STATE OF SOUTH CAROLINA	THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	No. 2014-CP-24-00981
STATE OF SOUTH CAROLINA,	
APPELLANT,	
vs.	**ORDER**
MARIA TODD MARTIN,	
RESPONDENT.	

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SC Court of Appeals

THIS MATTER IS BEFORE THE COURT on Appellant's Motion for Reconsideration of the Court's October 23, 2015 Order Denying Appellant's requested relief. The Appellant raises seven (7) issues in support of its Motion. This is a DUI case that originated in Magistrate's Court. The Court incorporates by reference its Order of October 23, 2015 as to the procedural history of this case outlined therein as well as the subject conversation (Parag. 2, Page 2) between the trooper and Defendant at the incident site as it relates to the Field Sobriety Tests.

After a careful and thorough review of this entire case, this Court determines that it was in error in affirming Judge Martin and his Order of July 30, 2014.

This whole case boils down to whether or not the video portion at the incident site as it relates to the Defendant's refusal to perform the field sobriety tests should be shown to the jury at trial. In other words, whether suppression of the Defendant's statements should be granted.

This Court makes the above determination on the following grounds:

1. It is undisputed that Miranda warnings were not given prior to the colloquy between the Trooper and Defendant concerning the Defendant performing the Field Sobriety Tests. It does not appear that this is really at issue between the parties. This Court determines, however, that Miranda warnings were not required in this situation pursuant to State vs. Kerr, 330 S.C. 132 (1998); State vs. Peele, 298 S.C. 63 (1989); Berkemer vs. McCarty, 468 U.S. 420 (1984).
2. Defendant argues that this issue requires a Rule 403 prejudice vs. probative value analysis. However, the prejudice to the Defendant has to be unfair prejudice. While the Defendant's statements can be considered incriminating and ultimately prejudicial, they are not unfair. The probative value of her statements as to the issue of intoxication far exceeds any unfair prejudice to the Defendant.
3. The Defendant freely and voluntarily gave the statements in response to the troopers' questions about the field sobriety tests.
4. The Court's Order stating that a person is not required to provide evidence against himself is true but misplaced in this case. While a person has the constitutional protection of not being required to incriminate himself, if he voluntarily makes statements when Miranda warnings are not required, then he has to live with his decision and in this case, the Defendant has to live with her decision. She could have kept her responses to a simple "no" throughout the colloquy but elected to comment on her abilities and sobriety.
5. The Court in its prior Order placed too much emphasis on the fact that since the Legislature has not enacted legislation allowing for a Defendant's refusal to perform

the field sobriety tests to be used against the Defendant at trial then the implication exists that the Legislature intended for the refusal not to be used. While this canon of statutory construction may be a valid one in some situations, it should not apply here.

6. The Defendant argues that her refusal would require the jury to speculate on the issue of the Defendant's impairment. While this may arguably be true if the Defendant's responses remained a "no", it certainly does not require speculation when the Defendant voluntarily said "No , if I was straight, I couldn't pass it".

IT IS HEREBY ORDERED:

1. The Appellant's Motion for Reconsideration is granted;
2. The Court's Order, dated October 23, 2015, is vacated except as to the above procedural history and the colloquy between the trooper and Defendant as outlined in Paragraph 2;
3. The Order of Judge Martin, dated July 30, 2014, is respectfully reversed;
4. This case is remanded to the Greenwood Magistrate's office for disposition of this case. If the case goes to trial, then the State will have the right to show the video of the Defendant's refusing to undertake the field sobriety tests to the jury.

IT IS SO ORDERED.

Donald B. Hocker
Circuit Court Judge

March 30, 2016
Laurens, South Carolina

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