

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL
CIRCUIT

2014 NOV 17

The State of South Carolina,
Plaintiff,

vs.

Tiffanie N. Turner,
Defendant.

BETH A. LARRIGG
CLERK OF COURT
LEXINGTON SC

Ticket No: 45178 GC

ORDER

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DEC 01 2014

SC Court of Appeals

This matter was before me today as the Defendant's Motion to Dismiss. Present at today's hearing was Todd Wagoner from the Lexington County Solicitor's Office. Also present was the Defendant with her attorney, S. Jahue Moore, Jr.

The Defendant is currently charged with driving under the influence second offense. After a pre-trial conference on Monday, October 20, 2014, the parties were instructed to be present today for any Pre-trial Motions. The trial, if necessary, would take place on Wednesday, October 22, 2014.

At today's hearing, the Defendant moved for an Order dismissing the charge made against her based upon the State's failure to comply with South Carolina Code Section 56-5-53.

The facts at issue concerning the Defendant's Motion were stipulated to by the parties. On July 25, 2013, the Defendant was driving a vehicle along highway 378 in Lexington County, South Carolina. The Defendant was stopped by a Town of Lexington police officer. The Town of Lexington police office asked the Defendant to exit her vehicle and perform field sobriety tests. During the horizontal gaze nystagmus field sobriety test, the Defendant's back was turned toward the police officer's vehicle and in-car camera. During the horizontal gaze nystagmus test, the Defendant's face and eyes are not visible.

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A TRUE COPY

Lex. Co. C.C.P., G.S. & F.C.

It is impossible from the video obtained in this case to view the results of the Defendant's horizontal gaze nystagmus test. From the video alone, no finder of fact could independently determine the results of the horizontal gaze nystagmus test.

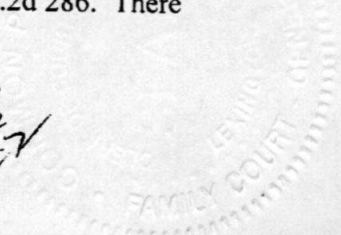
The State contends that simply showing the back for the Defendant's head satisfies South Carolina's video taping statute.

Pursuant to South Carolina Code Section 56-5-2953, the video recording at the roadside must include any field sobriety tests. The purpose of this statute is to create direct evidence of the arrest. STATE V. GORDON, 408 S.C. 536, 543, 759 S.E.2d 755, 758 (Ct. App. 2014). If the actual tests cannot be seen on the recording, the video taping requirement is pointless. *Id.*

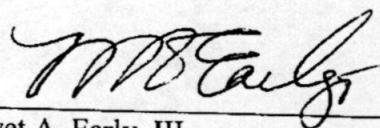
Nystagmus is defined as an involuntarily jerking of the eyeball, a condition that may be aggravated by the affect of chemical depressants on the central nervous system. STATE V. SULLIVAN, 310, S. C. 311, 315 N.2, 416 S.E. 2d. 766, 769 N.2 (1993). No nystagmus can be seen in this case because the Defendant's back is turned to the police officer's camera and the actual eyeballs cannot be seen. In order to avoid a pointless statutory requirement, it is at least required that the officer's camera record the Defendant's eyes which would amount to direct evidence of impairment if nystagmus were present.

The purpose of South Carolina Code Section 56-5-2953 is to create direct evidence of a DUI arrest. TOWN OF MOUNT PLEASANT, 39 S.E. 347, 713 S.E. 2d 285. Dismissal of a DUI charge is an appropriate remedy provided by Section 56-5-2953 when a violation of subsection (A) is not mitigated by subsection (B) exceptions. CITY OF ROCK HILL V. SUSCHENSKI, 374 S.C. 12, 17, 646 S.E. 2d 879, 881 (2007). The legislature clearly intended for a per se dismissal in the event a law enforcement agency violates the mandatory provisions of Sections 56-5-2953. TOWN OF MOUNT PLEASANT, 393 S.C. 348, 713 S.E.2d 286. There

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being no mitigation factors under subsection (B), a clear statutory violation has occurred. The driving under the influence second offense criminal charge against the Defendant is hereby dismissed.



