

**56-5-2953**  
**TITLE 56 - MOTOR VEHICLES**  
**CHAPTER 5. UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS**

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**56-5-2953. Incident site and breath site videotaping; admissibility as evidence; purchase and maintenance of videotaping equipment.**

ARTICLE 23. RECKLESS HOMICIDE; RECKLESS DRIVING; DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, DRUGS OR NARCOTICS

[Section effective until 12:00 p.m. on February 10, 2009. See, also, section effective 12:00 p.m. on February 10, 2009.]

(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 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 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.

(B) Nothing in this section may be construed as prohibiting the introduction of other evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the videotape equipment at the time of the arrest, probable cause determination, or breath test device was in an inoperable condition, stating reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the videotape because the person needed emergency medical treatment, or exigent circumstances existed. Further, in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue

lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the videotape.

(C) A videotape must not be disposed of in any manner except for its transfer to a master tape for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.

(D) SLED is responsible for purchasing, maintaining, and supplying all necessary videotaping equipment for use at the breath test sites. SLED also is responsible for monitoring all breath test sites to ensure the proper maintenance of videotaping equipment. The Department of Public Safety is responsible for purchasing, maintaining, and supplying all videotaping equipment for use in all law enforcement vehicles used for traffic enforcement. The Department of Public Safety also is responsible for monitoring all law enforcement vehicles used for traffic enforcement to ensure proper maintenance of videotaping equipment.

(E) Beginning one month from the effective date of this act, all of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to equip all breath test sites with videotaping devices and supplies. Once all breath test sites have been equipped fully with videotaping devices and supplies, eighty-seven and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by the Department of Public Safety to purchase, maintain, and supply videotaping equipment for vehicles used for traffic enforcement. The remaining twelve and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to purchase, maintain, and supply videotaping equipment for the breath test sites. Funds must be distributed by the State Treasurer to the Department of Public Safety and SLED on a monthly basis. The Department of Public Safety and SLED are authorized to carry forward any unexpended funds received in accordance with Section 14-1-208(C)(9) as of June thirtieth of each year and to expend these carried forward funds for the purchase, maintenance, and supply of videotaping equipment. The Department of Public Safety and SLED must report the revenue received under this section and the expenditures for which the revenue was used as required in the department's and SLED's annual appropriation request to the General Assembly.

(F) The Department of Public Safety and SLED must promulgate regulations necessary to implement the provisions of this section.

(G) The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a videotaping device. The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for a breath test site once the breath test site is equipped with a videotaping device.

**56-5-2953. Incident site and breath site videotaping; admissibility as evidence; purchase and maintenance of videotaping equipment.**

[Section effective until 12:00 p.m. on February 10, 2009.]

(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 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 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.

(B) Nothing in this section may be construed as prohibiting the introduction of other evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the videotape equipment at the time of the arrest, probable cause determination, or breath test device was in an inoperable condition, stating reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the videotape because the person needed emergency medical treatment, or exigent circumstances existed. Further, in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the videotape.

(C) A videotape must not be disposed of in any manner except for its transfer to a master tape for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.

(D) SLED is responsible for purchasing, maintaining, and supplying all necessary videotaping equipment for use at the breath test sites. SLED also is responsible for monitoring all breath test sites to ensure the proper maintenance of videotaping equipment. The Department of Public Safety is responsible for purchasing, maintaining, and supplying all videotaping equipment for use in all law enforcement vehicles used for traffic enforcement. The Department of Public Safety also is responsible for monitoring all law enforcement vehicles used for traffic enforcement to ensure proper maintenance of videotaping equipment.

(E) Beginning one month from the effective date of this act, all of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to equip all breath test sites with videotaping devices and supplies. Once all breath test sites have been equipped fully with videotaping devices and supplies, eighty-seven and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by the Department of Public Safety to purchase, maintain, and supply videotaping equipment for vehicles used for traffic enforcement. The remaining twelve and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to purchase, maintain, and supply videotaping equipment for the breath test sites. Funds must be distributed by the State Treasurer to the Department of Public Safety and SLED on a monthly basis. The Department of Public Safety and SLED are authorized to carry forward any unexpended funds received in accordance with Section 14-1-208(C)(9) as of June thirtieth of each year and to expend these carried forward funds for the purchase, maintenance, and supply of

videotaping equipment. The Department of Public Safety and SLED must report the revenue received under this section and the expenditures for which the revenue was used as required in the department's and SLED's annual appropriation request to the General Assembly.

(F) The Department of Public Safety and SLED must promulgate regulations necessary to implement the provisions of this section.

(G) The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a videotaping device. The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for a breath test site once the breath test site is equipped with a videotaping device.

