

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SEP 15 2016

SC Court of Appeals

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-08-00010

The State.....Appellant,

v.

Norman B. Dudley.....Respondent.

RECORD ON APPEAL

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Norman B. Dudley

ORDER DISMISSING APPEAL

CLERK OF COURT
BERKELEY COUNTY, S.C.

2

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	:	NINTH JUDICIAL CIRCUIT
State of South Carolina,	:	C/A # 2013-CP-08-_____
Appellant,	:	
vs.	:	<u>NOTICE OF APPEAL</u>
Norman B. Dudley,	:	<u>AND APPEAL</u>
Respondent.	:	Ticket F594836

NOTICE OF APPEAL
AND APPEAL

TO: The Hon. Edward L. Sessions, Berkeley County Magistrate Judge, and
Christopher J. Murphy, Counsel for Respondent Norman B. Dudley

The State of South Carolina, by and through the undersigned counsel, hereby gives notice of its appeal and appeals from the order of the Hon. Edward L. Sessions issued on December 3, 2013, which dismissed the above-referenced case. The State received notice of said order on December 3, 2013.

On December 15, 2012, Corporal E. D. McAbee of the South Carolina Highway Patrol cited Defendant Norman B. Dudley for Driving Under the Influence in violation of the S.C. Code of Laws § 56-5-2930. The matter came before the magistrate judge in Goose Creek for a jury trial on December 3, 2013. At a pre-trial hearing, the Defendant moved to dismiss the charge, claiming the Miranda warnings given by Cpl. McAbee and captured on video were incomplete. The court, relying on State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct. App. 2012), granted the motion and dismissed the case. This appeal followed.

The State contends the magistrate judge erred as a matter of law in dismissing the Defendant's DUI ticket because Cpl. McAbee's Miranda warnings were constitutionally sound and more than adequate to advise Mr. Dudley of his rights. In his motion before the court, the Defendant argued the warnings given by Cpl. McAbee were incomplete because they did not quote the Miranda language cited by the Hoyle court verbatim. According to the Defendant, an officer must give Miranda warnings by using the exact words from Hoyle, and the magistrate judge agreed. This was error.

In Hoyle, the court of appeals considered whether a defendant must be warned that if he decided to answer any questions he had a right to terminate the interrogation at any point thereafter. In deciding this additional language was not required, the court reiterated that Miranda only requires four warnings and cited the following:

The Miranda court held that a suspect in custody must be warned of the following rights: He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Hoyle, 397 S.C. at 626, 725 S.E.2d at 722 (quoting Miranda v. Arizona, 384 U.S. 436, 479, 86 S.Ct. 1602, ___, 16 L.Ed.2d 694, ___ (1966)). In citing Hoyle to the magistrate court, the Defendant claimed Cpl. McAbee was required to state "if you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish one." This language, the Defendant argued, is essential to satisfy the "fourth prong" of Miranda. The United States Supreme Court has concluded, however, that no particular words are necessary as long as the general meaning of Miranda is communicated to the defendant.

As the court stated in Florida v. Powell, “[t]he four warnings Miranda requires are invariable, but this Court has not dictated the words in which the essential information must be conveyed.” Florida v. Powell, 559 U.S. 50, 60, 130 S.Ct. 1195, 1204, 175 L.Ed.2d. 1009, ____ (2010). In determining whether an officer has adequately conveyed these warnings, the Powell court found that “reviewing courts are not required to examine the words employed as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably convey to a suspect his rights as required by Miranda.” Id. (citations omitted) Thus, the court upheld Powell’s conviction by finding the arresting officers’ warnings “sufficiently comprehensive and comprehensible when given a commonsense reading” where they informed Powell in part that he could “talk to a lawyer before answering any of their questions.” Id. at 62-63, 130 S.Ct. at 1204-05, 175 L.Ed.2d at ____.

In a similar case, the court made the following pronouncement:

We have never insisted that Miranda warnings be given in the exact form described in that decision. In Miranda itself, the Court said that the warnings required and the waiver necessary . . . are, *in the absence of a fully effective equivalent*, prerequisites to the admissibility of any statement made by a defendant. . . . Miranda has not been limited to station house questioning . . . and the officer in the field may not always have access to printed Miranda warnings, or he may inadvertently depart from routine practice

Duckworth v. Eagan, 492 U.S. 195, 202-03, 109 S.Ct. 2975, 2880, 106 L.Ed.2d 166, ____ (1989) (emphasis in original) (internal citations omitted). The Duckworth court then affirmed the defendant’s conviction, finding the warnings given “touched all of the bases required by Miranda.” Id.

Finally, in California v. Prysock the court previously held:

[T]he opinion of the California Court of Appeal essentially laid down a flat rule requiring that the content of Miranda warnings be a virtual incantation of the precise language contained in the Miranda opinion. Because such a rigid rule was not mandated by Miranda or any other decision of this Court, and is not required to serve the purposes of Miranda, we . . . reverse.

California v. Prysock, 453 U.S. 355, 355-56, 101 S.Ct. 2806, 2807, 69 L.Ed.2d 696, ____ (1981). In Prysock, the California appellate court had ruled the Miranda warnings given were inadequate because the defendant “was not explicitly informed of his right to have an attorney appointed before further questioning.” Id. at 359, 101 S.Ct. at 2809, 69 L.Ed.2d at _____. In rejecting this argument, the supreme court asserted it had never “indicated that the ‘rigidity’ of Miranda extends to the precise formulation of the warnings given” Id. To the contrary, the court remarked that “Miranda itself indicated that no talismanic incantation was required to satisfy its strictures.” Id.; see also State v. Singleton, 284 S.C. 388, 391, 326 S.E.2d 153, 155, *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (finding the omission of certain words in Miranda warnings did not render a confession inadmissible because a “talismanic incantation” is not required to satisfy Miranda) (citation omitted).

A review of the in-car video played at the pre-trial hearing reveals Cpl. McAbee gave the following Miranda warnings to the Defendant:

You have the right to remain silent, okay. Anything that you say can and will be used against you in a court of law. You have the right to have an attorney present before answering any questions. If you cannot afford one, an attorney will be appointed for you without any cost. Do you understand that? You may exercise these rights at any time without answering any questions or making any statements – do you understand that?

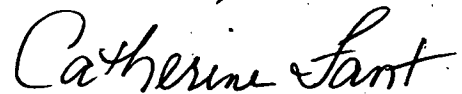
Pursuant to the line of cases cited above, these warnings clearly advised the Defendant of his four core rights under Miranda. It matters not that the words were not verbatim as written in Miranda or as cited in Hoyle. Given a commonsense reading, these words fully satisfied the constitutional requirements of Miranda and its progeny. Cpl. McAbee fully complied with the requirements of S.C. Code Ann. § 56-5-2953 and the magistrate erred in concluding otherwise.

CONCLUSION

For the reasons stated above, the magistrate judge erred as a matter of law in dismissing the Defendant's DUI charge.

WHEREFORE, the State respectfully requests that this Honorable Court reverse the decision of the magistrate, and remand this case to the lower court for trial and for such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



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Email: CatherineFant@scdps.gov
Attorney for Appellant
S.C. Bar # 14021

This 30th day of December, 2013

Blythewood, South Carolina

OTHER COUNSEL OF RECORD:

**Christopher J. Murphy
Murphy Law Firm, LLC
136 West Richardson Avenue
Summerville, SC 29483**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

C/A # 2013-CP-08-_____

Appellant,

vs.

CERTIFICATE OF SERVICE

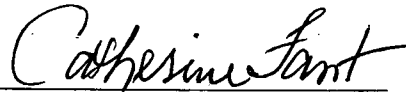
NORMAN B. DUDLEY,

Ticket No. F5948356

I HEREBY CERTIFY that on this 31st day of December, 2013, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Edward L. Sessions
Berkeley County Magistrate Judge
303-B North Goose Creek Boulevard
Goose Creek, SC 29445-2969

Christopher J. Murphy, Esq.
Murphy Law Firm, LLC
136 West Richardson Avenue
Summerville, SC 29483



Catherine Fant
Office of General Counsel
S. C. Department of Public Safety

Dated: December 30, 2013



**S. C. DEPARTMENT
OF PUBLIC SAFETY**
OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S.C. 29016
Tel: (803) 896-7965 • Fax: (803) 896-7967

December 30, 2013

Mary P. Brown, Clerk
Berkeley County Circuit Court
P. O. Box 219
300 B California Avenue
Moncks Corner, SC 29461

Re: State of South Carolina vs. Norman B. Dudley
Ticket No. F594836
Appeal # 2013-CP-08-_____

Dear Ms. Brown:

Please find enclosed the State's Notice of Appeal and Appeal and a Certificate of Service to be filed of record. Please provide me with a clocked-in copy of both documents. A return envelope is enclosed.

A copy of this Notice has been served upon all parties.

