

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE MAGISTRATE'S COURT

The State, )  
vs. )  
Reagan Phillip Prince, )  
Defendant. )  
\_\_\_\_\_ )

ORDER OF SUPPRESSION AND DISMISSAL

Ticket #: 13761FQ

Hearing Date: October 3, 2012  
Presiding Judge: Charles W. Jones  
Attorney for State: Lindsey Overby  
Attorney for Defendant: Pete G. Diamaduros

This matter came before the court for trial. After they jury was selected and before the case began, the Defendant made motions before the court. Before the court were three motions. The Defendant first argues that the datamaster results should be suppressed and the charges dismissed. The Defendant argued that there was never an arrest for Driving Under the Influence, which would allow the offering of the datamaster test. Without the datamaster test, there can be no charge for driving with an unlawful alcohol concentration. Defendant argued that section 56-5-2950 requires that a breath test must be administered at the direction of a law enforcement officer who has arrested a person for DUI. Defendant argued that it was clear that all arrests must be accompanied by a warrant or uniformed traffic citation. Defendant argued that the proper procedure for charging the Defendant with driving with an unlawful alcohol concentration is to first charge the Defendant with Driving Under the Influence pursuant to Section 56-5-2930 and then notifying him thirty days before trial that he will be prosecuted under Section 56-5-2933. Defendant argued that there was no lawful arrest and therefore obtaining the breath test with an unlawful arrest should lead to the suppression of that test. The court denied this motion and felt that the Defendant was properly arrested.

The Defendant argued that there was a violation of Section 56-5-2953, the mandatory video

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taping requirement at the incident site. Defendant argues that after he was handcuffed and placed in the police vehicle, the officer failed to turn the video camera on the Defendant for a period of time in excess of ten minutes. Defendant argued that the incident site video requirements require that the Defendant be videotaped from the time the blue lights are activated until the car arrives at the police department.

The court denied Defendant's motion based on 56-5-2953 due to the fact that the Defendant was videoed up until the time that he was told he was under arrest and cuffs were placed on the Defendant.

The third pre-trial motion made by the Defendant was based on Section 56-5-2950 (E), the affirmative assistance portion of the implied consent law. The court viewed a portion of the datamaster video recording. In the recording, the Defendant asked for an explanation of how he could have an independent person of his own choosing conduct an additional independent test. The officer advised the Defendant that if he took the test and did not agree with the results, that the Defendant would have to pay for a blood test and that the only place he could obtain a blood test was at Spartanburg Regional. The officer went on to tell the Defendant that he would have to pay for the test and that "I don't know how you are going to pay for it because you left your wallet and all of your money in the car". The Defendant then stated "I have got the money" to which the officer replied "I am sure you do but do you have it with you?". The Defendant then answered "No sir" to which the officer again responded "I thought it was crazy that you wanted to leave all of your money and wallet in the car".

After reviewing the datamaster videotape dealing with the Defendant and the officer's discussion concerning an independent test, this Court granted the State a one hour recess to obtain testimony from a witness at Spartanburg Regional Medical Center that could testify concerning the hospital policy on payment or billing requirements for obtaining an independent test.

After an hour, the court reconvened and it was determined that the State had no witness available to testify concerning hospital policy.

In construing the terms of a statute, the primary rule of statutory construction is that all rules of statutory construction are subservient to the one rule that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. The Town of Mt. Pleasant v. Roberts, 393 SC 332, 342 713 SE 2d 278, 283 (2011); State v. Johnson 393 SC 182, 720 SE 2d 516, 519 (Ct. App. 2011). The provisions of South Carolina Code Section 56-5-2950, being penal in nature must be strictly construed against the State and in favor of the Defendant.

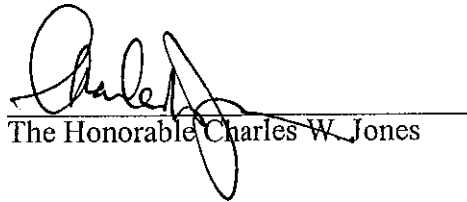
The Town of Mt. Pleasant v. Roberts, 393 SC 332, 342 713 SE 2d 278, 283 (2011); State v. Johnson 393 SC 182, 720 SE 2d 516, 519 (Ct. App. 2011). If the language of a statute is unambiguous and conveys a clear and definite meaning, then the rules of statutory interpretation are not needed and the court has no right to impose a different meaning. In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand statute. The Town of Mt. Pleasant v. Roberts, 393 SC 332, 342 713 SE 2d 278, 283 (2011); State v. Johnson 393 SC 182, 720 SE 2d 516, 519 (Ct. App. 2011).

In construing the terms of South Carolina Code Section 56-5-2950 (E), it is clear that the arresting officer must provide affirmative assistance to a person to contact a qualified person to conduct and obtain an additional test. The statute states that affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person's alcohol concentration. The statute further states that failure to provide affirmative assistance upon request to obtain a test bars the admissibility of the breath test result in any judicial or administrative proceeding.

This court finds that the officer in this case was not an employee of the hospital, and did not have anyone able to testify concerning hospital policies that would have restricted the Defendant from obtaining a blood test merely because he did not have cash in his possession.

This court therefore concludes that the only remedy available to it is to grant Defendant's motion to suppress the datamaster results and to dismiss the charge.

IF IS THEREFORE ORDERED that the charges against Defendant be and they hereby are dismissed with prejudice.

  
The Honorable Charles W. Jones

Spartanburg, South Carolina

October 30, 2012