[Section effective at 12:00 p.m. on February 10, 2009, at which time the section name line will read "Incident site and breath test site video recording."]

(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.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2) The video recording at the breath test site must:

(a) include the entire breath test procedure, the person being informed that he is being video recorded, and that he has the right to refuse the test;

(b) include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test; and

(c) 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 video record this waiting period.

(3) The video recordings 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.

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section

prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

(C) A video recording must not be disposed of in any manner except for its transfer to a master recording for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.

(D) SLED is responsible for purchasing, maintaining, and supplying all necessary video recording equipment for use at the breath test sites. SLED also is responsible for monitoring all breath test sites to ensure the proper maintenance of video recording equipment. The Department of Public Safety is responsible for purchasing, maintaining, and supplying all videotaping equipment for use in all law enforcement vehicles used for traffic enforcement. The Department of Public Safety also is responsible for monitoring all law enforcement vehicles used for traffic enforcement to ensure proper maintenance of video recording equipment.

(E) Beginning one month from the effective date of this section, all of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to equip all breath test sites with video recording devices and supplies. Once all breath test sites have been equipped fully with video recording devices and supplies, eighty-seven and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by the Department of Public Safety to purchase, maintain, and supply video recording equipment for vehicles used for traffic enforcement. The remaining twelve and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to purchase, maintain, and supply video recording equipment for the breath test sites. Funds must be distributed by the State Treasurer to the Department of Public Safety and SLED on a monthly basis. The Department of Public Safety and SLED are authorized to carry forward any unexpended funds received in accordance with Section 14-1-208(C)(9) as of June thirtieth of each year and to expend these carried forward funds for the purchase, maintenance, and supply of video recording equipment. The Department of Public Safety and SLED must report the revenue received under this section and the expenditures for which the revenue was used as required in the department's and SLED's annual appropriation request to the General Assembly.

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(G) The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a video recording device. The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for a breath test site once the breath test site is equipped with a video recording device.

(2008)



No Results Found

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2009CP4600879

South Carolina State Of vs. Lauren O Thomas

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:

Final Order On Appeal From Magistrate's Court

Dated at York, South Carolina, this 5th day of June, 2009.

Court Reporter:

s/Lee S. Alford

PRESIDING JUDGE - LEE S. ALFORD

This judgment was entered on the 22nd day of June, 2009, and a copy mailed first class this 22nd day of June, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew W Shelton Assistant Solicitor 529 S  
Cherry Rd Rock Hill, SC 29732

Michael Langford Brown Jr P.O. 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

*The Law Offices of*  
**MICHAEL L. BROWN, JR.**

223 Main Street, Suite 550, Rock Hill, SC • PO Box 1025, Rock Hill, SC 29731  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 State of South Carolina, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 Lauren Thomas, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE 16TH JUDICIAL CIRCUIT  
 Case No.: 2009-CP-46-879

**FINAL ORDER ON APPEAL  
 FROM MAGISTRATE'S COURT**

FILED-RECORDED  
 2009 JUN 22 11:11:03  
 CLERK OF COURT  
 YORK COUNTY, SOUTH CAROLINA

This matter is before the Court on appeal from York County Magistrate Court, Fort Mill Township. The trial court granted Defendant's motion to suppress evidence of field sobriety tests, arrest and the breath test result. The trial court ruled that the state failed to comply with the statutory requirement that a DUI suspect must be advised of his or her Miranda rights before field sobriety tests are administered or breath test given.

The State appeals on two grounds:

(1) That the Miranda warnings given by the arresting officer were adequate to comply with Miranda and

(2) That the required Miranda warnings in DUI cases are statutory rather than constitutional and the trial court was required to find that the Defendant was prejudiced by the failure to give a complete Miranda warning.

This Court agrees with the ruling of the trial court on these two issues and adopts the language of the trial court in its Return on Appeal.

#1  
 2009

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas of York County

APPEAL FROM YORK COUNTY  
Fort Mill Township Magistrate's Court

David S. Wood, Magistrate

09-CP46-879  
Z254820

State of South Carolina,  
Lauren Thomas,

v.

Appellant  
Respondent.

RETURN

On January 29, 2007 Respondent was charged under S.C. Code § 56-5-2930 with Driving Under the Influence (DUI) by Lance Corporal R.S. Bennett of the Highway Patrol. At the incident site, the arresting officer, pursuant to S.C. Code 56-5-2953 (A) (1) (b), advised the Respondent that:

"You have the right to remain silent and anything you say can and will be used against you in court. You have the right to have an attorney and if you cannot afford one, one will be appointed to you. Do you have any questions about that?" (Exhibit 2)

The State stipulated that during the contact between the Trooper and Respondent, the Trooper advised the Respondent in the same manner as above on the three separate occasions required by S.C. Code Ann. § 56-5-2953:

(1) before conducting Standardized Field Sobriety Tests, (2) before placing the Respondent under arrest and, (3) before offering the Respondent a breath test.

