

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

C.A. Nos.: 2017-GS-04-0365
Appellate Case No. 2019-001502

RECEIVED

Oct 15 2020

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Dustin Lee Hooper,

Appellant.

AMENDED RECORD ON APPEAL

Anderson, South Carolina
October 5, 2020

Other Counsel:

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
Post Office Box 1 1 549
Columbia, SC 2921 1
(803) 734-3727

s/Donald L. Smith

Donald L. Smith (SC Bar#6699)

122 N. Main Street

Anderson, SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Attorney for Appellant

DAVID R. WAGNER

Solicitor, Tenth Judicial Circuit

PO Box 8002,

Anderson, SC 29691

(864) 260-4046

Attorneys for Respondent

INDEX

| | |
|---|-----|
| Order, dated March 8, 2019 | 2 |
| Order Denying Motion, dated August 27, 2019 | 4 |
| Order Denying Motion to Vacate, dated August 29, 2019 | 6 |
| Sentencing Sheet | 8 |
| Motion for Reconsideration, dated March 15, 2019..... | 10 |
| Motion for Relief from Judgment, filed August 5, 2019 | 22 |
| Motion to Amend, filed August 9, 2019 | 31 |
| Motion to Vacate Judgment, filed August 9, 2019 | 34 |
| Trial Transcript dated March 5, 2019 | 42 |
| Testimony of Deputy Charlie Coons | |
| Direct examination by Mr. Stolarski..... | 44 |
| Cross-examination by Mr. Smith..... | 50 |
| Testimony of Trooper Russell Griffin | |
| Direct examination by Mr. Stolarski..... | 68 |
| Cross-examination by Mr. Smith..... | 82 |
| Redirect examination by Mr. Stolarski..... | 96 |
| Recross-examination by Mr. Smith..... | 97 |
| Transcript for Hearing on Motion to Vacate | 119 |
| Indictment | 127 |
| Appellant’s Notice of Appeal | 130 |
| Certificate of Counsel | 135 |

ORDER,
March 8, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

THE STATE OF SOUTH CAROLINA)

VS.)

DUSTIN LEE HOOPER,)

APPELLANT.)
_____)

IN THE COURT OF GENERAL SESSIONS)
TENTH JUDICIAL CIRCUIT)

INDICTMENT # 2017GS040365)

ORDER

RECEIVED

SEP 05 2019

SC Court of Appeals

The Defendant, Dustin Lee Hooper, was found guilty by a jury of his peers of Driving Under the Influence, 2nd Offense, on March 6, 2019. He has moved to remain on bond during the appellate process. The State has not objected to the Defendant's sentencing being deferred while he appeals his conviction.

Therefore, it is ORDERED, ADJUDGED AND DECREED that sentencing for Defendant, Dustin Lee Hooper, shall be deferred until his appeal has been exhausted. His sentencing shall be deferred provided he can secure a bond in the amount of \$1,500.00. The Defendant must have the bond secured by Friday March 8, 2019. It is understood that at the completion of the appellate process, he shall be brought before this Court for the purposes of sentencing. Should the Defendant choose not to go forward with his appeal, he shall be brought before this Court for the purposes of sentencing.

IT IS SO ORDERED.



~~The Honorable~~ R. Lawton McIntosh
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina
Dated: March 8, 2019

18 MAR 8 PM 4:35:57
Anderson, SC COC CP/GE

A TRUE COPY
AUG 30 2019
Richard S. Kelly
CLERK OF COURT

ORDER DENYING MOTION
August 27, 2019

19 AUG 28 AM 10:36:56
Anderson, SC DOC CP/68

STATE OF SOUTH CAROLINA)
)
)
State of South Carolina)
)
)
Plaintiff)
)
Vs.)
)
)
Dustin Lee Hooper,)
)
)
Defendant)

IN THE COURT OF GENERAL SESSIONS
FOR THE TENTH JUDICIAL CIRCUIT

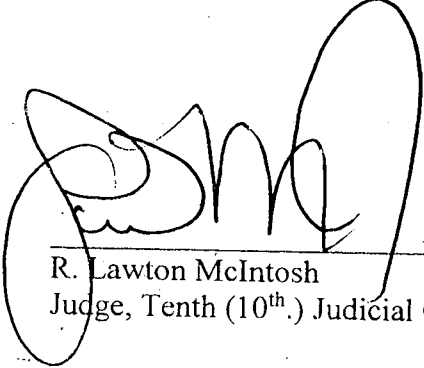
ORDER DENYING MOTION

Case Number: 2017-GS-04-0365

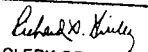
RECEIVED
SEP 05 2019
SC Court of Appeals

The Motion to Amend, Motion to Vacate Judgment and Motion for Relief of Judgment in case number 2017-GS-04-0365 is DENIED without the necessity of a formal hearing.

Anderson, SC
August 27, 2019



R. Lawton McIntosh
Judge, Tenth (10th.) Judicial Circuit

A TRUE COPY
AUG 30 2019

CLERK OF COURT 004

**ORDER DENYING
DEFENDANT'S MOTION
TO VACATE
August 29, 2019**

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF GENERAL SESSIONS)
TENTH JUDICIAL CIRCUIT)

THE STATE OF SOUTH CAROLINA)

INDICTMENT # 2017-GS-04-0365)

VS.)

ORDER DENYING DEFENDANT'S MOTION)
TO VACATE)

Dustin Lee Hooper,)
DEFENDANT.)

RECEIVED

SEP 05 2019

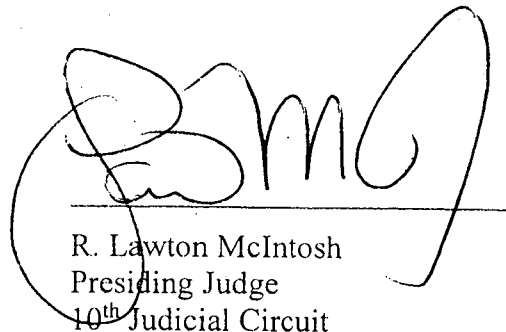
SC Court of Appeals

This matter came before the Court on August 29th, 2019 on the Defendant's Motion to Vacate the verdict in the above-referenced case. The State was represented by Stanford L. Overby, Jr. of the Tenth Circuit Solicitor's Office. The Defense was represented by Donald L. Smith, Esq. of the Anderson County Bar. The Court heard arguments and finds as follows:

1. The officer who is the "arresting officer" pursuant to S.C. Code § 56-5-2953(B) was Trooper Russell Griffin, as that term is defined in State v. Landis, 362 S.C. 97,606 S.E.2d 503 (S.C. Ct. App. 2004).
2. Trooper Griffin produced a video in compliance with S.C. Code § 56-5-2953.
3. While the Court takes note that the first deputy who conducted the traffic stop was not equipped with a camera, Trooper Griffin was the individual required to produce and did so pursuant to the statute. No affidavit was required on the part of the first deputy because Trooper Griffin was the arresting officer.

Therefore, IT IS ORDERED that Defendant's motion to vacate judgment is denied.

IT IS SO ORDERED.


R. Lawton McIntosh
Presiding Judge
10th Judicial Circuit

19 AUG 29 PM 4:50:02
Anderson, SC COC, CP/GS

August 29 2019

A TRUE COPY
AUG 30 2019
Richard S. Kelly
CLERK OF COURT 006

SENTENCING SHEET

COUNTY OF ANDERSON

STATE VS.

DUSTIN LEE HOOPER

AKA:

Race: White Sex: M Age: 25

DOB: 01/30/1993 SS#: 594-29-4283

Address: 108 Acorn Dr

City, State, Zip: Anderson, SC 29621-2403

DL# 101777182 SID#

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Driving A Vehicle While Under The Influence Of Alcohol And/Or Drugs

In violation of § 56-05-2930(A) of the S.C. Code of Laws, bearing CDR Code # 3356

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Wes Stedman 102843
79870

Stan Overby, Jr., Assistant Solicitor SC Bar # 6699 Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$ 3,000 provided that upon the service of 5 M.P. days/months/years and/or payment of \$1,500; plus costs and assessments as applicable*; the balance is suspended with probation for 6 M.P. months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ \$ _____

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ 1500.00 Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 100.00 \$ _____ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ 12.00 Other: _____

§56-1-286 (DUI Breath Test) \$25 \$ 25.00

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

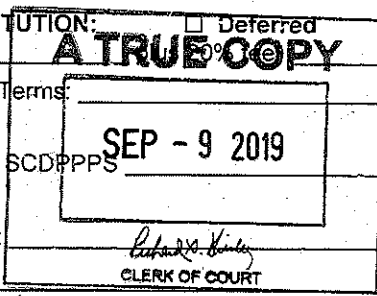
3% to County (if paid in installments) \$ _____

TOTAL \$ 3475.74

Clerk of Court/Deputy Clerk: Richard A. Shirley
Court Reporter: L. SCOTT

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2017GS0400365
AAW: 5102P0769367
Date of Offense: 10/29/2016
S.C. Code §: 56-05-2930(A)
CDR Code #: 3356
SENTENCE SHEET
Sentency deferred until Remission of Appeal



Sentency issued by stipulation of parties on 9-25-19

Presiding Judge: [Signature]
Judge Code: 2155
Sentence Date: 9-25-19

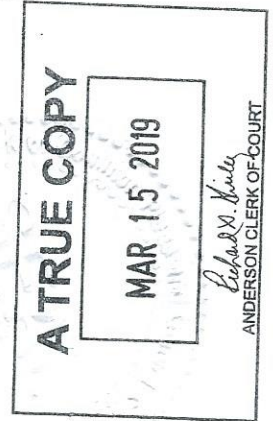
**MOTION FOR
RECONSIDERATION
March 15, 2019**

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
State of South Carolina)
Plaintiff,)
Vs.)
Dustin Lee Hooper,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

C.A. Nos.: 2017-GS-04-0365

MOTION FOR RECONSIDERATION



Plaintiff, by and through his counsel, respectfully moves for reconsideration this Court's Order, filed on March 6, 2019, and allege as follows:

STATEMENT OF FACTS

On October 28, 2016, Defendant Dustin Hooper (hereinafter referred as Hooper) started his day at 7 a.m. He worked a double shift at the Twisted Flame and got out around 10:30 p.m. He went home to shower; and, he had to go to TL Hanna to help jumpstart his friend DJ's car at around 11:00 p.m. After managing to get through the post-game, Westside traffic, he and DJ went to Christopher Steven Cauley's house off Highway 24. They were there momentarily; and, proceeded to Clemson where they had learned of Halloween festivities. They got to the Pier around 12:30 a.m.

DJ knew people at the Pier and pushed through the crowd to join other friends. Dustin and Steven sat on the front hood of the car and watched the traffic of party goers going in and out of the Pier. The crowd, which had enjoying the festivities for several hours, was not something that either Dustin or Steven wished to contend. Following approximately thirty (30) minutes, they left for a bonfire of which they had become aware.

Dustin drove them to the bonfire, which was roughly ten minutes away. They got to the bonfire sometime around 1:15 a.m. They didn't really know anyone there either; and, the

Diane Greenway
3.15.19

managed to hang out for another thirty (45) minutes, due to the fact that it was not nearly as crowded. Around 2:00 a.m., they got a call from DJ, who's car would not start again. They got in the car and headed back to the Pier.

They returned to the Pier to find DJ at wit's end regarding the issue of his car's inability to start. They managed to get the care started once again; and, recognized that this evening which had been nothing but a headache, needed to come to an end. The three of them said their goodbyes and left the Pier.

Initially, Dustin was to follow Steven back to his residence off of 24. However, as he traveled Clemson Blvd. toward Anderson, Dustin felt the day had been long enough; and, he simply wanted to go home. Therefore, rather than go to Steven's house, he stayed on Clemson Blvd. in order to have a straight path to his own home.

On October 29, 2016 at 2:32 a.m., a call was made to 911 from an unnamed citizen. The call was dispatched. The caller relayed the following:

- (a) That a red sedan with a tag number JKB851 was all over the road;
- (b) That he was following the vehicle passing KIA dealership in Anderson.

Officer Charlie Coon (hereinafter referred as "Coon") responded to the call and located a black car that was of a similar make-at the 28 Bypass overpass of Clemson Blvd. Coon is a reserve in the ACSO. His primary employment is at Piedmont Honda and works only when his children are not with him. Officer Coon saw Hooper's car and recognized that may be the vehicle that the caller had discussed. He checked the tag with dispatch; and, it was a match. He immediately blue-lighted the vehicle; and, subsequently, made a traffic stop.

About the same time, two troopers were coming from the opposite direction and saw that Deputy Coon had engaged his blue light for what appeared to be the vehicle for which they were looking. They performed a U-turn arrived; and, upon arrival, offered assistance to Deputy Coon.

Deputy Coon, who's aforementioned experience left him with experience that was far less than the trooper's experience, gladly accepted the trooper's offer to take over the investigation related to the stop. Additionally, Deputy Coon's vehicle, or the one that he used once a week, was not equipped with a dash cam. Deputy Coon did not have a button cam on his uniform, either.

When the troopers arrived, they pulled in behind in Coon's vehicle. Coon's vehicle, whose blue lights remained active, was between Hooper and the troopers' vehicles. Approximately five minutes into the stop and line of questioning, Coon moved his vehicle.

At that point, Hooper was subjected to the field sobriety tests. Trooper Griffin determined that Hooper failed the tests, placed him under arrest for DUI. Hooper was then transported to ACDC, where he was asked to take the breath test. Hooper refused to undergo the breath test.

In trial, Officer Coon testified that he saw Hooper making "hard right turns" when he was attempting to make the traffic stop. On the same token, he testified that Hooper never touched the curb. He did not offer that Hooper had done anything in approaching the traffic light. Coon stated that the car assigned to him by ACSO did not have a dash cam for purposes of videotaping statute (SC Code Ann. § 56-5-2953).

The jury returned a verdict in favor of the State, thus this motion.

ARGUMENT

DEFENDANT'S ARREST AND CONVICTION SHOULD BE REVERSED FOR NON-COMPLIANCE WITH THE STATUTE FOR S.C. CODE ANN. § 56-5-2953.

The video recording did not include the traffic stop conducted by Officer Coon.

Hooper posits that his arrest and conviction should be reversed for failure to comply with the statute on the videotaping requirement. Under South Carolina law, a person who commits DUI offense "must have his conduct at the incident site...video recorded". S.C. Code Ann. §56-5-2953(A). The law requires a law enforcement agency to be equipped with recording equipment. It mandates:

(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.

In the case of the *Town of Mt. Pleasant v. Roberts*, this Court stated that "the purpose of section 56-5-2953 . . . is to create direct evidence of a DUI arrest." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011). Hooper believes that this evidence shall include the stop itself. This is all the more pronounced when the statute provided that the recording begins not later than the activation of the officer's blue lights. Normally, blue lights are activated as a sign and/or warning that a certain individual has violated a law or ordinance, and as such should yield to the law enforcer's investigation. This signals the start of the investigation.

Hooper argues that the law intended for the stop to be recorded as well, because it is the only way to safeguard the public from baseless, invalid and unlawful stops. Hooper posits that this is the rationale for requiring that the recording begins not later than the activation of the officer's blue lights.

In this particular case, the video recording showed nothing of the stop. The video started with the patrol cars already parked, and the blue lights activated. In fact, the recording device was behind Coon's activated blue lights, until such time as Troopers R.G. Griffin (hereinafter referred to as "Griffin") and Ridgeway, came on the scene at 00:00:24 (as enumerated by Griffin's in-car camera).

Coon testified that he was responding to a call about a reckless driver in a sedan with tag JKB851. There was no description of the driver. Coon opined that Hooper was "making "hard right turns", prior to turning onto Walker Drive, where Coon effected the stop. Common sense dictate that this could not be the case. Hooper could not have made such a turn without striking the curb. There was no physical evidence showing damage on the right side of Hooper's vehicle, indicating an inability to safely navigate from the point of blue-light initiation until he stopped in the well-lit front of a business.

Hooper believes that without the video showing the stop, the reason for the stop could not be ascertained. That Coon responded to an anonymous tip does not, standing alone, constitute a probable cause. The conclusory statement of the caller had no corroboration. There was not a single specific statement defining what was in fact reckless to the caller. Aside from the tag, there was no other means to identify Hooper as the reckless driver, subject of the anonymous tip. If it were true that Coon observed Hooper was making hard right turns, then it would have been impossible for Coon to see Hooper's tag.

Coon's testimony on how he came to stop Hooper, was improbable based on physical evidence and common sense.

The arresting officer did not comply with Section 56-5-2953.

