id.*

Charleston County urges us not to reach this issue because it subsequently rescinded the reallocation action it took after executive session, making the FOIA violation moot. This argument would require us to venture beyond Appellants' pleading and its supporting documents. As already noted, our standard of review does not permit

us to accept that invitation. Therefore, the dismissal of this claim and the corresponding claim for attorneys' fees are reversed and remanded.

CONCLUSION

The circuit court's order of dismissal is affirmed for all claims with the exception of Appellants' FOIA claim related to the vote taken after the special finance committee returned from executive session and the claim for attorneys' fees attributable to that claim, should they prevail. The dismissal of those claims is reversed and remanded.

WILLIAMS, C.J., and VERDIN, J. concur.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Tyrone Anderson, Respondent,

v.

State of South Carolina, Appellant.

Appellate Case No. 2021-001189

Appeal From Greenwood County
Perry H. Gravely, Circuit Court Judge

Opinion No. 6051
Heard October 3, 2023 – Filed February 21, 2024

REVERSED

Attorney General Alan McCrory Wilson and Assistant Attorney General Joshua Abraham Edwards, both of Columbia; and Solicitor David Matthew Stumbo, of Greenwood, all for Appellant.

Robert Jamison Tinsley, Jr., of Greenwood, for Respondent.

VERDIN, J.: The State appeals the circuit court's reversal of Tyrone Anderson's magistrate's court conviction of driving under the influence (DUI) and dismissal of the charge. On appeal, the State argues it presented evidence to establish each

element of DUI and that evidence independently corroborated Anderson's admission of driving such that it satisfied the *corpus delicti* rule. We reverse.

FACTUAL/PROCEDURAL BACKGROUND

On January 29, 2020, Trooper J.L. Edwards cited Anderson for DUI. Anderson was tried by a jury in magistrate's court on May 7, 2021. At the trial, Deputy Dawn McGuire-Smith testified that she responded to a private residence in Greenwood County after someone reported a suspicious vehicle in the driveway. The private residence was not Anderson's home.¹ Deputy McGuire-Smith testified she discovered Anderson passed out in the driver's seat with his foot on the brake, while the vehicle's engine was running with the transmission in drive. She knocked on the window a few times before Anderson responded, and she told him to put the car in park several times before he complied. Deputy McGuire-Smith stated she smelled alcohol when he rolled the window down. She asked Anderson if he was coming from work, to which Anderson replied, "oh, yeah." She radioed dispatch to send a trooper. The State published Deputy McGuire-Smith's body camera footage to the jury.

Trooper Edwards testified that when he arrived on scene, he approached the vehicle and saw Anderson passed out. He asked Anderson where he was coming from, and Anderson replied, "here." When he asked Anderson to get out of the vehicle, Anderson had to lean up against the car to prevent himself from falling. Trooper Edwards explained he administered field sobriety tests, but Anderson was unable to complete them. Trooper Edwards testified he found a cup in Anderson's vehicle that contained brown liquid, which smelled of liquor. He recalled that after he transported Anderson to the detention center, Anderson refused to complete a breathalyzer test.

The State published Trooper Edwards's dash camera footage to the jury. On the footage, when asked where he was coming from, Anderson stated, "here," and "having a good time." Anderson also said he had a "few" drinks. Trooper Edwards asked Anderson, "How'd you get here?" Anderson replied, "I'm driving" and "just driving." Trooper Edwards again asked where he came from, and

¹ Although it is unclear who owned the residence where Anderson was found, Deputy McGuire-Smith's body camera footage showed her referencing the homeowners' presence at the scene.

Anderson replied, "home." After placing handcuffs on Anderson, Trooper Edwards read Anderson his *Miranda*² warnings and Anderson stated he wished to continue to speak to him. Anderson then stated, "I f***ed up," multiple times. He also asked Trooper Edwards to call his wife to tell her, "I'm drunk; I messed up." On cross examination, Trooper Edwards testified he did not observe Anderson driving. He acknowledged Anderson told him he was "having a good time right here" at the scene.

