

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case Tracking No. 2014-000280

William Russell Patterson , Respondent,

v.

The State of South Carolina, Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The circuit court erred in dismissing the State's case against Respondent when the video recording produced by the State fully complied with section 56-5-2953 of the South Carolina Code and the circuit court erred in failing to affirm the magistrate's holding because Respondent failed to demonstrate prejudice.
- II. The circuit court erred in finding section 56-5-2953(B) had no application in this case and in not finding, based on a totality of the circumstances, the State produced a proper video recording and the underlying case should not have been dismissed.

STATEMENT OF THE CASE

On July 6, 2013, Trooper Hassen stopped Respondent after observing his vehicle cross the center line of traffic. The stop was recorded on video. Respondent was ultimately ticketed for DUI. (Uniform Traffic Ticket G 378987; R.325). Prior to trial in the Magistrate Court before the Honorable Clayburn Barnette, Jr., Respondent's attorney moved to dismiss the case on the basis the State failed to provide a video recording in compliance with section 56-5-2953 of the South Carolina Code. (11/6T.3-5; R. 15-17). The motion to dismiss was denied by the magistrate and Respondent proceeded to trial on November 14, 2013. (11/6T.37-38; Magistrate's Return dated November 27, 2013; R.49-50; 1-2). At trial, the jury convicted Respondent of DUI. (11/14T.224-225; R. 274-275). He was sentenced to a fine of \$997 or thirty days in jail. (11/14T.230; R. 280)

Respondent filed an appeal to circuit court from the conviction in magistrate's court. (Notice of Appeal to Circuit Court; R. 326). The magistrate filed a Return dated November 27, 2013. (Magistrate's Return to Notice of Appeal; R. 1-2). The Honorable John C. Hayes, III, heard the appeal on January 13, 2014. (1/13T.1; R. 284). Judge Hayes issued an Order of Dismissal which was filed January 23, 2014. In the Order, he grants Respondent's appeal and dismissed the State's case against Respondent. (Order of Dismissal; R. 3-6). The State filed a Motion to Alter/Amend Judge Hayes' ruling on January 28, 2014. (Motion to Alter/Amend; R. 9). The motion was denied by Order filed January 31, 2014. (Order Denying Motion to Alter/Amend; R. 7).

The State timely filed a Notice of Appeal from the circuit court's orders. This appeal follows.

ARGUMENT

- I. **The circuit court erred in dismissing the State's case against Respondent when the video recording produced by the State fully complied with section 56-5-2953 of the South Carolina Code and the circuit court erred in failing to affirm the magistrate's holding because Respondent failed to demonstrate prejudice.**

The circuit court erred in dismissing the State's case for driving under the influence against Respondent. The State produced a proper video recording in full compliance with section 56-5-2953 of the South Carolina Code (Supp. 2013). Further, any possible defect in the video recording regarding the inability to fully see Respondent's head during the HGN test went to the video's weight to be considered by the jury and should not result in dismissal. Finally, the circuit court erred in failing to affirm the magistrate's ruling because, while the magistrate used the wrong term for his findings, it is clear the magistrate found Respondent failed to prove prejudice from the quality issues in the video and, as a result, correctly refused to dismiss the case.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

“The legislature’s intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute’s operation.” State v. Dupree, 354 S.C. 676, 693, 583 S.E.2d 437, 446 (Ct. App. 2003) (internal citation omitted).

Section 56-5-2953 provides:

(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.

S.C. Code Ann. § 56-5-2953(A) (Supp. 2013).

It is clear from the statute, the overarching requirement of the video recording is to record the defendant’s conduct at the incident site and the breath test site. The statute then details the events which must be included to provide documentation the events occurred, and to record the defendant’s conduct during those events. Indeed, capturing the driver’s overall conduct was the precise purpose described in Murphy v. State, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2011). The subparts of 56-5-2953(A)(1) simply identify particular aspects of that conduct which must also be included in the video recording.

The recording must begin no later than the activation of the blue lights, include any field sobriety tests administered, include the arrest of the person and show the person being advised of their Miranda rights. These are very specific, unambiguous requirements, all of which were met in this case with the video recording provided by the State.

The video clearly demonstrates Respondent's conduct throughout the time at the incident site, began actually before the blue lights were activated, recorded and provided a full recording of all field sobriety tests with nothing occurring off camera, showed Respondent being placed under arrest, and showed him being read his Miranda rights. The video recording completely complied with the unambiguous requirements of section 56-5-2953(A), and as a result, the circuit court erred in dismissing the case.