A. Officer Charlie Coon was the arresting officer.

While Section 56-5-2953 does not define the term "arresting officer". The court had the occasion to determine such in the case of State v. Landis, 362 S.C. 97 (2004). In *Landis*, Trooper Davis observed a vehicle driven by Landis weaving and straddling the center lane. A State Transport Police Officer initiated the blue lights; and, pulled Landis over to the side of the interstate. He was followed by Trooper Davis.

Transport Officer removed Landis from the car and Trooper Davis performed the field sobriety test, determined Landis was impaired and arrested him. There was no videotape of the incident. Landis argued that the State Transport Police Officer was the arresting officer, for which the requirements of Section 56-5-2953 must be met. The circuit court ruled that Trooper Davis was the arresting officer. S.C. Court of Appeals affirmed. It ruled that "*Trooper Davis was the "arresting officer" as that phrase is ordinarily understood. Trooper Davis personally observed Landis driving prior to the traffic stop. He arrived at the scene simultaneously with the State Transport Officer. Trooper Davis pulled in directly behind the Transport Officer and approached just after Landis had been removed from his vehicle. Moreover, trooper Davis conducted the field sobriety test, determined Landis was impaired, and placed him under arrest for DUI.*" Id.

Landis also cited the case of State v. Garvin in determining the arresting officer.

The term "arrest" has a technical meaning, applicable in legal proceedings. It implies that a person is thereby restrained of his liberty by some officer or agent of the law, armed with lawful

process, authorizing and requiring the arrest to be made. It is intended to serve, and does serve, the end of bringing the person arrested personally within the custody and control of the law, for the purpose specified in, or contemplated by the process.

State v. Garvin, 341 S.C. 122, 55 S.E.2d 591 (Ct. App. 2000) as cited in *Landis*.

Hooper asserts that Coon was the arresting officer. He was the one who responded to the anonymous tip/call; and, who admitted that he observed and followed Hooper while the latter was driving. It was Coon who determined that there was probable cause for stopping, and himself performed the traffic stop. Coon restrained Hooper's liberty, because the whole time that they were waiting for the two troopers, Hooper could not leave the site, voluntarily. Coon was the one who brought Hooper within the custody and control of the law, when he handed him over to the troopers. Coon was present the whole time Hooper was performing the sobriety test, until the latter was transported to the ACDC. Coon was the arresting officer responsible for meeting the statutory requirements of Section 56-5-2953. However, Coon failed to produce a videotape of the DUI arrest because his patrol car had no dash cam.

B. Coon failed to produce the required videotape nor to submit the mandated sworn affidavit.

Hooper is cognizant that the failure by an arresting officer to produce the required videotape is not alone a ground for dismissal, provided the arresting officer submits a sworn affidavit certifying that the video recording at the time of the arrest was in an inoperable condition and stating the reasonable efforts taken to maintain the equipment operable. (§ 56-5-2953(B)).

Here, Coon did not submit a sworn affidavit as mandated by law.

Even with totality of circumstances, the statute on videotaping was not complied with.

A. Recording was done long after the

activation of the blue lights.

Despite the fact that Coon was the officer who allegedly observed Hooper's violation that led to the stop, Coon was unable to record the stop and conduct the field sobriety tests (FSTS) because the car he was issued was not equipped with dash cams.

The statute requires law enforcement agencies to provide its patrol vehicles with video camera equipment. This law has been in effect since June 28, 1998-Act 434. On October 29, 2016, Anderson County Sheriff's Office had not complied with this mandate. In the case of *Town of Mt. Pleasant*, the Court found that the protracted failure to equip its patrol vehicles with video cameras defeated the intent of the Legislature. *Id.*

In the above-mentioned case, Officer Bruce Burbage of the Town of Mount Pleasant's Police Department effected a traffic stop of Treva Roberts. Officer Burbage performed three field sobriety tests on Roberts, which she failed. Officer Burbage arrested Roberts for DUI, transported him to the police department, and was offered a breathalyzer test. Roberts refused.

Officer Burbage failed to record the initial traffic stop, field sobriety tests or the arrest at the incident site in videotape. Officer Burbage presented an Affidavit showing that at the time he was operating the vehicle, that it was not equipped with videotaping device. The State argued that the statute requiring videotaping of the DUI did not apply to Town since the law controlled a stop "once the law enforcement vehicle is equipped with a videotaping device". The State contended that since its vehicles were not equipped with video cameras, then the videotaping requirement did not apply to it.

The Court of Appeals noted that there were municipalities whose law enforcement agencies had not placed cameras in patrol cameras long after the law was enacted. The Court of Appeals ruled that the *Town of Mount Pleasant* should not be rewarded for continually evading

their duty under the statute. *Id.* The Court of Appeals found that their behavior and lack of compliance within a reasonable amount of time was sanctionable. *Id.*

The ruling in the *Town of Mount Pleasant* is applicable in the instant case. ACSO had not equipped Coon's patrol car with a dash cam, despite the fact his only purpose on the one day a week that he worked was to monitor traffic. ACSO had not equipped Coon's patrol car with a dash cam, despite the fact that the statute had been active for nearly eight (8) years. This Court should not condone the county and ACSO's consistent non-compliance with the statute.

A. Missing Audio Recording

Hooper advances that the State also failed to comply with the statute when it submitted a video which was missing a segment of audio recording.

The video started with a parked patrol car, with activated blue lights. At 00:00:24, two troopers came in view approaching a car. At this point, Hooper has not been shown in the video. At 00:02:45, the troopers and Coon were shown at the side of the patrol car debating who will handle the field sobriety test. At 00:03:04, Trooper Griffin moved his vehicle from the view. At this point, the audio recording stopped, and came back on at 00:03:54 when Griffin returned to where Hooper and the other trooper were standing. During this 50 second-gap of no audio, Hooper was shown conversing with Coon and Ridgeway. All of these were not recorded. Hooper believes that this prevented the jury from hearing the entire audio recording. This prevented Hooper from preparing his defense and denied him his due process.

It is clear that the video submitted did not comply with the requirements of the statute for videotaping DUI arrests. The video did not show Coon conducting the traffic stop. Coon as arresting officer did not comply with the law on videotaping DUI. Even the Troopers' video did not comply with §56-5-2953. It showed the blue lights already activated, which meant the

camera was engaged long after the blue lights were initiated, in contravention of the clear language of the law. The video contained missing pieces. Hooper asserts that the video is inadmissible for being tainted.

Law enforcement is bound to laws concerning Driving Under the Influence, just as Dustin Hooper was.

"[A] court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation."

State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011).

"By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance." *Town of Mt. Pleasant* at 349.

In *Town of Mount Pleasant v. Roberts*, Justice Beatty, writing for the Court, found that "the Town failed to establish any statutory exception to excuse its noncompliance"; and, affirmed Judge Nicholson's reversal of Roberts's conviction and subsequent dismissal. *Id.* at 350.

Hooper reiterates that the video is inadmissible for failure to comply with the requirements of §56-5-2953, and for having been tainted. As such, Defendant deserves to have his arrest and conviction reversed.

CONCLUSION

For the foregoing reasons, Defendant respectfully prays that this Court reconsider its decision to deny Defendant's Motion to Dismiss the case, and to overturn the jury's ruling which was based on error of law.

{SIGNATURE FOLLOWS}

Donald L. Smith

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

Anderson, South Carolina
March 15, 2019.

**MOTION FOR
RELIEF OF JUDGMENT
August 5, 2019**

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

State of South Carolina)
Plaintiff,)

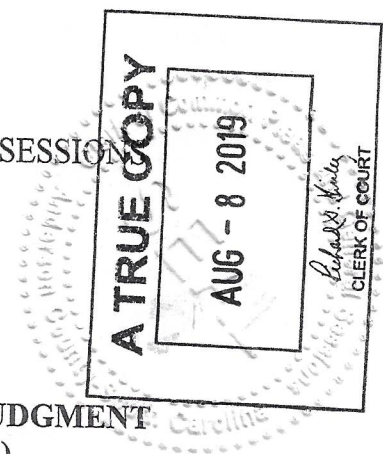
Vs.)

Dustin Lee Hooper,)
Defendant.)

IN THE COURT OF GENERAL SESSION
TENTH JUDICIAL CIRCUIT

C.A. Nos.: 2017-GS-04-0365

**MOTION FOR RELIEF OF JUDGMENT
PURSUANT TO RULE 60(b)(1)**



Plaintiff, by and through his counsel, respectfully moves for reconsideration this Court's Order, filed on March 6, 2019, and allege as follows:

STATEMENT OF FACTS

On October 28, 2016, Defendant Dustin Hooper (hereinafter referred as Hooper) started his day at 7:00 a.m. He worked a double shift at the Twisted Flame and got out around 10:30 p.m. He went home to shower; and, he had to go to TL Hanna to help jumpstart his friend DJ's car at around 11:00 p.m. After managing to get through the post-game, Westside traffic, he and DJ went to Christopher Steven Cauley's house off Highway 24. They were there momentarily; and, proceeded to Clemson where they had learned of Halloween festivities. They got to the Pier around 12:30 a.m.

DJ knew people at the Pier and pushed through the crowd to join other friends. Dustin and Steven sat on the front hood of the car and watched the traffic of party goers going in and out of the Pier. The crowd, which had enjoying the festivities for several hours, was not something that either Dustin or Steven wished to contend. Following approximately thirty (30) minutes, they left for a bonfire of which they had become aware.

Dustin drove them to the bonfire, which was roughly ten minutes away. They got to the bonfire sometime around 1:15 a.m. They didn't really know anyone there either; and, they

Uiane Greenway
8.9.19

managed to hang out for another thirty (45) minutes, due to the fact that it was not nearly as crowded. Around 2:00 a.m., they got a call from DJ, who's car would not start again. They got in the car and headed back to the Pier.

They returned to the Pier to find DJ at wit's end regarding the issue of his car's inability to start. They got the care started once again; and, recognized that this evening which had been nothing but a headache, needed to come to an end. The three of them said their goodbyes and left the Pier.

Initially, Dustin was to follow Steven back to his residence off of 24. However, as he traveled Clemson Blvd. toward Anderson, Dustin felt the day had been long enough; and, he simply wanted to go home. Therefore, rather than go to Steven's house, he stayed on Clemson Blvd. in order to have a straight path to his own home.

On October 29, 2016 at 2:32 a.m., a call was made to 911 from an unnamed citizen. The call was dispatched. The caller relayed the following:

- (a) That a red sedan with a tag number JKB851 was all over the road;
- (b) That he was following the vehicle passing KIA dealership in Anderson.

Officer Charlie Coon (hereinafter referred as "Coon") responded to the call. It should be noted that Coon is a reserve in the ACSO. His primary employment is at Piedmont Honda and works only when his children are not with him. Given this fact, the only responsibilities he had were related to being in a patrol car addressing matters such as those involving traffic. On this night, the last Friday prior to Halloween, it was understood that festivities relating to the celebration of Halloween would be significant. Therefore, it would be imperative for law enforcement to be prepared for the potential onslaught of "drunk drivers". Officer Coon's vehicle did not have a video camera in violation of section 56-5-2953 (D),

“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.*”

§ 56-5-2953(D). (Emphasis added),

Officer Coon located a black car that was of a similar make-at the 28 Bypass overpass of Clemson Blvd. Officer Coon saw Hooper’s car and recognized that may be the vehicle that the caller had discussed. He checked the tag with dispatch; and, it was a match. He immediately blue-lighted the vehicle; and, subsequently, made a traffic stop. He was unable to make the necessary video.

About the same time, two troopers were coming from the opposite direction and saw that Deputy Coon had engaged his blue light for what appeared to be the vehicle for which they were looking. They performed a U-turn arrived; and, upon arrival, offered assistance to Deputy Coon. Deputy Coon “handed off” his stop of Mr. Hooper to the highway patrolman, Russell Griffin..

In trial, Officer Coon testified that he saw Hooper making “hard right turns” when he was attempting to make the traffic stop. On the same token, he testified that Hooper never touched the curb. He did not offer that Hooper had done anything in approaching the traffic light. Coon stated that the car assigned to him by ACSO did not have a dash cam for purposes of videotaping statute (SC Code Ann. § 56-5-2953).

The jury returned a verdict in favor of the State, thus this motion.

ARGUMENT

DEFENDANT’S ARREST AND CONVICTION SHOULD BE REVERSED FOR NON-COMPLIANCE WITH THE STATUTE FOR S.C. CODE ANN. § 56-5-2953.

A. The video recording did not include the traffic stop conducted by Officer Coon.

Hooper posits that his arrest and conviction should be reversed for failure to comply with the statute on the videotaping requirement. Under South Carolina law, a person who commits

DUI offense “must have his conduct at the incident site...video recorded”. S.C. Code Ann. §56-5-2953(A). The law requires a law enforcement agency to be equipped with recording equipment. It mandates:

- (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.

In the case of the *Town of Mt. Pleasant v. Roberts*, this Court stated that "the purpose of section 56-5-2953 . . . is to create direct evidence of a DUI arrest." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011). Hooper believes that this evidence shall include the stop itself. This is all the more pronounced when the statute provided that the recording begins not later than the activation of the officer's blue lights. Normally, blue lights are activated as a sign and/or warning that a certain individual has violated a law or ordinance, and as such should yield to the law enforcer's investigation. This signals the start of the investigation.

Hooper argues that the law intended for the stop to be recorded as well, because it is the only way to safeguard the public from baseless, invalid and unlawful stops. Hooper contends

that this is the rationale for requiring that the recording begins not later than the activation of the officer's blue lights.

It is understood that there are exceptions to the hard and fast rule that the entire event be recorded. These include where a camera has become inoperable; a situation where the defendant has crashed his car and suffered significant injuries; etc. However, the exceptions must be expressed in a sworn affidavit.

Coon testified that he was responding to a call about a reckless driver in a sedan with tag JKB851. There was no description of the driver. Coon opined that Hooper was "making "hard right turns", prior to turning onto Walker Drive, where Coon effected the stop. Since a hard-right turn is a 90° turn, common sense indicates that this could not be the case. Hooper could not have made such a turn without striking the curb. There was no physical evidence showing damage on the right side of Hooper's vehicle, indicating an inability to safely navigate from the point of blue-light initiation until he stopped in the well-lit front of a business.

Hooper believes that without the video showing the stop, the reason for the stop could not be ascertained. That Coon responded to an anonymous tip does not, standing alone, constitute a probable cause. The conclusory statement of the caller had no corroboration. There was not a single specific statement defining what was in fact reckless to the caller. Aside from the tag, there was no other means to identify Hooper as the reckless driver, subject of the anonymous tip. If it were true that Coon observed Hooper was making hard right turns, then it would have been impossible for Coon to see Hooper's tag.

Coon's testimony on what he observed Hooper doing following initiating his blue lights, was improbable based on the lack of physical evidence and common sense.

B. Coon failed to submit the mandated sworn affidavit.

Hooper is cognizant that the failure by law enforcement to produce the required videotape is not alone a ground for dismissal. However, the exception must be explained in a sworn affidavit. In Hooper, the State intentionally failed to provide an affidavit. They very simply did not have an exception upon which to base an affidavit. (§ 56-5-2953(B)).

Here, Coon's vehicle did not possess a camera. Therefore, he did not submit a sworn affidavit as mandated by law.

C. The lack of a camera in Coon's patrol car violates the statute, requiring same.

Despite the fact that Coon was the officer who allegedly observed Hooper's violation that led to the stop, Coon was unable to record the stop and conduct the field sobriety tests (FSTS) because the car he was issued was not equipped with dash cams.

The statute requires law enforcement agencies to provide its patrol vehicles with video camera equipment. This law has been in effect since June 28, 1998-Act 434. On October 29, 2016, Anderson County Sheriff's Office had not complied with this mandate. In the case of *Town of Mt. Pleasant*, the Court found that the protracted failure to equip its patrol vehicles with video cameras defeated the intent of the Legislature. *Id.*

In the above-mentioned case, Officer Bruce Burbage of the Town of Mount Pleasant's Police Department effected a traffic stop of Treva Roberts. Officer Burbage performed three field sobriety tests on Roberts, which she failed. Officer Burbage arrested Roberts for DUI, transported him to the police department, and was offered a breathalyzer test. Roberts refused.

Officer Burbage failed to record the initial traffic stop, field sobriety tests or the arrest at the incident site in videotape. Officer Burbage presented an Affidavit showing that at the time he was operating the vehicle, that it was not equipped with videotaping device. The State argued that the statute requiring videotaping of the DUI did not apply to Town since the law controlled a

stop “once the law enforcement vehicle is equipped with a videotaping device”. The State contended that since its vehicles were not equipped with video cameras, then the videotaping requirement did not apply to it.

