

STATE OF SOUTH CAROLINA)
 COUNTY OF LANCASTER)
 State of South Carolina,)
 Plaintiff,)
 Vs.)
 Michael Wayne Sherill, Jr.,)
 Defendant.)

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 OF COURT)
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 LANCASTER, SC)

IN THE COURT OF COMMON PLEAS
 SIXTH JUDICIAL CIRCUIT

ORDER DENYING APPEAL

RECEIVED

DEC 19 2014

SC Court of Appeals

This matter came before the Court on November 10, 2014, on the Defendant's appeal from Lancaster County Magistrates Court. By its appeal, the Defendant appealed his conviction of driving under the influence, after the ruling of Magistrate Court, denying Appellant's motion for Arrest of Judgment or New Trial dated June 8, 2012. Parties stipulated that the sole issue before the court was whether the prosecuting agency's failure to comply with mandatory video requirements of SC Code Ann. §56-5-2953, as amended, at the incident site in regards to the Walk and Turn test performed by the Defendant. Present at the appeal hearing were Assistant Solicitor Luke I. Knight and Francis L. Bell, Jr. representing the Defendant.

By agreement of the parties, the relevant portion of the video that was produced at trial depicts 3 field sobriety tests offered to the Defendant at the time of his arrest. The Court reviewed this portion of the video that was introduced by the state during the Defendant's Trial, and the Court heard from each party as to the matter raised by the Defendant's appeal, and for the reasons set forth below in this Order, the ruling of the Magistrate Court is affirmed.

Findings of Fact

The facts of this case are agreed upon by the parties, and are set forth below.

The Defendant was stopped for a traffic violation on November 20, 2011, by Trooper Albert Walters of the South Carolina Highway Patrol. Pursuant to his investigation, Trooper Walters requested that the Defendant perform three field sobriety

tests- the Horizontal Gaze Nystagmus, the Walk and Turn, and the One Leg Stand. Trooper Walters conducted the tests on the side of the road in front of his patrol vehicle.

During the beginning of the administration of the Walk and Turn Test, both Trooper Walters and the Defendant were positioned in front of Trooper Walter's patrol vehicle in view of the camera. During the first part of the test, Trooper Walters instructs the Defendant to take nine steps in a straight line towards his patrol vehicle, and then to turn around and take nine steps away from his patrol vehicle. As the Defendant takes nine steps towards the patrol vehicle he is completely visible for steps 1 through 5. On the sixth through the ninth step the Defendant's feet are obstructed from the camera by the hood of the patrol vehicle. As the Defendant turns around and takes nine steps away from the patrol vehicle, the turn, and steps 1 through 5, of the Defendant's feet are obstructed from the camera, again by the hood of Walters' patrol vehicle. During the entire test Defendant was on camera from his knees up.

The Magistrate concluded that Defendant's conduct during the Walk and Turn Test was sufficient.

CONCLUSIONS OF LAW

This Court has personal jurisdiction and subject matter jurisdiction of the matter before it; and that venue is proper in Lancaster County, South Carolina.

Pursuant to the provisions of S.C. Code Ann. Section 56-5-2953(A), as amended, a person charged with Driving Under the Influence must have their conduct video recorded at the incident site as follows:

(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 breath test site video recorded.

(1)(a) The video recording at the incident site must:

- (i) not being later than the activation of the officer's blue lights;
- (ii) include any field sobriety test administered; and

- (ii) include the arrest of a person for a violation of Section 56-5-2930 or 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.

At issue in this case is whether the State has complied with the provisions of Section 56-5-2953(A)(1)(a)(ii), which states that "The video recording at the incident site must include any field sobriety test administered".

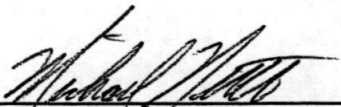
APPLICATION OF LAW

In the present case, the Court finds that the State did comply with the requirements of Section 56-5-2953 as outlined above. Specifically, the video recording produced did sufficiently capture the Defendant's walk and turn test.

The Defense had argued that the recordings are not sufficient, in that several steps on the Walk and Turn test are obstructed. This Court finds that the mandates of Section 56-5-2953 are met under the circumstances of this case.

NOW THEREFORE,

AND IT IS SO ORDERED.



Resident or Presiding Judge
Sixth Judicial Circuit

Lancaster, South Carolina

11-20-, 2014


CERTIFICATE OF MAILING

2012-CP-29-865

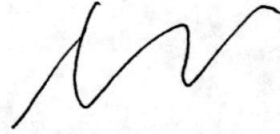
The undersigned hereby certifies that he is the attorney for the Plaintiff in the within matter, and that the within **Order** was served upon the attorney for the Defendant by depositing a copy of same in the United States Mail, with sufficient postage annexed thereto, addressed as follows:

Francis L. Bell, Jr.
Francis Bell Law Firm, LLC
P.O. Box 867
Lancaster, SC 29721

This 24th day of November, 2014.



Luke Knight
Assistant Solicitor



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