

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Honorable Donald B. Hocker, Circuit Court Judge

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FEB 17 2017

SC Court of Appeals

Appellate Case No.2016-000424

Thomas A. Williams.....Appellant,

vs.

State of South Carolina.....Respondent.

RECORD ON APPEAL

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor Eighth Judicial Circuit
Post Office Box 516
Greenwood, SC 29649
(864) 942-8800

MICAH ELIJAH BLACK
Eighth Judicial Circuit's Office

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

R. JAMISON TINSLEY, JR.
Tinsely & Tinsley, PC
212 Oak Avenue
Greenwood, SC 29646
(864) 223-0770

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A P P E A R A N C E S

Honorable C. Ryan Johnson
Greenwood County Magistrate's Court
Greenwood County Courthouse, Room 100
Greenwood, South Carolina 29646

REPRESENTING THE STATE:

MICAH BLACK, ESQUIRE
Eighth Circuit Solicitor's Office
600 Monument Street
Greenwood, South Carolina 29648

REPRESENTING THE DEFENDANT:

JAMISON TINSLEY, ESQUIRE
212 Oak Avenue
Greenwood, South Carolina 29646

P R O C E E D I N G S

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MR. TINSLEY:

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Your Honor, we have a matter we need to take up outside the presence of the jury.

4

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THE COURT:

6

Ladies and Gentleman of the jury, I'm going to ask that you reside to the jury room. It's just right behind the wall here. There's a matter we want to take up outside of your presence. Please do not discuss the case while you're in there. Thank you. And we may be one chair short in there, so you can either stand or bring a chair with you. I'm sorry. Yes, sir.

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MR. TINSLEY:

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Your Honor, the State has failed to prove the constitutionality of this road block, and they haven't produced evidence in discovery, pursuant to Rule 5, to -- to lay the grounds to establish it. So we ask that the case be dismissed on that ground.

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THE COURT:

22

Solicitor.

23

MR. BLACK:

24

Your Honor, I was getting to the constitution of the checkpoint. If you would so

25

1 grant, I can elicit testimony in -- in response
2 to -- to that constitutionality and the road
3 check. And then we can make arguments after that
4 about whether or not it's --

5 THE COURT:

6 I'll allow the Solicitor to proffer the
7 testimony; and then if there's any issues that
8 come up with regards to Rule 5, I'll be happy to
9 hear of (inaudible) statement.

10 MR. TINSLEY:

11 Your Honor, I will just say that they
12 produced nothing in discovery, except until
13 yesterday at 12:21 they produced (inaudible) that
14 that's -- that's all they produced so far in
15 discovery. And I don't think that's -- that's
16 enough to establish constitutionality. Further,
17 I think that should be disallowed, produced --
18 produced after jury selection.

19 THE COURT:

20 All right. Let me hear the testimony,
21 and then I'll be happy to reconsider (inaudible)

22 MR. TINSLEY:

23 Okay.

24 EXAMINATION BY MR. BLACK:

25 Q. Trooper Ashley, can you tell us where this

1 particular checkpoint occurred that night?

2 A. Sure. That particular checkpoint took place on
3 what's known as North Main Street, between the
4 two churches. It's off of Montague, or I guess
5 they would call it, Hampton Avenue. I'm not sure
6 where that picks up right there, but right across
7 from the red light from Big Mac Tire and cuts
8 across to Cambridge Avenue.

9 Q. Okay. Have you ever been part of a checkpoint at
10 that particular location?

11 A. I have, numerous times.

12 Q. Can you tell us when, give an estimate maybe
13 years, years that you've done that?

14 A. Throughout the years, we've done -- I mean,
15 several times a year we -- we go to that area, to
16 that particular location.