The Court of Appeals noted that there were municipalities whose law enforcement agencies had not placed cameras in patrol cars long after the law was enacted. The Court of Appeals ruled that the *Town of Mount Pleasant* should not be rewarded for continually evading their duty under the statute. *Id.* The Court of Appeals found that their behavior and lack of compliance within a reasonable amount of time was sanctionable. *Id.*

The ruling in the *Town of Mount Pleasant* is applicable in the instant case. ACSO had not equipped Coon’s patrol car with a dash cam, despite the fact his only purpose on the one day a week that he worked was to monitor traffic. ACSO had not equipped Coon’s patrol car with a dash cam, despite the fact that the statute had been active for nearly eighteen (18) years. Moreover, *Mount Pleasant’s* opinion was issued five years ago. This Court should not condone the county and ACSO’s consistent non-compliance with the statute.

Law enforcement is bound to laws concerning Driving Under the Influence, just as Dustin Hooper was.

"[A] court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation."

State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011).

“By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of section 56–5–2953 and, in turn, promulgated a severe sanction for noncompliance.” *Town of Mt. Pleasant* at 349.

In *Town of Mount Pleasant v. Roberts*, Justice Beatty, writing for the Court, found that

“the Town failed to establish any statutory exception to excuse its noncompliance”; and, affirmed Judge Nicholson’s reversal of Roberts’s conviction and subsequent dismissal. *Id.* at 350.

Hooper reiterates that the video is inadmissible for failure to comply with the requirements of §56-5-2953, and for having been tainted. As such, Defendant deserves to have his arrest and conviction reversed.

CONCLUSION

For the foregoing reasons, Defendant respectfully prays that this Court vacate its decision to deny Defendant’s Motion to Dismiss the case. Defendant bases his request on inadvertence for failing to address the State’s lack of an exception to the absence of video; and, the failure to provide a sworn affidavit to supplement the exception, to overturn the jury’s ruling which was based on error of law.



Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

Anderson, South Carolina
August 5, 2019.

MOTION TO AMEND
August 9, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
State of South Carolina)
Plaintiff,)
Vs.)
Dustin Lee Hooper,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

C.A. Nos.: 2017-GS-04-0365

MOTION TO AMEND

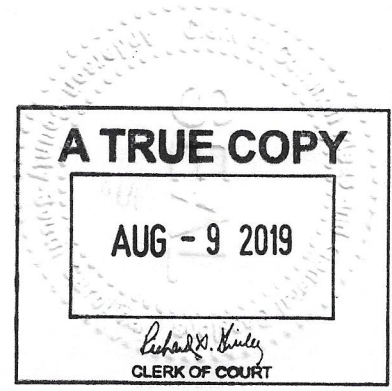
Defendant, by and through his counsel, respectfully submits this to Motion to Amend his Motion for Relief of Judgment, which he filed on August 5, 2019.

On March 6, 2019, Defendant was convicted of DUI after a jury trial. Defendant filed a timely Motion to Reconsider.

On August 5, 2019, Defendant filed a Motion for Relief from Judgment pursuant to Rule 60(b)(1). In his motion, Defendant prayed for this court to vacate its judgment based on inadvertence. Defendant avers that that State failed to address the lack of an exception to the absence of video and the failure to provide a sworn affidavit to supplement the exception. The court failed to rule on this issue.

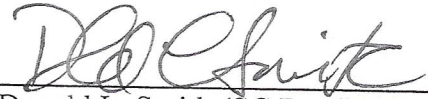
Defendant mistakenly named its previous motion and requests this court to allow him to amend or rename his previous motion into Motion to Vacate Judgment. Defendant posits that the contents of the motion as well as the prayer for relief should control the nature of the motion. Furthermore, the state will not be prejudiced by this request to amend or rename Defendant's motion, which was timely filed.

Wiane Curway
8.9.19



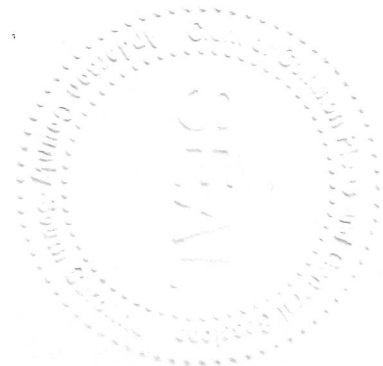
CONCLUSION

For the foregoing reasons, Defendant respectfully prays that in the interest of justice, this Court allow Defendant to amend and/or rename his duly filed Motion to Relief from Judgment, into Motion to Vacate Judgment.



Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

Anderson, South Carolina
August 9, 2019.



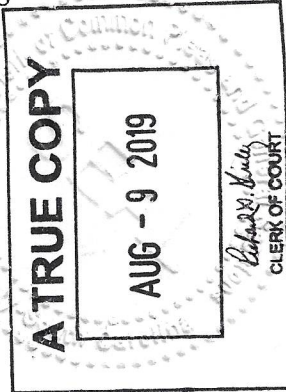
**MOTION TO
VACATE JUDGMENT
August 9, 2019**

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
State of South Carolina)
Plaintiff,)
Vs.)
Dustin Lee Hooper,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

C.A. Nos.: 2017-GS-04-0365

MOTION TO VACATE JUDGMENT



Plaintiff, by and through his counsel, respectfully moves for reconsideration this Court's Order, filed on March 6, 2019, and allege as follows:

STATEMENT OF FACTS

On October 28, 2016, Defendant Dustin Hooper (hereinafter referred as Hooper) started his day at 7:00 a.m. He worked a double shift at the Twisted Flame and got out around 10:30 p.m. He went home to shower; and, he had to go to TL Hanna to help jumpstart his friend DJ's car at around 11:00 p.m. After managing to get through the post-game, Westside traffic, he and DJ went to Christopher Steven Cauley's house off Highway 24. They were there momentarily; and, proceeded to Clemson where they had learned of Halloween festivities. They got to the Pier around 12:30 a.m.

DJ knew people at the Pier and pushed through the crowd to join other friends. Dustin and Steven sat on the front hood of the car and watched the traffic of party goers going in and out of the Pier. The crowd, which had enjoying the festivities for several hours, was not something that either Dustin or Steven wished to contend. Following approximately thirty (30) minutes, they left for a bonfire of which they had become aware.

Dustin drove them to the bonfire, which was roughly ten minutes away. They got to the bonfire sometime around 1:15 a.m. They didn't really know anyone there either; and, they

Diane Beerway
8-9-19

managed to hang out for another thirty (45) minutes, due to the fact that it was not nearly as crowded. Around 2:00 a.m., they got a call from DJ, who's car would not start again. They got in the car and headed back to the Pier.

They returned to the Pier to find DJ at wit's end regarding the issue of his car's inability to start. They got the care started once again; and, recognized that this evening which had been nothing but a headache, needed to come to an end. The three of them said their goodbyes and left the Pier.

Initially, Dustin was to follow Steven back to his residence off of 24. However, as he traveled Clemson Blvd. toward Anderson, Dustin felt the day had been long enough; and, he simply wanted to go home. Therefore, rather than go to Steven's house, he stayed on Clemson Blvd. in order to have a straight path to his own home.

On October 29, 2016 at 2:32 a.m., a call was made to 911 from an unnamed citizen. The call was dispatched. The caller relayed the following:

- (a) That a red sedan with a tag number JKB851 was all over the road;
- (b) That he was following the vehicle passing KIA dealership in Anderson.

Officer Charlie Coon (hereinafter referred as "Coon") responded to the call. It should be noted that Coon is a reserve in the ACSO. His primary employment is at Piedmont Honda and works only when his children are not with him. Given this fact, the only responsibilities he had were related to being in a patrol car addressing matters such as those involving traffic. On this night, the last Friday prior to Halloween, it was understood that festivities relating to the celebration of Halloween would be significant. Therefore, it would be imperative for law enforcement to be prepared for the potential onslaught of "drunk drivers". Officer Coon's vehicle did not have a video camera in violation of section 56-5-2953 (D),

“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.*” § 56-5-2953(D). (Emphasis added),

Officer Coon located a black car that was of a similar make-at the 28 Bypass overpass of Clemson Blvd. Officer Coon saw Hooper’s car and recognized that may be the vehicle that the caller had discussed. He checked the tag with dispatch; and, it was a match. He immediately blue-lighted the vehicle; and, subsequently, made a traffic stop. He was unable to make the necessary video.

About the same time, two troopers were coming from the opposite direction and saw that Deputy Coon had engaged his blue light for what appeared to be the vehicle for which they were looking. They performed a U-turn arrived; and, upon arrival, offered assistance to Deputy Coon. Deputy Coon “handed off” his stop of Mr. Hooper to the highway patrolman, Russell Griffin..

In trial, Officer Coon testified that he saw Hooper making “hard right turns” when he was attempting to make the traffic stop. On the same token, he testified that Hooper never touched the curb. He did not offer that Hooper had done anything in approaching the traffic light. Coon stated that the car assigned to him by ACSO did not have a dash cam for purposes of videotaping statute (SC Code Ann. § 56-5-2953).

The jury returned a verdict in favor of the State, thus this motion.

ARGUMENT

DEFENDANT’S ARREST AND CONVICTION SHOULD BE REVERSED FOR NON-COMPLIANCE WITH THE STATUTE FOR S.C. CODE ANN. § 56-5-2953.

A. The video recording did not include the traffic stop conducted by Officer Coon.

Hooper posits that his arrest and conviction should be reversed for failure to comply with the statute on the videotaping requirement. Under South Carolina law, a person who commits

DUI offense "must have his conduct at the incident site... video recorded". S.C. Code Ann. §56-5-2953(A). The law requires a law enforcement agency to be equipped with recording equipment. It mandates:

(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.

In the case of the *Town of Mt. Pleasant v. Roberts*, this Court stated that "the purpose of section 56-5-2953 . . . is to create direct evidence of a DUI arrest." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011). Hooper believes that this evidence shall include the stop itself. This is all the more pronounced when the statute provided that the recording begins not later than the activation of the officer's blue lights. Normally, blue lights are activated as a sign and/or warning that a certain individual has violated a law or ordinance, and as such should yield to the law enforcer's investigation. This signals the start of the investigation.

Hooper argues that the law intended for the stop to be recorded as well, because it is the only way to safeguard the public from baseless, invalid and unlawful stops. Hooper contends

that this is the rationale for requiring that the recording begins not later than the activation of the officer's blue lights.

It is understood that there are exceptions to the hard and fast rule that the entire event be recorded. These include where a camera has become inoperable; a situation where the defendant has crashed his car and suffered significant injuries; etc. However, the exceptions must be expressed in a sworn affidavit.

Coon testified that he was responding to a call about a reckless driver in a sedan with tag JKB851. There was no description of the driver. Coon opined that Hooper was "making "hard right turns", prior to turning onto Walker Drive, where Coon effected the stop. Since a hard-right turn is a 90° turn, common sense indicates that this could not be the case. Hooper could not have made such a turn without striking the curb. There was no physical evidence showing damage on the right side of Hooper's vehicle, indicating an inability to safely navigate from the point of blue-light initiation until he stopped in the well-lit front of a business.

Hooper believes that without the video showing the stop, the reason for the stop could not be ascertained. That Coon responded to an anonymous tip does not, standing alone, constitute a probable cause. The conclusory statement of the caller had no corroboration. There was not a single specific statement defining what was in fact reckless to the caller. Aside from the tag, there was no other means to identify Hooper as the reckless driver, subject of the anonymous tip. If it were true that Coon observed Hooper was making hard right turns, then it would have been impossible for Coon to see Hooper's tag.

Coon's testimony on what he observed Hooper doing following initiating his blue lights, was improbable based on the lack of physical evidence and common sense.

B. Coon failed to submit the mandated sworn affidavit.

stop "once the law enforcement vehicle is equipped with a videotaping device". The State contended that since its vehicles were not equipped with video cameras, then the videotaping requirement did not apply to it.

The Court of Appeals noted that there were municipalities whose law enforcement agencies had not placed cameras in patrol cars long after the law was enacted. The Court of Appeals ruled that the *Town of Mount Pleasant* should not be rewarded for continually evading their duty under the statute. *Id.* The Court of Appeals found that their behavior and lack of compliance within a reasonable amount of time was sanctionable. *Id.*

The ruling in the *Town of Mount Pleasant* is applicable in the instant case. ACSO had not equipped Coon's patrol car with a dash cam, despite the fact his only purpose on the one day a week that he worked was to monitor traffic. ACSO had not equipped Coon's patrol car with a dash cam, despite the fact that the statute had been active for nearly eighteen (18) years. Moreover, *Mount Pleasant's* opinion was issued five years ago. This Court should not condone the county and ACSO's consistent non-compliance with the statute.

Law enforcement is bound to laws concerning Driving Under the Influence, just as Dustin Hooper was.

"[A] court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation."

State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011).

"By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance." *Town of Mt. Pleasant* at 349.

In *Town of Mount Pleasant v. Roberts*, Justice Beatty, writing for the Court, found that

“the Town failed to establish any statutory exception to excuse its noncompliance”; and, affirmed Judge Nicholson’s reversal of Roberts’s conviction and subsequent dismissal. *Id.* at 350.

Hooper reiterates that the video is inadmissible for failure to comply with the requirements of §56-5-2953, and for having been tainted. As such, Defendant deserves to have his arrest and conviction reversed.

CONCLUSION

For the foregoing reasons, Defendant respectfully prays that this Court vacate its decision to deny Defendant’s Motion to Dismiss the case. Defendant bases his request on inadvertence for failing to address the State’s lack of an exception to the absence of video; and, the failure to provide a sworn affidavit to supplement the exception, to overturn the jury’s ruling which was based on error of law.



Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

Anderson, South Carolina
August 9, 2019.

TRIAL TRANSCRIPT
(Excerpts)
March 5, 2019

State of South Carolina
County of Anderson

Court of General Sessions

State of South Carolina)
)
)
 v.)
)
 Dustin Lee Hooper)
)
 _____ Defendant.)

Transcript of Record
2017-GS-04-00365

March 5, 2019
Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge; and a jury.

A P P E A R A N C E S:

William Stolarski, Assistant Solicitor
Attorney for the State

Stan Overby, Assistant Solicitor
Attorney for the State

Donald Smith, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

| <u>WITNESS</u> | <u>PAGE</u> |
|--|-------------|
| Deputy Charlie Coons | |
| Direct examination by Mr. Stolarski..... | 4 |
| Cross-examination by Mr. Smith..... | 10 |
| Trooper Russell Griffin | |
| Direct examination by Mr. Stolarski.... | 28 |
| Cross-examination by Mr. Smith..... | 42 |
| Redirect examination by Mr. Stolarski.. | 56 |
| Recross-examination by Mr. Smith..... | 57 |
| Christopher Cauley | |
| Direct examination by Mr. Smith..... | 73 |
| Cross-examination by Mr. Stolarski.... | 82 |
| Redirect examination by Mr. Smith..... | 87 |
| Dustin Hooper | |
| Direct examination by Mr. Smith..... | 89 |
| Cross-examination by Mr. Stolarski.... | 107 |
| Redirect examination by Mr. Smith..... | 112 |

- - -

P R O C E E D I N G S

* * * * *

1 THE COURT: Call your first witness.

2 MR. STOLARSKI: The State calls Trooper Charlie
3 Coons.

4 THE WITNESS: (Approaching.)

5 THE CLERK: Do you solemnly swear or affirm the
6 testimony you'll give the Court today in this case
7 to be the truth, the whole truth, and nothing but
8 the truth?
9

10 THE WITNESS: I do.

11 THE CLERK: If you will take the witness stand,
12 please, sir, and state your name and spell your last
13 name for the reporter, please.

14 THE WITNESS: Yes, sir. I'm Deputy Charlie
15 Coons with Anderson County Sheriff's Office. Last
16 name is spelled C-o-o-n-s.