With kind regards, I am

Yours very truly,

Catherine Fant
Assistant General Counsel

CF/rr

Enclosures

cc: Honorable Edward L. Sessions ✓
Christopher J. Murphy, Esquire

FILED

JAN 2 2014

Goose Creek Magistrate Office

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

State of South Carolina,

Appellant,

vs.

Norman B. Dudley,

Respondent.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

C/A # ²⁰¹⁴2013-CP-08- 10

NOTICE OF APPEAL
AND APPEAL

Ticket F594836

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2014 JAN -3 PM 2:45

FILED

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AND APPEAL

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In Hoyle, the court of appeals considered whether a defendant must be warned that if he decided to answer any questions he had a right to terminate the interrogation at any point thereafter. In deciding this additional language was not required, the court reiterated that Miranda only requires four warnings and cited the following:

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Hoyle, 397 S.C. at 626, 725 S.E.2d at 722 (quoting Miranda v. Arizona, 384 U.S. 436, 479, 86 S.Ct. 1602, ___, 16 L.Ed.2d 694, ___ (1966)). In citing Hoyle to the magistrate court, the Defendant claimed Cpl. McAbee was required to state "if you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish one." This language, the Defendant argued, is essential to satisfy the "fourth prong" of Miranda. The United States Supreme Court has concluded, however, that no particular words are necessary as long as the general meaning of Miranda is communicated to the defendant.

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Attorney for Appellant
S.C. Bar # 14021

This 30th day of December, 2013

Blythewood, South Carolina

OTHER COUNSEL OF RECORD:

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Summerville, SC 29483**

STATE OF SOUTH CAROLINA :
COUNTY OF BERKELEY :

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA :

²⁰¹⁴
C/A # ~~2013~~-CP-08- 10

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vs.

NORMAN B. DUDLEY,

CERTIFICATE OF SERVICE

Ticket No. F5948356

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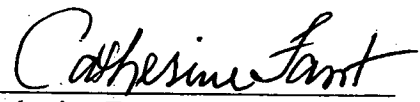
The Honorable Edward L. Sessions
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Goose Creek, SC 29445-2969

Christopher J. Murphy, Esq.
Murphy Law Firm, LLC
136 West Richardson Avenue
Summerville, SC 29483

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2014 JAN -3 PM 2:45

FILED


Catherine Fant
Office of General Counsel
S. C. Department of Public Safety

Dated: December 30, 2013

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COUNTY OF BERKELEY

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Appellant,

vs.

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NINTH JUDICIAL CIRCUIT

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AND APPEAL

Ticket F594836

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JAN 2 2014

Goose Creek Magistrate Court
20

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FILED

JAN 2 2014

Pursuant to the line of cases cited above, these warnings clearly advised the Defendant of his four core rights under Miranda. It matters not that the words were not verbatim as written in Miranda or as cited in Hoyle. Given a commonsense reading, these words fully satisfied the constitutional requirements of Miranda and its progeny. Cpl. McAbee fully complied with the requirements of S.C. Code Ann. § 56-5-2953 and the magistrate erred in concluding otherwise.

CONCLUSION

For the reasons stated above, the magistrate judge erred as a matter of law in dismissing the Defendant's DUI charge.

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This 30th day of December, 2013

Blythewood, South Carolina

FILED

JAN 2 2014

Goose Creek Magistrate Office

OTHER COUNSEL OF RECORD:

Christopher J. Murphy
Murphy Law Firm, LLC
136 West Richardson Avenue
Summerville, SC 29483

FILED

JAN 02 2014

Goose Creek Magistrate Office

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Appellant

vs.

NORMAN B. DUDLEY,
Respondent

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A # 2014-CP-08-00010
) TICKET # F594836

RESPONDENT'S REPLY

**TO: Catherine Fant, Esquire, Office of General Counsel for SC Department of
Public Safety**

On December 15, 2012, Trooper E.D. McAbee of the South Carolina Highway Patrol issued a citation to the Defendant for Driving Under the Influence in violation of S.C. Code §56-5-2930. This matter was initially scheduled for a bench trial on January 9, 2013 at 2:00 p.m. at Central Traffic Court; however, on December 17, 2012, at the request of the Defendant's Attorney, Christopher J. Murphy, a jury trial was requested. Once the jury trial was requested, it was transferred to the Goose Creek Magistrate's Office and clocked as received on January 18, 2013.

On May 17, 2013, the matter was scheduled for a Pre Trial Hearing. This hearing had to be rescheduled. A second Pre Trial hearing was scheduled for August 6, 2013. Again that Pre Trial hearing had to be continued. A third Pre Trial Hearing was scheduled for September 17, 2013 but that hearing was rescheduled for September 10, 2013. Again that hearing was continued and at that time a Jury Trial was scheduled for October 15, 2013. The jury trial was continued and scheduled for December 3, 2013.

On December 3, 2013 all parties were present for the Jury Trial. A motion hearing was heard prior to the seating of any jurors. At the hearing on the motion, the Court reviewed the videotape of the incident site. On the videotape, the Trooper failed to advise the Defendant "that if he cannot afford an attorney one will be provided for him prior to any questioning if he so desires". Instead, the Trooper advised the Defendant "that if he cannot afford an attorney one will be provided to him *at no cost*" and nothing more. The Court found that as a matter of law the State did not satisfy the fourth prong

of Miranda as required by §56-5-2953 of the South Carolina Code of Laws and State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct. App 2012).

As a matter of law, the Respondent would request that the State's appeal be dismissed as the State's Notice of Appeal and Appeal was not filed timely. §18-3-30 of the South Carolina Code of Laws requires that *"The appellant shall file the notice of appeal with the clerk of the circuit court and shall serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the case **within ten days** after sentencing and state the grounds for his appeal."*

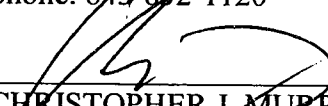
The State concedes in it's brief that it received notice of the Court's decision on December 3, 2013 and that no motion for reconsideration or new trial was requested. Further, the State did not file it's Appeal until approximately thirty (30) days after the trial of December 3, 2013.

CONCLUSION

The State filed no motion for a new trial or reconsideration in this case. The State did not timely file the Notice of Appeal or Appeal until thirty (30) days after the court date of December 3, 2013 in violation of §18-3-30 of the South Carolina Code of Laws and as a matter of law it should be dismissed.

Respectfully submitted,

MURPHY LAW FIRM, L.L.C.
136 West Richardson Avenue
Summerville, South Carolina 29483
Telephone: 843-832-1120

BY: 

CHRISTOPHER J. MURPHY
Attorney for the Defendant

Summerville, South Carolina
Date: January 21, 2014

STATE OF SOUTH CAROLINA

) IN THE MAGISTRATE'S COURT

2014 CP-08-10

COUNTY OF BERKELEY

) NINTH JUDICIAL CIRCUIT

) C/A # 2013-CP-08-_____

STATE OF SOUTH CAROLINA,

) TICKET # F594836

Appellant

)

)

)

MAGISTRATE'S RETURN

vs.

)

)

NORMAN B. DUDLEY,

)

Respondent

)

)

FILED
JAN 13 2014
CASE NO. *ju*
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

On December 15, 2012, Trooper E.D. McAbee of the South Carolina Highway Patrol issued a citation to the Defendant for Driving Under the Influence in violation of S.C. Code §56-5-2930. This matter was initially scheduled for a bench trial on January 9, 2013 at 2:00 p.m. at Central Traffic Court; however, on December 17, 2012, at the request of the Defendant's Attorney, Christopher J. Murphy, a jury trial was requested. Once the jury trial was requested, it was transferred to the Goose Creek Magistrate's Office and clocked as received on January 18, 2013.

On May 17, 2013, the matter was scheduled for a Pre Trial Hearing. This hearing had to be rescheduled. A second Pre Trial hearing was scheduled for August 6, 2013. Again that Pre Trial hearing had to be continued. A third Pre Trial Hearing was scheduled for September 17, 2013 but that hearing was rescheduled for September 10, 2013. Again that hearing was continued and at that time a Jury Trial was scheduled for October 15, 2013. The jury trial was continued and scheduled for December 3, 2013.

On December 3, 2013 all parties were present for the Jury Trial. A motion hearing was heard prior to the seating of any jurors.

First, the State's Notice of Appeal and Appeal was not filed timely. According to §18-3-30, it states that, "*The appellant shall file the notice of appeal with the clerk of the circuit court and shall serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the case within ten days after sentencing and state the grounds for his appeal.*"

This court did not receive notification of Appeal or the Appeal until thirty (30) days after the trial of December 3, 2013. No motion for a new trial was made by the state.

