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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-254

Filed 21 November 2023

Union County, No. 20 CRS 51964

STATE OF NORTH CAROLINA

v.

SCOTT GRAINGER JONES, Defendant.

Appeal by Defendant from judgment entered 24 August 2022 by Judge Hunt Gwyn in Union County Superior Court. Heard in the Court of Appeals 6 September 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Liliana R. Lopez, for the State.*

*Mary McCullers Reece for Defendant-Appellant.*

GRIFFIN, Judge.

Defendant Scott Grainger Jones appeals from a judgment entered after a jury found him guilty of driving while impaired. Defendant argues the trial court erred in denying his motion to dismiss as there was not substantial evidence Defendant was appreciably impaired. We find no error.

**I. Factual and Procedural History**

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On 14 May 2020, Trooper L. Corbalan arrived at the Sunshine Express gas station to investigate a small traffic accident. After he arrived, Trooper Corbalan observed Defendant sitting on the driver's side of the vehicle. During his investigation, Trooper Corbalan spoke with Defendant, who told him he "hit over there, the lady that was over there." Defendant also pointed towards the other vehicle, which was located by the gas pump. Trooper Corbalan noticed Defendant and his car smelled of alcohol, his speech was slurred, and he was moving very slowly. Upon making these observations, Trooper Corbalan asked Defendant if he had been drinking. Defendant responded he had a "forty." Defendant also told Trooper Corbalan "on a scale of 0-10, zero being completely sober, ten being completely impaired[,] he would place himself at a five.

Officers J. McWhorter and G. Helms also responded to the scene. Officer McWhorter administered the horizontal gaze nystagmus test to Defendant, who had to use a walker to steady himself, as he was having trouble standing on his own. The test revealed six out of the six clues of impairment. Officer Helms administered an Alco-Sensor test, which confirmed the presence of alcohol and Defendant was subsequently arrested. Defendant refused to submit to an intoximeter chemical analysis.

On 6 September 2020, Defendant was indicted for habitual driving while impaired pursuant to N.C. Gen. Stat. § 20-138.5. Defendant's case came on for trial on 24 August 2022. At trial, Defendant made a motion to dismiss, which was denied.

Defendant did not introduce evidence at trial, but renewed his motion to dismiss, which was again denied. Upon hearing all the evidence, the jury found Defendant guilty of habitual driving while impaired.

Defendant was sentenced to 23 to 37 months' imprisonment. Defendant gave notice of appeal in open court.

## **II. Standard of Review**

This Court must “review a trial court’s denial of a motion to dismiss *de novo*, to determine whether there was substantial evidence (1) of each essential element of the offense charged, and (2) that [the] defendant is the perpetrator of the offense.” *State v. Collins*, 283 N.C. App. 458, 465, 874 S.E.2d 210, 215 (2022) (internal marks and citations omitted). In doing so, “we must examine the evidence adduced at trial in the light most favorable to the State[.]” *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982). “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Turnage*, 362 N.C. 491, 493, 666 S.E.2d 753, 755 (2008) (internal marks and citations omitted).

## **III. Analysis**

Defendant argues the trial court erred in denying his motion to dismiss as there was not substantial evidence he was appreciably impaired. We disagree.

In order to defeat a motion to dismiss, the State must present substantial evidence of all of the elements of habitual driving while impaired. *State v. Scott*, 356 N.C. 591, 597, 573 S.E.2d 866, 869 (2002). Under N.C. Gen. Stat. § 20-138.5, “[a]

person commits the offense of habitual impaired driving if he drives while impaired as defined in [N.C. Gen. Stat. § 20-138.1] and has been convicted of three or more offenses involving impaired driving as defined in [N.C. Gen. Stat. § 20-4.01(24a)] within 10 years of the date of this offense.” N.C. Gen. Stat. § 20-138.5(a) (2021).

A person is guilty of driving while impaired under N.C. Gen. Stat. § 20-138.1 when:

[H]e 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. The results of a chemical analysis shall be deemed sufficient evidence to prove a person’s alcohol concentration; or
- (3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.