17 DEPUTY CHARLIE COONS,
18 having been produced and first duly sworn as a
19 witness on behalf of the State, testified as
20 follows:
21

22 DIRECT EXAMINATION

23 BY MR. STOLARSKI:

24 Q. Okay. So where are you currently employed?

25 A. I'm currently employed with the Anderson County

1 Sheriff's Office.

2 Q. Okay. And how long you been working there?

3 A. Since 2014.

4 Q. Okay. And what's your -- your -- your role
5 there?

6 A. My role at the Sheriff's Office is, I'm a
7 reserve deputy.

8 Q. Okay. And were you working on October 29,
9 2016, at approximately 2:30 in the morning?

10 A. Yes, I was.

11 Q. Okay. And what were your duties at that time?

12 A. My duties at the Sheriff's Office were road
13 patrol.

14 Q. And where else -- where -- where else do you
15 work, other than the Sheriff's Office?

16 A. I'm an automotive sales associate at Piedmont
17 Honda.

18 Q. And can you tell the jury how you got called
19 out that night?

20 A. The call came out through the Anderson County
21 dispatch that -- for a BOLO of a reckless driver
22 coming into Anderson on 76 from the Kia Anderson
23 side of town.

24 Q. And what does BOLO mean?

25 A. Just be on the lookout.

1 Q. Okay. And what -- what was the vehicle
2 description under the BOLO?

3 A. The vehicle description came out as a red in
4 color Honda Civic stating a South Carolina tag,
5 JKB-851.

6 Q. And what was it called in by?

7 A. It was called in by a following citizen.

8 Q. Okay. And what drew your suspicions to the
9 vehicle that night?

10 A. What drew my suspicions to the vehicle was, I
11 approached 76 off of 28 Bypass on the down ramp in
12 Anderson County. Took a left onto 76 to try to cut
13 off the vehicle, and noticed the vehicle underneath
14 the bypass at a stop -- at a stoplight.

15 So I turned around on the vehicle. With the
16 vehicle description, it was of a different color.
17 So I called dispatch and asked them to make sure
18 that this was the accurate tag that they had been
19 given, and it was.

20 Q. And so the tag that was given -- what was the
21 tag on the vehicle, I should say?

22 A. What was the tag number?

23 Q. Yeah, what was the -- or did the tag number on
24 the vehicle match up to the tag number that was
25 given to you?

1 A. It did.

2 Q. And what did you do at that point?

3 A. At that point, we proceeded through the traffic
4 light. I noticed the vehicle tried to ease over to
5 the right-hand lane, and I initiated my blue lights.
6 Watched the vehicle make several attempts to the
7 right-hand side of the road as it was trying to get
8 off the roadway, and then took an immediate right
9 turn onto Walker Drive. Rested about 200 yards down
10 onto a service center parking lot.

11 Q. Can you describe this attempt to turn in more
12 detail for the jury?

13 A. The attempt to turn, to me where the vehicle
14 was trying to exit the roadway using no turn signal,
15 but there's several turnoffs right there. There's a
16 couple into the dealership itself, and then a BB&T
17 Bank is beside it, and then Walker Drive is the next
18 road to the right after that.

19 Q. And what county is Walker Drive in?

20 A. Anderson County.

21 Q. And what did you do once the -- this car come
22 to a stop?

23 A. Once the car came to a stop, I approached the
24 vehicle on the driver's side. I made contact with
25 Mr. Dustin Hooper who's sitting in the courtroom

1 today and identified myself as Deputy Coons with the
2 Anderson County Sheriff's Office and asked for his
3 driver's license, registration, and insurance card.

4 Q. I noticed that you pointed to someone on the
5 defense's side. For the record, can you state the
6 person you saw that night?

7 A. Yes. Dustin Hooper who seated in the courtroom
8 today.

9 Q. Can you describe what he's wearing?

10 A. He's wearing an orange jumpsuit.

11 Q. Right now if you could?

12 A. Oh, he's wearing a white sweater and khaki
13 pants.

14 Q. All right. Thank you. All right. And what
15 did you notice at that point?

16 A. Upon me asking for his driver's license, he
17 made several attempts to look in his wallet. He
18 never produced his driver's license, and he tried to
19 hand me what appeared to be a debit card.

20 Q. Okay. Did you notice any odors about the
21 defendant?

22 A. Yes. You could smell alcohol coming from his
23 breath and also smell -- due to my knowledge, what
24 seemed to be the odor of marijuana in the vehicle.

25 Q. Okay. And what did you notice, if anything,

1 about his mannerisms that night?

2 A. Mr. Hooper was very dazed, speech was slurred,
3 and very disoriented.

4 Q. Okay. And what, if anything, did -- else did
5 you notice about the car or his immediate
6 surroundings?

7 A. Immediate surroundings was the -- there was a
8 bottle of Crown Royal that was on the passenger's
9 seat. It was in plain view.

10 Q. Okay. And what happened after that?

11 A. What happened after that is, upon stopping the
12 vehicle, within 30 seconds the highway patrol was
13 right behind me.

14 Once I made contact with the vehicle and
15 understood that it was probably suspicion of driving
16 under the influence, I gave a motion and the highway
17 patrolman came over and took control of the scene at
18 that point.

19 Q. Okay. And the area where this incident
20 occurred, are you familiar with this area?

21 A. Yes, I am.

22 Q. And why are you familiar with this area?

23 A. It is my beat area. It's the area I work.

24 Q. And this make of car, are you familiar with
25 this make of car?

1 A. I am.

2 Q. And why are you familiar with this make of car?

3 A. Because I've got 20 years of automotive
4 experience; 13 years selling Hondas.

5 MR. STOLARSKI: No further questions. Please
6 answer any questions the defense may ask of you.

7 THE WITNESS: Okay.

8 THE COURT: Cross-examination.

9 MR. SMITH: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. SMITH:

13 Q. You got your video when you initiated your blue
14 lights, right?

15 A. No, sir.

16 Q. Why not?

17 A. The car is not equipped with video.

18 MR. SMITH: May we approach?

19 THE COURT: Yes, sir.

20 (Sidebar discussion.)

21 BY MR. SMITH:

22 Q. So you've been working with Honda for 20 years?

23 A. No, sir. I've been selling automobiles for
24 20 years.

25 Q. And the sheriff's position is a part-time job?

1 A. That's correct, sir.

2 Q. How long have you been working part-time for
3 the Sheriff?

4 A. Since 2014.

5 Q. You have any other experience in law
6 enforcement?

7 A. Just I was assigned to an MP unit when I was in
8 the Marine Corps.

9 Q. How many stops have you made for DUI?

10 A. To this point, sir, or to that point?

11 Q. To this point.

12 A. Five or six.

13 Q. To that point that you pulled over Mr. Hooper.

14 A. I don't recall, sir.

15 Q. But you know it's been five to six to this
16 point?

17 A. That's correct, sir.

18 Q. How many have you had in the last year?

19 A. Two, sir.

20 Q. What are your hours when you're working
21 part-time?

22 A. On the nights that I work, I typically work
23 from somewhere between 7:00 to 8:00 p.m. until 2:00
24 or 3:00 in the morning.

25 Q. Where do they keep your car? Do you have a

1 specific car or they just give you one?

2 A. I have a Crown Vic.

3 Q. Is that your car?

4 A. Yes, sir. It's assigned to me, sir.

5 Q. All right. So you get the same car every week
6 or every -- when do you work?

7 A. I usually work on Wednesday nights because I'm
8 off that car lot on Thursdays. I work Saturday
9 nights because I'm off on Sundays. Nights alternate
10 depending on whether or not I have my kids and
11 things like that, sir.

12 Q. What -- what training did you get for your
13 part-time job?

14 A. We went 13 weeks to a South Carolina Criminal
15 Justice Academy class.

16 Q. Would that have been in 2014?

17 A. Yes, sir. It's a pretty lengthy class, sir.

18 Q. Yes, sir. You got behind Mr. Hooper at the
19 light; isn't that right?

20 A. That is correct, sir.

21 Q. And you initiated your blue lights at that time
22 because you knew you had the car?

23 A. Once I confirmed the tag because this car was a
24 different color. Once I went through the traffic
25 light, that's correct, sir.

1 Q. So you didn't see him drive?

2 A. Up to the traffic light, no, sir. Once he left
3 the traffic light, yes, sir.

4 Q. So you got blue lights on him which means what?

5 A. That means he's getting pulled over, sir.

6 Q. So that means he's got to try to get over,
7 right?

8 A. That's correct, sir.

9 Q. So he was having difficulty finding the
10 appropriate spot to pull over?

11 A. If that's what he did, sir. I mean, it was
12 well lit and very wide. Several areas he could've
13 pulled off in clear sight.

14 Q. Like what?

15 A. Like a driveway.

16 Q. Driveway of what?

17 A. A dealership.

18 Q. Where did he end up turning right at?

19 A. On Walter Drive.

20 Q. So he turned down a road?

21 A. That's correct, sir.

22 Q. And where he stopped was in a very open parking
23 lot; is that right?

24 A. It was the edge of the road, sir. There's
25 several vehicles. That's an automotive repair shop

1 that keep vehicles there.

2 Q. Is it the same place that testing's done here
3 on the video?

4 A. Yes, sir.

5 Q. And you're saying that there was cars somewhere
6 there?

7 A. I said it's an automotive service area. They
8 repair cars there.

9 Q. Yes, sir. Could you see any of those cars in
10 the video?

11 A. I don't recall, sir. I know where my car was
12 placed at.

13 Q. Was it near a car?

14 A. My car was parked behind his vehicle. It was
15 angled to the front door of the business.

16 Q. Other than your cars, was there any other cars
17 near your vehicles?

18 A. I didn't pay attention to those cars, sir.

19 Q. He safely went to where he ended up, right?

20 A. There was no altercation or anything like that.
21 Yes, sir. I mean, he safely went there.

22 Q. And when I -- when I ask that question, I'm
23 asking about the vehicles. He didn't run into
24 anything or hit a curb or anything like that, right?

25 A. No, sir.

1 Q. So the driving that you saw, there was no
2 problem other than you're not -- you weren't pleased
3 with where he tried to turn right or get off the
4 road; is that right?

5 A. He had several attempts to get over to the
6 right. He had a lit area. Where he finally pulled
7 over was a dark area, sir.

8 Q. You just told me that he -- he parked where the
9 video was taken, right?

10 A. That's correct, sir.

11 Q. And there wasn't a big light in the front of
12 that building?

13 A. I don't recall, sir. I just know the
14 dealership has got LED lights that are about six or
15 seven on the road on Richardson.

16 Q. Did you write down that he was trying to evade
17 you?

18 A. I did not.

19 Q. So he wasn't trying to get away, right?

20 A. That's correct, sir.

21 Q. So are you trying to imply something by saying
22 that he was attempting to get off the road?

23 A. No, sir. I said he made several attempts --
24 hard right attempts to get off the road.

25 Q. You said hard right?

1 A. Uh-huh. Yes, sir.

2 Q. What does a hard right mean to you?

3 A. Most people gradually get over, use their turn
4 signal. Not make hard attempts to turn right.

5 Q. Was he on the inside lane?

6 A. It was on the outside lane.

7 Q. So he was on the ---

8 A. By this time, he had already eased over. It
9 was on the inside lane at the -- at the stoplight.
10 There was several areas that he could've pulled over
11 at, sir.

12 Q. How many times have you testified?

13 A. Testified to what, sir?

14 Q. Like you're doing today.

15 A. Yes, sir. That's the first.

16 Q. How many times?

17 A. Once.

18 Q. Is that today?

19 A. No, sir.

20 Q. Have you ever performed the DUI tests or
21 anything associated with a DUI?

22 A. No, sir.

23 Q. With regard to his -- you said you smelled
24 alcohol on him?

25 A. That is correct, sir.

1 Q. How many times have you tried to smell alcohol
2 on people?

3 A. How many times have I tried to smell?

4 Q. Yes. Or done it -- smelled it?

5 A. Well, my common knowledge of the way alcohol
6 smells, if I conduct a traffic stop and I smell
7 alcohol, I know the common smell of alcohol.

8 Q. You said there was Crown Royal, right?

9 A. That's correct.

10 Q. In the passenger's seat?

11 A. That's correct.

12 Q. Did you smell Crown Royal on him?

13 A. I smelled an alcoholic beverage smell. I did
14 not smell Crown Royal specific.

15 Q. Was the Crown Royal bottle sealed?

16 A. It had the top on it, yes, sir, if that's what
17 you're implying sealed.

18 Q. Right. Well, had the seal been broken on it?
19 Had it been open before?

20 A. Yes. The bottle had liquid removed from it.

21 Q. Do you know whether the -- there was a seal on
22 it to prevent alcohol from getting out of the bottle
23 at that time?

24 A. I did not inspect the bottle of alcohol, sir.

25 Q. So that's possible. Maybe with leaking on the

1 front seat?

2 A. Anything is possible, sir.

3 Q. What did you inspect?

4 A. We inspected the vehicle. Took the alcohol,
5 and I can tell you it was put on top of the vehicle
6 and there was no moist or wetness to the bottle. So
7 if you're asking did it spill out, the bottle was
8 not wet.

9 Q. But if the top of the -- the top of the bottle
10 was pointed toward the seat, it would be sloped that
11 way; is that correct?

12 A. It was sitting on the seat, sir. I don't
13 recall the way it was sloped. The top was on the
14 bottle.

15 Q. Mr. Hooper tell you that he doesn't drink Crown
16 Royal?

17 A. He did not.

18 Q. What did he tell you?

19 A. Not much of anything.

20 Q. How long were you around him?

21 A. From the time the traffic stop started to the
22 time the vehicle was towed by Duckett towing away
23 from the scene.

24 Q. And you said he was slurring his speech?

25 A. When I approached the vehicle, that is correct.

1 Q. Have you ever talked to Dustin before?

2 A. I have not.

3 Q. What's his usual manner of speaking?

4 A. That I do not know.

5 Q. So do you know if he was slurring?

6 A. I do.

7 Q. What was the thing that you -- you noticed
8 physically about Mr. Hooper?

9 A. That he seemed dazed.

10 Q. He has long hair, doesn't he?

11 A. He does.

12 Q. Is that normal when you see -- you see people
13 wearing hair like him?

14 A. Are you referring to his dreadlocks?

15 MR. STOLARSKI: Objection. Relevance.

16 THE COURT: Sir?

17 MR. STOLARSKI: Objection, Your Honor.

18 Relevance.

19 THE COURT: Overruled. Go ahead.

20 BY MR. SMITH:

21 Q. How would you describe the hair that you saw
22 the night?

23 A. I am familiar with dreadlocks, and I knew
24 that's what it was.

25 Q. Yes, sir. Do you see that often?

1 A. I do.

2 Q. On white people?

3 A. On all kinds of people, sir.

4 Q. Okay. All right. So no doubt he was DUI, but
5 you didn't see any erratic driving, right?

6 A. I saw him try to make several right-hand
7 attempts. If you want to classify that as erratic
8 or not, sir, that's what I saw.

9 Q. Yes, sir. I don't understand a hard right.
10 Can you tell me again what a hard right is? When
11 he's in this lane, a hard right, does that mean a
12 right angle?

13 A. A hard right is leaving your lane of travel to
14 try to turn into a location and turn back into your
15 lane.

16 Q. So did he hit his curb -- hit the curb?

17 A. No, sir.

18 Q. So how far to the right did he get?

19 A. I didn't measure it, sir.

20 MR. SMITH: I have nothing further, Your Honor.

21 THE COURT: Redirect?

22 MR. STOLARSKI: No redirect from the State,
23 Your Honor.

24 THE COURT: May this witness be excused?

25 MR. STOLARSKI: Yes, sir.

1 MR. SMITH: Without objection.

2 THE COURT: All right. Madam forelady, I have
3 a matter to take up outside the presence of the
4 jury. If you'll just go back to the jury room for a
5 few minutes. If you need anything, ask our bailiff.

6 (At 3:24 p.m., jury left the courtroom.)

7 THE COURT: All right. Mr. Smith, I'll be glad
8 to hear from you.

9 MR. SMITH: May it please the Court, Your
10 Honor?

11 The statute is clear ---

12 THE COURT: I need you to speak louder, please,
13 sir.

14 MR. SMITH: Yes, sir. The statute -- the
15 statute's clear, you must initiate -- upon
16 initiating lights, it must be videoed.

17 In this case, Officer Coons did not have one;
18 however, he didn't have probable cause either. He
19 might have reasonable suspicion. He turned the blue
20 lights without ever seeing him drive, so we have no
21 witness as to his driving. So there's no -- there's
22 not negative witness here to testify that he drove
23 bad, just that he turned the blue lights because he
24 think he found the car which was black and said it
25 was red. But no one saw him drive, so there's no

1 probable cause to pull him over.

