

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
State of South Carolina,)
)
)
Plaintiff,)
)
v.)
)
[Defendant Name],)
)
)
Defendant.)
_____)

IN THE MAGISTRATE COURT
BETHEL / KINGS MOUNTAIN

Ticket No.: XXXXX
Driving Under the Influence - 1st Offense

MOTION TO SUPPRESS EVIDENCE

The Defendant, [Defendant Name], through his undersigned attorney, Kevin M. Hope, hereby moves the Court to suppress evidence of a breath test obtained in violation of S.C. Code Section 56-5-2950(B). The grounds for this Motion are as follows:

1. On October 28, 2012, at approximately 3:30 AM, [Officer Name] with the York County Sheriff's Office placed the Defendant under arrest for Driving Under the Influence in violation of S.C. Code Section 56-5-2930.
2. The Defendant was transported to the York County Jail and offered a breath test pursuant to S.C. Code Section 56-5-2950(A).
3. [Officer Name] has produced a video recording of the breath test pursuant to S.C. Code Ann. § 56-5-2953.
4. S.C. Code Section 56-5-2950(B) states:

No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;

(2) his privilege to drive must be suspended for at least one month if he takes the test or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent or more;

(3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;

(4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and

(5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

5. [Officer Name] failed to provide the Defendant with the written copy required by S.C. Code Section 56-5-2950(B) upon activation of the video recording equipment and prior to the commencement of the testing procedure.

6. S.C. Code Section 56-5-2950(J) states:

The failure to follow any of these policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence of any test results, if the trial judge or hearing officer finds that this failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure and the court trial judge or hearing officer rules specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure.

7. After approximately twenty three minutes and twenty five seconds elapsed on the breath site video, and before the breath test was offered to the Defendant, the following verbal exchange was recorded:

Defendant: “Sir, you don’t owe me nothing but can you at least tell me [...] what pretty much is going to happen [...] do you have any idea

what's going to happen [...] I know my insurance is going out the f***ing sky rate. Do you have any idea what's going to happen?"

[Officer Name]: "Your license is going to be suspended for at least a month."

Defendant: "That's about all you can tell me? That'll work."

8. The Defendant was not given a written copy of his implied consent rights and the implied consent form submitted by [Officer Name] does not contain the Defendant's signature.
9. [Officer Name] misinformed the Defendant by stating that the Defendant's license would be suspended for at least a month.
10. The failure to provide a written copy of implied consent rights to the Defendant resulted in the Defendant being unaware of the consequences of providing a breath sample or refusing the breath test.
11. The verbal exchange evidences that the Defendant was unaware of the consequences of offering a breath sample or refusing the breath test.
12. [Officer Name] further confused or misled the Defendant by providing an inaccurate and incomplete response regarding the consequences of providing a breath sample or refusing the breath test.
13. The State's failure to provide a written copy required by S.C. Code Section 56-5-2950(B) materially affected the fairness of the testing procedure.

FOR ALL THE ABOVE REASONS the Defendant asks the Court to suppress evidence of a breath test obtained in violation of S.C. Code Section 56-5-2950(B)

Respectfully submitted,

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Date: _____