At the close of the State's evidence, Anderson moved for a directed verdict, arguing the State failed to prove he was driving. He asserted that his case aligned directly with *State v. Graves*,³ in which our supreme court determined "driving" required movement of the vehicle. In response, the State argued Anderson stated in the video that he was driving. The magistrate denied the directed verdict, finding there was circumstantial evidence to submit the issue to the jury. Anderson then replied that to prove the *corpus delicti* of DUI, a confession was not enough and there must be substantial circumstantial evidence. The magistrate again denied the directed verdict.

The jury found Anderson guilty of DUI. The magistrate sentenced him to twenty days in jail or the payment of a \$992 fine. Anderson appealed his guilty verdict to the circuit court. The magistrate filed a return, indicating that Trooper Edwards's dash camera video showed Anderson stated he was, "drunk," "f***ed up," and he "f***ed up bad." The magistrate further observed that Anderson was asked multiple times where he was coming from, and he responded, "here," "having a good time," "just driving," and "home."

At the hearing before the circuit court, Anderson argued the magistrate erred by denying his request for a directed verdict because the State failed to prove the element of driving for his DUI conviction. The State responded that it satisfied the corroboration rule by providing sufficient independent evidence to corroborate Anderson's statements that (1) Anderson was in the driver's seat with his foot on the brake and (2) the officer had to tell him to put the car in park.

The circuit court reversed Anderson's conviction, holding that the State failed to produce any independent evidence of driving, whether direct or circumstantial, that

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ 269 S.C. 356, 237 S.E.2d 584 (1977).

showed Anderson put the car in motion while under the influence of alcohol. Therefore, the circuit court found the magistrate erred in denying Anderson's motion for a directed verdict. This appeal followed.

STANDARD OF REVIEW

"In criminal appeals from a municipal court, the circuit court does not conduct a de novo review; rather, it reviews the case for preserved errors raised to it by an appropriate exception." *City of Cayce v. Norfolk S. Ry. Co.*, 391 S.C. 395, 399, 706 S.E.2d 6, 8 (2011). "[T]he circuit court is bound by the municipal court's findings of fact if there is any evidence in the record which reasonably supports them." *City of Greer v. Humble*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013). "The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law." *State v. Hoyle*, 397 S.C. 622, 625, 725 S.E.2d 720, 722 (Ct. App. 2012) (quoting *State v. Johnson*, 396 S.C. 182, 186, 720 S.E.2d 516, 518 (Ct. App. 2011)).

LAW AND ANALYSIS

The State argues the circuit court erred by reversing Anderson's conviction of DUI because the State presented sufficient independent evidence to corroborate Anderson's statements to the police, and that independent evidence, taken together with the statements, allowed a reasonable inference that Anderson committed the crime of DUI. We agree.

Our courts have long held that "a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*." *State v. Osborne*, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999) (footnotes omitted). However, in *Osborne*, our supreme court followed the holding of the United States Supreme Court in *Opper v. United States*, 348 U.S. 84, 93 (1954), and applied the trustworthiness approach set forth there. *Osborne*, 335 S.C. at 179-80, 516 S.E.2d at 205; *see also State v. Abraham*, 408 S.C. 589, 592 n.1, 759 S.E.2d 440, 441 n.1 (Ct. App. 2014) ("Given our supreme court's holding in *State v. Osborne*, we find our state's law is consistent with the 'trustworthiness' approach delineated in *Opper* . . ."). The *Osborne* court clarified that "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."

335 S.C. at 179-80, 516 S.E.2d at 205. Thus, "the corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*." *Id.* at 179, 516 S.E.2d at 204 (quoting *Opper*, 348 U.S. at 93). Instead, the State must "introduce substantial independent evidence which would tend to establish the trustworthiness of the statement." *Id.* (quoting *Opper*, 348 U.S. at 93).

"Corroboration requires 'substantial independent evidence,' which is sufficient 'if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth.'" *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 205 (Ct. App. 2001) (quoting *Osborne*, 335 S.C. at 179, 516 S.E.2d at 204)). "If the statement is independently corroborated, then the combination of the statement and the State's remaining evidence may be considered by the trial court to determine if there is any evidence tending to establish the *corpus delicti*." *Id.* at 132-33, 546 S.E.2d at 205; *see also Abraham*, 408 S.C. at 592-93 n.1, 759 S.E.2d at 442 n.1 (Ct. App. 2014) ("[T]he *corpus delicti* rule only requires evidence *aliunde* the confession which, when considered with the confession, supports the confession and permits a reasonable inference that the crime occurred. The independent evidence must touch or be concerned with the *corpus delicti*." (internal citation omitted by court) (quoting *State v. Trexler*, 342 S.E.2d 878, 880-81 (N.C. 1986))); *id.* at 593 n.1, 759 S.E.2d at 442 n.1 ("[T]he rule does not require that the evidence *aliunde* the confession prove any element of the crime." (quoting *Trexler*, 342 S.E.2d at 880)).