2 THE COURT: This case that you handed up, is
3 that you, Mr. Stolarski, the Hinkle case?

4 MR. STOLARSKI: That's actually the defense.

5 THE COURT: Is Hinkle still good law, or did
6 that get reversed?

7 MR. STOLARSKI: It actually got reversed, Your
8 Honor. I've got a current one.

9 THE COURT: It probably did.

10 MR. SMITH: I don't doubt that. I had my staff
11 bring over here a case involving this, so ---

12 THE COURT: I know there's been a lot of orders
13 emanating from the Supreme Court about this issue.
14 I know the most recent was -- I think somebody said,
15 "I'm not going to blow." Did they have to continue
16 to and said no.

17 I am a little bit concerned about the fact that
18 Officer Coons, through no fault of his own, but his
19 car is not equipped. It kind of reminds me of a
20 case that Judge Nicholson heard out of Mount
21 Pleasant, that they when this happened, I think they
22 had six or seven years to equip their cars with
23 videotaping and taping equipment. They chose not
24 to. He said, "I'm throwing out the case." That is
25 a little concerning.

1 Now, let me ask you, Mr. Smith. According to
2 what I read from Mr. Stolarski -- and I don't -- I'm
3 not saying it's law. I'm sure it is -- that only
4 the arresting officer has the requirement of
5 producing the videotape.

6 MR. SMITH: I read that, as well, but we
7 have -- we have a vehicle pulled over for an alleged
8 driving violation that he didn't see. So they had
9 suspicion. He didn't follow him and say, "Yeah,
10 this guy is definitely driving impaired." He didn't
11 see any violation.

12 THE COURT: Well, I -- I -- I mean, I think
13 whatever Mr. Coons -- Officer Coons related, plus
14 the phone call from a following citizen who says --
15 they have -- they -- they gave the tag number
16 correctly. They said he was driving erratically. I
17 mean, the probable cause issue is there. I am more
18 concerned about the equipment issue. What -- what's
19 your response to that?

20 MR. STOLARSKI: Basically, this is a factual
21 scenario that's almost identical to Landis.

22 THE COURT: Sir?

23 MR. STOLARSKI: Sorry. Sorry, Your Honor.

24 This is a factual scenario ---

25 THE COURT: You don't need to approach now. I

1 can hear you.

2 MR. STOLARSKI: Oh, okay. This is a factual
3 scenario, and it's almost identical to Landis. I
4 would say that the only arresting officer is
5 required to produce a videotape in compliance with
6 the statute. Landis dealt with a situation where a
7 state transport officer who didn't have video pulled
8 over the defendant.

9 Right behind him came officer -- Trooper Davis
10 with the highway patrol. Officer pulled up behind
11 that officer. He ended putting him through field
12 sobriety tests and ended up arresting him for DUI.

13 Now, as it turns out, Officer Davis didn't have
14 a video either, but he had an affidavit stating why
15 he didn't have a video.

16 THE COURT: Right.

17 MR. STOLARSKI: And then the Court in this case
18 looked to who was the arresting officer. That would
19 be Officer -- or Trooper Davis. This situation
20 mirrors this almost exactly.

21 Trooper Griffin is the one who follows
22 afterwards. Puts him through field sobriety tests
23 and then arrests him. He has video that complies
24 with the statute.

25 THE COURT: What's your last name?

1 THE TROOPER: Griffin.

2 MR. STOLARSKI: It's Russell Griffin, Your
3 Honor.

4 THE TROOPER: Russell Griffin.

5 THE COURT: Trooper Griffin, did his activate
6 when he cut on the active blue lights?

7 MR. STOLARSKI: These camera systems are
8 supposed to ---

9 THE COURT: They are designed, I know, to cut
10 on when they activate blue lights.

11 MR. STOLARSKI: Yes, sir.

12 THE COURT: I know that.

13 THE TROOPER: Yes, they did.

14 MR. STOLARSKI: Yeah, they prerecord for 30
15 seconds. I don't believe these things activated
16 with the blue lights. I believe the blue lights
17 were actually activated by the -- the officer in
18 this case if I remember correctly.

19 THE COURT: I tell you what, I've been involved
20 with cases as a lawyer and as a judge. Any time you
21 flip on that switch, they're supposed to be
22 activated is what I understood.

23 MR. STOLARSKI: I -- I don't see any evidence
24 that they were not activated.

25 THE COURT: You have a 30-second delay? Is

1 that what it is?

2 MR. STOLARSKI: Yes, Your Honor. It's about 30
3 seconds of silence.

4 THE COURT: I mean, I think the cases are kind
5 of clear that small deviations from the requirements
6 don't make it a bad arrest.

7 MR. STOLARSKI: I think from the totality of
8 these circumstances, basically this thing, there's
9 nothing to say that ---

10 THE COURT: Go ahead, Mr. Smith.

11 MR. SMITH: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. SMITH: The Mount Pleasant situation, I'm
14 not sure what the case was, but I -- I remember that
15 as well.

16 The difference between Landis and this case is,
17 the gentleman -- the trooper -- the transport car
18 that pulled that driver over saw the faulty driving.
19 He pulled over, so that was an eyewitness to the
20 driving.

21 Officer Coons, he was no eyewitness to the
22 driving. He turned his blue lights on at the
23 traffic point. He didn't have an opportunity to see
24 him drive.

25 THE COURT: All right. I'm going to take it

1 under advisement, and I will issue a ruling as soon
2 as I'm ready. Right now, I can't tell you what I'm
3 going to do, quite frankly.

4 Are you ready with your next witness?

5 MR. STOLARSKI: I am, Your Honor.

6 THE COURT: Are you ready to go, Mr. Smith?

7 MR. SMITH: Yes, sir.

8 THE COURT: Okay.

9 (At 3:41 p.m., jury entered the courtroom.)

10 THE COURT: All right. Would you call your
11 next witness?

12 MR. STOLARSKI: Your Honor, the State calls
13 Trooper Russell -- Russell Griffin to the stand.

14 THE COURT: Come around, please, sir.

15 THE WITNESS: (Complying.)

16 THE CLERK: Do you solemnly swear or affirm the
17 testimony you'll give the Court today in this case
18 to be the truth, the whole truth, and nothing but
19 the truth?

20 THE WITNESS: I do.

21 THE CLERK: If you'll take the witness stand,
22 please, sir, and state your name and spell your last
23 name for the reporter, please.

24 THE WITNESS: Trooper R.A. Griffin with the
25 South Carolina Highway Patrol. Last name is

1 G-r-i-f-f-i-n.

2 TROOPER RUSSELL GRIFFIN,
3 having been produced and first duly sworn as a
4 witness on behalf of the State, testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. STOLARSKI:

8 Q. Can you state where you're currently employed?

9 A. The South Carolina Highway Patrol.

10 Q. Okay. And how long have you been with the
11 Highway Patrol?

12 A. A little over two-and-a-half years.

13 Q. Okay. And were you on duty on October 29,
14 2016, at approximately 2:30 a.m.?

15 A. Yes.

16 Q. And what were your duties at -- at that time?

17 A. Routine patrol; wreck call.

18 Q. Okay. And do you have any training or
19 experience in the detection of drunk drivers?

20 A. Yes.

21 Q. Can you explain what that is?

22 A. We go through an intensive week-long course at
23 the South Carolina Criminal Justice Academy during
24 our 21-week training.

25 Q. Okay. And how were you -- how were you called

1 out onto the scene that night?

2 A. We received a BOLO about a Honda driving
3 erratically down Clemson Boulevard, which is 76 in
4 Anderson County heading towards Anderson city.

5 Q. Okay. And tell -- tell me what you saw, if you
6 can just explain.

7 A. I believe we were coming over Salem Church, and
8 we saw a Honda approaching us. And Deputy Coons'
9 vehicle was behind the Honda with blue lights on.
10 And at the time I turned onto -- I said, "I think
11 that's our BOLO vehicle." Go in there and get
12 behind him.

13 And when we got there, Deputy Coons was already
14 talking to the driver, and he asked that we take
15 over.

16 Q. Okay. And where was this at?

17 A. On Clemson Boulevard at Walker Drive.

18 Q. Okay. And what town was it in?

19 A. Anderson.

20 Q. Okay. And did you speak to the driver of the
21 vehicle that night?

22 A. Yes.

23 Q. Okay. And could you -- do you recognize him
24 here in the courtroom today?

25 A. Yes, sir.

1 Q. Okay. What is his name?

2 A. Dustin Hooper.

3 Q. And can you point him out to me?

4 A. Right there, the white sweater and khakis.

5 Q. And how do you know he was the driver?

6 A. He admitted to driving. He was in the driver's
7 seat. Deputy Coons told us he was in the driver's
8 seat, and I also observed he was in the driver's
9 seat.

10 Q. Okay. And did the defendant say where he was
11 coming from that night?

12 A. A Halloween party.

13 Q. Okay. And did you notice anything about his
14 speech?

15 A. It was slurred.

16 Q. Notice any odors about him?

17 A. Alcoholic beverages coming from his person, and
18 he was really kind of disoriented.

19 Q. Okay. And what did you -- what did you do at
20 that point?

21 A. I requested that he take three standardized
22 field sobriety tests to determine if he was too
23 impaired to be driving.

24 Q. What are standardized field sobriety tests for
25 the jury?

1 A. They're tests administered by NHTSA, National
2 Highway Safety Traffic Administration, that are
3 standard throughout the entire nation to determine
4 if somebody is too impaired to be driving.

5 Q. And tell me about that first test you gave him
6 if you could.

7 A. The horizontal gaze nystagmus test, that's to
8 determine the involuntary jerkiness of the eyes due
9 to any alcohol consumed.

10 Q. Okay. And can you -- is there some way that you
11 have explaining what nystagmus is to a -- to the
12 jury?

13 A. Yeah. It's like a marble rolling on a piece of
14 sandpaper. It just jerks around like that.

15 Q. Okay. And what is a normal person's eye look
16 like?

17 A. It's just smooth.

18 Q. Okay. And what clues do you look for on the
19 horizontal gaze nystagmus test?

20 A. A lack of smooth pursuit, distinct and
21 sustained nystagmus at maximum deviation, and
22 nystagmus prior to 45 degrees.

23 Q. Okay. And what clues did -- did you see that
24 night?

25 A. All three of them in both eyes. Lack of smooth

1 pursuit, distinct and sustained nystagmus at maximum
2 deviation, and the onset of nystagmus prior to 45
3 degrees.

4 Q. What does lack of smooth pursuit mean?

5 A. When you're following the object in front of
6 eyes, it -- instead of following it smoothly, it
7 kind of jumps from point to point.

8 Q. Okay. What is distinct and sustained nystagmus
9 at maximum deviation?

10 A. When you max out the -- the eye, it'll have a
11 distinct involuntary jerking, which is caused by
12 alcohol consumption.

13 Q. Okay. And how do you -- how do you test or how
14 do you look and see these things?

15 A. Go approximately the length of a piece of paper
16 in front of their face, slightly above eye level.
17 You ask them to follow, keep their eye -- keep their
18 head still, hands down by their side, and feet
19 together. And just tell them to follow your finger
20 with their eyes and their eyes only and not to move
21 their head.

22 Q. Okay. And can you tell me what -- what is
23 onset of nystagmus prior to 45 degrees?

24 A. Take their eye to their shoulder, and then
25 nystagmus happens prior to 45 degrees when they've

1 consumed alcohol.

2 Q. Okay. How many clues are required to validate
3 this test?

4 A. Four.

5 Q. Four?

6 A. (Nonverbal response.)

7 Q. And how many clues did you see total?

8 A. Six.

9 Q. And how many clues are there total and
10 completely?

11 A. Six.

12 Q. And can you tell me about the next test?

13 A. The walk-and-turn test. Yeah, that's a test
14 actually to -- you walk nine steps in line heel to
15 toe. Do a small circle and then -- which is told
16 to, and then you do nine heel to toe steps back.

17 Q. And what's -- what's the manner told to, what's
18 that mean on the turn?

19 A. Oh, the turn. Once you get to nine steps, you
20 leave your front foot planted. With the rear foot,
21 you take a small series of steps. You'll do a half
22 circle and go back in that same line you just came
23 from.

24 Q. Okay. And how many clues are required to
25 validate this test?

1 A. Two.

2 Q. Okay. And what -- what clues did you see that
3 night?

4 A. During that, he could not keep his balance
5 during instructions. He didn't touch heel to toe
6 several times. Turned improperly. He also stopped
7 while walking, and he stepped off the line several
8 times.

9 Q. Okay. And can you tell me about the -- the
10 last test that you did on the defendant?

11 A. The one-leg stand test is basically get in the
12 first position of the first test. Hands down by
13 your side. Feet together. Raise one leg
14 approximately six inches off the ground. Your hands
15 down by your side and keeping your foot pointed so
16 that your foot -- or keeping your toe pointed so
17 that your foot is parallel to the ground.

18 Keeping your eyes on the toes the whole -- the
19 entire test, you count one thousand one, one
20 thousand two, one thousand three, and so on for 30
21 seconds.

22 Q. Okay. And what do you look for on this test?

23 A. To see if they put their foot down, if they use
24 arms for balance, seeing if they hop or if they
25 sway.

1 Q. Okay. And what clues did you see on this test?

2 A. He put his foot down and he also swayed while
3 he was balancing.

4 Q. Okay. And how many clues are required to
5 validate?

6 A. Two.

7 Q. And how many clues did you see?

8 A. Two.

9 Q. Okay. I'm going to show you what's been marked
10 as State's Exhibit 1.

11 A. Yes, sir.

12 Q. What is this?

13 A. On scene video.

14 Q. Okay. And how do you know?

15 A. I reviewed the video, put my initials on it,
16 and also put the date that I reviewed it.

17 Q. Okay. And is this a fair and accurate
18 representation of the subject matter therein?

19 A. Yes.

20 MR. STOLARSKI: Okay. Your Honor, at this
21 point, I'd like to move -- to admit this into
22 evidence as State's Exhibit No 1.

23 THE COURT: Any objection?

24 MR. SMITH: Without objection.

25 THE COURT: Admitted.

1 (State's Exhibit No. 1 was received into
2 evidence.)

3 MR. STOLARSKI: I'd like to play this for the
4 jury as well, Your Honor.

5 THE COURT: Yes, sir. You may publish it.

6 MR. STOLARSKI: Your Honor, may I approach for
7 a second?

8 THE COURT: Both -- both of the attorneys can.

9 (Sidebar discussion.)

10 (Playing the DVD.)

11 BY MR. STOLARSKI:

12 Q. All right. Can you tell me what you did from
13 that point once you guys arrived at the jail?

14 A. Once we arrived at the jail, he was taken into
15 the Datamaster room, and he was advised of his
16 implied -- advised of his implied consent rights and
17 offered a breath test.

18 Q. Okay. And what is implied consent?

19 A. It's just basically telling "yes" or "no" if
20 you're going to take the test. If not, your license
21 gets suspended for six months.

22 Q. I'm showing you what's been marked as State's
23 Exhibit No. 2. Can you explain what this is?

24 A. This is advisement of implied consent rights
25 form.

1 Q. Okay. And what's -- sorry. Did you give the
2 defendant a copy of that?

3 A. Yes.

4 Q. Did you, in fact, read that out loud to the
5 defendant?

6 A. Yes.

7 Q. Okay. And how do you know that's the form you
8 gave him?

9 A. It has my signature, date and time, and also
10 his signature.

11 Q. Okay. Is this a direct copy of the form you
12 made?

13 A. Yes, sir.

14 Q. Is it a fair and accurate representation of the
15 subject matter therein?

16 A. Yes.

17 MR. STOLARSKI: I'd like to admit this into
18 evidence as State's Exhibit No. 2.

19 THE COURT: Any objection?

20 MR. SMITH: No objection.

21 THE COURT: Admitted.

22 (State's Exhibit No. 2 was received into
23 evidence.)

24 BY MR. STOLARSKI:

25 Q. And could you explain very generally what

1 implied consent means?

2 A. It just means we offered a breath test. They
3 tell me "yes" or "no" if you're willing to take it.
4 If not, your license gets suspended for six months.

5 Q. And have you had instruction in the operation
6 of breath tests?

7 A. Yes.

8 Q. Do you have training in the operation?

9 A. Yes.

10 Q. And where did you receive that training?

11 A. South Carolina Criminal Justice Academy.

12 Q. And at the time of the incident, were you, in
13 fact, certified to operate a breath test machine?

14 A. Yes.

15 Q. Okay. And how often do you have your
16 certification renewed?

17 A. Every two years.

18 Q. Okay. And at the time of the incident, was
19 there anything that leads you to believe that the
20 machine was not in proper working order?

