

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

State of South Carolina

Plaintiff

vs.

Scott Douglas

Defendant

IN THE MAGISTRATE COURT

FOURTH JUDICIAL CIRCUIT

**ORDER**

TICKET #: 69528FU

This matter came before the Court on March 11, 2013. Present at the hearing was the Defendant who was represented by Franklin Joyner of the Chesterfield County Bar. Present for the State was Detective Keith Thomas and Officer Clay Anderson, both of the Cheraw Police Department.

Mr. Joyner moved in accordance with the South Carolina Supreme Court's ruling in City of Rock Hill v. Suchenski, that Defendant's charge of Driving Under the Influence should be dismissed because the roadside video recording failed to show the arresting officer advise Miranda rights to the Defendant as required by S.C. Code § 56-5-2953.

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#### FACTS

On July 14, 2012, at approximately 2:10 a.m., Cheraw Police Officer Clay Anderson initiated his blue lights and conducted a traffic stop of Defendant. The traffic stop occurred in the parking lot of McDonald's restaurant on Chesterfield Highway in Cheraw, South Carolina. Officer Anderson's in car video camera recorded the entire roadside stop. Officer Anderson never advised Defendant of his Miranda rights which the roadside video clearly shows.

## LAW

S.C. Code § 56-5-2953(A), requires that a person who has violated S.C. Code § 56-5-2930 to have his or her conduct at **the incident site** video recorded. Specifically, S.C. Code § 56-5-2953(A)(1)(a)(iii) requires that the video recording must “**show** the person being advised of his Miranda rights.”

(1)(a) The video recording **at the incident site must:**

(i) not begin later than the activation of the officer’s blue lights;

(ii) include any field sobriety test administered; and

(iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and **show the person being advised of his Miranda rights.**

S.C. Code § 56-5-2953 is part of a comprehensive DUI law that specifically outlines procedures to be followed in every DUI case. Criminal statutes are to be strictly construed against the State. State v. Middleton, 367 S.C. 527, 530, 626 S.E.2d 74, 76 (Ct. App. 2006). S.C. Code § 56-5-2953 makes it very clear that Miranda rights are required to be shown at the incident site.

The South Carolina Supreme Court has strictly interpreted the requirements of S.C. Code § 56-5-2953 and has stated that it “provides for dismissal of charges when the statute is inexcusably violated.” City of Rock Hill v. Suchenski, 374 S.C. 12, 16, 646 S.E.2d 879, 881 (2007). In Suchenski, the arresting officer did not record the entire arrest as required by S.C. Code § 56-5-2953 because the camera ran out of tape. Because the video recording did not comply with S.C. Code § 56-5-2953, the South Carolina Supreme Court affirmed the circuit court’s decisions reversing the conviction.

The Suchenski Court provided an analysis of S.C. Code § 56-5-2953 and noted that strict compliance may not necessarily lead to dismissal where exceptions for noncompliance were met as outlined in S.C. Code § 56-5-2953(B). The statute expressly provides for an allowance by the State to produce an affidavit explaining the reason for the failure to comply with Miranda as outlined in S.C. Code § 56-5-2953(A). Specifically, the pertinent aspect of the code provides exceptions for situations where the video equipment was in an inoperable condition and reasonable efforts to maintain the equipment in operable conditions were unsuccessful, no alternative video equipment was available, the suspect need emergency medical treatment, or exigent circumstances. Furthermore, where the arrest was made at a roadblock where it was not initiated by activation of blue lights, the video must be initiated as soon as practicable and **must begin and conform with the provisions** of S.C. Code § 56-5-2953(A).

Most recently, the South Carolina Supreme Court had the opportunity to re-evaluate Suchenski as it pertained to the willful failure of a municipality to equip its patrol cars with cameras and thus used its lack of recording equipment as an exception to S.C. Code § 56-5-2953(A). In Town of Mt. Pleasant v. Roberts, 713 S.E.2d 278 (2011), the Court evaluated whether the State's failure to comply with a statutory obligation to create evidence necessarily warrants a per se dismissal of the defendant's case. In extending the per se dismissal of the willful failure on review by the municipality, the Court clearly stated that inexcusable noncompliance by a law enforcement agency with an existing camera was affirmatively answered by the appellate courts of this state. Id.

### ANALYSIS

In the case at bar, the State has failed to comply with the requirements of S.C. Code § 56-5-2953(A). The video does not depict the Defendant being advised of his Miranda rights. As


noted above, a recitation of Miranda rights is neither shown nor heard at the incident site. As a result, the State has clearly violated S.C. Code § 56-5-2953(A)(1)(a)(iii)

In this case, it is impossible for the State to produce an exception pursuant to S.C. Code § 59-5-2953(B). Specifically, Officer Anderson's camera was in perfect working condition and recorded both video and audio of the roadside stop. The State has provided to the Defendant what it has alleged to be the full video as part of its discovery response and has not provided any explanation for Officer Anderson's failure to comply with the statute. The same analysis provided by the Suchenski court applies to this case. Moreover, the South Carolina Supreme Court's reasoning in Town of Mt. Pleasant v. Roberts succinctly states that per se dismissal is the remedy for inexcusable noncompliance with the video recording statute.

### CONCLUSION

For the reasons set forth above, the charge of Driving Under the Influence, against the Defendant is dismissed.

AND IT IS SO ORDERED, this \_\_\_\_ day of March, 2013.

  
Judge John Davis

Chesterfield, South Carolina

Date March 11/2013

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