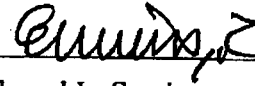
Secondly, the grounds for the Defendant's motion were as follows: "*The video tape of the incident site disclosed by the prosecution pursuant to Rule 5 of the SCRCF does not contain a video recording of the Defendant being advised of his Miranda rights as required by §56-5-2953 of the South Carolina Code of Laws.*"

At the hearing on the motion, the Court reviewed the videotape of the incident site. On the videotape, the Trooper failed to advise the Defendant "that if he cannot afford an attorney one will be provided for him prior to any questioning if he so desires". Instead, the Trooper advised the Defendant "that if he cannot afford an attorney one will be provided to him *at no cost*" and nothing more. The Court found that as a matter of law the State did not satisfy the fourth prong of Miranda as required by §56-5-2953 of the South Carolina Code of Laws and State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct. App 2012).

CONCLUSION

The State filed no motion for a new trial on this case. This court finds that all parties were notified of the jury trial date and time. The State did not file the Notice of Appeal or Appeal until thirty (30) days after the court date of December 3, 2013. The Trooper did not disclose the Miranda rights to the defendant as required by §56-5-2953 of the South Carolina Code of Laws and State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct. App 2012).

Respectfully submitted,



Judge Edward L. Sessions
Berkeley County Magistrate
303-B North Goose Creek Blvd.
Goose Creek, SC 29445
Telephone: (843) 553-7080
Fax: (803) 553-7074

This 1st day of January, 2014
Goose Creek, SC

Enclosures:

Copy of Notice of Appeal and Appeal

RECEIVED

AUG 21 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-08-00010

The State.....Appellant,

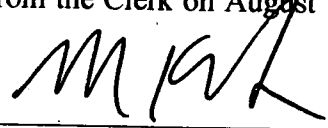
v.

Norman B. Dudley.....Respondent.

NOTICE OF APPEAL

The Appellant, The State of South Carolina, hereby appeals from the Order of the Honorable J.C. Nicholson, Judge of the Ninth Judicial Circuit, dated August 3, 2015, and filed for record on August 14, 2015, in the matter of The State of South Carolina vs. Norman B. Dudley, Case Number 2014-CP-08-00010, with the Berkeley County Common Pleas Court.

Appellant received the written Order from the Clerk on August 14, 2015. A copy of the Order is attached hereto.



Marcus K. Gore, Assistant General Counsel
Email: MarcusGore@scdps.gov
Catherine Fant, Assistant General Counsel
Email: CatherineFant@scdps.gov
South Carolina Department of Public Safety
Office of General Counsel
P. O. Box 1993
Blythewood, SC 29016
Telephone: (803) 896-7965

Blythewood, S.C.
Date: August 18, 2015

Other Counsel of Record:

**Christopher J. Murphy, Esq.
Murphy Law Firm, LLC
136 West Richardson Avenue
Summerville, SC 29483**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

The State of South Carolina,

v.

Norman B. Dudley

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A #2014-CP-08-00010
) Ticket No.: F594836

RECEIVED

AUG 21 2015

SC Court of Appeals

) ORDER DISMISSING APPEAL

CLERK OF COURT
BERKELEY COUNTY, S.C.

15 AUG 14 PM 12:26

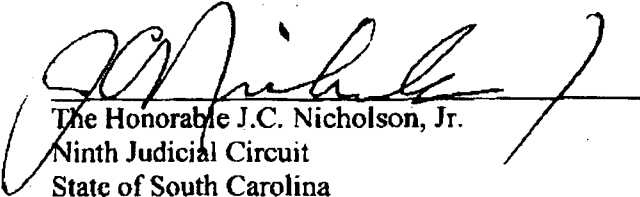
THIS MATTER came before the Court upon the State's Appeal of the Dismissal of Driving Under the Influence (First Offense) handed down by Honorable Edward L. Sessions, Berkeley County Magistrate Judge, on December 3, 2013. The Court issued its Order of Dismissal on that date and the State received notice at that time.

FINDINGS OF FACT

The Court finds upon a review of the record that the State failed to file a timely appeal in this matter having done so January 3, 2014. Section 18-3-30 of the South Carolina Code of Laws governs appeals from criminal matters in Magistrate Court. The statute provides that the notice of appeals from criminal matters in Magistrate Court shall be filed within ten days. It would be a violation of the Equal Protection Clause to not hold the prosecuting agency to the same standard as an accused in the courts of this state.

THEREFORE, IT IS HEREBY ordered that the State's Appeal is hereby dismissed.

AND IT IS ORDERED.


The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit
State of South Carolina

32: CDM
AUG 3, 2015
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 21 2015

SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-08-00010

The State.....Appellant,

v.

Norman B. Dudley.....Respondent.

PROOF OF SERVICE

I do hereby certify that I have served the Notice of Appeal in the above captioned action, by depositing it in the United States Mail, postage prepaid, on this 18th day of August, 2015, addressed to the Honorable Jenny Abbott Kitchings, Clerk of the Court of Appeals of South Carolina, P. O. Box 11629, Columbia, S.C. 29211.



Monishia L. Davis
Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: August 18, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-08-00010

RECEIVED

AUG 21 2015

SC Court of Appeals

The State.....Appellant,

v.

Norman B. Dudley.....Respondent.

PROOF OF SERVICE

I do hereby certify that I have served the Notice of Appeal in the above captioned action, by depositing it in the United States Mail, postage prepaid, on this 18th day of August, 2015, addressed to Respondent's counsel, Christopher J. Murphy, 136 West Richardson Avenue, Summerville, SC 29483.



Monishia L. Davis
Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: August 18, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

AUG 21 2015

SC Court of Appeals

The Honorable J.C. Nicholson, Circuit Court Judge

Case No. 2014-CP-08-00010

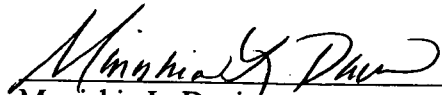
The State.....Appellant,

v.

Norman B. DudleyRespondent.

PROOF OF SERVICE

I do hereby certify that I have served the Notice of Appeal in the above captioned action, by depositing it in the United States Mail, postage prepaid, on this 18th day of August, 2015, addressed to the Honorable Mary P. Brown, Clerk of Court of Berkeley County, Berkeley County Circuit Court, P.O. Box 219, Moncks Corner, S.C. 29461.



Monishia L. Davis
Paralegal
Office of General Counsel
S. C. Department of Public Safety

Dated: August 18, 2015

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
State of South Carolina,	)	
	)	
	)	
v.	)	Case No. 14-CP-08-0010
	)	
Norman B. Dudley,	)	
	)	
Respondent.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 12, 2015, before The Honorable J.C. Nicholson, in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel as follows:

APPEARANCES:

Catherine Fant, Esq.
.... Appearing for State of South Carolina

Christopher Murphy, Esq.
...Appearing for Norman B. Dudley

Deborah Garrison
Circuit Court Reporter –9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

INDEX

(NO WITNESSES PRESENTED)

(NO EXHIBITS ENTERED)

1 THE COURT: All right, let me see.
2 First is the State versus Norman Dudley. Is
3 Mr. Dudley here? Anybody here on that?

4 MR. MURPHY: Chris Murphy representing
5 the Respondent.

6 THE COURT: Okay.

7 MS. FANT: Catherine Fant for the
8 State, Your Honor.

9 THE COURT: Okay. You got the file?
10 The trial was on December 3?

11 MS. FANT: Yes, sir.

12 MR. MURPHY: Yes, sir.

13 THE COURT: When was the notice of
14 appeal filed?

15 MR. MURPHY: Not until December 30th.

16 THE COURT: So it was filed within the
17 thirty (30) days?

18 MS. FANT: Yes, sir. Yes, sir.

19 MR. MURPHY: It wasn't filed as a
20 criminal appeal, but they did file it within
21 ten (10) days and they had notice of it, is
22 my argument.

23 THE COURT: What's the requirement in
24 Magistrate's Court on the appeal?

25 MR. MURPHY: Ten (10) days from the date

1 of the decision to file the criminal appeal,
2 Your Honor.

3 THE COURT: Okay.

4 MS. FANT: Your Honor, the State
5 obviously disagrees. I actually prepared a
6 memorandum of law on that, but we don't
7 believe the statute that he cited actually
8 applies to the State.

9 THE COURT: All right. Let me -- let
10 me -- I was just reading the return. I was
11 reading your return, Ms. Fant. It was -- let
12 me see you got -- is your memorandum in here?

13 MS. FANT: No, Your Honor. I just
14 filed it this morning.

15 THE COURT: All right. Let me see it,
16 if you would.

17 MS. FANT: (Tenders).

18 THE COURT: Thank you, ma'am. All
19 right. Ms. Fant, I will be glad to hear you.

20 MS. FANT: Yes, Your Honor. Would you
21 like for me to address the timeliness issue
22 first or ---

23 THE COURT: Yeah, if you would.

24 MS. FANT: Your Honor, the statute
25 that Mr. Murphy is referring to is Section

1 18-3-30, which provides that, (reading): "The
2 appellant, within ten (10) days of sentence,
3 shall file notice of appeal with the Clerk of
4 Court and file -- shall serve notice of appeal
5 upon the magistrate who tried the case and
6 upon the designated agent for the prosecuting
7 agency or attorney who prosecuted the charge,
8 stating the grounds upon which the appeal is
9 founded."