The South Carolina Supreme Court has explained: "the purpose of section 56-5-2953 . . . is to create direct evidence of a DUI arrest." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011). The video is to document the arrest, document any field sobriety tests the Trooper administered, and document the defendant's conduct during the tests. As explained, the video began before Trooper Hassen stopped Respondent's vehicle and continued uninterrupted during the administration of the field sobriety tests, the reading of Miranda, Respondent's arrest, and the transport of Respondent for administration of the breath test. (Video of Incident Site). The purpose of the video is not to allow a jury to see exactly what is seen by the officer during the field sobriety tests or any other time. The purpose is not to provide the jury with the ability to assess a person's attempt to complete a field sobriety test. The video is

a documentary of the actions performed by the officer and the defendant's conduct after being stopped.

Contrary to the findings of the circuit court, the plain language of the statute does not require the Defendant's head to be visible during the administration of the HGN field sobriety test, nor does it require the video to provide the viewer with the ability to assess the defendant's success or failure on the video. It merely says the video recording must "include any field sobriety tests administered." S.C. Code Ann. § 56-5-2953(A)(1)(a)(ii) (Supp. 2012). As the Court of Appeals correctly found in Murphy, the statute does NOT require that the recording capture "a continuous full view of the accused." Nothing in the amended statute has changed this requirement. The plain language of the statute, even after amendment, requires nothing more than the defendant's conduct be captured during the administration of the field sobriety tests. His conduct would not include a close up of his eyes or a perfectly visible head to determine how he performed on the HGN test, but instead would only require that his overall demeanor, behavior, or actions be captured on the video recording.

The statute does not require the watcher of the video to see exactly what the officer saw or to see the test be performed in such a way that the watcher can make an assessment of the defendant's performance. It requires the conduct of the defendant be recorded. Any issue regarding the quality of what is shown regarding the successful or unsuccessful completion of the test is for the jury to consider as part of the weight it assigns to the video and not to the admissibility of the video. The State must produce a video which records the person's conduct and which includes any field sobriety tests offered. This was unquestionably done in this case.

The statute also does not require a recording of a particular quality, or a recording in the best possible lighting conditions, or any other such limitation. The ruling by the circuit court forces an absurd decision to be made by officers attempting to protect the public from drunk drivers. Under the circuit court's ruling, Officers are better off not performing any field sobriety tests—basically the argument presented by defendant's counsel when questioning the Trooper (11/6T.12; 25; R. 24; 37)—than performing the tests and risk a dismissal because the video recording is not perfect, especially when done in less than ideal circumstances of darkness. This Court's ruling will have the effect of 1) encouraging officers to perform no field sobriety tests and turn the subsequent DUI trial into a battle of credibility with little supporting video evidence—a result which clearly defeats the legislative purpose of creating evidence of the DUI through the video; 2) requiring a professional videographer and lighting assistant travel with him so as to produce a movie perfect video recording capturing all details even in the dark of night, which of course is when a significant number of DUIs occur; or 3) allowing the jury to perform its duty in properly considering any “defects” in the video recording, especially when the defendant is unable to articulate any prejudice resulting from the “defects.” See e.g., State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976) (“exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the appellant cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedure.”). The State submits the video in this case clearly complied with the clear, unambiguous statutory requirements of section 56-5-2953 and the third option above, allowing the jury to perform its duty of weighing the

evidence, was properly selected by the magistrate and should be the option selected by this Court.

As long as the recording includes “any field sobriety tests administered,” it is in compliance with the plain, unambiguous language of the statute, and the circuit court erred in finding otherwise. Requiring “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” adds requirements to the statute not found in the clear, unambiguous language, and it places an absurd burden on those attempting to enforce the laws of the state and protect the citizens from the dangers of drunk drivers. See Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (“When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature’s language”); see also, State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011) (recognizing that where a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning).

The State submits that as long as a juror can tell the arresting officer is administering the test, there is compliance. Here, the video recording leaves no doubt Trooper Hassen conducted the HGN test. The video is recorded under less than perfect conditions and using less than perfect equipment, both beyond the control of the Trooper. As a result, while it is clear Trooper Hassen conducted the HGN test—it can be seen and heard on the video—the recording is not perfectly clear or done in such a way that the jury can see what the Trooper sees. This, however, is not and should not be the

requirement under the statute. Certainly the legislature did not intend to craft a video recording statute which will result in the dismissal of many night time DUIs because the video is not perfect.

