

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE'S COURT
)	FOR BEAUFORT COUNTY
COUNTY OF BEAUFORT)	
)	
STATE OF SOUTH CAROLINA)	ORDER
)	
v.)	TICKET E 231131
)	
MARTIN HONAN,)	
Defendant.)	

This matter comes before me based on the Defendant's Motion to suppress the field sobriety tests in the instant case. The Defendant's Motion is based on alleged deviations from the Standardized test procedure. A hearing on this matter was scheduled for September 14, 2010, and all parties were notified of hearing time and place. The State is represented by the arresting officer, Trooper Conley. The Defendant is represented by his attorney of record, Samuel C. Bauer.

At the commencement of the Hearing, the parties agreed that all citations to NHTSA protocol should be made to the August 2006 Manual.

Upon direct examination by the Defense, Trooper Conley agreed that the administration of field sobriety testing should be in accordance with NHTSA Standards. The officer testified that he received training in the administration of the standardized field sobriety tests at the South Carolina Criminal Justice Academy in accordance with the requirements of the National Highway Traffic Safety Administration procedures for

1 of 8
 bap

said testing. Further, Trooper Conley agreed with the following NHTSA Statement regarding validation:

IT IS NECESSARY TO EMPHASIZE THIS VALIDATION APPLIES ONLY WHEN:

THE TESTS ARE ADMINISTERED IN THE PRESCRIBED, STANDARDIZED MANNER

THE STANDARDIZED CLUES ARE USED TO ASSESS THE SUSPECT'S PERFORMANCE

THE STANDARDIZED CRITERIA ARE EMPLOYED TO INTERPRET THAT PERFORMANCE.

IF ANY ONE OF THE STANDARDIZED FIELD SOBRIETY TEST ELEMENTS IS CHANGED, THE VALIDITY IS COMPROMISED.

NHTSA (R8/06, Page VIII-19).

Trooper Conley stipulated that the probable cause to arrest the Defendant was based on the Defendant's performance on the Field Sobriety Tests.

At the conclusion of the Hearing, the parties were requested to submit copies of any proposed Orders they wished this Court to consider, along with a DVD of the incident site videotape.

After reviewing the same, I make the following findings of fact and conclusions of law:

In the instant case, the arresting officer administered the three standardized field sobriety tests which have been validated by NHTSA: The standardized test battery consists of the HGN, the Walk and Turn, and the One Leg Stand.

The first test administered by the officer is the HGN. As an initial consideration, the video shows that the HGN test is conducted with the officer's blue lights flashing

2018
bup

toward the test subject's field of vision. The presence of the flashing lights compromises the validity of any test results obtained here. The NHTSA standards for administration of the HGN test specifically require facing the subject away from flashing lights:

Examples of optokinetic nystagmus include watching strobe lights, rotating lights, or rapidly moving traffic in close proximity. (NHTSA R8/06, Page VIII-4).

[A]lways face suspect away from rotating lights, strobe lights and traffic passing in close proximity. (NHTSA R8/06, Page VIII-15).

Further, I find the administration of the test is not in compliance with NHTSA standards. The video shows the officer passing the stimulus in front of each of the Defendant's eyes 4 times. If the test were conducted to NHTSA standards, each eye would be checked twice for equal tracking and equal pupil size (2 passes per eye), each eye would be checked twice for smooth pursuit (2 passes per eye), each eye would be checked twice for distinct nystagmus at maximum deviation (2 passes per eye) and finally each eye would be checked twice for onset of nystagmus prior to 45 degrees deviation (2 passes per eye). NHTSA requires 8 passes per eye instead of the 4 per eye shown on the incident site video. (NHTSA R8/06, Pages VIII-6 through 8).

The Second test administered by the officer is the Walk and Turn. In reviewing the video tape of this test which begins at 21:28:30, I find that the administration of this test deviates from the standardized instructions in thirteen ways:

3 of 8
bap

1. As part of the Standardized Instructions, the officer is required to place the suspect in the "ready position" by telling the suspect to place his Left foot on the line. The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 1 Point 1).
2. As part of the Standardized Instructions, the officer is required to tell the suspect to "Place your right foot on the line ahead of the left foot, with the heel of your right foot against toe of your left foot." The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 1 Point 2).
3. As part of the Standardized Instructions, once the Suspect has his feet properly placed in the ready position, the officer is required to "Tell the suspect to place his arms down at his sides." The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 1 Point 3).
4. As part of the Standardized Instructions, once the suspect has his feet properly placed and his arms down at his sides, the officer is require to "Tell the suspect to keep this position until I tell you to begin." The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 1 Point 4).
5. As part of the Standardized Instructions, once the suspect has been told to remain in the ready position until told to begin, the officer is required to ask the suspect if he understands the instructions so far. The arresting officer in