"The corroboration rule applies whether a statement amounts to a confession or merely constitutes an admission of essential facts from which guilt might be inferred." *Hill v. State*, 415 S.C. 421, 433-34, 782 S.E.2d 414, 421 (Ct. App. 2016). "If there is any evidence tending to establish the *corpus delicti*, then it is the trial court's duty to pass that question on to the jury." *Osborne*, 335 S.C. at 180, 516 S.E.2d at 205.

"The *corpus delicti* of DUI is: (1) driving a vehicle; (2) within this State; (3) while under the influence of intoxicating liquors, drugs, or any other substance of like character." *State v. Townsend*, 321 S.C. 55, 58, 467 S.E.2d 138, 140 (Ct. App. 1996); *see also* S.C. Code Ann. § 56-5-2930(A) (2018) ("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 . . ."). The driving of a motor vehicle while under the influence of alcohol may be proven by circumstantial evidence. *State v.*

Salisbury, 330 S.C. 250, 256-57, 498 S.E.2d 655, 658 (Ct. App. 1998), *aff'd as modified*, 343 S.C. 520, 541 S.E.2d 247 (2001).

Here, the circuit court relied on our supreme court's 1977 opinion in *Graves* to find the State did not satisfy the corroboration rule. In *Graves*, the State appealed a circuit court's order reversing the defendant's conviction and sentence for DUI. 269 S.C. at 358, 237 S.E.2d at 585. The State presented evidence that a patrolman discovered a vehicle with the engine running and the transmission in gear. *Id.* at 359, 237 S.E.2d at 585. The vehicle was occupied by the defendant, who was leaning over the steering wheel asleep. *Id.* The patrolman indicated he instructed the defendant to get out of the car, at which time the car started moving. *Id.* The patrolman further stated that he observed a strong odor of alcohol and some physical impairment, but acknowledged he never saw the defendant driving the vehicle. *Id.* On appeal, our supreme court considered whether the defendant's actions constituted DUI and affirmed the reversal of the defendant's conviction, finding the word "drive" required the vehicle to be in motion to constitute the offense. *Id.* at 364, 237 S.E.2d at 588.

As stated above, in its 1999 opinion in *Osborne*, our supreme court applied the "trustworthiness approach" set forth in *Opper* and its progeny. *Osborne*, 335 S.C. at 179-80, 516 S.E.2d at 204-05 ("We clarify the law in this State that, consistently with *Opper* and its progeny, 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.").

In *Osborne*, a trooper discovered a wrecked car, which was abandoned, but its hood was warm to the touch. *Id.* at 174, 516 S.E.2d at 202. A few hours later, a deputy met the defendant at a convenience store. *Id.* The deputy testified the defendant, who appeared very intoxicated, wanted to report his car was stolen. *Id.* After the deputy informed him of his *Miranda* rights, the defendant admitted he wrecked the car, that the keys to the locked car were in his pocket, and he had not had any alcohol after the accident. *Id.* at 174-75, 516 S.E.2d at 202. The defendant failed the field sobriety tests and his breathalyzer test result was 0.14%. *Id.* at 175, 516 S.E.2d at 202. Applying the trustworthiness approach, our supreme court held the State provided independent evidence, taken together with the defendant's statements, which "allowed a reasonable inference that the crime of driving under the influence was committed." *Id.* at 180, 516 S.E.2d at 205.