21 A. No.

22 MR. SMITH: Without objection.

23 THE COURT: Admitted.

24 MR. STOLARSKI:

25 Q. What is this?

1 A. The breath test report, the breath alcohol
2 analysis test report.

3 Q. And so that's the one for this specific
4 defendant?

5 A. Yes.

6 Q. And how do you know?

7 A. My signature; his signature; date and time.

8 Q. Fair and accurate representation of the subject
9 matter therein?

10 A. Yes.

11 Q. All right. What is the result?

12 A. Refused.

13 MR. STOLARSKI: Your Honor, admit this into
14 evidence as State's Exhibit No. 3.

15 THE COURT: Without objection?

16 MR. SMITH: Yes, sir.

17 THE COURT: Admitted.

18 (State's Exhibit No. 3 was received into
19 evidence.)

20 BY MR. STOLARSKI:

21 Q. And why did you mark him down as a refusal?

22 A. He told me he wasn't going to admit to the
23 breath alcohol test.

24 Q. Okay. And what is this?

25 A. The notice of suspension form.

1 Q. And how do you know?

2 A. My signature; date and time; his signature.

3 Q. Okay. And fair and accurate representation of
4 the subject matter therein?

5 A. Yes.

6 MR. STOLARSKI: Your Honor, I'd like to admit
7 this into evidence as State's Exhibit No. 4.

8 MR. SMITH: Without objection.

9 THE COURT: Admitted.

10 (State's Exhibit No. 4 was received into
11 evidence.)

12 BY MR. STOLARSKI:

13 Q. And can you tell me how long a person's license
14 is suspended as a result of the refusal?

15 A. Six months.

16 Q. Okay. What is this?

17 A. The BAV.

18 Q. Okay. And how do you know?

19 A. It's got my signature and the date I reviewed
20 it.

21 Q. Okay. And is this a fair and accurate
22 representation of the subject matter therein?

23 A. Yes.

24 MR. STOLARSKI: Okay. Your Honor, I'd like
25 admit this into evidence as State's Exhibit No. 5.

1 MR. SMITH: Without objection.

2 Could he go to the bathroom? Before he starts,
3 could he go to the bathroom?

4 THE COURT: That's admitted.

5 (State's Exhibit No. 5 was received into
6 evidence.)

7 THE COURT: Ladies and gentlemen, we'll take
8 about a five or ten-minute break.

9 (At 4:21 p.m., jury left the courtroom.)

10 (From 4:21 to 4:30 p.m., brief recess.)

11 (At 4:30 p.m., jury entered the courtroom.)

12 THE COURT: All right. Sir, you may proceed.

13 (Playing DVD.)

14 BY MR. STOLARSKI:

15 Q. Real quick. Can you tell me the defendant's --
16 or the -- what the ground area was like in the area
17 where you conducted field sobriety tests?

18 A. Yeah, it was dry asphalt and level.

19 Q. Okay. And can you tell me the defendant's age?

20 A. I believe he's 21.

21 Q. Do you have your incident report with you?

22 A. (Reading.) He was born in '93.

23 Q. Okay.

24 A. So at the time he would've been 19, 20.

25 Q. All right. Okay. So -- but born in 1993 you

1 said?

2 A. Yeah.

3 Q. And did you form an opinion that night as to
4 the defendant's sobriety?

5 MR. SMITH: Objection as to relevance. I
6 believe that's ---

7 THE COURT: I can't -- I can't hear you.

8 MR. SMITH: Looking at a jury -- that's the
9 jury's province, not the trooper's.

10 THE COURT: I'll sustain it.

11 MR. STOLARSKI: No further questions.

12 THE COURT: Okay. Cross-examination.

13 MR. SMITH: May it please the Court?

14 CROSS-EXAMINATION

15 BY MR. SMITH:

16 Q. Trooper Griffin, it was cold that night, right?

17 A. Not to my recollection. No, sir.

18 Q. If I told you -- this was about three o'clock
19 in the morning?

20 A. Yes, sir.

21 Q. If I told you it was 54, 55 degrees ---

22 A. Yes, sir.

23 Q. --- would you -- would that sound reasonable?

24 A. Yes, sir.

25 Q. You saw him driving because you were driving in

1 the opposite direction, right?

2 A. Yes, sir.

3 Q. And he wasn't doing anything wrong from what
4 you could see?

5 A. At the time I saw him, he was already being
6 pulled over and was turning right.

7 Q. Okay. But he was still driving?

8 A. Yes, sir.

9 Q. Wasn't doing anything wrong?

10 A. Not that I could see.

11 Q. Never saw him take a drink?

12 A. No, sir.

13 Q. Never saw him smoke anything?

14 A. No, sir.

15 Q. And, in fact, he didn't smoke anything, right?

16 A. Not to my recollection.

17 Q. And you had the opportunity to give him a blood
18 test?

19 A. He refused a breath test and there's reason to
20 do a blood test.

21 Q. Are you -- you can't make him take a blood
22 test?

23 A. I mean, once he refuses the breath test, that's
24 the end of it.

25 Q. Can't -- you can't take -- make him take a

1 blood test?

2 A. Once he refuses, there's no -- that's it.

3 Q. All right. How many times have you stopped
4 someone for what you believe to be a DUI or reckless
5 driving, that sort of thing?

6 A. To this point or to that point?

7 Q. To this point.

8 A. Probably about 45 or 50.

9 Q. In those 45 times, did you -- did you find that
10 there was a smell of alcohol?

11 A. Ninety-nine percent of them, yes.

12 Q. And in those 99 percent, was there ever a time
13 that you didn't charge someone with a DUI?

14 A. At times. Yes.

15 Q. Please share with me one of those times.

16 A. Running through the field sobriety tests and
17 they don't fail them, then they go home.

18 Q. How many times have you not failed someone with
19 this stagmus test -- nystagmus test?

20 A. Not failed them?

21 Q. Yes.

22 A. I'm not sure.

23 Q. Would you agree with me that that is a
24 subjective test because there's no calculation,
25 right?

1 A. No, sir.

2 Q. So -- and no one can see the eyes other than
3 you?

4 A. No, sir.

5 Q. So you decide whether he fails or not, right?

6 A. Yes, sir.

7 Q. How long do you do the test for the nystagmus?

8 A. You hold it on each side for at least four
9 seconds.

10 Q. Four seconds?

11 A. Yes, sir.

12 Q. Would it surprise that you did it for a minute
13 and 27 seconds for Mr. Hooper?

14 A. No, sir. The entire horizontal gaze nystagmus
15 test takes that long, but if you're talking about
16 maximum deviation, that's four seconds on each side.

17 Q. Four seconds each side?

18 A. Yes, sir.

19 Q. Tell me the -- the time for each element of
20 that test and process?

21 A. At least four seconds.

22 Q. Okay. So in each eye, is there ---

23 A. Just a minimum of four seconds.

24 Q. How many -- how many fours is that?

25 A. I don't know. That's not saying that, you

1 know, four seconds is just the minimum. It can be
2 held for longer than four seconds.

3 Q. The eyes have -- the eye has a muscle, right?

4 A. Yes, sir.

5 Q. And so if there's tension or you hold it for
6 some -- too long, it's going start shaking, isn't
7 it?

8 A. Possibly.

9 Q. The farther you go out to the left or to the
10 right, that's a strain on the eye, isn't it?

11 A. Yes, sir.

12 Q. So if you make him do it for a minute and 27
13 seconds, isn't that what's going to happen anyway?

14 A. I'm not sure.

15 Q. With regard to that testing, what -- can you
16 tell me what the procedure is?

17 A. For?

18 Q. The nystagmus test.

19 A. Yes, sir. You check for lack -- lack of smooth
20 pursuit. You pupil track, and then go through the
21 maximum deviation onset to 45 degrees, and then
22 vertical gaze nystagmus.

23 Q. Is there any -- about the elements, is there
24 anything that you need to follow there -- lights,
25 gravel, anything?

1 A. Only flat ground, you know, no lights directly
2 in the eyes.

3 Q. Where is it that -- some other trooper comes
4 and stands next to you and puts his -- his
5 flashlight into your eye. Where's that at?

6 A. Where is it at?

7 Q. Yeah.

8 A. What -- what do you mean in your question of
9 where's it at?

10 Q. In the procedures. You saw that, right? The
11 other trooper had a -- had a flashlight.

12 A. Yeah, had one, as well.

13 Q. Yes, sir. I know.

14 A. Okay.

15 Q. But is there something over there?

16 A. No, sir.

17 Q. Okay. The other trooper had his flashlight on
18 too, didn't he?

19 A. Yes, sir.

20 Q. Why?

21 A. I guess to give more light. I'm not sure.

22 Q. So -- so he had another light coming in from
23 the side, right?

24 A. Yes, sir.

25 Q. How does that affect the eye?

1 A. It could -- it could affect it. I'm not really
2 sure how it affects it.

3 Q. A minute and 27 -- how many -- how many tests?
4 There's three tests; is that right?

5 A. Yes, sir.

6 Q. So that's three times two times -- that's six,
7 right, six tests altogether times four is 24.
8 Twenty-four seconds would be the minimum?

9 A. Yes, sir.

10 Q. Twenty-four. Let's see, a minute and 27
11 seconds. That's four times that -- five times that,
12 five times?

13 A. Yes, sir.

14 Q. Do you just hold it there until the eye starts
15 twitching?

16 A. No, sir.

17 Q. Well, how do you explain a minute and 27
18 seconds?

19 A. I'm not sure, sir. That's how long it took to
20 administer the test.

21 Q. How long does it usually take?

22 A. I'm not sure. Roughly, probably 45 seconds to
23 a minute.

24 Q. Even if it's a good test?

25 A. Yes, sir.

1 Q. The Kia store on 176, is that where it's at?

2 A. US-76.

3 Q. That's four miles from where you stopped,
4 right?

5 A. I guess so. Yes, sir.

6 Q. Do you know whether the driver that said it was
7 a red car, do you know if that was a former
8 girlfriend of Mr. Hooper's?

9 A. I'm not aware.

10 Q. Do you think it might've been a guy having a
11 fight or could've been a guy having a fight with ---

12 MR. STOLARSKI: Objection. Speculation.

13 MR. SMITH: It's cross-exam.

14 THE COURT: Sustained unless you lay a
15 foundation for it.

16 BY MR. SMITH:

17 Q. You didn't see him drive, right?

18 A. No, sir.

19 Q. But -- well, you did see him, but you saw him
20 there was no driving error?

21 A. Yes, sir.

22 Q. So all you had to go on was the driving that
23 happened four miles previous to that, right?

24 A. Yes, sir.

25 Q. And then you don't know who that person was,

1 what that person's motive was, do you?

2 A. No, sir.

3 Q. He signed everything that you asked him?

4 A. Yes, sir.

5 Q. He knew what he was signing, right? He
6 acknowledged that?

7 A. Yes, sir.

8 Q. You knew he worked from seven o'clock the
9 previous morning, right?

10 A. Not to my recollection. No, sir.

11 Q. Okay. So at three o'clock in the morning,
12 that's 20 hours?

13 A. Yes, sir.

14 Q. Did you know he worked a double shift that day?

15 A. No, sir.

16 Q. Did you know that he didn't get to the Clemson
17 party until one o'clock in the morning?

18 MR. STOLARSKI: Objection. Facts not in
19 evidence.

20 THE COURT: Sir?

21 MR. STOLARSKI: Facts not in evidence, Your
22 Honor.

23 THE COURT: He has a wide latitude on
24 cross-examination. Overruled.

25 BY MR. SMITH:

1 Q. Did you know he didn't get to Clemson until one
2 o'clock?

3 A. No, sir.

4 Q. Fifty-three degrees. He had -- what did he
5 have, a jumpsuit on like a prisoner?

6 A. Yes, sir.

7 Q. You'd agree with me that that's thin material,
8 right?

9 A. Yes, sir.

10 Q. So didn't he say he was cold?

11 A. I believe so. I'm not sure.

12 Q. I think he actually put his -- his arms in his
13 shirt at the breathalyzer place, right?

14 A. Yes, sir.

15 Q. That would be an indication of being chilled,
16 wouldn't it?

17 A. Yes, sir.

18 Q. Do you think that would cause some difficulty
19 standing still?

20 A. It might.

21 Q. Does -- do people shiver when they're cold?

22 A. Yes, sir.

23 Q. And that -- it twitches the body, right?

24 A. Yes, sir.

25 Q. What's a hard right turn to you?

1 A. A 90-degree angle turn.

2 Q. Ninety-degree angle?

3 A. Yes, sir. Like a sudden hard -- a sudden
4 right.

5 Q. Yes, sir. He has the right to blow and the
6 right not to blow, correct?

7 A. Yes, sir.

8 Q. So he -- he made a choice?

9 A. Yes, sir.

10 Q. The breathalyzer, that can be affected by
11 cologne, can't it?

12 A. Yes, sir.

13 Q. When they're at the breathalyzer room -- where
14 he was in the breathalyzer room, he didn't slur one
15 time, did he?

16 A. I don't recall.

17 Q. With regard to the -- the trip to ACDC,
18 Mr. Hooper had expressed his disappointment in
19 himself at the scene; is that right?

20 A. Yes, sir.

21 Q. And was hoping that he could just go home; is
22 that right?

23 A. Yes, sir.

24 Q. So when he was in the car, no one was talking
25 to him. He was deep in thought, right? Or even

1 if -- he could've been sleeping, right?

2 A. Yes, sir.

3 Q. And that's being -- being out for 20 -- or
4 being up for 20 hours, that seems reasonable,
5 doesn't it?

6 A. Yes, sir.

7 Q. What's the abnormal person do with regard to
8 the nystagmus test?

9 A. Abnormal person?

10 Q. Yeah, you said that a normal person does
11 something. What's the abnormal person do?

12 A. What do you mean an "abnormal person"?

13 Q. Well, you said the normal person ---

14 A. Yeah.

15 Q. --- does the nystagmus test or performs this
16 way. I want to know what an abnormal person does?

17 A. An abnormal person that's been drinking?

18 Q. No. You said a normal person. What is a
19 normal person then?

20 A. Just somebody that's not -- you know, is not
21 too impaired to be driving.

22 Q. And you know he was -- do you know if he drank
23 at all?

24 A. Yes, sir. You could smell the alcoholic
25 beverage coming from his person -- from his breath.

1 Q. Is there any way to gauge that?

2 A. Just by your training and you smell alcohol.

3 Q. How long had you been a trooper at that point?

4 A. A little over a month.

5 Q. The beginning of the video is blocked; isn't
6 that right?

7 A. It's quiet. Yes, sir.

8 Q. How long do you think it's blocked?

9 A. I'm not sure.

10 Q. Aren't you supposed to get the entire video?

11 A. Yes, sir.

12 Q. He don't -- he didn't perform the walking test
13 after he made that turn, did he? He did the first
14 part, and then he walked this way, he did fine.

15 A. Yes, sir.

16 Q. Would you agree with that?

17 A. Yes, sir.

18 Q. And then when he turned, he -- he did poorly?

19 A. Yes, sir.

20 Q. Why do you think that is?

21 A. He was too impaired to be driving.

22 Q. Did he have anything in his shorts?

23 A. Came to find out, he had marijuana in his
24 shorts.

25 Q. When did you find out about that?

1 A. At the jail.

2 Q. Why? How?

3 A. It fell out of his shorts onto the floor.

4 Q. So it was in his shorts the whole time. And,
5 of course, you guys took his pants down, so it
6 wasn't in his pocket, was it?

7 A. No, sir.

8 Q. Do you think he was walking to try to keep it
9 in his shorts?

10 A. No, sir.

11 Q. No?

12 A. No, sir.

13 Q. How many times did you have to tell him to
14 spread his legs?

15 A. Once -- twice.

16 Q. You want to watch it again? Was it three or
17 four times you say, "More. More. More." Do you
18 remember that?

19 A. Yes, sir.

20 Q. That was because he had the marijuana in his
21 shorts; isn't that right?

22 A. It could be. Yes, sir.

23 Q. And, in fact, it finally came out at the jail,
24 right?

25 A. Yes, sir.

1 Q. The one-leg stand, what's the protocol for
2 that? How many seconds do you need to stand there?

3 A. Thirty seconds.

4 Q. How many?

5 A. Thirty.

6 Q. Oh, you need to stand there 36 seconds?

7 A. Thirty seconds. Yes, sir. Stood at a time,
8 yes.

9 Q. When was the last time you had someone count to
10 30?

11 A. It's very rare.

12 Q. So he was cold. Had something in his shorts
13 that he's trying to keep there. Those issues
14 could've been affecting his ability to stand, right?

15 A. Could've been.

16 Q. And you don't know -- you didn't see him drive
17 poorly anyway. You saw him drive without crashing
18 and without doing anything, right?

