



ALAN WILSON
ATTORNEY GENERAL

June 14, 2017

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Sean Robert Kelly
Appellate Case No: 2016-000875

RECEIVED
JUN 14 2017
SC Court of Appeals

Dear Ms. Kitchings:

I received your letter dated June 12, 2017 requesting copies as well as proof that the audio of the magistrate's hearing and the DVD of the roadside traffic stop were presented to the circuit court. Please find included with this correspondence a copy of the magistrate's return indicating that "all evidence, including the audio of the trial" were attached to the return, which by statute is filed with the circuit court in its appellate capacity. I have also enclosed copies of both the audio and the video. If I may provide any further assistance to the Court, please let me know.

Sincerely,

Rancee Saunders
Assistant Attorney General
S.C. Bar No: 100073

RS/ab

cc: Heath Preston Taylor, Esquire (without enclosures)



STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF YORK

RETURN TO NOTICE OF APPEAL

CASE NUMBER: 2015-CP-46-03747

STATE,

VS.

DEFENDANT,

Sean Kelly

Ticket: 68360GM

Charge: Driving Under the Influence, 1st offense

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JUN 14 2017

SC Court of Appeals

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2016 JAN 21 PM 3:53

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The above action came before the Court on September 17, 2015 at 10:00am as a bench trial.

Assistant Solicitor Bill Mckinnon was the prosecutor for the State and Kevin Tolsen and Deputy Stagner were witnesses for the State. The defendant was represented by Attorney Michael Brown.

On September 11, 2013, the defendant was stopped on I-77 by Investigator Tolsen with the 16th Solicitor's office. The initial stop was accomplished by the use of emergency blue lights. Following the initial traffic stop, Deputy Stagner arrived on the scene. Tolsen's car had no video recording equipment. Stagner initiated a DUI investigation and subsequently arrested the defendant for DUI and transported him to the Moss Justice Center in York, SC. After all testimony and evidence had been presented and after the State rested, the defendant made a motion for a directed verdict of not guilty. After some discussion, it was agreed by all parties to delay a ruling to a later date. The next date for all parties was on November 25, 2015 in my office at which time motion to dismiss was granted.

In this case, the important statutory provision is 56-05-2953 (A). "The video recording at the incident site must: (i) not begin later than the activation of the officer's blue lights." This case involves a

traffic stop accomplished with the activation of blue lights, however, we have no incident site video that complies with this mandatory provision.

The State has argued that the non-compliance should be excused under the exceptions found in 56-5-2953(B). However, this court finds that argument is without merit, where none of the exceptions apply to the facts of this case.

The video provided by Deputy Stagner does not satisfy 56-5-2953(A), where the video begins recording only after the traffic stop has been entirely completed. The statute unambiguously establishes a point in time when the video recording must begin, stating "The video recording at the incident site must: (i) not begin later than the activation of the officer's blue lights." 56-5-2953 (A)(1)(a)(i).

Here, the officer's blue lights, refers to Tolsen, the officer whose blue lights were activated in effecting the traffic stop. The only video produced by the state, fails to begin recording at the statutorily required time, violating the clear mandate provided by 56-5-2953 (A).

Moreover, none of the exceptions from 56-5-2953 (B) apply in this case. There are no facts indicating: 1) the video equipment was inoperable, or 2) that it was impossible to produce the videotape because the defendant either needed emergency medical treatment or exigent circumstances existed. 56-5-2953(B) further states, "In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrest, where an arrest has been made and the video recording equipment has not been activated by blue lights."

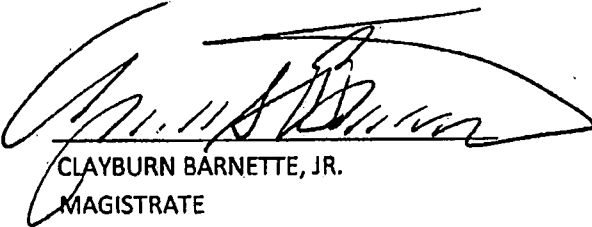
At first glance it may seem the Stagner video implicates this section, "where an arrest has been made and the video recording equipment has not been activated by blue lights," This argument would defeat the clear legislative intent found in the other mandatory provisions of the statute. "In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." State v. Henkel (S.C., 2015).

Rather, this exception concerns situations that do not involve the normal traffic stop, which is accomplished by blue lights. This exception recognizes, there are certain times, where it is not practical for the video to begin upon activation of blue lights. Unlike the subsection (B) scenarios, this case clearly involves a blue light traffic stop, and accordingly must comply with mandatory requirement of 56-5-2953(A)(1)(a)(i). Any attempt to excuse their noncompliance through would defeat the overall intent of the statute, and subsection (A) would be rendered meaningless.

Here, the state has failed to produce a video in compliance with Section 56-5-2953 (A), and none of the exceptions of Section 56-5-2953(B) apply. Strictly construing the requirements of this statute and applying the clear case law of this state, the court must dismiss this prosecution for an alleged violation of Section 56-5-2930.

Please find enclosed all evidence, including the audio of the trial.

If I can be of any further assistance, please do not hesitate to call.


CLAYBURN BARNETTE, JR.
MAGISTRATE
YORK COUNTY CENTRALIZED DUI COURT

December 7, 2015

The State v. Sean Robert Kelly
DVDs enclosed
Please Do not Bend