In State v. Gordon, Op. No. 5226 (S.C. Ct. App. filed Apr. 23, 2014) (Shearouse Adv. Sh. No. 16 at 71) (Certiorari pending), this Court determined: "Because of the purpose of the videotaping to create direct evidence of the arrest, if the actual tests cannot be seen on the recording, the requirement is pointless." In Gordon, this Court affirmed the circuit court's finding (on appeal from a magistrate court's finding that the recording was only required to show the conduct of the defendant) that the head must be shown during the HGN test. Id. at 76. This Court's opinion indicates the actual test could not be seen, but does not add the requirement added in this case that the results of the test or the performance of the defendant on the test must also be seen.¹

More recently, our Supreme Court decided State v. Sawyer, Op. No. 27393 (S.C. Sup. Ct. filed June 4, 2014) (Shearouse Adv. Sh. No. 22 at 24). In Sawyer, the Court addressed the issue of a videotape from the breath test site that lacked audio, and determined it did not satisfy the requirements of § 56-5-2953. Id. The Supreme Court distinguished Murphy from the facts in Sawyer, stating, "Here, however, we are concerned not with the defendant's conduct but with the content of the statutorily required warnings." Id. at 28. Specifically, the Court found that because the State did not produce audio recording of the Miranda warnings or the person being informed he was being videotaped, the recording failed to meet the statutory requirements. Sawyer has no bearing on the instant case because, like Murphy, this case deals with Appellant's conduct rather than statutorily required verbal warnings.

¹ To the extent necessary, the State will move to argue against the precedent of Gordon.

Further, it appears the circuit court acknowledges the Trooper produced a video, but believes the issue related to the content or quality of the content of the video. Any issues regarding the quality of the content of the video should go to its weight and the weight to be assigned the video by the trier of fact. See State v. Cope, 405 S.C. 317, 342 n.6, 748 S.E.2d 194, 207 n.6 (2013) (“factual discrepancies . . . go to the weight of the evidence”); State v. Dicapua, 373 S.C. 452, 636 S.E.2d 150, 153 (Ct. App. 2007) (Stilwell, J., concurring opinion) (lack of audio on surveillance videotape of drug sting went to the weight of the evidence, not its admissibility); Weaver v. Lentz, 348 S.C. 672, 680, 561 S.E.2d 360, 364-365 (Ct. App. 2002) (“Questions as to the accuracy of conclusions drawn go solely to the weight of the testimony, rather than its admissibility.”); see also, State v. Salisbury, 330 S.C. 250, 498 S.E.2d 655, 665 (Ct. App. 1998) (conflict in testimony regarding condition of breathalyzer machine went to weight of the test results rather than admissibility of the evidence), *aff’d as modified*, 343 S.C. 520, 541 S.E.2d 247 (2001). Defects in evidence or procedure generally do not affect admissibility. See, e.g., State v. Odom, 382 S.C. 144, 676 S.E.2d 124 (2009) (citing State v. Huntley, 349 S.C. 1, 562 S.E.2d 472 (2002)).

The State has complied with section 56-5-2953 by producing a videotape with all required events documented. Thus, since the videotape was produced, an affidavit from the arresting officer meeting the requirements of section 56-5-2953(B) was not required, and the circuit court erred in dismissing the case.

Additionally, the circuit court’s reliance on City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 897 (2007), to dismiss the case is misplaced. In Suchenski, the

arresting officer's vehicle recorder ran out of tape before the defendant was arrested, and as a result, there was no recording of the last field sobriety test or the arrest, both events required to be recorded under the statute. Thus, under the statute, the officer could not produce a videotape of all of the required events. The officer testified a tape had never ended during an arrest before, and he did not know the tape was about to run out, but assumed the videotape was running as usual. The magistrate denied the defendant's motion to dismiss, finding exigent circumstances excused full compliance with the statute. The circuit court reversed on appeal. The Supreme Court affirmed, finding the City's claim of exigent circumstances was not preserved for review, and in the absence of an exception, section 56-5-2953(B) required dismissal of the charge. Id.

In this case, unlike Suchenski, the State produced a videotape of the entire incident site and all events required to be documented under the statute. While the video recording does not clearly show Respondent's head during the HGN test, the video recording clearly documented Respondent's conduct during this test and all tests performed as required by the statute. Any defects of the videotape go to its weight to be assigned by the jury and not its admissibility under the statute, and the court should have found the video recording admissible and allowed the case to proceed to trial. See Section 56-5-2953(A)(3) (video recordings of incident and breath test sites are admissible as evidence in a criminal proceeding).