10 Section B of that statute then says,
11 "A person convicted of magistrates court who
12 pays a fine does not waive his right of appeal
13 and may appeal his conviction within the
14 allotted time allotted in this section."

15 Your Honor, by the very terms of the
16 statute it can't possibly apply to the State.
17 The words that it uses, "after sentence",
18 "upon conviction", "serve the designated
19 prosecuting agent", it clearly is a statute
20 that applies to the defendant. And the
21 underlying criminal appeals statute for
22 magistrates court, which is Section 18-3-10
23 also discusses, (reading): "...every person
24 convicted before a magistrate criminal offense
25 and sentenced may appeal from the sentence to

1 *the Court of Common Pleas."*

2 And the reason is that in this state
3 the appeal rights of the State are covered by
4 case law not statute. As there is no statute
5 in magistrates court that addresses the
6 State's right to appeal, but the State does
7 have the right to appeal pursuant to case law.
8 Particularly *State v Del Viso* (phonetic) ---

9 THE COURT: We got the right to appeal
10 but what's your statutory limitations and
11 time? Do you think you have one?

12 MS. FANT: We -- Yes, sir. We believe
13 we have thirty days.

14 THE COURT: Why do you -- why do you
15 think thirty days?

16 MS. FANT: That is based upon the fact
17 that there is a lack of a statute that
18 actually addresses the State's appeal in
19 magistrates court.

20 In the absence of that the only
21 thing you can do is turn to the rules. And
22 the Rule 37, first looking at the rules of
23 criminal procedure, states that, "*These rules*
24 *shall apply to every trial court of criminal*
25 *jurisdiction within the State. They apply*

1 *insofar as practical in magistrates courts."*

2 The last part of the rule says,
3 (reading): *"In any case where no provision*
4 *is made by statute or these rules, the*
5 *procedure shall be in accordance to the*
6 *practice that is heretofore existed in the*
7 *courts of the State."*

8 So it's our position that you then
9 have to look to the civil rules to determine
10 what the appeal timeframe is and the relevant
11 portion of Rule 74 declares, *"Notice of*
12 *Appeal to the circuit court must be served on*
13 *all parties within thirty (30) days after*
14 *receipt of written notice of the judgment,*
15 *Order or Decision appealed from. In all such*
16 *appeals the notice of intention to appeal*
17 *shall be filed with the clerk of court to*
18 *which the appeal is taken and with the*
19 *inferior court within the time frame ..."* --
20 excuse me, *"...within the time provided by the*
21 *statute, or by this rule when no fixed time*
22 *or no time is fixed by statute, for service*
23 *of the notice of intent to appeal."*

24 Your Honor, we are faced with the
25 situation where there is no statute that on

1 its face and by its terms applies to the
2 State. The criminal rule says that you look
3 to other procedure, if in fact, it is not a
4 specific criminal rule to address this under.
5 There isn't, and therefore the State believes
6 the proper procedure is to turn to Rule 74,
7 which in its own terms says, that appeals to
8 the Circuit Court." So obviously that would
9 be anticipating appeals from magistrate
10 court, shall be filed within thirty days and
11 this is true when the timeframe is provided
12 by statute or with this -- or this rule when
13 no time is fixed for a statute.

14 And *State v. Oxner* 391 S.C. 132, 705
15 S.E.2d51 from 2011, specifically finds that
16 the procedural aspect for Rule 74 applies to
17 circuit court proceedings upon appeal from a
18 criminal conviction in magistrates court, so
19 we therefore feel that the thirty (30) days
20 given by Rule 74 is the appropriate time
21 frame.

22 THE COURT: If Mr. -- anything else?

23 MS. FANT: That's all on the
24 timeliness.

25 THE COURT: Okay. Let's -- Mr. Murphy

1 let me hear you on time.

2 MR. MURPHY: Judge, I disagree. The
3 Rule that she quotes, *"In any case where no*
4 *provision made by statute or these rules of*
5 *procedure..."* ---

6 THE COURT: Which rule are you talking
7 about now, 37?

8 MR. MURPHY: Rule 37 of the criminal ---

9 THE COURT: The criminal procedure?

10 MR. MURPHY: Yes, sir. I am quoting
11 from her brief. (Reading): "...shall be
12 according to the practice as it hereto --
13 heretofore existed in the courts of the
14 State."

15 Judge, criminal appeals have got to
16 be filed, whether it's by the State or the
17 defendant within ten (10) days.

18 She's admitted that they are the
19 appellate, she's admitted that they received
20 notice of the court's ruling. The trooper
21 was right there, the yet they didn't file any
22 post-trial motions and they didn't file it
23 within ten days, as I believe is required on
24 a criminal appeal. That's the practice in
25 the State of South Carolina.

1 And she's trying to then say, 'well
2 there's no criminal statute or there's no
3 procedure.' Well, it's pretty well-settled
4 law that you file a criminal appeal within
5 ten days. And they received notice, but now
6 she's trying to back door that with a civil
7 rule. So we feel that the appeal should be
8 dismissed as a matter of law.

9 THE COURT: Anything in rebuttal?

10 MS. FANT: Yes, Your Honor. I would
11 just point out what statute is he -- is he
12 referring to? The statute that is quoted in
13 his Reply is the one that clearly can't apply
14 to the State by its own Rule. I don't
15 understand if there is no statute and the
16 Rule says you look to this rule in the
17 absence of a statute. I don't see how you
18 can say that it's ten (10) days when there is
19 no statute that tells the State that there's
20 ten days.

21 THE COURT: All right. Setting aside
22 the magistrate court rules, what's the time
23 limit on appeal from a circuit court
24 conviction?

25 MS. FANT: Thirty days.

1 MR. MURPHY: No, no, no, no, no, Judge.

2 In a circuit court conviction, General

3 Sessions, you have ten days.

4 THE COURT: That's what I thought.

5 MS. FANT: Excuse me. Well, of course

6 ---

7 THE COURT: I think it's ten days,

8 isn't it?

9 MS. FANT: You're right, Your Honor,
10 but the State obviously can't appeal a
11 criminal conviction in circuit court.

12 THE COURT: Well, let's don't say
13 criminal conviction, let's just say a
14 criminal matter.

15 MS. FANT: Well, okay the suppression
16 of evidence. There is -- there's no --
17 there's no rule on that either, Your Honor.

18 I was a prosecutor in circuit court. The
19 appellate defense and the AG's office handled
20 all of our criminal appeals, but my knowledge

21 ---

22 THE COURT: I mean, the State is very
23 limited on what they can appeal from a
24 criminal conviction. What are some of those
25 reasons they can appeal?

1 MS. FANT: When in fact the court
2 commits an error of law or suppresses
3 evidence that is material to the State's
4 case.

5 In this instance we believe the
6 court committed an error of law on the
7 *Miranda* issue.

8 THE COURT: So you're saying an error
9 of law or suppresses evidence, but that would
10 have -- that wouldn't happen during the
11 trial, that would be pre-trial.

12 MS. FANT: Correct. This was a pre-
13 trial ruling.

14 THE COURT: Because I don't know of any
15 time the State can appeal as a result of a
16 trial itself -- a jury verdict.

17 MS. FANT: Correct, Your Honor. That
18 -- I do not believe that ---

19 THE COURT: Except possibly
20 prosecutorial misconduct.

21 MS. FANT: Well I ---

22 THE COURT: A directed verdict on
23 prosecutorial misconduct ---

24 MS. FANT: Or juror misconduct and --
25 and, you know, juror buying, that sort of

1 thing obviously. But it is incredibly
2 limited under those circumstances.

3 THE COURT: So I guess trying to
4 eliminate -- trying to understand your
5 argument, you're saying since there's no
6 appeal by the State and any appeal is very
7 limited set by case law the time limits do
8 not apply to you and the statute specifically
9 refer to the defendants.

10 MS. FANT: Correct. Because I think
11 by their very own terms when you read the
12 statutes when it says, 'an appellant shall
13 appeal within ten days of sentence and then
14 notify the prosecution'. If you are the
15 prosecution, the piece of that statute makes
16 no sense. You haven't been convicted of
17 anything, you haven't -- there hasn't been a
18 sentence because it's a pre-trial ruling. I
19 don't see how on the face of it that it can
20 apply.

21 THE COURT: Okay. All right. Let me
22 give it some thought, but let me hear you on
23 the merits of your appeal.

24 MS. FANT: Yes, sir.

25 THE COURT: That I the -- I believe the

1 video did not -- according to the magistrate
2 turn the highway patrolman did not give
3 proper *Miranda* warnings and he dismissed the
4 DUI accordingly. Is that correct?

