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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable Alexander S. Macauley, Circuit Court Judge

Appellate Case Tracking No. 2012-213018

The State,

Appellant

vs.

Bailey Taylor,

Respondent

INITIAL BRIEF OF RESPONDANT

TRAVIS NEWTON
S.C. BAR NO. 74492

ATTORNEY FOR RESPONDANT

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S.C. Code Ann. Sec 56-5-2953 (A) (B)..... 4,5,6,7,8,9

STATEMENT OF ISSUES ON APPEAL

The magistrate and circuit ruled the State failed to produce a proper video recording under section 56-5-2953 of the South Carolina Code.

The magistrate and circuit court found that an affidavit is required when the video of the incident site does not meet the statutory requirements.

ARGUMENT

The magistrate and circuit found the defendant must have her conduct, at the incident site, recorded as required by section 56-5-2953(A). Due to exigent circumstances, the officer removed the defendant from the view of the camera. Exigent circumstances allow an exception to the incident site video recording when a sworn affidavit is submitted by the arresting officer. In the present case, no sworn affidavit was submitted by the arresting officer.

The State contends the Magistrate Court erred in the dismissal for Trooper Tolley's failure to comply with section 56-5-2953 of the South Carolina Code requiring that a person who violates Section 56-5-2953

must have his conduct at the incident site recorded. First, the state argues the word "conduct" was not meant to encompass all or every action of the defendant. Second, the state argues that an affidavit is not required to explain exception(s) for the incomplete video.

SECTION 56-5-2953 states in part

(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.

Section 56-5-2953 (B) states:

Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a

violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video recording **required by this section** is not alone a ground for dismissal of any charge

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

circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

According to the Initial Brief of Appellant, "There is only a several second period of time when Trooper Tolley is trying to reposition his automobile so he can comply with the specific recording requirements of the statute that Respondent is out of view of the camera. This is a clear admission by the state that exigent circumstances existed prohibiting Trooper Tolley from meeting the specific recording requirements of the statute. More specifically, Trooper Tolley moved his patrol car and consequently omitted Respondent's conduct from the videotape for a period of time. Section 56-5-2953 states a person **must** have his conduct at the incident site video recorded and the recording must not begin later than the activation of the officer's blue lights. Section 56-5-2953 (B) allows an exception to the video requirement by submission of an affidavit, by the arresting officer, when exigent circumstances exist. The legislature has provided clear exceptions for instances where a person's conduct is not video recorded due to exigent circumstances. In the present case, no affidavit was submitted by the arresting officer for failing to produce a video that meets the statutory requirements of 56-5-2953.

CONCLUSION

Based on Trooper Tolley's failure to video record conduct at the incident site with no affidavit to explain exceptions to the video requirement, the statutory requirements of section 56-5-2953 were not satisfied and the case was properly dismissed by the magistrate and circuit court.

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SC Court of Appeals

July 25, 2013

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The Honorable Jenny A Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: The State vs. Bailey Taylor
Appellate Case No.2012-213018


Dear Ms Kitchings,

Thank you for being patient with me in preparing the Respondents Brief for the above referenced case.

I have enclosed the original Brief and a proof of service in filing in the above referenced case with Mr. William M. Blicht, Jr. Certified Mail No. 7012164000025560902 mail to the following address.

Mr. William M. Blicht, Jr.
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

Sincerely,



Travis A. Newton, PA
Attorney at Law
SC Bar No. 15608

cc: Mr. William M. Blicht, Jr.
Assistant Attorney General

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