

STATE OF SOUTH CAROLINA ) IN THE MAGISTRATE COURT BERKELEY COUNTY  
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 COUNTY OF BERKELEY )  
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 STATE OF SOUTH CAROLINA ) TICKET #: E711800, E711801, E711802, E711803  
 )  
 -vs- ) ORDER  
 )  
 [REDACTED] )  
 Defendant )

Attorney for Defendant: R. Brady Vannoy, Esquire  
 Prosecuting/Arresting Officer: Trooper Pearson, SCHP  
 Presiding Judge: The Honorable Edward L. Sessions

This case is before the Court on Defendant's Motion to Dismiss filed on July 6, 2011. This matter was heard on August 30, 2011. Present for the South Carolina Highway Patrol was Trooper C.A. Pearson. Present for the Defendant was his Attorney R. Brady Vannoy, Esquire of Moncks Corner. The Court heard from both sides and viewed the roadside video.

On March 15, 2011 Defendant was arrested and charged with Driving Under the Influence ("DUI") (Refusal) by Trooper C.A. Pearson of the South Carolina Highway Patrol. After being arrested by Trooper Pearson, Defendant was placed in the front seat of the patrol vehicle. Trooper Pearson then turned his camera on the Defendant and read him his Miranda rights.

On August 30, 2011 Defendant argued that (1) the videotape failed to "show" the recitation of Miranda by Trooper Pearson and failed to capture Defendant's "conduct" and (2) that assuming the tape does comply with S.C. Code Sec. 56-5-2953, that Trooper Pearson did not advise Defendant of his "complete" Miranda warnings under S.C. Code Sec. 56-5-2953 and State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838 (Ct. App. 1996).

After hearing arguments from the Defense and the State and after viewing the videotape and reviewing relevant law provided by both parties, I find that Defendant's motion must be granted.

The South Carolina legislature set forth specific procedures for DUI cases. S.C. Code Sec. 56-5-2953 mandates video recording of DUI arrests and requires the subject's "conduct" to be video recorded. Subsection (A) requires that the video recording at the incident site "show" the defendant being advised of his Miranda rights:

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

(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."

In City of Rock Hill v. Suchenski, 374 S.C. 12 (2007), our Supreme Court held that a violation of the videotaping statute warrants dismissal of the case and not suppression of the relevant evidence.

In the present case, Trooper Pearson places Defendant under arrest for Driving Under the Influence. He then takes the Defendant off camera for almost a minute and places him in the front seat of his patrol car. He then turns the camera on Defendant and reads him his Miranda rights. Trooper Pearson cannot be seen during this period.

This Court finds that the video tape does not comply with S.C. Code Sec. 56-5-2953.<sup>1</sup> Namely, following the Defendant's arrest and before the reading of Miranda, the Trooper and the Defendant are not visible for over a minute. Further, while Trooper Pearson reads Defendant his Miranda rights, the Trooper cannot be seen doing this. The word "show" means "something that one views or at which one looks and at the same time hears." Black's Law Dictionary Sixth Edition, p. 1379. In this case, you can see Defendant but you cannot see the Trooper. Thus the videotape fails to comply with Sec. 56-5-2953.

Since Defendant's "conduct" was not fully captured coupled with the fact that the videotape does not "show" Trooper Pearson reading Defendant his Miranda rights, this matter must be DISMISSED with prejudice. See City of Rock Hill vs. Suchenski, 374 S.C. 12, (S.C. 2007) and Murphy vs. State, Opinion No. 4816 (S.C. App. 2011) FN4.

Accordingly, the Court does not address Part 2 of Defendant's motion.

AND IT IS SO ORDERED!



The Honorable Edward L. Sessions  
Berkeley County Magistrate

Goose Creek, South Carolina  
This 6<sup>th</sup> day of September 2011

<sup>1</sup> This Court finds Judge Cothran's analysis in State v. Lee Griffin Green, C/A No. 2009-CP-14-634 to be similar to the case before the Court.