Doyet A. Early, III
Presiding Judge

Bamberg South Carolina
8/20/14, 2014



WITNESSES

Lexington Police Department

Earl Alewine

Law Enforcement Case #: 3002916

DOCKET NO. 2014GSS3200469

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014

ARREST WARRANT NUMBER

45178GC

TMMV

ACTION OF GRAND JURY

TRUE BILL

Forperson of Grand Jury

Date: *2/10/14*

VERDICT

CDR #: 3356

Indictment for

Driving Under the Influence -- 2nd Offense

§ 56-05-2930(A)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
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INDICTMENT FOR
Driving Under the Influence -- 2nd Offense

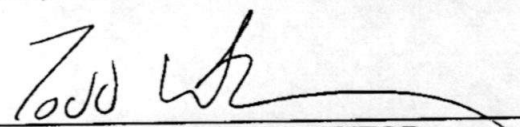
§ 56-05-2930(A)

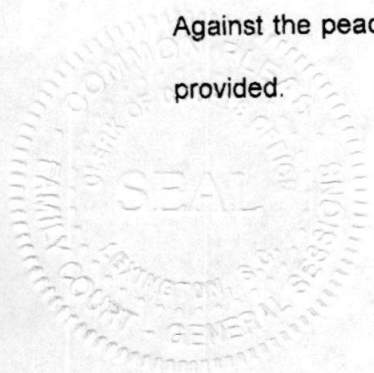
At a Court of General Sessions, convened on February 2014, the Grand Jurors of Lexington County present upon their oath:

That Tiffanie Nicole Turner, on or about July 25, 2013, did drive a motor vehicle in Lexington County, South Carolina, while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, such being the second offense within the ten-year period immediately preceding the date of this violation; in violation of Section 56-5-2930, S.C. Code of Laws (1976, as amended)

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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR



ORIGINAL

Form S 438
Item 5710

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF LEXINGTON VERSUS
FIRST NAME TJ FRANKIE MIDDLE NAME NISSLE LAST NAME TURNER
STREET AND NO. CITY STATE ZIP CODE

STATE LICENSED DRIVER'S LICENSE NO SC ICDL NO DRI LIC CLASS D
VEH. LIC. NO. STATE SC MAKE OF VEH CAROLIS YEAR 2003 COM. VEH. NO HAZ. MT. NO MOPED NO MTRCYCL NO COMB. NO OTHER NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT LEXINGTON STREET AND NO. 111 MAGNOLIA
DATE OF TRIAL 6-20-03 TIME OF TRIAL 6:30 CITY LEXINGTON STATE SC ZIP CODE 29076

VIOLATION - COURT APPEARANCE REQUIRED YES NO NO VIOLATION SECTION NO. 56-5-2950
DUI 2nd

OWNER OF VEHICLE SAMR DATE OF ARREST 7-25-03
ADDRESS OF OWNER 7 175 203 DATE OF VIOLATION 7 175 203

BAIL DEPOSITED JAIL NAME OF ARRESTING OFFICER ALEWINE RANK PTL

DESCRIPTION OF ACCUSED W F 12 6 19 87 50 160 107 BLU COUNTY LEX NUMBER 1132
DATE BAIL REC'D 20 BY 20 RADGF 1132 TICKET 1132

CASE BEFORE MAGISTRATE MUN COURT
CIRCUIT COURT FAMILY COURT FEDERAL COURT
NAME OF TRIAL COURT LEXINGTON TIME OF VIOLATION 0235 WEATHER PM 1 CLR
IF DIFFERENT FROM ABOVE DISTANCE IN FEET FROM INTERSECTION 9300 SUNSET BLVD

DEFENDANT: DID NOT APPEAR APPEARED
DISPOSITION: NOLLE PROSSED GUILTY
FORFEITED BOND PLED: NOLO CONTENDERE

TRIAL BY: TRIAL JUDGE JURY
MILES US 378 CITY LEX

VERDICT OF TRIAL IF ANY: GUILTY NOT GUILTY
DATE OF TRIAL IF ANY 20
JAIL 0 SUSPEND 0 FINE 0 AMT. COLLECTED 0 AMT SUSPENDED 0

COMMITTED TO: Vehicle Searched NO Arrest as Result of Collision NO
OFFENSE CODE 99 B.A. LEVEL REFUSED

CERTIFIED CORRECT DATE 20 45178GC

TRIAL COURT COPY

9816-18-052

DOCKET NO.

