

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 The State of South Carolina,)
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)
)
 vs.)
)
 Leroy Jenkins,)
)
)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS

ORDER FOR SUPPRESSION OF EVIDENCE

Ind. Nos.: 06-GS-42-1625; and
 06-GS-42-1626

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 SPARTANBURG COUNTY
 2007 AUG 14 AM 10:26
 MARC MITCHELLS

In this case, Defendant, Leroy Jenkins, (hereinafter "Jenkins") is charged with driving under the influence, second offense pursuant to SC Code Ann. § 56-5-2930 and possession of cocaine base. Jenkins is represented in the matter by Andrew J. Johnston, Esq., of the Spartanburg County bar. The State is represented by Assistant Attorney General, C. Dale Scott, Esq., of the state Attorney General's Office.

On June 27, 2007 a hearing was held in this matter in the Spartanburg County Court of General Sessions. Jenkins was present with his counsel. The State was represented at the hearing by Mr. Scott. At the hearing, Jenkins' made, *inter alia*, motions to suppress the administration and results of field sobriety tests and the administration and results of a breath test. The court finds these motions should be granted.

The legal and factual basis for the two motions is the same. South Carolina law sets forth procedures for the gathering of evidence in DUI investigations. SC Code Ann. § 56-5-2953 (A) provides:

A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site videotaped.

- (1) The videotaping at the incident site must:
 - (a) begin not later than the activation of the officer's blue lights and conclude after the arrest of the person for a violation of Section 56-5-2930, 56-5-2933, or a probable cause

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CLERK OF COURT
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 BY: *Marc Mitchell* D.C.
 DATED: *8/14/07*

determination that the person violated Section 56-5-2945; and (b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered. (2) The videotaping at the breath site: (a) must be completed within three hours of the person's arrest for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 or a probable cause determination that the person violated Section 56-5-2945, unless compliance is not possible because the person needs emergency medical treatment considered necessary by licensed medical personnel; (b) must include the reading of Miranda rights, the entire breath test procedure, the person being informed that he is being videotaped, and that he has the right to refuse the test; (c) must include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test; (d) must also include the person's conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to videotape this waiting period. However, if the arresting officer administers the breath test, the person's conduct during the twenty-minute pre-test waiting period must be videotaped.

The videotapes of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

THE REQUIREMENT OF "MIRANDA" WARNINGS

Under the constitutional analysis which has developed over time, the courts have held that *Miranda* warnings are not required unless the criminal suspect is in custodial detention. See, e.g., *Berkemer v. McCarty*, 468 U.S. 420 (1984). The United States Supreme Court has held specifically that the *Miranda* requirement does not apply to roadside questioning by police during "routine traffic stops". *Pennsylvania v. Bruder*, 488 U.S. 9 (1988).

However, it is important to note that these decisions are based upon a constitutional analysis as to whether Miranda warnings are required in a given situation by the Fifth Amendment. The South Carolina General Assembly has set forth specific procedures for DUI investigations, by statute, which includes the readings of "Miranda

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rights". Therefore, in DUI investigations in this state, while *Miranda* warnings may not be required by the Fifth Amendment, they are mandated by statute.

§ 56-5-2953 (A) requires that a person detained for investigation for suspicion of driving under the influence must be advised of his "Miranda rights" and that such advisement be videotaped. This statutory requirement extends to both requests to perform field sobriety tests before arrest and to the offer of a breath after arrest.

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THE FORM OF THE WARNINGS

§ 56-5-2953 (A) does not define nor prescribe the form the administration of "Miranda rights" must take. However, the statute obviously refers to the landmark United States Supreme court decision in of *Miranda v. Arizona*, 384 U.S. 436 (1966). In *Miranda*, the Court held that criminal suspects must be informed of their right to consult with an attorney and of their right against self-incrimination prior to questioning by police. In *Dickerson v. United States*, 530 U.S. 428 (2000), the United States Supreme Court, speaking through Chief Justice William H. Rehnquist, held 7-2 that "the [*Miranda*] warnings have become part of our national culture."

In decisions subsequent to *Miranda*, the courts have honed the form which these warnings must take. While holding that no "talismanic incantation" of the warnings is required, the courts, including the South Carolina Court of Appeals, have settled on certain basic minimum information to be conveyed in *Miranda* warnings.

In *State v. Kennedy*, 325 S.C. 295; 479 S.E.2d 838; (1996), the court cited *Miranda* and the United States Supreme Court decision in *Duckworth v. Eagan*, 492 US 195 (1989) for the form *Miranda* warnings must take. In *Kennedy*, the court held that "[a] suspect in custody may not be subjected to interrogation unless he is informed that:

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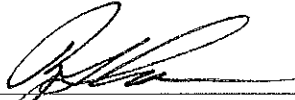
This court concludes that the warnings in this case are deficient under the § 56-5-2953 (A). Therefore, any evidence obtained from field sobriety tests and the breath test were obtained in violation of state law, must be suppressed and not allowed admitted into evidence at the trial of this case.

THEREFORE, IT IS ORDERED that any evidence obtained from field sobriety tests and the breath test herein must be suppressed and not allowed admitted into evidence at the trial of this case.

AND IT IS SO ORDERED!


Spartanburg, South Carolina

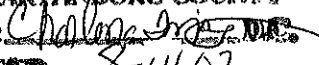
August 10, 2007



Roger L. Couch, Judge
Court of General Sessions
Seventh Judicial Circuit

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MARC KITCHENS
CLERK OF COURT
SPARTANBURG COUNTY



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SPARTANBURG COUNTY
BY: 
DATED: 8-14-07