

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Andrew Ryan Maupin,)
)
 Appellant,)
)
 vs.)
)
 City of Rock Hill,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-46-01617

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 SC Court of Appeals
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 DAVID HAMILTON
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ORDER

This is an Appeal by Appellant from his conviction in the Rock Hill Municipal Court of Driving Under the Influence; less than .10; first offense. Appellant was tried in his absence on August 22, 2016, however, the case was reopened and Appellant was tried and found guilty at a bench trial on May 19, 2017.

This Appeal was heard by the undersigned on November 7, 2017. Appellant was represented by Michael Brown, Esq., The City by Christopher Barton, Esq.

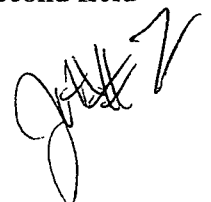
The issue on appeal is set forth on the Notice of Appeal as "[t]he lower court erred in failing to dismiss the charge against the Defendant; the error being that all field sobriety tests were not videotaped or recorded." The nub of this ground is a second field type sobriety test was administered to Appellant at the Rock Hill Law Enforcement Center after Appellant had been administered a field sobriety test at the incident site and a breath test at the Law Enforcement Center.

Appellant argues that since the third test (second field type test termed a drug recognition test) was not video recorded, he is entitled to dismissal of the driving under the influence charge.

The City bases its argument on the requirement that courts give strict construction to a statute absent an ambiguity in the statute (*See State v. Gordon*, 414 S.C. 94, 777 S.E.2d 376 (S. Ct. 2005)). The City argues that since the statute, at issue, states that videotaping must take place solely at two places, the incident site and the breath test site, the third test, conducted at the Rock Hill Law Enforcement Center was not required to be videotaped. Understanding that a statute's "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or export the statute's operator," (*Gordon*, 414 S.C. at page 98), the Court does not believe it is restricted to giving a statute a tortured interpretation. By that, I mean that the legislative's intention is that subsequent to one being stopped by law enforcement, the driver is subject to two tests to determine whether or not his or her facilities to operate a motor vehicle is materially and appreciable impaired, subject to a urine test as set forth herein below.

A reading of Chapter 5 of Title 56 reveals that the legislation has provided for the two tests set forth in Section 56-5-2953. A breath test (Section 56-5-2946) and a field sobriety test (Section 56-5-2948). Additionally, Section 56-5-2950 provides the sole option for further testing if a law enforcement officer believes a person is "under the influence" of drugs other than alcohol. The statute specifically provides that, at this point in the investigation of a driving under the influence of drugs or alcohol arrest, an officer may order a urine sample. The plain language of Section 56-5-2950, directs that the officer in this case's only option, was to order a urine sample, not a second field type sobriety test. Once the officer invoked the provision of the implied consent statute (Section 56-5-2950), all subsequent events were predicated on the result of the breath test.

Under the City's theory, a driver could be given a field sobriety test at the incident site, which is videoed and then take the driver to a Walmart parking lot and administer a second field



sobriety test which would not need to be videoed. The parking lot would not be the incident site nor would it be the breath test site. Counsel for the City acknowledged at the hearing that under the City's theory, the Walmart test would be admissible even though not videoed because it was not conducted at the incident site or the breath test site. This is, in the Court's opinion, a tortured application of Section 56-5-2953, as the Chapter 5 Sections must be read in pari materia.

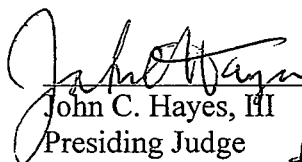
The Court has not been directed to any statutory authority for a drug recognition test of the type administered to Appellant.

Based on the above, the undersigned finds the court below erred in considering the results of Officer Sean Barley's drug influences evaluation.

I find that Appellant's remedy is not dismissal as here the State did comply with Section 56-5-2953. Therefore, City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (S.C. 2007) does not apply. Appellant's remedy is a remand for a new trial in keeping with the holdings herein above.

This case is remanded to the Rock Hill Municipal Court.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #3

November 17th, 2017
York, South Carolina