In *Russell*, the defendant was found in the back seat of a car that was in a ditch on the side of the road. 345 S.C. at 130, 546 S.E.2d at 204. He admitted to driving the car, although he subsequently denied driving. *Id.* The State presented evidence showing the car belonged to the defendant, the defendant was the only occupant present at the scene when officers arrived, the keys to the vehicle were in the defendant's pocket, and the hood of the car was still warm. *Id.* at 133, 546 S.E.2d at 205. This court affirmed the defendant's conviction for DUI, concluding the State presented independent evidence to support the trustworthiness of the defendant's statements that he had been driving the car, such that the question of guilt of DUI should have been submitted to the jury. *Id.*

In *Abraham*, this court reversed the circuit court's reversal of a defendant's magistrate's court conviction for DUI. 408 S.C. at 594, 759 S.E.2d at 443. A trooper arrived at the accident scene of a wrecked vehicle and found the defendant in the presence of emergency personnel. *Id.* at 590-91, 759 S.E.2d at 441. The defendant smelled of alcohol, failed field sobriety tests, and his breathalyzer result showed his blood alcohol level was 0.22%. *Id.* at 591, 759 S.E.2d at 441. The defendant also admitted to drinking wine and driving the wrecked vehicle. *Id.* This court held the State provided sufficient independent evidence to support the trustworthiness of the defendant's statements to the police, and the "independent evidence, taken together with the statements, allowed a reasonable inference that the crime of DUI had been committed." *Id.* at 594, 759 S.E.2d at 443. Therefore, this court concluded that the magistrate court properly denied the defendant's motion for a directed verdict and submitted the case to the jury. *Id.*

We acknowledge that at first blush, the facts of the present case may seem similar to those in *Graves*. However, the defendant in *Graves* never admitted to driving the vehicle as Anderson did here. Furthermore, in viewing the present facts through the trustworthiness approach of *Osborne* and its progeny, we hold the State satisfied the corroboration rule.

First, Trooper Edwards's dashboard camera footage showed that Anderson admitted to driving and to being drunk.⁴ *See Hill*, 415 S.C. at 433-34, 782 S.E.2d at 421 ("The corroboration rule applies whether a statement amounts to a

⁴ Anderson also admitted driving to Deputy McGuire-Smith when she asked Anderson if he was coming from work and he replied, "oh, yeah."

confession or merely constitutes an admission of essential facts from which guilt might be inferred."). When Trooper Edwards asked Anderson where he was coming from, he stated, "home," "here," "I'm driving," and "driving." Anderson also repeatedly said, "I f***ed up," and asked to call his wife to tell her that he was "drunk," and had "messed up." As such, Anderson's statements qualified as an admission under the corroboration rule.

Second, the State presented sufficient independent evidence to corroborate Anderson's statements to law enforcement. As to the element of driving a vehicle, Deputy McGuire-Smith testified that when she arrived on scene, she observed Anderson passed out in the front seat with his foot on the brake, while the car was on and the transmission was in drive. Additionally, the private residence was not Anderson's home. *See 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.").

Deputy McGuire-Smith testified she responded to a call at a private residence in Greenwood County; thus, the second element, "within this State," is met. Finally, Deputy McGuire-Smith's testimony satisfies the element of "while under the influence of intoxicating liquors." Deputy McGuire-Smith stated that when Anderson rolled his window down, she smelled alcohol. She further indicated she had to knock on Anderson's window several times to wake him up and had to tell him to put the car in park several times before he complied. Trooper Edwards testified Anderson had to lean up against the car to prevent himself from falling over and he was unable to complete a field sobriety test. Trooper Edwards further stated he found a cup with brown liquid that smelled like liquor.

These facts, taken together, provided a foundation independent of Anderson's statements to support the trustworthiness of Anderson's statements. Furthermore, this independent evidence, taken together with Anderson's statements, allowed a reasonable inference that Anderson committed the crime of DUI. Accordingly, we hold the magistrate properly denied Anderson's motion for a directed verdict and submitted the case to the jury because there was evidence tending to establish the *corpus delicti* of DUI. *See Osborne*, 335 S.C. at 180, 516 S.E.2d at 205 ("If there is any evidence tending to establish the *corpus delicti*, then it is the trial court's duty to pass that question on to the jury.").

Based on the foregoing, we hold that the circuit court erred by reversing Anderson's conviction of DUI because the State presented sufficient independent evidence to corroborate Anderson's statements to the police, and that independent evidence, taken together with the statements, allowed a reasonable inference that the crime of DUI was committed. The circuit court's decision is hereby reversed and Anderson's conviction is reinstated.

REVERSED.

WILLIAMS, C.J., and HEWITT, J., concur.