19 A. Yes, sir.

20 MR. SMITH: I have nothing further at this
21 time, Your Honor.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. STOLARSKI:

25 Q. What's your experience, the relationship with

1 alcohol and drowsiness?

2 A. Most people drink once they're, you know,
3 coming down off their -- you know, when they're
4 starting to sober up, they become real sleepy.

5 Q. Okay. And what does the consumption of a half
6 bottle of Crown normally do to you?

7 A. It usually makes you too impaired to drive.

8 Q. And what does that do to you in terms of awake
9 versus drowsy?

10 A. It affects your divided attention so that
11 you -- you're not driving the way you should be.

12 MR. STOLARSKI: No further questions.

13 MR. SMITH: May it please the Court?

14 THE COURT: Yes, sir.

15 RECROSS EXAMINATION

16 BY MR. SMITH:

17 Q. Those -- that's about you, right? Your ability
18 to drink and then not be done with drinking and have
19 sleeping and stuff, right? That has nothing to do
20 with Mr. Hooper?

21 A. I'm not sure.

22 MR. SMITH: Okay. Thank you.

23 THE COURT: Thank you, Officer. You may step
24 down.

25 (Witness excused.)

1 MR. STOLARSKI: At this time the State rests,
2 Your Honor.

3 THE COURT: All right. Very good. All right.
4 Ladies and gentlemen of the jury, the State advised
5 they rest, meaning they have presented their case in
6 chief. I'm going to go ahead and break for the day.
7 It's five minutes until 5:00 anyway.

8 Is there any -- anyone who can't be here at
9 9:30 in the morning?

10 THE JURORS: (No responses.)

11 THE COURT: Great. You can be here. Anyway,
12 if you'd leave your notepads in the jury room,
13 they'll be secure. Nobody will go through them, and
14 we'll resume at 9:30 in the morning. Hope you have
15 a good evening.

16 (At 4:56 p.m., jury was dismissed for the day.)

17 THE COURT: I've looked at that Hinkle case.
18 The copy you gave me was a Court of Appeals case.
19 It was reversed by the Supreme Court.

20 MR. SMITH: Yes, sir.

21 THE COURT: And, basically, held that you got
22 to look at it -- the videotape has to begin when
23 it's reasonably able to. You got to look at in
24 totality.

25 I wasn't quite sure. And, also, based on what

1 Mr. Stolarski gave me, that the arresting officer --
2 someone is required to videotape. I think that,
3 quite frankly, leaves, you know, the thought for
4 abuse by the county. I'm not fussing at you, but
5 need to get those cars equipped. There's going to
6 be some situations where you get your cases thrown
7 out of court because of it if it's not.

8 Obviously, there's a case out of Mount Pleasant
9 as noticed that we threw out the case and said,
10 "Y'all had plenty of time to get cameras." That's
11 not your call, but anyway.

12 When you activate -- when he -- when Officer
13 Griffin activated his breathalyzer -- I mean, blue
14 lights, excuse me, I wasn't sure what -- what's the
15 30-second delay?

16 MR. STOLARSKI: Your Honor, when a trooper
17 activates his blue lights, 30 seconds -- sorry.
18 When a trooper activates his blue lights, 30 seconds
19 before that time is saved on a disk, but the audio
20 isn't saved. So if I've got a -- a period of time,
21 trooper activates blue lights here, going forward
22 you have video and audio. And what's saved before
23 that is 30 seconds of just video. So you've got 30
24 seconds without audio, activation of blue lights,
25 video and audio.

1 THE COURT: Okay. And when did Officer Griffin
2 activate his blue lights? I was reading when you
3 cut on that video.

4 MR. STOLARSKI: Your Honor, I believe the video
5 itself starts at 2:40:40 seconds, so 30 seconds
6 after that.

7 THE COURT: Let me ask it a better way. At
8 what point in the process? I know that Mr. Coons --
9 Deputy Coons activated his light when the defendant
10 was stopped at the stoplight, if my notes are
11 correct.

12 MR. STOLARSKI: I'm sorry, sir. Oh, yeah.

13 THE COURT: And I wasn't clear when Officer
14 Griffin arrived and activated -- when active -- when
15 Trooper Griffin activated his blues. When did he do
16 that?

17 MR. STOLARSKI: He activated his blue lights
18 after -- after Deputy Coons.

19 THE COURT: Well, I understand that because
20 Deputy Coons did the stop. What I'm looking for,
21 had the defendant stopped pursuant to Deputy Coons?

22 MR. STOLARSKI: Yes, Your Honor.

23 THE COURT: And he pulled up on the scene as
24 quick as he got there?

25 MR. STOLARSKI: Yes. It was after the stop.

1 THE COURT: That's what I'm thinking. Under
2 the circumstances, I mean, I think that you have
3 some aspects of the Mount Pleasant case, Mr. Smith.
4 I think that the spirit and intent of the statute is
5 to make sure that you have the field sobriety tests,
6 Miranda on the tape. That was clearly on there.
7 And he -- this is the arresting officer.

8 So I think that -- I'm going to deny your
9 motion based on the video and based on Hinkle,
10 because Hinkle holds contrary to what you're saying.

11 I do have some concerns in this case, quite
12 frankly. And I was a little bit foggy by -- and
13 it's -- and it's not against the law to drive after
14 having a drink of alcohol. You have to be
15 materially and appreciably impaired.

16 And if Deputy Coons never witnessed driving and
17 it's material and appreciable impairment, then
18 there's a problem. So I wasn't quite sure about the
19 hard right. What I took that to mean was that it
20 was not -- it was done in -- it was in a fashion
21 that would indicate impairment, but that was never
22 clearly brought out.

23 So I want to hear you on that regard, because
24 right now we don't have the eyewitness who called it
25 in. Officer Griffin said he saw him driving, but

1 that was after he arrived at the scene or he was
2 passing by and he'd already been pulled -- he
3 already had the blue lights on by Griffin.

4 And so I'm a little concerned about that. How
5 do you address that because, obviously, Deputy Coons
6 made the decision to pull this gentleman over based
7 on the eyewitness report. Would subsequent erratic
8 driving at the scene and before the decision to
9 make -- to pull him over?

10 MR. STOLARSKI: Well, Your Honor, I would say
11 that driving is an element of DUI, as is materially
12 appreciably impaired ---

13 THE COURT: Impaired driving.

14 MR. STOLARSKI: --- but not actually poor
15 driving. It's simply driving under the influence
16 and then that the defendant is materially and
17 appreciably impaired. I don't have to prove that an
18 element of this crime. Erratic driving certainly
19 helps, but it's not a requirement under the statute.

20 THE COURT: Well, that's a good point. And I
21 do so few DUI cases, I don't know. Impairment can
22 be judged either by the inference raised by the BA,
23 or how else would impairment be judged? Just the
24 smell of alcohol doesn't mean impairment.

25 MR. STOLARSKI: Well, I would say that you look

1 at his conduct on the scene, as well at his
2 performance on the field sobriety tests. This guy
3 clearly cannot walk a straight line.

4 He also very clearly falls asleep in the back
5 of the police car. He's just been arrested, and
6 can't keep his eyes open.

7 Just as a matter of common sense, he's coming
8 back from a costume Halloween party where he's been
9 around drinking and -- and marijuana and it's 2:30
10 in the morning, so I'm just saying.

11 THE COURT: Well, that may be common sense, but
12 that's really not part of this.

13 Let me ask you this: So your position is, I
14 don't have to show that he was driving badly, as
15 long as I can show that he was driving, he was
16 drinking, and he was materially impaired and
17 appreciably impaired. That's all I got to do.

18 MR. STOLARSKI: That is correct, Your Honor.

19 THE COURT: Thank you. All right.

20 Mr. Smith ---

21 MR. SMITH: Yes, sir.

22 THE COURT: --- I think he's correct in that,
23 isn't he?

24 MR. SMITH: Well, first of all, it's irrelevant
25 that the blue lights were on because ---

1 THE COURT: Sir?

2 MR. SMITH: It's irrelevant the blue lights
3 were on because he's still driving. So if he's
4 impaired, he's going to ineffectively drive, if
5 that's the -- that's the point. How do he get
6 pulled over? He didn't do anything to get pulled
7 over.

8 THE COURT: Well, I think that when you have a
9 tipster who calls in and gives, "I'm following this
10 vehicle and he's driving erratically. This is the
11 tag number." The car otherwise meets the
12 description, the color be wrong at night. It's
13 understandable, but the tag matching up, the
14 location of the vehicle matching up, and it being in
15 the area where the driver said they would be, I
16 think that the officer or Deputy Coons had probable
17 cause to pull him.

18 MR. SMITH: So it's like a citizen's arrest?

19 THE COURT: No. He's -- you're sworn and
20 certified, aren't you?

21 THE WITNESS: Yes, sir.

22 THE COURT: It's not a citizen's arrest. He's
23 the one -- he's the one that pulled him. He had a
24 right to. Had an obligation to.

25 I'm saying you got to have probable cause to

1 pull them over.

2 MR. SMITH: Yes, sir.

3 THE COURT: He's in violation of driving -- a
4 driving statute, which we don't have except driving
5 potentially under the influence based upon this
6 call, which was verified by -- by Deputy Coons when
7 he arrived on the scene, found the tag number, the
8 car and location where the driver said he was going
9 to be. Albeit, he gets stopped at the light. When
10 he drove off, he did -- he drove somewhat erratic --
11 erratically again.

12 MR. SMITH: Who did?

13 THE COURT: Your client. According to what my
14 interpretation of what Deputy Coons' testimony was,
15 he -- you kept asking him about a hard right -- the
16 hard right.

17 MR. SMITH: That's 90 degrees, isn't it?

18 THE COURT: Well, as I heard -- what I thought
19 I heard from Deputy Coons is that he started to take
20 the hard right, came back into the road, took a hard
21 right. He did that several times as if he couldn't
22 make up his mind what he wanted to do, so that's
23 erratic-type driving.

24 MR. SMITH: But he also said he didn't hit the
25 curb. If he's taking a hard right, that means he's

1 right next to the curb. And he hit the curb, so how
2 hard was the right? That's embellishment to try to
3 make it sound worse than it is.

4 THE COURT: Well, I mean, I understand that.
5 But here's what I'm concerned with was, if nobody
6 saw him driving, until the decision was made to pull
7 the blue -- to put on the blue lights, then how can
8 you say -- how can you have probable cause to stop
9 him or pull him over? I think there is probable
10 cause based on the tip that was called in. It was
11 that.

12 I think further verification came from the
13 driving, even though it's not totally clear, it
14 seems to indicate some erratic -- erratic-type
15 driving.

16 And then I think Mr. Stolarski might be right
17 in that you don't have to show that he was driving
18 erratically if they can show that he was driving and
19 drinking and impaired -- appreciably impaired, as
20 long as the initial stop was appropriate.

21 And so ---

22 MR. SMITH: We -- we have no idea ---

23 THE COURT: I agree, but it was verified.

24 MR. SMITH: --- if they saw anything at all.
25 Somebody doesn't like him. Doesn't like his hair,

1 so they called in and say that. And that's the
2 evidence that ---

3 THE COURT: Well, no, he even smelled of
4 alcohol, he had open container in his car, and he
5 was -- he didn't do very well on the field sobriety
6 tests.

7 MR. SMITH: But you don't know that until you
8 get him pulled over, right?

9 THE COURT: Well, that rises to more the
10 believability to make the case in chief, but the
11 probable cause standard is more likely that a crime
12 has occurred. I think that it does. I mean, there
13 might be people that disagree with me, Mr. Smith,
14 but I think that that car gets probable cause.

15 Therefore, I deny your motion to dismiss the
16 case based on Hinkle. I think that there's enough
17 facts in evidence to make it a question for the jury
18 to make their determination.

19 That being said, before we go home today, would
20 you raise your right hand, please?

21 THE DEFENDANT: (Complying.)

22 THE COURT: Do you swear or affirm to tell the
23 truth, the whole truth, and nothing but the truth?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Now, we've had rest. We've

1 reached that point in the trial where you have a
2 right to put up a defense in this case. You have a
3 right to get on the stand and testify. You also
4 have a right to claim the protections afforded to
5 you by the Fifth Amendment to the United States
6 Constitution, which I'm trying to pull up right
7 here.

8 Has your attorney advised you of your right not
9 to testify against yourself or not -- or against
10 self-incrimination?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. I figured he did, but
13 let me go over this with you.

14 The Fifth Amendment of the United States
15 Constitution in part says this: It says, "No person
16 shall be compelled in any criminal case to be a
17 witness against himself."

18 So, basically, that means that Mr. Smith can't
19 make you get on the stand. The State can't make you
20 get on the stand. I can't make you get on the
21 stand. No one can make you get on stand. You have
22 the right to testify if you wish to. If you do,
23 you'll be subject to direct examination by your
24 attorney. You'll be subjected to cross-examination
25 from the State's Attorney.

1 Is there anything in this gentleman's record
2 that you would seek to use to impeach him with?

3 MR. STOLARSKI: No, Your Honor.

4 THE COURT: All right. So they're not trying
5 bring up any prior criminal record you may have.
6 Obviously, you have one other DUI, but you're -- but
7 that's not going to be an issue. Obviously, the
8 purpose of cross-examination will be to discredit
9 you and to impeach your credibility before the jury.
10 You understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, if you choose not to testify,
13 I will charge the jury when I instruct them on the
14 law that they shall not consider that whatsoever
15 because that's your constitutional right, and also
16 because the State has the burden of proving your
17 guilt by proof beyond a reasonable doubt. Okay,
18 sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you decide to testify, that
21 decision is a personal decision to you. It has to
22 be made by you freely and voluntarily and knowing
23 your rights under the Fifth Amendment, and the
24 consequences of getting on the stand and testifying.
25 Okay, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I'm not going to ask you to make a
3 decision now, but when we get here in the morning,
4 you'll be required to tell me whether or not you
5 wish to testify or wish to claim the privileges
6 under the Fifth Amendment. Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Let me tell you this, I
9 know you'll be here, but I say this to all
10 defendants. It's probably -- I'm sure it's in your
11 bonding papers. If you don't come to court
12 tomorrow, we will proceed in your absence. Okay?
13 So come on and be here at 9:30.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Or whatever time your attorney
16 tells you.

17 All right. Guys, see you in the morning at
18 9:30.

19 MR. OVERBY: Thank you, Your Honor.

20 MR. STOLARSKI: Thank you, Your Honor.

21 MR. SMITH: Thank you.

22 (At 5:12 p.m., the proceedings concluded for
23 the day.)

24 March 6, 2019

25 THE COURT: All right. Mr. Smith, have you had

1 an opportunity to speak with Mr. Hooper about
2 whether or not he wishes to testify?

3 MR. SMITH: Yes, sir.

4 THE COURT: Does he wish to testify?

5 MR. SMITH: He does.

6 THE COURT: Okay. Very good. How many
7 witnesses are you going to have today? Do you know?

8 MR. SMITH: Two.

9 THE COURT: Two?

10 MR. SMITH: Yes, sir.

11 THE COURT: Okay.

12 MR. SMITH: Your Honor, the -- after discussing
13 yesterday the Mount Pleasant case, I did a brief
14 that incorporated that. And I recognize that your
15 ruling may stay the same, but I just wanted that for
16 the record.

17 THE COURT: Okay. And that was on whether or
18 not -- it was basically to dismiss the case?

19 MR. SMITH: Yes, sir. It brings to the -- the
20 Court took into consideration Deputy Coons'
21 explanation, and that's one of the reasons why it's
22 mandatory that the light be on when the blue lights
23 are initiated. So by not having it, that prejudiced
24 us in a great manner because he -- he was driving.
25 He didn't do anything wrong according to us, but the

1 Court took into consideration his -- his testimony.
2 And if you'd had followed -- if Anderson County
3 would've followed the statute and provided a camera
4 when he's in traffic control, then -- then we'd have
5 it.

6 THE COURT: All right. Thank you, sir. Are
7 you -- Mr. Smith, are you ready to proceed?

8 MR. SMITH: Yes, sir.

9 THE COURT: Mr. Stolarski, are you ready to
10 proceed?

11 MR. STOLARSKI: Yes, Your Honor.

12 (At 9:38 a.m., jury entered the courtroom.)

13 THE COURT: Good morning. I hope you had a
14 nice evening. We will -- we will proceed with
15 testimony at this juncture.

16 Mr. Smith, are you ready to proceed?

17 MR. SMITH: Yes, sir. May it please the Court?

18 THE COURT: You may call your first witness.

19 MR. SMITH: Defense calls Christopher Steven
20 Cauley.

21 THE WITNESS: (Approaching.)

22 THE CLERK: Do you solemnly swear or affirm the
23 testimony you'll give the Court today in this case
24 to be the truth, the whole truth, and nothing but
25 the truth?

