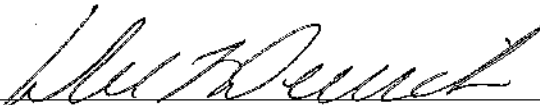




Based on these factors, the Court must GRANT the motion of the Defendant and dismiss this charge.

NOW, THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for dismissal is hereby GRANTED.



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Judge Will F. Derrick

March 3, 2010  
Westminster, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CLARENDON )  
 )  
 State of South Carolina, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Lee Griffin Green, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 THIRD JUDICIAL CIRCUIT

C/A NUMBER: 2009-CP-14-634

ORDER  
 CERTIFIED TRUE COPY  
 OF ORIGINAL FILED IN THIS OFFICE  
 DATE 1/10/10  
 Beulah H. Roberts  
 CLERK OF COURT  
 CLARENDON COUNTY, SC

2010 JAN -6 AM 11:46

BELEMANE  
 CLERK OF COURT  
 CLARENDON COUNTY, SC

This matter is before the court on appeal from the Clarendon County Magistrate's Court Respondent, the State of South Carolina, appeals the dismissal of the charge of Driving Under the Influence first offense after a jury trial on November 3, 2009. The Honorable Cecil Moore of Orangeburg, South Carolina presided over the trial. The Appellant, the State of South Carolina, timely filed their Notice of Appeal with this court on November 12, 2009 and the parties appeared before me to argue this appeal on January 4, 2010. The State was represented by Rachel D. Erwin, Assistant General Counsel. The Respondent was represented by Shaun C. Kent, and Steven S. McKenzie.

**FINDINGS OF FACT**

Respondent's vehicle was stopped on June 13, 2009 by Trooper Shay McKenzie of the South Carolina Highway Patrol. Respondent Lee Griffin Green, at the time, was employed as a Clarendon County Sheriff's Officer. Trooper McKenzie stopped the vehicle driven by Green for suspicion of driving under the influence, and activated his in-car video camera at the incident site. The Trooper's camera was pointed directly at the back of the Respondent's vehicle. Thereafter the Trooper got out of his vehicle and began questioning the Respondent. Through the course of his investigation the Trooper determined that the Respondent may be driving under the influence of alcohol. The Trooper then began to give several field sobriety tests which were all captured on video. After completion of the last field sobriety test, the Trooper decided that the Respondent was under the influence of alcohol, and took the Respondent back to his police car. While walking Respondent back to the squad car the Respondent's actions were no longer being videotaped. Specifically, the officer's video was still directly pointed and aimed at the position where Respondent was earlier being given his field sobriety tests. What's more, the last thing that can be seen on the video is the Respondent being given his final field sobriety test. Thereafter, the Trooper can be heard orally giving the Respondent his *Miranda* warnings. Again, this matter cannot be seen, however can be heard. After a full recitation of the *Miranda* rights the Trooper is seen turning around his video camera to point and aim the camera directly at the Respondent who is now sitting in the back seat of the patrolman's squad car.

Additionally, at the lower court's trial, the only evidence preserved for Appellate Review was

a sample Order provided by the defense as well as relevant case law. The video referred to by the State was not entered into evidence in the previous trial. Specifically the State argued "the audio from the video of the traffic stop clearly records the defendant being advised of his *Miranda* warnings and audibly records defendant answering affirmatively when asked if he understood those rights. A review of the field tape clearly demonstrates the defendant received his *Miranda* warning and the Constitutional protections afforded by these rights were adhered to."

Respondent moved for a dismissal of the charges at trial based upon the State's failure to videotape the entirety of his conduct at the incident site, including the State's failure to capture on videotape the advisement of defendant's *Miranda* rights, as required by §56-5-2953 of the South Carolina Code of Laws and pursuant to the South Carolina Supreme Court case of City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E. 2d 879 (SC 2007). The trial court affirmed the motion interpreting §56-5-2953 to require that the arrest and *Miranda* must both be visually and audio recorded. The State now appeals.

#### CONCLUSIONS OF LAW


Upon review of the record and the arguments of counsel, I find and conclude that the lower court was correct in its interpretation of the law. Specifically, the not guilty verdict should be affirmed.

Trooper McKenzie failed to comply with the provisions of §56-5-2953 at the incident site. Specifically, the videotape, as distinguished from any audio recording does not "show" Mr. Green's advisement of his *Miranda* rights. Section 56-5-2953 specifically requires that a defendant's complete arrest and advisement of *Miranda* rights both be visually and audio recorded.

I further find that the additional arguments made by the State are without merit as they were not preserved for appellate review.

**AND IT IS SO ORDERED.**

Jan. 6, 2010

  
Ralph F. Cothran, Jr.  
Presiding Judge, Third Judicial Circuit