5 MS. FANT: Correct, Your Honor.

6 THE COURT: All right. Let me hear you
7 on the merits of your appeal.

8 MS. FANT: Thank you, Your Honor.
9 Your Honor, I believe the question was not
10 that the *Miranda* was not on video. It
11 certainly was.

12 The questions raised by Mr. Murphy
13 was that it was not -- the *Miranda* warnings
14 were not given as dictated by the case of
15 *State v Hoyle* 3-97 S.C. 622, 725 S.E.2d 720,
16 which is a court of appeals * from 2012.
17 However, what Corporal McAbee did give as
18 *Miranda* are the appropriate warnings. What
19 he said was, (reading):

20 "You have the right to remain
21 silent." Okay.

22 "Anything that you say can and will
23 be used against you in a court of law."

24 "You have the right to have an
25 attorney present before answering any

1 questions. If you cannot afford one, an
2 attorney will be appointed for you without
3 any costs. Do you understand that?"

4 "You may exercise these rights at
5 any time without answering any questions or
6 making any statements. Do you understand
7 that?"

8 Corporal McAbee, in front of Judge
9 Sessions, brought up both the State an U.S.
10 Supreme Court case where *State v Singleton*
11 284 S.C. 388, 326 S.E.2d 153 from 1985. The
12 court cited a United States precedent in
13 saying that there is no incantation of words
14 for *Miranda*. And when you look at the
15 Supreme Court cases, it's very clear that as
16 long as you get the meaning of the four
17 prongs of *Miranda* across to the defendant
18 that is enough to satisfy.

19 The cases that the State cited in
20 its appeal are all Supreme Court cases.
21 *Duckworth v Eagan* 492 ---

22 THE COURT: Where -- read the return.
23 The magistrate says that he's -- I don't
24 think the magistrate had any problem with
25 where he say, "If you cannot afford an

1 attorney one will be provided him at no
2 cost". The problem was he didn't go forth
3 and say, 'provide prior to any questions, if
4 you so desire'. So he didn't address the
5 questioning issue.

6 MS. FANT: But he had already said ---

7 THE COURT: According to the return. I
8 don't know what actually happened, but
9 referring to the return.

10 MS. FANT: Correct. What -- What they
11 ---

12 THE COURT: So the question is failure
13 to say, 'Hey, we'll get you a lawyer before
14 there is any further questioning' is the
15 fallacy according to the magistrate on the
16 return. Is that correct, Mr. Murphy?

17 MR. MURPHY: Yes, sir, Your Honor.

18 MS. FANT: But he did say it.

19 THE COURT: The notification she is
20 referring to don't address that.

21 MS. FANT: He did say it. That's the
22 problem ---

23 THE COURT: Where did he say it?

24 MS. FANT: In -- in-- he said,
25 (reading): "You have the right to remain

1 *silent anything that you say can and will be*
2 *used against you in a court of law. You have*
3 *the right to have an attorney present before*
4 *answering any questions."*

5 THE COURT: Now, that's not what the
6 return says. The return says, 'The trooper
7 advised the defendant' and I quote, "*That if*
8 *he cannot afford an attorney one will be*
9 *provided him at no cost*" and nothing more.

10 MS. FANT: Your Honor, ---

11 THE COURT: Now, that's just what the
12 return says. I thought -- I wasn't there and
13 there's no transcript, so I don't know.

14 MS. FANT: Well, Your Honor at this
15 point then we would ask that the magistrate
16 be required to amend the return to conform
17 with the recording that we have from the
18 proceeding. The -- what I read to you where
19 he said, 'Before answering any questions' is
20 verbatim what is on the video tape and what
21 was argued during the proceeding.

22 Unfortunately, when the magistrates
23 decide to pick and choose what they are going
24 to put in the return rather than the complete
25 proceedings of what transpired and what was

1 on the video tape, it puts the State in a --
2 you know, at a distinct disadvantage where I
3 know from listening to the tape what -- what
4 was said ---

5 THE COURT: All right. You've
6 transcribed the tape itself?

7 MS. FANT: Yes, sir.

8 THE COURT: Was the tape admitted or
9 offered into evidence?

10 MS. FANT: It was -- it was shown,
11 (affirmative nod). I don't know whether -- I
12 don't think what -- well it couldn't be
13 offered into evidence they hadn't started the
14 trial. This was pre-trial ---

15 THE COURT: Okay. This was prior
16 trial?

17 MS. FANT: Correct.

18 THE COURT: What was -- was the tape
19 given to the magistrate?

20 MS. FANT: They watched it in court.

21 THE COURT: And heard the video?

22 MS. FANT: Correct.

23 THE COURT: Okay. And you've got a
24 transcript of that?

25 MS. FANT: I have the actual video

1 tape.

2 THE COURT: Have you transcribed it?

3 MS. FANT: No, sir. I have not.

4 THE COURT: Okay. Mr. Murphy have you
5 looked -- heard the video? Does it -- does
6 it state what the State says? What Ms. Fant
7 has said?

8 MR. MURPHY: Judge, I mean, I looked at
9 the video probably over a year -- I mean, a
10 year -- whenever we did this trial. And I do
11 recall that the issue was that *Miranda* was
12 incomplete as to what was comp --- what was
13 said, I can't recall off the top of my head.
14 But that -- that was the whole -- the whole
15 issue was that *Miranda* was incomplete.

16 THE COURT: Okay. Well, Ms. Fant is
17 saying the return is in error that he did
18 tell him that -- the trooper did advise him
19 that -- that an attorney would be provided
20 prior to any questions. Is that correct?

21 MS. FANT: That is correct, Your
22 Honor. And I do have the copy ---

23 THE COURT: Well hold -- what I'm going
24 to do is to, okay -- what I'm going to do is
25 I'm going to take it under advisement and I

1 want you to get that recording transcribed
2 and notarized.

3 MS. FANT: Yes, sir.

4 THE COURT: Supply it with Mr. Murphy.

5 MS. FANT: Okay.

6 THE COURT: Okay? Mr. Murphy, y'all
7 review it and see if the return that I am
8 going by is correct or incorrect. Okay?

9 MR. MURPHY: Yes, sir.

10 THE COURT: If you would and I'll be
11 glad for y'all to -- once you get that
12 transcript read it. I'll be glad to receive
13 any written memorandums, very brief
14 memorandums, on that particular issue as
15 whether *Miranda* was proper or improper.
16 Okay?

17 MR. MURPHY: Yes, sir.

18 THE COURT: And I'm not saying the
19 magistrate did anything wrong, it just -- you
20 know, he did the return probably several
21 months afterwards and he did it by memory.
22 Probably -- I don't even know if he looked at
23 the video, but that's neither here nor there.
24 But I think it is only proper to get the
25 video transcribed and y'all can supply me

1 whatever memorandums y'all want to supply.

2 Based upon what was actually said by the
3 patrolman to the defendant.

4 MR. MURPHY: Right. Judge and I quite
5 honestly -- I can't recall ---

6 THE COURT: Well, I'm sure you
7 couldn't. I'm sure the magistrate couldn't
8 either. But she's got the video so let's get
9 it transcribed and see what was actually
10 said. Okay?

11 MR. MURPHY: Yes, sir.

12 THE COURT: And I'll make a decision
13 once I receive that information from you. On
14 both issues, the time and the merits -- if I
15 say your time is proper. If I don't, we
16 won't get to the merits. Okay?

17 MS. FANT: Yes, sir, and thank you.

18 THE COURT: All right. Thank y'all
19 very much.

20 MR. MURPHY: Have a great day judge.

21 THE COURT: All right. Thank you.

22 (HEARING CONCLUDED)

23

24

25

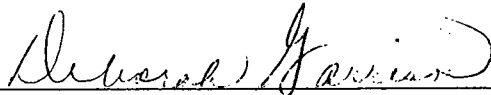
STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on January 12, 2015, before The Honorable J.C. Nicholson, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
September 30, 2015

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 STATE OF SOUTH CAROLINA,) Case No. 2014-CP-08-0010
4 Plaintiff,)
5 vs.) Transcript of Record
6 NORMAN B. DUDLEY,)
7 Defendant.)
8 DATE: July 6, 2015

9
10 B E F O R E:

11 The Honorable J.C. Nicholson, Jr.

12
13 A P P E A R A N C E:

14 MARCUS GORE
Attorney for the Plaintiff

15 CHRISTOPHER J. MURPHY
Attorney For the Defendant

16
17
18 Karen V. Andersen, RMR, CRR, CSR
Circuit Court Reporter
19
20
21
22
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25

1 THE COURT: Let me go get your letter. I left it on
2 the desk. If you would, for the record, state who's here
3 representing who.

4 MR. GORE: My name is Marcus Gore. And I'm here on
5 behalf of the State.

6 MR. MURPHY: Chris Murphy, Your Honor, representing
7 Mr. Dudley.

8 THE COURT: Mr. Murphy, apparently we had this a
9 while back.

10 MR. MURPHY: Yes, sir, in January.

11 THE COURT: The transcript on the Miranda rights.

12 MR. MURPHY: Yes, sir.

13 THE COURT: And looking at the transcript that
14 Mr. Gore had presented to the State, it looks like some of
15 the Miranda rights were given. What's your position after
16 having read the transcript that was provided to the Court by
17 the State; or have you seen it?