The Supreme Court interpreted the dismissal language in Suchenski. The Court stated:

The statute provides, "Failure by the arresting officer to produce the videotapes 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 [exceptions

apply] ..." (emphasis added). Conversely, failure to produce videotapes **would be a ground for dismissal** if no exceptions apply.

Suchenski, 374 S.C. at 16, 646 S.E.2d at 881 (emphasis added). Nothing in the above language used by the Court mandates dismissal or requires the evidence be deemed inadmissible. By using "would be a ground for dismissal" the Court specifically provided discretion to the court to determine the remedy based on the court's analysis of the State's failure to produce.

The conclusion to Suchenski is also telling. The Court concluded by stating: "Finally, dismissal of the DUAC charge **is an appropriate remedy** provided by § 56-5-2953 where a violation of subsection (A) is not mitigated by subsection (B) exceptions." The Court specifically chose language which indicates other remedies are also appropriate. The Court did not find dismissal is the only appropriate remedy. The Court specifically stated dismissal is **an** appropriate remedy. The conclusion by the Court clearly allows the trial court discretion in how to handle a failure to produce a videotape.

Also, nothing in Suchenski mandates a perfect video in order for it, or any of the evidence related to it, to be admissible. Even if Suchenski requires strict compliance with the statutory requirements of what must be recorded, it does not require that compliance be perfect in every way. The State in Suchenski failed to record entire required events. The videotape did not have quality issues or defects; instead, required events are entirely absent. In that situation, in which entire events required to be recorded are missing, the Court found dismissal was "an appropriate remedy" and did not require it, nor did it make any statement regarding the admissibility of the videotape. Suchenski says nothing about

the admissibility of a videotape or other evidence in a situation where the tape includes all events required, but has mere defects or quality issues.

The magistrate in this case found there was no need to address the HGN test for its compliance. While the magistrate made his ruling based on the issue being “mute” (sic), the State submits his analysis really is that Respondent failed to prove any prejudice suffered from the fact his head was not visible during the HGN test. The magistrate correctly noted the HGN merely determines the presence of alcohol in a person’s system. See State v. Sullivan, 310 S.C. 311, 315 n.2, 426 S.E.2d 766, 769 n.2 (1993). The test cannot be used to determine the level of impairment or the blood alcohol content of the person. See Id. at 315-316; 426 S.E.2d at 769 (citing State v. Garrett, 119 Idaho 878, 811 P.2d 488 (1991)). As the magistrate found, Respondent admitted he consumed alcohol so he cannot demonstrate how he was prejudiced by the administering of a test to determine the presence of alcohol. Accordingly, while the magistrate used the wrong term of mootness, the circuit court erred in reversing his decision that Respondent could not have been prejudiced by the administration of the HGN, whether in the dark or not.

As has previously been found, violations of a statutory requirement should not result in exclusion or other remedy without the presence of prejudice. It is well established that “exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the appellant cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedure.” State v. Chandler, 267 S.C. 138, 143, 226 S.E.2d 553, 555 (1976); see also, State v. Hunley, 349 S.C. 1, 6, 562 S.E.2d 472, 474 (2002) (finding the trial court erred in automatically

suppressing a breath test's results when no prejudice to the defendant was shown as a result of the implied consent statute's violation).

Finally, the interpretation of the statute by the circuit court would lead to an absurd result. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (finding courts will reject an interpretation of a statute leading to an absurd result clearly unintended by the legislature); State v. Elwell, 396 S.C. 330, 336, 721 S.E.2d 451, 454 (Ct. App. 2011) ("The statute must be interpreted with realistic circumstances and rationales in mind."). A person could avoid prosecution for DUI by placing himself during part of a test in the shadows so he is not clearly visible. The Trooper would never be able to know of the defect until the video could be viewed at a later time, thereby preventing him from being able to rectify any defect. Additionally, tests such as the HGN, which involve noticing the movement and jerking of the eyes, could never be recorded in such a manner as to allow the fact finder to see what the officer saw or "so that an assessment could be made [by the jury] as to how well the driver-suspect performed the test."

The State submitted a properly recorded video which began prior to Trooper Hassen activating his blue lights, showed all field sobriety tests being performed, included Respondent's arrest, and showed the reading of Miranda warnings. Any possible "defects" because of the video occurring at night inured only to the weight to be given by the jury and should not result in dismissal of the case. Further, the circuit court's interpretation, requiring a video sufficient to assess the performance of the field sobriety tests, leads to an absurd result. Finally, the magistrate correctly determined Respondent failed to demonstrate prejudice, and as a result, the circuit court erred in not affirming the

magistrate's decision. This Court should find the video produced by the State complied with the statutory requirements of section 56-5-2953 and dismissal was not warranted.