17 Q. Are you aware that it's on the pre-approved
18 checklist with the highway patrol?

19 A. I believe it is. I'm not 100 percent positive on
20 that. I can't -- I can't say for sure. I
21 believe it is.

22 Q. Can you tell us why that location has been
23 picked?

24 A. It's a high-producing area for impaired drivers.

25 Q. Have you ever arrested anybody in that location?

1 A. Yes, sir.

2 Q. For what?

3 A. For driving under influence.

4 Q. Can you tell me how many? Can you give an
5 estimate?

6 A. In that particular spot, through the years, I've
7 probably maybe had, I'm going to say, five or
8 six.

9 Q. Okay. And that's you personally?

10 A. That's me personally. That's -- that's not
11 counting the ones that I have witnessed while
12 being in the road check there that have -- that
13 have been taken off the roadways at that
14 particular location.

15 Q. All right. So you said you started the highway
16 patrol 2006. When did you get transferred up to
17 Greenwood?

18 A. January of 2007.

19 Q. So that's been since 2007?

20 A. Yes.

21 Q. Okay. Can you tell us when you do these
22 checkpoints how do you -- how do you set these
23 safety checkpoints up?

24 A. Are you -- I'm not sure I'm following you. At
25 which --

1 Q. I guess, I'm asking do you have signs that tell
2 the vehicles that you --

3 A. We have signs. We have -- we usually have signs
4 that are placed out in advance to the checkpoint.
5 We have on yellow traffic vests; we have
6 flashlights. Occasionally if the lighting is
7 bad, we'll -- we'll have flares set out to
8 illuminate the stop signs or the checkpoint ahead
9 signs.

10 Q. Okay. Are you stopping every vehicle that comes
11 through?

12 A. Yes, sir.

13 Q. And nobody is passing without going through?

14 A. Nobody passing and everybody gets checked.

15 Q. Okay. And can you tell us kind of what --
16 specifically what you're looking for at a
17 checkpoint?

18 A. At the checkpoints, we're checking for, one,
19 impaired drivers. We're checking for any
20 equipment violations, anybody who has driver's
21 license that are either suspended or either
22 doesn't have driver's license and things of that
23 nature, basic as a check.

24 Q. How long per stop, per vehicle? Can you give us
25 an estimate?

1 A. Usually, probably, 30 to 45 seconds. If -- if
2 there's no violation or anything noticed about
3 the vehicle, it's a quick checking of lights and
4 it's walk around the vehicle and -- and send on
5 their way.

6 Q. (Inaudible)

7 A. Yes, and you're free.

8 Q. Your (inaudible) you provided this to me
9 yesterday. Can you tell us, the Court, what that
10 is?

11 A. This is a inspection report. Basically, it's a
12 report showing what all that we wrote at that
13 particular checkpoint, that night, and the time
14 frame that we were there. And we were only there
15 for 30 minutes, a total of -- let's see, one,
16 two, three, four troopers involved, a total of
17 two cases were made in that 30 minutes.

18 Q. Were there any warnings?

19 A. Four warnings were issued.

20 Q. Okay. Are those, inspection reports, are they
21 generated for every checkpoint?

22 A. Yes, sir. Every time we have a checkpoint, one
23 of these is generated after each one to document
24 how many citations were issued and how many
25 warnings were issued.

1 Q. And is that inspection report the report that's
2 dealing with the Defense case today?

3 A. It is. It's from March the 30th, 2013, on North
4 Main Street in Greenwood County.

5 Q. Okay. And just one more question. Would you say
6 that the checkpoint is for general criminal
7 activity?

8 A. No, sir.

9 Q. Okay.

10 A. No, sir.

11 Q. Okay. I don't have anymore questions. I'll
12 allow the Defense to cross; and then, I guess,
13 we'll be arguing the Motion (inaudible)

14 THE COURT:

15 Any questions about the proffered
16 testimony?

17 MR. BLACK:

18 Your Honor, can we have that marked as
19 State's Exhibit No. 1? Not into evidence, but
20 just to mark it.

21 THE COURT:

22 It'll be marked for identification
23 purposes as Court's Exhibit No. 1.

24 MR. BLACK:

25 Thank you, Judge.

1 THE COURT:

2 If it comes introduced, we'll change it
3 over to State's exhibit number whatever it ends
4 up being, so currently it's Court's Exhibit No.
5 1.