18 MR. MURPHY: Judge, I received this on June 29th.
19 And as you recall, you asked them to provide a certified
20 transcript.

21 THE COURT: I understand they couldn't do that
22 because --

23 MR. MURPHY: Right, we had the court reporter that
24 could not provide that. So, Judge, I don't know. My
25 position was two-fold. If you recall, they did not --

1 THE COURT: What I don't recall is what's the
2 significance of the Mirandized rights? Did they use some
3 statement the person made in the DUI or -- I mean, so it
4 violated Miranda, so what? Only thing that's going to
5 entitle you to is suppression of evidence.

6 MR. MURPHY: My position is that they violated the
7 statute because they had to have Miranda on the videotape as
8 required by the statute. And the fact that they only had
9 half a Miranda --

10 THE COURT: What did they use? Did they use
11 statements against him or use observations?

12 MR. MURPHY: Judge, we never got to a trial.

13 THE COURT: Pardon?

14 MR. MURPHY: I'm sorry. We never got to a trial.
15 The court dismissed the case.

16 THE COURT: Okay. Talking about the lower court?

17 MR. MURPHY: The magistrate dismissed the case. And
18 then they didn't file notice of the appeal for almost 30
19 days. My argument to you at the time was that they didn't
20 timely file the appeal because they had 10 days pursuant to
21 the appeal from the statute that governs appeals for
22 magistrate's court.

23 THE COURT: Okay.

24 MR. MURPHY: That was my first argument. And then
25 you said, well, let's listen to the argument for the state.

1 And then my argument at that point, Your Honor, was that
2 Miranda was insufficient as a matter of law and they couldn't
3 argue that, and asked you to uphold the --

4 THE COURT: I know the case is on dismissal when the
5 video is not properly operating or not taken and they haven't
6 filed the affidavit, et cetera, and the case is dismissed.
7 Any cases dismissed because of Miranda rights were not given
8 or not taped. Because, traditionally, in criminal court, if
9 you violate the Miranda, all that entitles you to is whatever
10 evidence needs to be suppressed, i.e., confessions.

11 MR. MURPHY: Judge, what we argued was -- and again,
12 I don't have my file, Judge, because I moved everything to
13 off storage and I couldn't find it when I received notice of
14 this. But my argument was pursuant to the DUI statute, they
15 had to do certain things, one of which is they had to
16 Mirandize on video. My argument is that they have not. So,
17 therefore, they have violated the statute.

18 THE COURT: Do you have any cases that warrant
19 dismissal of that basis, is my question?

20 MR. MURPHY: Judge, I mean, you could look at the
21 town Mount Pleasant -- I can't think of the defendant's
22 name -- where that's a case that's right on point. It
23 follows the statute, says, if you don't do these three things
24 on video, then dismissal is proper. My argument is Miranda
25 is not on video.

1 THE COURT: Okay. All right. Anything else?

2 MR. MURPHY: No, sir.

3 THE COURT: You know the site for the Mount Pleasant
4 case?

5 MR. MURPHY: Not off -- I thought I argued it -- I
6 thought it was in the clerk's file, Judge.

7 THE COURT: It may be. Okay.

8 MR. MURPHY: In their return or in their appellate
9 brief, they tried to argue -- I think they were cited in that
10 case.

11 THE COURT: Your memorandum is in here. I
12 apologize. I should have read it, but I didn't have the file
13 for this morning. Okay?

14 MR. MURPHY: Yes, sir.

15 THE COURT: Let me see what case. Talking about
16 Town of Mount Pleasant vs. Roberts?

17 MR. MURPHY: I believe that's it, Your Honor.

18 THE COURT: 2011?

19 MR. MURPHY: Yes, sir.

20 THE COURT: I thought that case was about the Town
21 of Mount Pleasant not even having video cameras in the car.
22 Well, that's the case I'm familiar with it.

23 MR. MURPHY: And then there's a subsequent case that
24 should be cited somewhere in there, Judge, where they used
25 your ruling because they did not videotape. And the statute

1 requires all three things. Field sobriety test has to be
2 videotaped and the defendant has to be mirandized on
3 videotape at the incident site. And my argument, Judge, if
4 you didn't have the Miranda, then you didn't comply with the
5 statute.

6 THE COURT: Okay. Anything else?

7 MR. MURPHY: No, sir.

8 THE COURT: Thank you very much.

9 Yes, sir, Mr. Gore.

10 MR. GORE: Okay. Your Honor, thank you very much.
11 I guess I will address all the issues because, honestly, I
12 was not here last time for the previous hearing that Ms.
13 Feign argued. So I'm not exactly sure where some things
14 stand, but I guess let me deal with the timing issue first on
15 the 10 days for appeal. We believe the statute -- and it's
16 set forth in our response that we made to the defendant's
17 motion or his response -- that we believe the statute that
18 governs the timeliness of appeals is not applicable here.

19 It's clear in the language of it that it's for
20 defendants who have been convicted. Uses such terms as:
21 After conviction, the 10 days begins to run and you are
22 supposed to serve a copy on the prosecutor. It's clear
23 that's intended for a defendant, not for the State.

24 There is no statute on point about the State's right
25 to an appeal. And that makes sense because our case law is

1 clear that the State's right to appeal is governed by case
2 law.

3 THE COURT: What time frame -- on your argument, you
4 have no limitation on time?

5 MR. GORE: No, we believe it's 30 days, Your
6 Honor.

7 THE COURT: You think it's 30 days?

8 MR. GORE: We believe it's 30 days because the
9 rules -- rule about timing for appeals says when there is no
10 rule on point --

11 THE COURT: Why would I give you 30 days when the
12 defendant doesn't have 10 days? What's fair about that?

13 MR. GORE: I don't disagree there's a difference
14 there. And, actually, I would point out that the legislature
15 is actually considering a bill that would extend -- change
16 the statute to 30 days for the defendant. Perhaps they
17 recognized that inconsistency. It actually is up for
18 consideration right now in the House because the legislature
19 has seen fit to do it that way. I don't know why, but --

20 THE COURT: But you are under the statute. Why
21 wouldn't you be under the statute of 10 days?

22 MR. GORE: Well, the statute that we are talking
23 about here -- let me make sure I can give you the correct
24 cite here, is 18-330. And it says that the appellant within
25 10 days after sentence shall file a notice of appeal. Well,

1 the State can't file after sentence because the State's never
2 sentenced.

3 THE COURT: I understand. But you got a dismissal
4 which would be the same as dismissal as far as appeal is
5 concerned. You've got a ruling against you.

6 MR. GORE: Correct. And it says a person convicted
7 may appeal his conviction. Again, that can't be the State.
8 I think whether it's a drafting error or the legislature
9 chose to do it this way and treat the State and defense
10 differently, they've done it that way. And the statute
11 clearly gives the defendants 10 days. And perhaps that's
12 because of its appeals for magistrate court, the idea that
13 these things need to get moving, keep the ball rolling. But
14 the prosecution's right to appeal, to be honest, I would
15 agree with you, there's nothing concretely in the statute or
16 the rules that says what the time limit is.

17 We are not proposing it's an unlimited time limit by
18 any means. But where there is none, we have to look to fill
19 in the gaps. And what our position is that you look in the
20 civil rules, which this is a civil proceeding today, even
21 though it's an appeal from a criminal matter, we are aware
22 under the civil rules today, and the civil rules talk about
23 the 10 days or 30 days --

24 THE COURT: What do the criminal rules say?

25 MR. GORE: Criminal rules are silent as to time for

1 appeal. They don't have anything about that. So there is --
2 I don't deny that there is an inconsistency there. But the
3 statute says what it says about the defendant's right to
4 appeal. And the State, to the extent there is a hole, we
5 think we can fill it in with the civil rules.

6 But I would also point out, Your Honor, it is clear
7 that the State's right to appeal is not governed by statutes.
8 It's not statutory. That's State vs. McKnight. And I can
9 give you the cite for that if you need it. Because -- and
10 that makes clear no matter -- even if you were to say that
11 statute should apply to us, it can't, because the State's
12 right is governed by case law. And, unfortunately, we don't
13 have a case that says how long the State has to appeal.

14 THE COURT: Well, I will assume that's because, as
15 you said to begin with, the State in a criminal case doesn't
16 have the right to appeal the conviction.

