

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP4603355

South Carolina State Of vs. Carl B Sullivan

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other:
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other:

IT IS ORDERED AND ADJUDGED:

See attached order; Statement of Judgment by the Court:

ORDER

Dated at York, South Carolina, this 23rd day of May, 2011.

Court Reporter:

s/ JOHN C. HAYES, III.

PRESIDING JUDGE - JOHN C. HAYES, III.

This judgment was entered on the 25th day of May, 2011, and a copy mailed first class this 25th day of May, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew Shelton York County Solicitor's
Office 529 S Cherry Road Rock Hill, SC 29732

Michael I. Brown Jr PO Box 1025 Rock Hill,
SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Carl Bryan Sullivan.)
)
)
Appellant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE 16th JUDICIAL CIRCUIT
Case No.: 2010-CP-46-3355

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

ORDER

FILED-RECEIVED
2011 MAY 25 AM 8:26

The sole issue in this case is whether the word "show" as used in Section 56-5-2953, S.C. Code of Laws, 1976, as amended means a visual viewing or may an off camera audio suffice.

The relevant facts as set forth in the Magistrate's return are:

During the roadside stop, the Trooper's in-car camera was pointed forward and recorded the entire roadside scene. After he placed Sullivan in the front passenger seat of his patrol car, the Trooper read Sullivan his Miranda rights. The rights can clearly be heard on the video but neither Sullivan nor the Trooper are visible on video because the in-car camera was pointed forward toward Sullivan's vehicle. The Trooper testified he was standing beside Sullivan behind the opened front passenger door when he read Sullivan his rights.

Section 56-5-2953 provides:

(A) 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 video recorded.

(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 tests 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.

The word video has several meanings, but all relate to the visual. (The Farlex Dictionary; www.thefreedictionary.com). Visual relates to the sense of sight (The Farlex Dictionary, supra).

A videotape is a relatively wide magnetic tape used to record visual images and associated sound for subsequent playback or broadcasting or is a recording made on such a tape. (The Farlex Dictionary; supra). The word show means "something that one views or at what one looks and at the same time hears." Black's Law Dictionary Sixth Edition, p. 1379.

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Cl. App. 2002) (citing State v. Baugom, 340 S.C. 339, 531 S.E.2d 922 (2000)). The Court does not consider merely the language of the particular clause being constructed but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitmer v. State, 328 S.C. 1, 492 S.E.2d 777 (1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Cl. App. 1997).

The legislation is clear. The breath site video must show (depict) the subject being given their Miranda warnings.

In the instant case the arresting officer failed to comply with the requirement of Section 56-5-2953. There is nothing in the record to suggest that any of Section 56-5-2953 (B) applies.

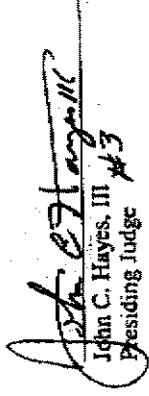
The Court finds the Magistrate's Court erred in failing to grant appellant's motion to dismiss the instant charge based on the Trooper's failure to comply with Section 56-5-2953.

Section 56-5-2953 has had a tortured history. Initially enacted in 1998, it has been amended several times. The 2009 amendment applies in the instant case.

In this case there has been a violation of Section 56-5-2953(A) and there is no evidence of a Section 56-5-2953 (B) exception. Therefore, pursuant to City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (Sup.Ct. 2002), the appropriate remedy for the violation of section (A) is dismissal of the charge.

Therefore, the ruling by the Magistrate Judge is reversed and the charge in the instant case, ticket number E010425, is dismissed with prejudice.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #3

May 23, 2011
York, South Carolina.

The Law Offices of
MICHAEL L. BROWN, JR.
223 Main Street, Suite 550, Rock Hill, SC • PO Box 1025, Rock Hill, SC 29731
Telephone: (803)328-8822
Facsimile: (803)328-0523

FACSIMILE COVER SHEET

TO: Jim

DATE: 6-

FAX NUMBER: 328-5747

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 5

FROM: Loori

RE: _____

COMMENTS: _____

This communication contains confidential or legally privileged information, and is intended only for the use of the individual or entity named above. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the US Postal Service. We will be glad to reimburse you for postage. Thank you.
