

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
COUNTY OF DORCHESTER)	TICKET NUMBER: F 559576
STATE OF SOUTH CAROLINA,)	
-versus-)	
DAVID JOSEPH KELLY,)	ORDER
Defendant.)	

This matter came before the Court on June 6, 2013 as a result of a Motion to Dismiss filed by Counsel for the Defendant. Present for the hearing was Corporal L.M. Gabe of the South Carolina Highway Patrol, the Defendant, and his attorney, Robert D. Robbins. Prior to the hearing, Attorney Robbins provided Corporal Gabe and the Court with a Memorandum of Law in Support of the Motion to Dismiss. Based on the Motion to Dismiss, Memorandum of Law, and arguments presented, the Court makes the following findings of fact:

FACTS

On December 1, 2012 the Defendant, David Kelly, had a one car accident on US 17-A. David Kelly was able to get out his vehicle, but the vehicle was in a ditch and was inoperable. He flagged down a motorist who called South Carolina Highway Patrol dispatch.

Corporal L.M. Gabe was dispatched to the scene. She arrived at approximately 4:36 a.m. Corporal Gabe interviewed the Defendant and administered three field sobriety tests. At the conclusion of the field sobriety tests, she placed Defendant under arrest at approximately 4:46 a.m. Corporal Gabe did not advise the Defendant of his Miranda Rights upon placing him under arrest.

After putting handcuffs on the Defendant, Corporal Gabe sat him in her patrol vehicle at approximately 4:48 a.m. She then trained her in-car video on the Defendant's face at approximately 4:56

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a.m. At approximately 5:11 a.m. Corporal Gabe left the scene with the Defendant on the way to administer a breath test. At no time between placing the Defendant under arrest at 4:46 a.m. and leaving the incident scene at 5:11 a.m., did Corporal Gabe advise Defendant of his Miranda Rights.

LAW

S.C. Code §56-5-2953 (A) requires that a person who has violated §56-5-2930 must have his or her conduct at the incident site video recorded. Subsection (1)(a) of §56-5-2953(A) also mandates the following:

The video recording at the incident site must ... (iii) include the arrest of a person for violation of §56-5-2930 and show the person being advised of his Miranda Rights (emphasis added).

The South Carolina Supreme Court has strictly interpreted the requirements of S.C. Code §56-5-2953. State v. Middleton, 367 S.C. 527, 530, 626 S.E.2d 74, 76 (Ct. App. 2006). City of Rock Hill v. Suchenski 374 S.C. 12, 646 SE.2d 879 (S.C. 2007). Suchenski was the first case to address a failure to comply with the videotaping statute. The Court concluded the legislature had a procedure that must be followed in a DUI arrest. Because the procedure was not followed, the Supreme Court found that non-compliance resulted in a dismissal.

The Suchenski decision was reaffirmed recently in several cases. In Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (S.C. 2011), the Supreme Court dismissed a Driving Under the Influence charge due to the Town of Mount Pleasant Police Department willfully failing to abide by the requirements of §56-5-2953(A). Likewise in Denise Murphy v. State, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2011) the Court of Appeals found that the remedy for non-compliance with this statute was also a dismissal. See also, State v. Bruce Scott Johnson, 396 S.C. 182, 720 S.E. 2d 516 (S.C. App. 2011) where the Court of Appeals again found dismissal was the appropriate remedy.

In his Memorandum of Law, Counsel for the Defendant conceded that he has not been able to find an appellate case dealing with the failure to give Miranda at the incident site, but he did present to the

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Court a decision from the Magistrate Court in the Fourth Judicial Circuit on a nearly identical fact pattern in which the presiding Magistrate dismissed the charge of Driving Under the Influence on March 11, 2013.

ANALYSIS

In the present case, Corporal Gabe did not contest the factual allegations set forth in the Memorandum of Law submitted by defense counsel. The uncontradicted facts show that the Defendant was placed under arrest by Corporal Gabe at 4:46 a.m. and placed in her patrol car at 4:48 a.m. Corporal Gabe left the incident scene with the Defendant at 5:11 a.m. At no point between placing the Defendant under arrest at 4:46 a.m. and leaving the incident scene at 5:11 a.m. did Corporal Gabe advise the Defendant of his Miranda Rights.

Failure to advise the Defendant of his Miranda Rights as required by S.C. Code §56-5-2953 is a clear violation of that statute. The case law previously cited also clearly mandates that the remedy for non-compliance is dismissal of the charges.

CONCLUSION

For the reasons set forth above, the charge of Driving Under the Influence against the Defendant, David Joseph Kelly, on ticket F 559576, is hereby dismissed.

AND IT IS SO ORDERED!



Katrina Patton
Presiding Judge, Dorchester County Magistrate Court

19th day of June, 2013
Summerville, South Carolina

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