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 FEB 26 2016
 SC Court of Appeals

Thomas A. Williams
 PLAINTIFF(S)

State of South Carolina
 DEFENDANT(S)

Submitted by: The Court

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court;

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2167
 Judge Code

10/28/15
 Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
THOMAS A. WILLIAMS,)
)
Appellant,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

ORDER

C/A No. 2014-CP-24-1091

RECEIVED
FEB 26 2015
SC Court of Appeals

PRESIDING JUDGE:
COURT REPORTER:
APPELLANT'S ATTORNEY:
RESPONDENT'S ATTORNEY:
DATE OF HEARING:

HON. DONALD B. HOCKER
TARA T. SCOTT
R. JAMISON TINSLEY, JR.
MICAH BLACK
WEDNESDAY, SEPTEMBER 2, 2015

This matter came before the Court for an appeal hearing from Magistrate's Court on Wednesday, September 2, 2015, at 9:00 a.m. The Respondent was represented by Assistant Solicitor Micah Black of the Eighth Circuit Solicitor's Office. The Appellant was represented by R. Jamison Tinsley, Jr.

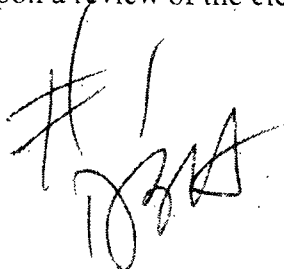
Procedural History

Appellant was arrested for DUI on March 30, 2013, by Trooper James C. Ashley of the South Carolina Highway Patrol. Appellant was issued Ticket Number G-000332.

A jury trial was held in this matter on Tuesday August 26, 2014, and Appellant was found guilty of driving under the influence.

During the course of the trial, Appellant timely objected on multiple grounds and timely appealed the Magistrate's ruling on the legal matters discussed herein.

Based upon a review of the clerk's file and arguments of counsel, the Court hereby makes



the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

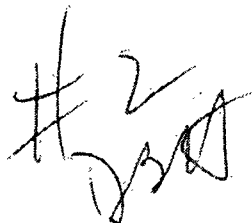
1. The Court finds that the traffic safety checkpoint set up on North Main Street, just off Montague Avenue, in Greenwood, South Carolina, was constitutional pursuant to State v. Vickery 399 S.C. 507 (S.C. Ct. App. 2012).

2A. The Court finds that the walk and turn field sobriety test performed by Appellant was sufficiently captured on the incident site video so as to conform with the videotaping requirements set forth in Code Section 56-5-2953. Appellant argued that his feet were not captured on video during every step of the walk and turn test. The Court finds that the time Appellant's feet were not on video during the test to be insignificant.

2B. Appellant argued the applicability of State v. Gordon, Op. No. 27554 (S.C. August 5, 2015), which was decided after Appellant's trial. Appellant argued to this Court that, in the alternative, Gordon should apply because Appellant's feet were on video but could not be seen. Under this scenario, Appellant argued that Appellant's performance of the walk and turn field sobriety test should be suppressed and redacted if Appellant is granted a new trial. The Court rejects this argument.

3. The Court finds that the State did not violate Rule 5/Brady by turning over an Inspection Report (which sets forth and describes violations made at the checkpoint location on the night of Appellant's arrest) to the defense on the day before trial. The State turned over the document as soon as it received the document from law enforcement. The Court finds that Appellant was not prejudiced by this disclosure on the day before trial.

4. Appellant timely objected at trial that the State violated Rule 5/Brady by first producing evidence regarding the S.C. Highway Patrol's selection of this site for a roadblock



during Trooper Ashley's testimony under oath during trial. Appellant contends the failure to produce such evidence prior to trial constitutes a Rule 5/Brady violation. On April 16, 2013, Appellant filed and served the State with his Rule 5/Brady motion, which in pertinent part requested "[a]ny and all investigation reports, information, or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial." The Court finds that the State's failure to produce this evidence regarding the S.C. Highway Patrol's selection of this site for a roadblock, which was first disclosed by the State during Trooper Ashley's testimony during trial, was not a Rule 5/Brady violation because such evidence was not material to establish Appellant's guilt or innocence, did not mitigate punishment, and/or did not impeach, discredit, or contradict Trooper Ashley's testimony.

5A. Appellant timely objected at trial to the admissibility of Appellant's refusal to provide a breath sample. Appellant contends the Magistrate erred in allowing the State to introduce evidence of Appellant's refusal to provide a breath sample because Trooper Ashley did not have the statutory right to offer Appellant a breath test pursuant to Code Section 56-5-2950(A), which provides in pertinent part: "A person that drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination thereof."

5B. Trooper Ashley testified that Appellant drove up to the roadblock, but Trooper Ashley never testified to any bad driving by Appellant. (Tr. p. 24, ll. 4-10.) Appellant contends

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that he did not have to consent to a breath test because he was not arrested for an offense arising out of acts alleged to have been committed while he was driving a motor vehicle while under the influence. Appellant argues that he was merely arrested for driving under the influence. Appellant argues the State, therefore, should not have been allowed to introduce evidence of his refusal to provide a breath sample. The Court finds this argument is without merit because any person arrested for driving under the influence has consented to a breath test, so the Magistrate properly allowed the State to introduce evidence regarding Appellant's refusal to provide a breath sample.

IT IS SO ORDERED.



HON. DONALD B. HOCKER
Presiding Circuit Court Judge

Laurens, South Carolina

10-9, 2015

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