II. The circuit court erred in finding section 56-5-2953(B) had no application in this case and in not finding, based on a totality of the circumstances, the State produced a proper video recording and the underlying case should not have been dismissed.

The circuit court erred in finding section 56-5-2953(B) has no application in the instant case and erred in failing to consider the totality of the circumstances prior to dismissing the case against Respondent. The State submits either the circuit court erred in finding it had the power to dismiss the case based on the language of section 56-5-2953 and City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 897 (2007), or the circuit court erred in finding the totality of the circumstances exception had no application in this case as they both arise from the same portion of the statute. The State asserts if the totality of the circumstances are considered the video produced by Trooper Hassen sufficiently met the requirements of section 56-5-2953(A) and the case should not have been dismissed.

Section 56-5-2953 is divided into two applicable subsections². Subsection (A) sets forth the requirements for video recording at both the incident site and the breath test site. Nothing in the first section provides for dismissal, or any other remedy, for failing to produce a video or failing to produce a video of a certain quality as is at issue in the instant case.

Subsection (B) reads in pertinent part as follows:

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-**

² The statute has subsections (A) through (G). However, as it relates to the current appeal, only subsections (A) and (B) are applicable.

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. . . . 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**

S.C. Code Ann. § 56-5-2953(B) (Supp. 2013) (emphasis added). The only provision allowing for the dismissal of the case—Subsection (B)—also allows the court to consider “any other valid reason for the failure to produce the video recording based upon the totality of the circumstances.” *Id.*

As a result, the circuit court’s determination subsection (B) does not apply must be an error of law. Either the circuit court improperly dismissed the case because the State produced a video and no other provision outside of subsection (B) even allows for dismissal of the case, or the court should have considered the totality of the circumstances exception found in subsection (B) as requested by the State in making its determination of whether to dismiss the case.

The State submits dismissal was not proper because a video was produced.³ In the event this Court finds dismissal was an appropriate remedy, then the State submits the totality of the circumstances clearly favor not dismissing the case.

³ As discussed above, the State also submits the video clearly complied with the requirements of section 56-5-2953 and so dismissal was clearly inappropriate.

Trooper Hassen followed Respondent and witnessed him driving erratically and filmed him on his camera driving across the middle line prior to stopping Respondent. (Video of Incident Scene). The traffic stop in this case took place in the night along a very dark portion of the road. (Video of Incident Scene). The stop also took place at an intersection of two roads which could be busy and had traffic on them even late at night. (Video of Incident Scene; 11/6T.9-10; R. 21-22). Trooper Hassen indicated he performed the HGN test on Respondent and Respondent's performance on the test can never be captured on the video because his eyes are not on the video. (11/6T.9; 14; 16-17; 20; R. 21; 26; 28-29; 32). As a matter of fact, Trooper Hassen testified "There's not a DUI case in the State of South Carolina where you can see their eyes on the video. No way." (11/6T.20; R. 32). Trooper Hassen was able to testify to how he conducted the field sobriety tests, including the HGN, and was subject to extensive cross-examination about his conducting the test.

Based on the totality of the circumstances, including the facts 1) the video recording included from before the blue lights were activated until after Respondent's arrest; 2) the conditions at the time of the stop included it being dark and raining; 3) the stop occurred at an intersection which was travelled even late at night; 4) the video equipment is not capable of recording Respondent's or any other person's eyes during the HGN test; and 5) Trooper Hassen was able to testify to all the procedure he undertook and be cross-examined about the field sobriety tests he performed, the circuit court should have found the video admissible and should not have dismissed the case.

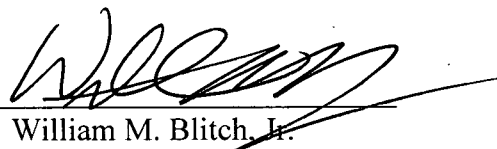
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court dismissing the State's case against Respondent should be reversed and Respondent's conviction and sentence from magistrate court be reinstated.

Respectfully submitted,

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February 3, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case Tracking No. 2014-000280

The State,

Appellant,

vs.

William Russell Patterson,

Respondent.

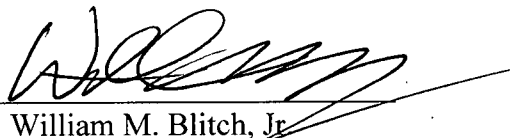
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Appellant on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Christopher A. Wellborn, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 3rd day of February, 2015.



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