17 MR. GORE: True. Doesn't come up very often.

18 THE COURT: This is a technical issue that you have
19 the right to appeal.

20 MR. GORE: You are right, Your Honor.

21 THE COURT: Anything else?

22 MR. GORE: Sure. Well, let me address the merits on
23 the actual Miranda. The transcript that I provided to you is
24 a transcript only of the portion that I believe that there's
25 some dispute about. And that's based on the defendant's

1 reply. I believe -- and I think this was argued last time.
2 There are basically four prongs of Miranda. I don't think
3 there's any dispute that the first three were given. I don't
4 purport that the transcript I gave you is the entirety of the
5 warning. If you want to see that, it's on the video that we
6 provided, probably only 30 seconds long. But the first three
7 I think were given clearly. And the reason I say that is the
8 defendant's return makes clear his argument is about the
9 fourth prong, about the right to counsel. That being the
10 area we are in., So that's the part I transcribed for you.

11 And to be honest, Your Honor, I don't think there's
12 that much of a dispute between the parties as to what was
13 actually said. What I say in mine is that, as I understood
14 it, and again, this is my translation of it, you have a right
15 to have an attorney present before any questions. If you
16 cannot afford one, one will be appointed to represent you
17 without any cost. And he asked, do you understand that? You
18 may exercise these rights at any time, not answer any
19 questions or make any statements. Do you understand that?

20 What Mr. Dudley's attorney in his reply says is that
21 the wording that we gave that was inaccurate, his translation
22 of it -- and this is paraphrased, I think, because of the
23 pronouns that he used, was that the officer said, if he
24 cannot afford an attorney, one will be provided to him at no
25 cost.

1 I don't think the substance of those two warnings
2 are different in such a manner that matters. And we
3 presented -- I won't go over this in great detail, but in our
4 original appeal, going back to United States Supreme Court
5 and our state Supreme Court has said over and over, there is
6 no magic words you have to say for Miranda. You don't have
7 to follow some exact script every single time, as long as you
8 have a reasonable interpretation and that defendant
9 understood what he was being advised of.

10 And as far as the fourth prong, the fourth prong is,
11 was he advised that he had a right to counsel? And I believe
12 that based on the transcript that I provided to you, that he
13 absolutely was advised, that he had been told, yes, he did
14 have the right to counsel. And whether or not he used the
15 specific formulation that was laid out in the Hoyle case,
16 which is, I think, what the defendant originally cited to the
17 trial judge, I think is inconsequential. There are no exact
18 magic words you have to use every time, as long as you have
19 the correct -- the understanding.

20 And I think United States Supreme Court has said in
21 Flood vs. Powell, the inquiry is simply whether the warnings
22 reasonably conveyed to a suspect his rights as required by
23 Miranda. So that's the touchstone for what we are looking
24 at.

25 And then finally, Your Honor, on the issue of what

1 you do when you do have an incomplete Miranda, Town of Mount
2 Pleasant is not a Miranda case. I do believe -- and I don't
3 know these off the top of my head, but I think there are
4 cases where the case has been dismissed for failure when
5 there was no Miranda that was recorded. That's not the
6 situation we have here. We -- obviously, if we are missing
7 something, we are missing one piece of it, but I don't think
8 we are. But even -- I don't think that is automatically the
9 remedy. The case that the defendant always points to for
10 what is the remedy when you have noncompliance with the
11 videotaping statute is Suchenski. And Suchenski talks about
12 what happens.

13 THE COURT: What's your cite on that; do you know?

14 MR. GORE: I don't. It's city of Rock Hill vs.
15 Suchenski, S-u-c-h-e-n-s-k-i.

16 And that case makes clear that -- that case,
17 ultimately the Supreme Court upheld the dismissal, pretrial
18 dismissal of the DUI for noncompliance with the video. But
19 it makes clear that doesn't have to be the remedy. You
20 can -- I think as you cited earlier, you can just use good
21 old-fashion suppression. If we get something that turns out
22 as a result of a bad Miranda warning, a confession that comes
23 in or something like that, then you can suppress that. You
24 don't play that part of the video. You do what you normally
25 do.

1 Just because it's a DUI, you don't have to treat it
2 any differently. So even if you do have a violation of that
3 statute, the case law doesn't require that dismissal. You
4 still can proceed with a normal suppression like you would in
5 any type of other case.

6 But, again, I think from the beginning, our point is
7 we think that there would be no reason to suppress this
8 video. The Miranda warnings that were given were absolutely
9 sufficient to meet the test under Miranda.

10 THE COURT: Thank you, Mr. Gore.

11 Mr. Murphy, anything you want to add briefly?

12 MR. MURPHY: Judge, I just think that the statute is
13 clear that it's titled appeals from criminal case in
14 magistrate's court. It's 10 days.

15 I used to be a solicitor. I practiced law a long
16 time. 10 days is 10 days. It's not 30 days.

17 But Suchenski case, Your Honor, there was a case
18 after it. Again, I apologize. I think I quoted it in my
19 initial reply. There was a case after Suchenski in which, if
20 those three things weren't done, then dismissal of the charge
21 was proper.

22 Miranda, the prongs of Miranda as in the Hoyle
23 decision, Judge, require three essential prongs. The first
24 of the third one is, if you can't afford a lawyer, one will
25 be provided to you prior to questioning. That's an essential

1 element or the prong of Miranda. They didn't do it here.

2 THE COURT: Well, what he has given to me, and I
3 haven't listened to it, says you have a right to have an
4 attorney present for any questions. Now, have you listened
5 to it? I have not listened to it.

6 MR. MURPHY: Judge, like I said, I just received
7 this. I would object to the transcript even being part of
8 this argument, of this record, because, one, I haven't had a
9 chance to view it. I wasn't provided a copy of the disk.

10 THE COURT: I'm going to give you the disk and give
11 you an opportunity to see if this is correct or not
12 correct.

13 MR. MURPHY: Judge, are we going to do that today?

14 THE COURT: Let me just ask you a question. You
15 cited the case, I don't know which one it was, the three
16 items that need to be done on the video. And let me just
17 tell you what concerns me. You may be absolutely correct.
18 Here we sit in a DUI, DUI first, the defendant is subject to,
19 what, 30 days in jail and a fine?

20 MR. MURPHY: Yes, sir.

21 THE COURT: And you are trying to sit here and
22 convince this Court that because Miranda rights weren't
23 given, that the charge is supposed to be dismissed? If you
24 are trying a capital murder case and Miranda rights were not
25 given, only thing that would happen would be suppression, not

1 a dismissal. I've got a real problem with that. I've got a
2 real problem with that.

3 MR. MURPHY: Judge, I understand your argument.
4 However, Suchenski, and there's a case that follows it that
5 says if you don't -- you, State -- do not comply with these
6 three things, one of which is read Miranda on videotape,
7 dismissal is proper. It's specifically cited and deals with
8 this statute and this crime. So, I mean, it says
9 dismissal.

10 THE COURT: That's absolutely absurd.

11 MR. MURPHY: Judge, we do some absurd things up at
12 the legislature.

13 THE COURT: That's absolutely absurd.

14 MR. MURPHY: We do some absurd things.

15 THE COURT: Yeah, we do. That doesn't mean I have
16 to.

17 MR. MURPHY: I understand. But I think the case law
18 after Suchenski, the statute, it was the intent of the
19 legislature that you had strict compliance with this statute
20 in these situations.

21 THE COURT: Okay.

22 MR. MURPHY: But, Judge, I don't have time today to
23 listen to the video.

24 THE COURT: When you get time, let me know and write
25 me a letter and tell me what you can determine on this.

1 Y'all go look at it and see what you can determine. I'm not
2 going to waste my time listening. As a matter of fact, I
3 couldn't get it to run on the computer. I don't know what's
4 wrong with it.

5 MR. MURPHY: Judge, again, if you couldn't view it,
6 they couldn't provide a certified copy of the transcript as
7 you required, we have to look at the return of the
8 magistrate.

9 THE COURT: Do you have a copy of this letter to me
10 June 26th?

11 MR. MURPHY: I just received it, yes, sir.

12 THE COURT: He specifically tells you the time frame
13 to look at 1:57, 1:58, 15 through 4. Listen to it and see if
14 this is correct or incorrect. Okay?

15 MR. MURPHY: And just write the Court and let you
16 know?

17 THE COURT: Sure. I'm going to give this to you.

18 MR. MURPHY: I have a copy of the letter.

19 THE COURT: I want to know if you think, as officer
20 of the court, this is a proper interpretation what was on the
21 video. That's all I'm asking you to do.

22 MR. MURPHY: I will get back with the Court.

23 THE COURT: Get back to me. And I will make a
24 decision after I've read the memorandums and read those cases
25 where the three prongs have elevated DUI over and above

1 capital punishment.