1 THE BAILIFF: (Complying.)

2 (At 12:55 p.m., jury entered the courtroom.)

3 THE COURT: Madam forelady, my understanding is
4 the jury has reached a verdict.

5 THE FORELADY: Yes, sir.

6 THE COURT: Is it unanimous?

7 THE FORELADY: Yes, sir.

8 THE COURT: Would you pass it to the clerk,
9 please, ma'am?

10 THE FORELADY: (Complying.)

11 THE CLERK: If it pleases the Court?

12 THE COURT: Yes, sir.

13 THE CLERK: This is the State of South
14 Carolina, County of Anderson, in the Court of
15 General Sessions Tenth Judicial Circuit, Indictment
16 No. 2017-GS-04-0365, the verdict form in the case of
17 the *State of South Carolina v. Dustin Lee Hooper*.

18 The charge driving under influence. As to the
19 charge of driving under the influence, we the jury
20 unanimously find the defendant guilty. This is
21 signed by our foreperson, and it is dated today in
22 Anderson, South Carolina.

23 Ladies and gentlemen of the jury, if this was
24 your verdict in the court room -- in jury room and
25 it is in the courtroom, would you indicate by

1 Does anybody need a statement for their
2 employer?

3 THE CLERK: I'm printing them right now. I'll
4 bring them back to the jury room.

5 THE COURT: Thank you so much. Y'all take
6 care. You are more than welcome to stick around.
7 I'm going to sentence this gentleman. If you want
8 to leave, you can, or you can stick around.

9 The range on this is a fine from 2100 to \$5100,
10 and a minimum of five days up to a year, and the
11 fine can only be dropped down to \$1100. So if you'd
12 come around, please, sir, and if you'd bring me your
13 sentence -- sentencing sheet.

14 Madam forelady, can I get you to sign this
15 indictment for me?

16 THE FORELADY: (Complying.)

17 THE COURT: All right. You were asking at the
18 bench that you wanted to appeal because of the
19 failure to record the traffic stop itself ---

20 MR. SMITH: Yes, sir.

21 THE COURT: --- right?

22 MR. SMITH: Yes, sir.

23 THE COURT: You're asking that I allow your
24 client to stay out on bond pending the appeal?

25 MR. SMITH: Yes, sir. Related to the lack of a

1 camera in the Anderson County car, and then the
2 blocking of the video camera of the trooper's car
3 once they finally turned it on.

4 THE COURT: Normally, I wouldn't do it. In
5 this case, I will not have no objection pending -- I
6 think he's going to have to put an appeal bond up,
7 but ---

8 MR. SMITH: Yes, sir.

9 THE COURT: --- I'll make it \$1500.

10 MR. SMITH: Yes, sir.

11 THE COURT: So you'll stay out on appeal. Once
12 it comes back, you'll come back before me. If you
13 lose your appeal, I'll sentence you at that point.
14 Okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Good luck. Just don't get in any
17 more trouble while it's pending.

18 MR. SMITH: Thank you, Your Honor.

19 THE COURT: All right.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Well, that's a first for me. I
22 never let them stay out on appeal before. Normally,
23 I sentence them because sometimes -- I've let people
24 delay reporting after I have sentenced them, and
25 they have a tendency not to show back up so I don't

1 do it anymore. I'm sure this young man will be
2 back.

3 Does anybody have any questions of me they'd
4 like to ask? You just want to get out of here?
5 Thank you, again. You're free to go. Thank you.

6 (At 1:00 p.m., jurors were excused from further
7 service.)

8 THE COURT: Mr. Smith, how long does your
9 client need before he can post that bond? He needs
10 to do it by the end of the week.

11 MR. SMITH: Yes, sir.

12 THE COURT: You need to prepare me an order.

13 MR. SMITH: Yes, sir.

14 THE COURT: He's pending resolution of appeal.
15 He's out on bond and the sentence is deferred, but
16 he's got to put up a \$1500 appeal bond posted by no
17 later than five o'clock Friday.

18 MR. SMITH: Yes, sir.

19 THE COURT: Okay. Thank you.

20 MR. SMITH: Thank you, sir.

21 THE COURT: I'm going to let you have your
22 sentencing sheet. I'm going to make a note that
23 it's deferred.

24 (The proceedings concluded at 1:01 p.m.)
25

**TRANSCRIPT OF HEARING
ON DEFENDANT'S
MOTION TO VACATE
August 29, 2019**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

STATE OF SOUTH CAROLINA,
Plaintiff,
vs.
DUSTIN LEE HOOPER,
Defendant.

) IN THE COURT OF
) GENERAL SESSIONS
) OF THE TENTH
) JUDICIAL CIRCUIT
)
)
)
)
)
) TRANSCRIPT OF RECORD
) 2017-GS-04-000365
)
)
)
)
)
)
)

ORIGINAL

August 29, 2019
Anderson, South Carolina

B E F O R E:
HONORABLE R. LAWTON MCINTOSH, Judge.

A P P E A R A N C E S
STANLEY L. OVERBY, ASSISTANT SOLICITOR
For The State
DONALD L. SMITH, ESQUIRE
For Defendant

Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

| <u>WITNESS</u> | <u>PAGE</u> |
|---|-------------|
| MOTION TO VACATE JUDGMENT By Mr. Smith | 4 |
| REPLY TO MOTION TO VACATE JUDGMENT By Mr. Overby | 6 |
| ORDER OF THE COURT | 12 |
| FURTHER ARGUMENT By Mr. Smith | 13 |
| ORDER OF THE COURT | 13 |
| CERTIFICATE OF COURT REPORTER | 14 |

1 MR. OVERBY: The reason is, is this: In Mt.
2 Pleasant that officer was the same officer who conducted
3 the traffic stop and the field sobriety test and the DUI
4 arrest.

5 THE COURT: Well ---

6 MR. OVERBY: In this case you have two different
7 officers. And the one officer in question ---

8 THE COURT: Hang on. Hang on.

9 MR. OVERBY: Sure.

10 THE COURT: That's not what I'm driving at. I've
11 got the two officers, and the officer who did the actual
12 arrest did do the video, if I recall.

13 MR. OVERBY: Correct.

14 THE COURT: But was there any evidence in the
15 record as to the age of this vehicle and why there was
16 no video camera in it?

17 MR. OVERBY: No, Your Honor. Not in this, not in
18 this particular case. There was no evidence whatsoever
19 as to why they do not have cameras and that camera in
20 that car.

21 THE COURT: Okay. Go ahead. I interrupted you,
22 I'm sorry.

23 MR. OVERBY: That's quite alright. The issue is
24 who has to produce the video. This case I would
25 actually put more akin. And Mr. Smith, I'm just gonna

1 amend one thing that he says or make a correction. The
2 legislature's not saying that these officers have to
3 have cameras for all traffic offenses. This does not
4 apply.

5 THE COURT: Just the DUI case. And the statute
6 does say that.

7 MR. OVERBY: Correct. But it's only for DUI
8 cases.

9 THE COURT: Right.

10 MR. OVERBY: So when an officer is conducting a
11 traffic stop, and in this case this officer had a BOLO,
12 okay? I mean, and he conducts the traffic stop. He
13 believes that it's possible impairment. But, I mean,
14 the question ultimately becomes this, what is the
15 officer to do? Is he supposed to allow the drunk driver
16 to continue on the roadway without ---

17 THE COURT: It comes to this, why is there not a
18 camera in that car?

19 MR. OVERBY: I don't disagree with you about that
20 aspect of things either.

21 THE COURT: Right.

22 MR. OVERBY: But the thing is, is that they're --
23 the statute doesn't kick in until the camera is equipped
24 in the car. The thing about

25 Town of Mt. Pleasant versus Roberts was, they were doing

1 DUI stops --

2 THE COURT: Right.

3 MR. OVERBY: -- incessantly, consistently and
4 they were just simply crying poor. Sheriff's office
5 isn't crying poor here, the sheriff's office is giving
6 it to another agency to do the investigation.

7 THE COURT: Well, you know, again, there's no
8 evidence in the record to suggest this car had been out
9 in use for a long period of time. It should have been
10 equipped and it wasn't. There's no evidence to suggest
11 the other way, or that it was brand new and hadn't had
12 it done.

13 But I can see where Mr. Smith is going where it
14 could be subject to abuse, but in this case there's just
15 no evidence one way or the other. And so under the case
16 that you cite, Landis, the second person, who was the
17 arresting officer, under the statute did have a video;
18 so, therefore, requirements of the statute are met.

19 I'll do an order denying the motion to vacate the
20 judgment, Mr. Smith. Mr. Overby, will you prepare me an
21 order for that?

22 MR. SMITH: Your Honor, the one thing that is a
23 fact that the Landis case, the last paragraph where it
24 talks about the holding and it says that the reason we
25 are affirming this is because of the exception

1 inoperable camera and the affidavit, of which neither
2 was provided.

3 THE COURT: Well, if you follow Mr. Overby's
4 line, he says there's nothing requiring it. Under the
5 statute, the arresting officer was the second guy who
6 did do the videotaping, who did provide the video. On
7 this case it's the first guy. Well, it's not. He's not
8 the arresting officer; therefore, there's no need to
9 have an affidavit.

10 MR. SMITH: Yes, sir.

11 THE COURT: I may be wrong on that. These cases
12 are kind of all over the place.

13 MR. SMITH: Yes, sir.

14 THE COURT: But I'm gonna deny your motion.

15 MR. SMITH: Yes, sir, thank you.

16 THE COURT: All right.

17 MR. OVERBY: Thank you, Your Honor. And I'll be
18 happy to provide you with an order.

19 THE COURT: All right, thank you.

20 (Hearing concluded at 3:21 p.m.)

21

22 --- THIS ENDS REQUESTED TRANSCRIPT ---

23

24

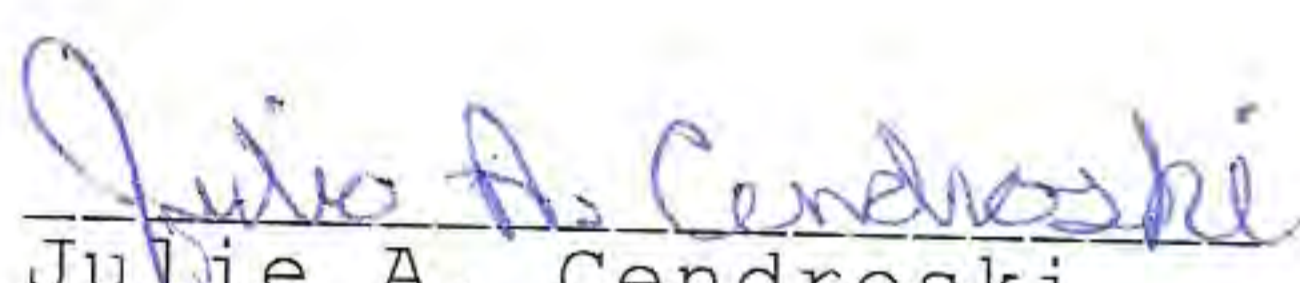
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of General Sessions for Anderson County, South Carolina, on the 29th day of August, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

INDICTMENT
February 21, 2017

WITNESSES

Sc Highway Patrol
Russell A. Griffin

DOCKET NO. 2017-GS-04-00365

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

FEB 21 2017

, TERM

ARREST WARRANT NUMBER

5102P0769367

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

William A. Johnson
Foreperson

VERDICT

Guilty

William A. Johnson
Foreperson of Grand Jury
Date: 5-6-17

DUSTIN LEE HOOPER

VS.

THE STATE

INDICTMENT FOR

DRIVING A VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL AND/OR
DRUGS

SC Code: § 56-05-2930(A)
CDR Code: 3356

A TRUE COPY

OCT - 5 2020

Charles Kelly
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

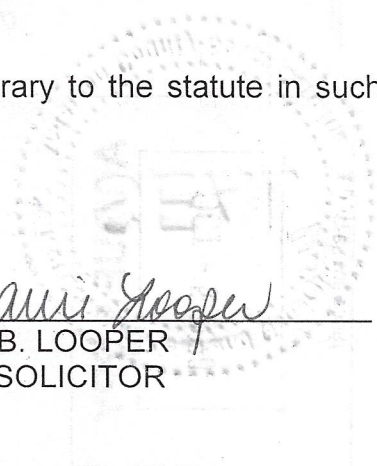
FEB 21 2017

At a Court of General Sessions, convened on _____, the
Grand Jurors of Anderson County present upon their oath:

**DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR
DRUGS**

The defendant, Dustin Lee Hooper, did on or about October 29, 2016 in Anderson County, drive a vehicle while under the influence of alcohol and/or any other drug or a combination of drugs and/or substances which cause impairment and while having a blood alcohol level of less than .10 to the extent that his faculties to drive are materially and appreciably impaired, such not being the first offense within a period of ten years including and immediately preceding the foregoing date. All in violation of 56-05-2930(A), Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Stephanie B. Looper
STEPHANIE B. LOOPER
ASSISTANT SOLICITOR

NOTICE OF APPEAL
August 30, 2019

**FORM 1
NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

C.A. Nos.: 2017-GS-04-0365

State of South Carolina,
v.

Respondent,

Dustin Lee Hooper,

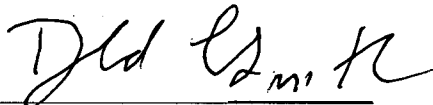
Appellant.

RECEIVED
SEP 05 2019
SC Court of Appeals

NOTICE OF APPEAL

Appellant Dustin Lee Hooper appeals the jury verdict rendered in the trial of this matter on March 6, 2019, with the Order of the Court issued on March 8, 2019, and the denials of motions pled by Appellant on August 5 and 8, 2019, by the Honorable R. Lawton McIntosh, who issued his Orders on August 27 and 29, 2019.

August 30, 2019


Donald L. Smith (SC Bar #: 6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Other Counsel:
Mr. Stan Overby
Assistant Solicitor, Tenth Circuit
100 S Main St, Anderson, SC 29624

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

C.A. Nos.: 2017-GS-04-0365

State of South Carolina,
v.

Dustin Lee Hooper,

Respondent,

Appellant.

RECEIVED

SEP 05 2019

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Notice of Appeal, and Proof of Service of the same, upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia, SC 29211; Honorable Richard Shirley, Anderson County Clerk of Court, at Post Office Box 8002, Anderson, SC 29622; Assistant Solicitor Stan Overby at Office of Solicitor Tenth Judicial Circuit, 100 S Main St, Anderson, SC 29624; the South Carolina Office of Court Administration located at 1015 Sumter Street, Suite 201, Columbia, SC 29201; Ms. Julie Cendroski at P.O. Box 26248, Greenville, SC 29616-0757 and Ms. Lisa Scott at P.O. Box 4356, Anderson, SC 29622, by depositing copies of it in the United States Mail, postage prepaid, on August 30, 2018.



Donald L. Smith (SC Bar #: 6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, SC
August 30, 2019.

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT

August 30, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RE: The State v. Dustin Lee Hooper
Case No.: 2017-GS-04-0365

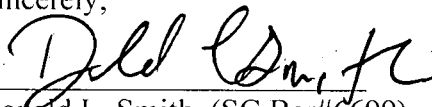
RECEIVED
SEP 05 2019
SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the following materials for filing:

- (1) Appellant's Notice of Appeal;
- (2) A copy of the decision of Judge R. Lawton McIntosh;
- (3) Proof of Service for the same.

Sincerely,



Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

cc: Honorable R. Lawton McIntosh, Circuit Court Judge
Mr. Stan Overby, Assistant Solicitor, Tenth Circuit
Office of Court Administrator
Ms. Lisa Scott, Court Reporter
Ms. Julie Cendroski, Court Reporter

th
RECEIVED

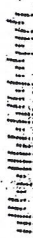
SEP 05 2019

SC Court of Appeals



The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
Post Office Box 1629
Columbia, SC 29211

252 1629 8012



CERTIFICATE OF COUNSEL

CERTIFICATE OF COUNSEL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

C.A. Nos.: 2017-GS-04-0365
Appellate Case No. 2019-001502

RECEIVED

Oct 15 2020

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Dustin Lee Hooper,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material, as provided under Rule 210(g) of SCACR.

Anderson, South Carolina
October 5, 2020

Donald L. Smith

Donald L. Smith (Bar No.: 6699)

122 N. Main Street

Anderson, SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Attorney for Appellant