On motion of defense counsel, the Magistrate suppressed the Standardized Field Sobriety Tests and the breath test result based on the State's failure to comply with the General Assembly's unequivocal mandate to advise Respondent of his Miranda rights pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602.

The General Assembly did not mandate partial compliance with this statute, the General Assembly clearly states in SC Code Ann. §56-5-2953(A)(1)(b):

"(1) The videotaping at the incident site *must*:

(b) include the person being advised of his Miranda *rights* before any field sobriety tests are administered, if the tests are administered. (emphasis added)"

The tests were administered, the Miranda rights were not.

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 (Ct. App.2002) (citing State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999) cert denied as improvidently granted, State v. Hudson, 346 S.C. 139, 551 S.E.2d 253

(2001). The determination of legislative intent is a matter of law. Hudson, 336 S.C. 237, 519 S.E.2d 577.

The legislature's intent should be ascertained primarily from the plain language of the statute. Morgan at 366, 574 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Id.* When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660\_(1991). We should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. Hudson, 336 S.C. 237, 519 S.E.2d 577.

When a statute's language is plain and unambiguous, and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Id.* Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. *Id.*; City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct. App. 1998).

The General Assembly clearly and plainly states that the videotape must include the person being advised of his Miranda rights. "Rights" is plural. S.C. Code Ann. §56-5-2953 does not state "some of his Miranda rights" or "whichever Miranda rights the officer decides to include." Miranda rights, given the plain and ordinary meaning, can only mean all of those rights. There is no room for officer discretion as to which of the various and sundry Miranda rights are to be read to the suspect.

In State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838, the Court of Appeals ruled that a defendant must be advised of the following:

"He has the right to remain silent; anything he says can be used against him in a court of law; he has a right to the presence of an attorney; if he cannot afford an attorney, one will be appointed for him prior to any questioning, if he so desires; and he has the right to terminate the interrogation at any time and not answer any further questions."

The defendant in this case was not advised that she had the right to the presence of an attorney, that one would be appointed to her prior to any questioning, that she had the right to terminate the interrogation at any time and not answer any further questions.

The State argues in it's Notice of Appeal and Brief that the Trooper's warnings to the defendant were "very similar" to those endorsed by the United State Court of Appeals for the Fourth Circuit in U.S. v. Frankson, 83 F.3d 79. The rights endorsed in Frankson were as follows:

"Now I want to advise you of your rights. First of all, you have the right to remain silent. Anything you say, do or write can and will be used against you. You have the right to an attorney, the Government will get one for you. I also explained to him he could answer some of my questions, all of my questions, or none of my questions. I also told him that while he was talking to me, he was free to stop talking to me at anytime."

The advisement by the Trooper was not even close to as thorough or complete as the rights endorsed in Frankson. Noticeably absent is the defendant's right to terminate the interrogation at any time and not to answer any further questions.

The statute does not call for an analysis based on custody or interrogation. If that was the case, then no Miranda warning would be necessary at such an early stage of a police investigation. Whether the suspect was in custody or being interrogated has no place in determining what rights the suspect should be advised of by the officer because the General Assembly specifically stated that the suspect must be advised of their Miranda rights at certain points during the investigation and arrest of an individual charged with DUI. No matter what Miranda has been interpreted to mean in the various federal courts, the General Assembly has the ability to afford suspects with more protection than the United States Constitution or the South Carolina Constitution.

The General Assembly mandated that a suspect be advised of his Miranda rights and the state failed to comply with the statute. Accordingly, short of dismissing the case, the evidence collected after the State failed to adequately

and fully advise the defendant of his Miranda rights was suppressed. The legislature has established a procedure that *must* be followed in the making of a DUI arrest. Here, the procedure was not followed.

The State's assertion that the lower court should have articulated whether or not there was unfair prejudice to the Respondent due to non-compliance with S.C. Code Ann. § 56-5-2953 is not properly before the Circuit Court. The State did not seek a post-judgment ruling from the court regarding that issue. In order to preserve an issue for appellate review, a party must file a motion to alter or amend the judgment when the party raises an issue to the lower court and the court fails to rule on that issue. No ruling was made on that issue during the lower court proceeding.

Respectfully,

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David S. Wood  
York County Magistrate Judge  
114 Spring Street  
Fort Mill, SC 29715

March 30, 2009