

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 William Russell Patterson )  
 )  
 Appellant, )  
 )  
 -v- )  
 )  
 State of South Carolina, )  
 )  
 Respondent )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT

Order of Dismissal

C.A. No.: 2013-CP-46-3519

FILED-RECEIVED  
 2014 JAN 23 PM 12:18  
 DAVID HAMILTON  
 C.C.P. & GS.  
 YORK COUNTY, SC

This matter came before the court on January 13, 2014. It is an appeal from rulings by a Magistrate Judge on Defendant's motion to dismiss a Driving Under the Influence charge. The Defendant asserted below that the arresting officer failed to comply with the mandatory videotaping requirements of Section 56-6-2953(A)(1)(a)(ii) of the S.C. Code of Laws for 1976, as amended, when administering field sobriety tests. The Defendant was represented by Christopher A. Wellborn of the York County Bar. The State appeared through Aaron Hayes of the 16<sup>th</sup> Circuit Solicitors Office. As part of the hearing, the pertinent parts of the videotape from the incident site were viewed by the Court. The Court also had available a transcript of the proceedings below.

On July 6, 2013, Corporal Michael Hassen of the South Carolina Highway Patrol stopped the Defendant after observing the Defendant's motor vehicle swerving across his lane of traffic. Corporal Hassen asked the Defendant to perform several field sobriety tests. The tests included

*[Handwritten Signature]*  
 1

the Horizontal Gaze Nystagmus (HGN) test as well as the walk heel to toe test.<sup>1</sup> The issue in this case is whether the arresting officer complied with the requirements of 56-5-2953(A)(1)(a)(ii) of the S.C. Code of Laws for 1976, as amended, in the video recording of these sobriety tests. A trial was held in the York County Magistrate's Court on November 14, 2013, whereby a jury returned a verdict of Guilty to Driving Under the Influence, 1<sup>st</sup> offense. Prior to the trial, Defendant made a two-pronged motion to dismiss based on the alleged failure of the incident site video to comply with Section 56-5-2953(A) of the S.C. Code of Laws as to the HGN and heel to toe tests.

The gravamen of the Defendant's argument, then and now, is that the video fails to show the HGN and Heel to Toe tests in such a manner as would allow a person watching the recording to view the tests performed so that an assessment could be made as to how well the Defendant performed each test. In construing the terms of S.C. Code Ann. Section 56-5-2953(A)(1)(ii), which requires that "any field sobriety test administered" must be video recorded, the plain and ordinary meaning of the statute would appear to be that a field sobriety test be completely or substantially recorded, such that a person watching the recording could view the test performed by the driver-suspect, so that an assessment could be made as to how well the driver-suspect performed the test.

In the instant case, the Magistrate Judge has, with good intentions and excellent logic, placed this appeal in an interesting posture. As to the HGN test, the Magistrate Judge specifically did not deny or grant Defendant's motion to dismiss for failure of the arresting officer to fully comply with §56-5-2953, as to the administration of the HGN test. The Magistrate Judge, quite logically according to his return, did not rule on the HGN issue as he

---

<sup>1</sup> The trooper also administered the one leg stand test. The administration of this test is not an issue.

*J. H. H.*  
2

found the issue was "mute" (sic). When a trial judge is faced with a motion, the judge must either grant or deny the motion. A trial judge can deny a motion based on mootness, but cannot avoid ruling on a motion. While a finding of "mootness" may not be couched as a denial, it is in fact a denial. The logical reasoning by the Magistrate Judge was that the HGN test results evince only that the subject had ingested alcohol prior to the stop. The Magistrate Judge observed that as Defendant admitted to drinking alcoholic beverages prior to the stop, the result of the test would show only that to which Defendant had already admitted, i.e. ingestion by Defendant of an alcoholic beverage.

The problem with the Magistrate Judge's logic, in the Court's opinion, is that the statute requires that the Defendant's conduct be videotaped. The statute does not in any way address videotaping of the results of the test other than to the extent that the results of a Defendant's conduct in performing a test would be of evidentiary value as to the effect of the ingestion of alcohol. That is, one's performance on the tests would be indicative of the effect, if any, the ingestion of alcohol would have on the pivotal issue, any material effect on one's physical and/or mental ability to operate a motor vehicle. While this is obvious as to the heel to toe test and the one leg stand, it also applies to the HGN test.

Even though the HGN is administered in a case where there is an admission of ingestion of alcohol, one's conduct in following the officer's instructions and one's general demeanor during the test would be positive or negative evidence relevant to the pivotal issue noted above. Therefore, I find that one's conduct during the administration of the HGN test is conduct that must be videotaped.<sup>2</sup>

---

<sup>2</sup> In this order the Court will not travel to the murky additional issue of: whether the defendant's eyes must be videotaped during the administration of the HGN test in order for there to be compliance with the statute.

*Jeff*



Exhibit B

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
William Russell Patterson )  
Appellant, )  
-V- )  
State of South Carolina, )  
Respondent )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Order Denying Motion to Alter/Amend  
C.A. No.: 2013-CP-46-3519

Before the Court is the State's Motion to Alter/Amend the Court's Order issued January 17, 2014. The State has requested that the Court enter a new order reinstating the jury's verdict against Appellant and affirming Appellant's conviction. This motion was timely filed by the State. Upon reviewing said motion, it is hereby DENIED.

BY ORDER OF THE COURT

1/30, 2014

York, S.C.

John C. Hargrett

FOR York COUNTY

FILED-RECEIVED  
2014 JAN 31 AM 10:34  
DAVID G. HARRISON  
C.C.C.P. & G.S.  
YORK COUNTY, SC

Exhibit B