

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 City of Rock Hill, )  
 )  
 Plaintiff/Respondent )  
 )  
 v. )  
 )  
 Andrew Ryan Maupin, )  
 )  
 Defendant/Appellant )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 C.A. No.: 2017-CP-46-01617

ORDER

RECEIVED  
 DEC 27 2017  
 SC Court of Appeals

FILED-RECEIVED  
 2017 DEC -7 PM 3:12  
 DAVID HAMILTON  
 C.C.C.P. & GS  
 YORK COUNTY, SC

The City of Rock Hill has filed a Rule 59(e) motion asking the Court to alter or amend its Order of November 17, 2017.

The City's motion points out correctly that the Court went outside the grounds stated by Appellant in his Notice of Appeal. Therefore, the Court grants the City's Motion to Alter and Amend and does so herein below.

As noted in the November 17, 2017 Order, the legislature has established a statutory scheme in Chapter 5 of Title 46. As noted in the November 17, 2017 Order, the scheme provides for the video taping of certain statutory authorized test. As noted in the November 17, 2017 Order, the test at issue here (drug recognition test) is not addressed in Title 56 per se. A reading of Section 56-5-2953, S.C. Code, 1976, as amended, when read in light of the requirement that statutes are to be interpreted in pari materia leads to the conclusion that an arrestee's conduct during field sobriety tests must be videoed. Section 56-5-2953 provides, in the Court's view, videotaping of "any field sobriety test." (Section 56-5-2953(A)(c)(ii).

Attached to the Municipal Court's Return is a "South Carolina Drug Influence Evaluation," cataloging the test and test results of the drug recognition test. While the test is

broader than the test usually administered at the incident site, it includes some, if not all, of such test. Certainly the City cannot argue the test was not a field sobriety test simply because it was administered at the Law Enforcement Center and not at the incident site.

As noted in the November 17, 2017 Order, conducting a field sobriety test at a location other than at the incident site and thus avoiding the necessity of videotaping the test, could create a subterfuge<sup>1</sup> which ignores the statutory scheme and deprives the arrestee of the beneficial safeguard the legislature has offered him or her with the videotaping requirement.

I find the field sobriety test for drugs given post the breath analysis of Appellant, should have been videotaped. Since this was not done, the City has violated the clear intention of the legislature as set forth in Section 56-5-2953, S.C. Code of Laws, 1976, as amended.

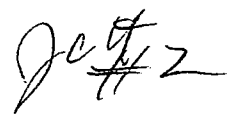
The Court realizes that the holding below is contrary to its finding in the November 17, 2017 Order. However, the city has caused the undersigned to rethink the entire case and now finds, for reasons above, the City did not fully comply with Section 56-5-2953. A second field sobriety test, regardless of name or location, must be videotaped. That was not done in Appellant's case.

Therefore, pursuant to City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (S.C. 2007), the conviction of Appellant for driving under the influence is reversed, and the charge dismissed.

I find that Section 56-5-2953(B) is not implicated. Here, the City offers no valid reason for the officer's decision to not videotape the drug recognition test. Also, while Section B does allow for "other evidence," this does not, as the City seems to argue, negate the videotaping requirements of Section A.

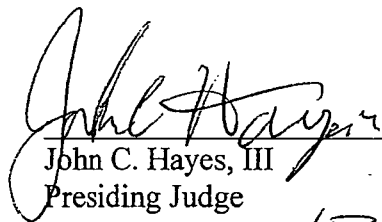
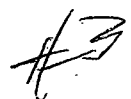
---


<sup>1</sup> The use of this word is not intended to imply any ulterior motive in the administration of a third test. The word is used to highlight the significance of law enforcement's use of a third test not recognized by statute.

A handwritten signature in black ink, appearing to be "J. G. 2" or similar, located in the bottom right corner of the page.

Therefore, the Driving Under the Influence of Appellant in the Municipal Court for the City of Rock Hill on May 19, 2017, is set aside and dismissed.

IT IS SO ORDRED.

  
\_\_\_\_\_  
John C. Hayes, III  
Presiding Judge  


December , 2017  
York, South Carolina