

For these reasons, Davis' breath test site video recording was improperly suppressed and should be reversed.

CONCLUSION

For the reasons stated above, this Court should reverse the rulings of the lower courts and remand for trial. The March 31, 2010, affidavit was only submitted to Davis in error and not as a result of any intent to mislead or misrepresent. Further, the matter was cured by both the subsequent submission of the April 5, 2010, affidavit, and representations by the City as to the validity of this affidavit. In addition, there is no authority for an "Affidavit for Failure to Produce Videotape" to irrevocably bind a governmental entity, such that correction could never be made, to an incorrectly submitted affidavit. Davis' breath test results were scientifically reliable and accurate as determined by the SLED implied consent expert, and her breath test site video complied with all relevant statutory safeguards and requirements and should not have been suppressed. Because the suppression of the breath test result and breath site video severely compromised the prosecution's case, the ruling of the trial court should be reversed and remanded for trial.

Respectfully submitted,



David A. Fernandez, Esquire
Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
Tel: (803) 737-4242
Attorney for Appellant

September 19, 2012

RECEIVED

OCT 30 2012

SC Court of Appeals