2 MR. GORE: You have to have heard it.

3 MR. MURPHY: This is just the video. I will look at
4 it.

5 THE COURT: That's the video. He gave me the video.
6 He doesn't have a transcript.

7 MR. MURPHY: I was thinking it was an audio
8 recording, not just a video.

9 THE COURT: No, that's the video.

10 MR. MURPHY: So I have the video.

11 THE COURT: You've got the video?

12 MR. MURPHY: Yeah, sir. I will look at it again.

13 THE COURT: Take a look at it. See if that's proper
14 interpretation from his perspective or not.

15 MR. MURPHY: I thought you were talking about audio
16 recording.

17 THE COURT: No, that's the video itself. Thank you
18 very much.

19 MR. GORE: Thank you, Your Honor.

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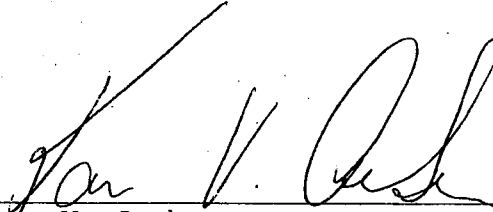
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 20th day of September, 2015, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

Form 458
Rev. 9/10

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME <u>Norman</u>		MIDDLE NAME <u>Brian</u>		LAST NAME <u>Ridley</u>	
STREET AND NO. <u>9999 Dorchester rd</u>		CITY <u>S.ville</u>		STATE <u>S.</u>	ZIP CODE <u>29485</u>
STATE LICENSED <u>NC</u>	DRIVER'S LICENSE NO. <u>28875413</u>		CDL ☐ YES ☒ NO	DRI. LIC. CLASS <u>C</u>	
VEH. LIC. NO. <u>NONE</u>	STATE	MAKE OF VEH <u>FORD</u>	YEAR <u>13</u>	COMM. VEH. ☐ YES ☒ NO	HAZ. MT. ☐ YES ☒ NO
		HAZ. MT.	MOPED	ATV/UTV	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT <u>CTC</u>		STREET AND NO. <u>223 N. Live Oak Dr</u>				
DATE <u>01</u>	OF <u>09</u>	TRIAL <u>13</u>	TIME OF TRIAL <u>2:00</u>	CITY <u>Moncks Corner Sc</u>	STATE <u>S.</u>	ZIP CODE <u>29461</u>

VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO		VIOLATION SECTION NO. <u>56-S-2930</u>
---	--	---

OWNER OF VEHICLE <u>N. Dudley</u>	DATE OF ARREST <u>12/15/12</u>
ADDRESS OF OWNER <u>S.ville Sc</u>	DATE OF VIOLATION <u>12/15/12</u>

BAIL DEPOSITED <u>JAIL</u>	NAME OF ARRESTING OFFICER <u>E.D. Mcabee</u>	RANK <u>CPL</u>
-------------------------------	---	--------------------

DESCRIPTION OF ACCUSED		COUNTY <u>Berk</u>	NUMBER <u>00</u>
RACE <u>W</u>	SEX <u>M</u>	BIRTH DATE <u>10/19/83</u>	HT. <u>5'11"</u>
DATE BAIL REC'D. BY		BADGE <u>159</u>	TROOP <u>6</u>

CASE BEFORE		MAGISTRATE ☒ MUN. COURT ☐	
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐		TIME OF VIOLATION MILITARY TIME <u>0205</u>	
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE.		WEATHER <u>C</u>	

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☒		MILES <u>10</u>		N <u>1</u>	E <u>2</u>	S <u>8</u>	W <u>4</u>
DISPOSITION		CITY <u>MC</u>		CODE <u>1</u>			

TRIAL BY: TRIAL JUDGE ☒ JURY ☐		DATE OF TRIAL IF ANY <u>12/31/13</u>			
VERDICT OF TRIAL IF ANY		Lat <u>0</u>			
JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED	Long <u>0</u>

COMMITTED TO:		Vehicle Searched <u>N</u>	Arrest as Result of Collision <u>N</u>	OFFENSE CODE <u>99</u>	B.A. LEVEL <u>Refused</u>
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CERTIFIED CORRECT <u>[Signature]</u>	DATE <u>12/31/13</u>	F 594836
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ENFORCEMENT RECORDS COPY



South Carolina Department of Public Safety

OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S.C. 29016
Tel: (803) 896-7965 • Fax: (803) 896-7967

June 26, 2015

The Honorable J.C. Nicholson, Jr.
100 Broad Street, Suite 106
Charleston, SC 29401

RE: State v. Norman B. Dudley
C/A No. 2014-CP-08-10

Dear Judge Nicholson:

The State's appeal in the above-referenced DUI case was heard before you on January 12, 2015. Assistant General Counsel Catherine Fant from the South Carolina Department of Public Safety ("SCDPS") appeared on the State's behalf. Ms. Fant has been out on extended medical leave since March, and I have been assisting with some of her pending cases as a result.

This appeal centered on the sufficiency of Miranda warnings given to the defendant. A review of the Department's file indicates that you instructed the State to secure a certified transcript of the Miranda warnings that were given to Respondent.

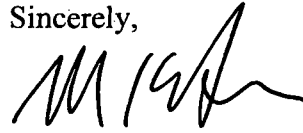
Accordingly, Ms. Fant sent a copy of the dash-cam video to a court reporter in order to have a transcript prepared. As reflected on the enclosed letter (received by SCDPS on June 19, 2015), the court reporter recently advised me that she is unable to prepare a transcript because of issues with the clarity of the audio.

Consequently, I have taken the liberty of preparing a transcript based on my review of the video and have enclosed a copy thereof along with the video itself for your review. The Miranda warnings encompass approximately 16 seconds of the video. Based on the chronological time/date stamp located in the upper right hand corner of the video, the warnings begin at 1:57:49 and run through 1:58:05. The relevant content can also be accessed at the 4:15 through 4:31 marks of the video's displayed running time.

I would note that the parties are largely in agreement as to the words used by the officer. Respondent's reply indicated that the "Trooper advised the Defendant 'that if he cannot afford an attorney one will be provided to him *at no cost....*'" (Emphasis in original.) While this does not match the State's transcript exactly, the substance of the two versions is not markedly different. I would invite Respondent to prepare his own transcript for comparison by the court.

This matter has been set for a hearing on July 6, 2015, although it does not appear that one is necessary under the foregoing circumstances. I would welcome further instruction from the court as to whether a ruling can go ahead and be made based on the information provided by the parties to date or if the July 6th hearing is nonetheless required.

Sincerely,

A handwritten signature in black ink, appearing to read 'MKG', with a stylized flourish at the end.

Marcus K. Gore
Assistant General Counsel

enc.

cc: Christopher J. Murphy, Esq. (w/o CD)

/mkg

6/1/15

Marcus Gore
Office of General Counsel
S.C. Department of Public Safety
Post Office Box 1993
Blythewood, S.C. 29016

Re: State vs. N. Dudley, 12/15/12

Mr. Gore,

The audio on the disk your office provided me was distorted and inaudible for me to transcribe. I sent the audio to a video specialist, in an attempt to enhance the sound, but he was unsuccessful.

I am returning the disk to you. I'm sorry I could not have been more help.

Sincerely,

Andrea Shorb, CR

Lakelands Reporting
Post Office Box 555
Laurens, South Carolina 29360

RECEIVED

JUN 19 2015

SCDPS
Office of General Counsel

State's Transcript of Miranda Warnings Given to Norman B. Dudley on December 15, 2012

1:57:49-1:58:05 (chronological date/time stamp)

4:15-4:31 (CD time)

Cpl. McAbee: What I'm gonna do before I do anything else is tell you that you have the right to remain silent, okay. Anything that you say can and will be used against you in a court of law. You have a right to have an attorney present before any questions. If you cannot afford one, one will be appointed to represent you without any cost. Do you understand that?

N. Dudley: Yes sir.

Cp. McAbee: You may exercise these rights at any time, not answer any questions, or make any statements. Do you understand that?

N. Dudley: Yes sir.

From: Nicholson, J. C. Law Clerk (Charles Patrick) <JNicholsonLC@sccourts.org>
Sent: Wednesday, July 08, 2015 11:11 AM
To: chris@murphylawfirmllc.com; Gore, Marcus K.
Subject: RE: State v. Norman Dudley 2014-CP-08-2010

Chris and Marcus,

Judge Nicholson has decided to rule on this matter without reaching the Miranda issue. He states that because the statute provides the appellant 10 days to file a notice of appeal in case of a conviction, that it would be absurd and a violation of equal protection to not apply those same rules to the prosecuting agency. Chris, can you please prepare a Proposed Order reflecting this ruling?

Sincerely,

Charlie

Charlie Patrick
Law Clerk to The Honorable J.C. Nicholson, Jr.
Circuit Court Judge
100 Broad Street
Charleston, South Carolina 29401
Tel: (843) 958-5047
jnicholsonlc@sccourts.org

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-08-00010

RECEIVED

SEP 15 2016

SC Court of Appeals

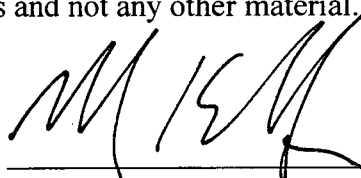
The State.....Appellant,

v.

Norman B. Dudley.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Blythewood, SC 29016  
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Attorney for Appellant

Date: 1 September 2016