- this case completely omits this inquiry. (NHTSA R8/06, Page VIII-9, Instruction 1 Point 5).
6. As part of the Standardized Instructions, the officer is required to tell the suspect to make a turn by "keeping the front foot on the line, and turn by taking a series of small steps with the other foot." The arresting officer in this case simply tells the suspect to turn around. (NHTSA R8/06, Page VIII-9, Instruction 2 Point 2).
 7. As part of the Standardized Instructions, the officer is required to demonstrate the required turn to the suspect. The arresting officer in this case does not demonstrate the turn. (NHTSA R8/06, Page VIII-9, Instruction 2 Point 2).
 8. As part of the Standardized Instructions, the officer is required to tell the suspect "While you are walking, keep your arms at your sides." The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 2 Point 3).
 9. As part of the Standardized Instructions, the officer is required to tell the suspect to "Watch your feet at all times" while the suspect is walking. The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 2 Point 3).
 10. As part of the Standardized Instructions, the officer is required to tell the suspect "Count your steps out loud." The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 2 Point 3).

11. As part of the Standardized Instructions, the officer is required to tell the suspect "Once you start walking, don't stop until you have completed the test." The arresting officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-9, Instruction 2 Point 4).
12. As part of the Standardized Instructions, the officer is required to ask the suspect if he understands this portion of the test instructions. The arresting officer in this case completely omits this inquiry. (NHTSA R8/06, Page VIII-9, Instruction 2 Point 5).
13. As part of the Standardized Instructions, the officer is required to tell the suspect "Begin, and count your first step as one." The arresting officer in this case completely simply tells the suspect to "start". (NHTSA R8/06, Page VIII-9, Instruction 2 Point 6).

As a result of the officer's deviation from the Standardized Instructions, the Standardized clue set cannot be used. NHTSA recognized 8 standardized clues in evaluating a suspect's performance on the test. The first two clues of "losing balance during the instruction phase" and "starts too soon" cannot be used when the suspect is not properly placed in the ready position and told to remain there. Because the instructions for the walking phase deviated from NHTSA standards, the standardized clues of "stops while walking"; "uses arms for balance"; and "turns incorrectly" cannot be used for scoring purposes.

The Third test administered by the officer is the One Leg Stand. In reviewing the video tape of this test which begins at 21:29:25, I find that the administration of this test deviates from the standardized instructions in six ways:

1. As part of the Standardized Instructions, the officer is required to tell the suspect to get into the "ready position" with feet together and arms at their sides. The officer in this case completely omits this instruction. (NHTSA R8/06, pages VIII-12, Instruction 1, point 1).
2. As part of the Standardized Instructions the officer is required to demonstrate the "ready position". The officer in this case completely omits the demonstration. (NHTSA R8/06, Page VIII-12, Instruction 1, point 1).
3. As part of the Standardized Instructions, the arresting officer is required tell the suspect not to begin the test until told to start. The officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-12, Instruction 1 Point 2).
4. As part of the Standardized Instructions, the officer is required to ask the suspect if he understands the "ready position" instructions. The officer in this case fails to make this inquiry. (NHTSA R8/06, Page VIII-12, Instruction 1 Point 3).
5. As part of the Standardized Instructions, the officer is required to instruct the suspect that while taking the test, the suspect must keep both legs straight and arms at your sides." The officer in this case completely omits this instruction. (NHTSA R8/06, Page VIII-12, Instruction 2 Point 2).

7 of 8
bap

6. As part of the Standardized Instructions, the officer is required to ask the suspect if he understands the test phase instructions. The officer in this case completely omits the inquiry. (NHTSA R8/06, Page VIII-12, Instruction 2 Point 5.

I find, based upon the foregoing, that the State deviated from NHTSA standards on each of the field sobriety tests offered to the Defendant, and that such deviation was so great as to warrant the field sobriety tests inherently unreliable. Therefore, the Defendant's motion to suppress the field sobriety tests is granted.

Furthermore, whereas the "standardized field sobriety tests" were the basis for the probable cause for arrest of the Defendant, all evidence obtained following the arrest of the Defendant is suppressed as well, including the breath testing site and the results of the breath test. ***As a result, this case shall be dismissed.***



Beth Ann Prince

Beaufort County Magistrate

Bluffton, South Carolina

October 4, 2010

8/18
bap