N.C. Gen. Stat. § 20-138.1 (2021). Our General Statutes define “Under the Influence of an Impairing Substance” to be “[t]he state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.” N.C. Gen. Stat. § 20-4.01(48b) (2021). Further, a person is appreciably impaired when his impairment can be “recognized and estimated.” *State v. Harrington*, 78 N.C. App. 39, 45, 336 S.E.2d 852, 855 (1985).

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While the State, in order to convict a defendant of driving while impaired, must prove the defendant has “ingested a sufficient quantity of an impairing substance to cause his faculties to be appreciably impaired[,]” *State v. Fincher*, 259 N.C. App. 159, 162, 814 S.E.2d 606, 608 (2018) (citations omitted), our Court has previously held: “[t]he fact that a motorist has been drinking, when considered in connection with faulty driving or other conduct indicating an impairment of physical and mental faculties, is sufficient *prima facie* to show a violation of N.C. Gen. Stat. § 20-138.1.” *State v. Norton*, 213 N.C. App. 75, 79, 712 S.E.2d 387, 390 (2011) (internal marks and citations omitted). Our Court has also recognized the opinion of law enforcement, as to whether or not a defendant is impaired, to be sufficient evidence of a defendant’s impairment, where the opinion was “not solely based on the odor of alcohol.” *State v. Mark*, 154 N.C. App. 341, 346, 571 S.E.2d 867, 871 (2002) (citations omitted) (holding the State presented sufficient evidence that the defendant was impaired including an officer testifying that he formed an opinion that defendant was appreciably impaired after conducting a field sobriety test).

In *State v. Fincher*, the defendant was charged with driving while impaired after she collided with the rear end of another vehicle. *Fincher*, 259 N.C. App. 159, 161, 814 S.E.2d 606, 607 (2018). The State introduced evidence at trial tending to show: the responding officers noted the defendant’s eyes were red and glassy and she had slurred speech, the defendant admitted she had earlier consumed a controlled substance, and the responding officers observed six out of six signs of impairment

throughout the administration of the horizontal gaze nystagmus test. *Id.* at 162, 814 S.E. 2d at 608. Nonetheless, the defendant moved to dismiss the charges, which was denied. *Id.* Upon conviction, the defendant appealed to our Supreme Court arguing the trial court erred as there was not evidence to support a conclusion that the amount of substance found in the defendant's blood was sufficient to cause appreciable impairment. *Id.* at 161, 814 S.E. 2d at 608. Our Supreme Court held the defendant's motion to dismiss was properly denied because, even though there was no evidence of the specific amount of impairing substance consumed, the evidence presented was sufficient evidence to withstand the motions. *Id.* at 163, 814 S.E. 2d at 608.

Similarly, here, Trooper Corbalan testified at trial (1) he observed the smell of alcohol in the car and on Defendant, (2) Defendant's speech was slurred, (3) Defendant admitted to drinking a "forty," and (4) Defendant admitted to bumping into another car at the gas station. Additionally, Officer Helms testified he administered an Alco-Sensor test to confirm the presence of alcohol. Further, Officer McWhorter testified it was his opinion that Defendant was appreciably impaired after detecting six out of six clues of impairment during the administration of the horizontal nystagmus test.

Thus, we hold, as our Supreme Court did in *Fincher*—the above evidence, introduced by the State at trial, is substantial evidence of impairment. Because the State introduced substantial evidence of impairment, pursuant to N.C. Gen. Stat. §

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20-138.1, the State introduced substantial evidence of each of the essential elements of habitual driving while impaired under N.C. Gen. Stat. § 20-138.5(a).

Having reviewed the evidence in the light most favorable to the State, we hold the State introduced substantial evidence that could prove Defendant was appreciably impaired.

**IV. Conclusion**

For the aforementioned reasons, we hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges WOOD and STADING concur.

Report per Rule 30(e).