

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

Honorable Alexander S. Macaulay, Circuit Court Judge

**Case No. 2012-213018
Trial Court case No. 2012CP3700272**

Bailey Taylor,

Respondent.

V.

The State,

Appellant.

**RESPONDENT'S FINAL BRIEF
TRAVIS A. NEWTON**

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

The magistrate and circuit ruled the State failed to produce a proper video recording under Section 56-5-2953 (A) (B) 2010 of the South Carolina Code.

The Magistrate and Circuit Court found that an affidavit is required when the video recording of the incident site does not meet the statutory requirements.

STATEMENT OF THE CASE

On July 22, 2013, Respondent was arrested for driving with an unlawful alcohol Concentration under section 56-5-2933 of the South Carolina Code and issued a uniform traffic ticket. The matter was set for trial in the magistrate's court on March 13, 2012; however the case was dismissed on pre-trial motion by Respondent under sections 56-5-2953 (A) (B) of the South Carolina Code. The State appealed to the Circuit Court by Notice of Appeal served and filed March 20, 12. The Honorable Alexander S. Macaulay heard the appeal for the magistrate's court decision. By Order dated September 6, 2013, Judge Macaulay affirmed the decision of the magistrate. The State served and filed a Notice of Appeal on September 14, 2012.

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" 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 (A) 2010 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) 2010 states:

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video recording **required by this section** is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which


reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or **exigent circumstances existed**. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording **must** begin and conform to 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 office's failure to produce the video recording.

According to the Initial Brief of Appellant,

"There is only a several seconds" when Trooper Tolley is trying to reposition his automobile so he can comply with the specific recording requirements of the statute that the Respondent is out of view of the camera. **This is a clear admission by the State that exigent circumstances exists** prohibiting Trooper Tolley from meeting the specific video 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 exists. **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

For all the foregoing reasons, it is respectfully submitted that based on Trooper Tolley's failure to provide a complete video recording of the Respondent's conduct at the incident site and Trooper Trolley did not provide a sworn affidavit certifying to explain exceptions to the video recording 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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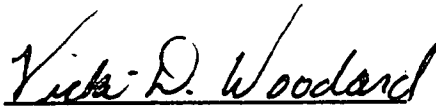
The State,

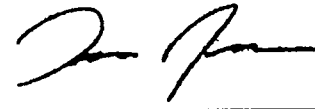
Appellant.

PROOF OF SERVICE

I Travis A. Newton, Officer of the Court, and Vicki D. Woodard, Legal Assistant, certify that I have served the Respondent Brief on Bailey Taylor by depositing a copy of it in the United States Mail, postage prepaid, on July 25, 2013, VIA CERTIFIED MAIL: 7012-1640-0000-2556-090, and a corrected copy on September 16, 2013 VIA CERTIFIED MAIL: 7013-0600-0002-3975-9561 to the attorney of record, Mr. William Mr. Blicht, Jr., Assistant Attorney General of Columbia, South Carolina 29211, address to:

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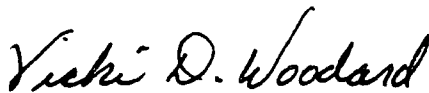
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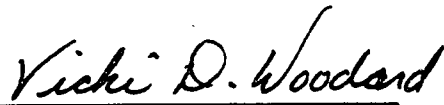
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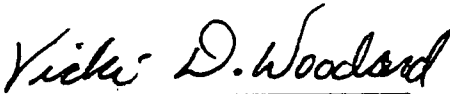
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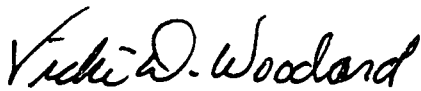
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Counsel for the Respondent certifies that this Brief contains all material proposed to be included by any of the parties and not any other material.

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