6 MR. TINSLEY:

7 I understand.

8 MR. BLACK:

9 Okay, thank you, Judge. I apologize.

10 EXAMINATION BY MR. TINSLEY:

11 Q. It says (inaudible) checkpoint up at the top
12 right?

13 A. Yes, sir.

14 Q. What does that mean?

15 A. That means that we did not have it specifically
16 set for that evening. It was just we all decided
17 just to pick a location and go there.

18 Q. "We all," so does that mean the four troopers
19 listed on this (inaudible)

20 A. Usually, the supervisor is the one who picks the
21 locations of the road checks, and sometimes he
22 gets input from the other troopers involved.

23 Q. Do you recall this particular checkpoint, the
24 process of how it was chosen?

25 A. Do I recall how it was chosen?

1 Q. Uh-huh.

2 A. No, sir. I don't know if -- if Sergeant Opperman
3 (phonetic) chose that location or if myself or
4 one of the other troopers suggested we have a
5 checkpoint there.

6 Q. Was -- so, Sergeant Opperman was the supervisor
7 in that crew?

8 A. Yes, sir.

9 Q. So there's no -- no written document that
10 authorized this particular roadblock? Y'all made
11 that decision that evening; is that correct?

12 A. I'm not aware of any documentation to say we were
13 to have a checkpoint at that specific location,
14 at that specific time, on that specific night;
15 no, sir.

16 Q. Who had made the authorization for this roadblock
17 time and duration?

18 A. The supervisor in charge at the road check had
19 made that authorization.

20 Q. Prior to that evening, when was the most recent
21 time that y'all had a roadblock at that location?
22 Do you know?

23 A. I don't. I'm not sure. Various teams go there
24 at different particular times, so I'm not sure
25 when the last time that the -- that we had a road

1 check at that particular location.

2 Q. Well, how about you personally? Do you know
3 that?

4 A. I can't remember. Are you asking recently or --

5 Q. No. I'm asking prior --

6 A. Prior to that, I can't recall. I do not
7 recollect.

8 Q. Was there any advance notice given to the public
9 about this, about this roadblock?

10 A. I'm not aware if there was or not.

11 Q. And y'all didn't have a search warrant to stop
12 cars at this roadblock?

13 A. No, sir.

14 Q. Nothing further.

15 THE COURT:

16 Anything else?

17 MR. BLACK:

18 I don't have anything else right now.

19 THE COURT:

20 Go ahead and read me your argument
21 document.

22 MR. TINSLEY:

23 Your Honor, pursuant to (inaudible) the
24 state has to establish three prongs (inaudible)
25 to establish constitutionality in roadblock.

1 One, (inaudible) of the public interest; two,
2 degree the seizure (inaudible) of public
3 interest; and three, it's the variety of
4 interference with people's personal liberty. And
5 I don't think the State has met its second prong.
6 There's no empirical data showing the
7 effectiveness of this -- of this roadblock. The
8 first -- the only evidence that was produced to
9 me in discovery (inaudible) came in yesterday was
10 -- that document that was put in -- presented as
11 Court's Exhibit 1 was e-mailed to me yesterday at
12 4:22 p.m, when I -- when I received it. And so I
13 think it should be excluded on that -- that
14 grounds. It was after jury selection. But I
15 don't think that's enough for the -- to make the
16 prong, that prong of (inaudible). It's just like
17 empirical data, it's sort of like (inaudible).
18 Yeah, it shows (inaudible) that night. But the
19 State has not produced any evidence as planned
20 (inaudible) pursuit protocol of the roadblock.
21 And he's, you know, given some estimates
22 regarding his prior involvement over a seven-year
23 period, but -- with this location. And I don't
24 think that meets the (inaudible) standard for
25 showing (inaudible) to prove the effectiveness of

1 the roadblock. Not -- not produced the required
2 evidence to -- to get them over that hump. And
3 therefore (inaudible) that this roadblock is
4 violating Mr. Williams' Fourth Amendment
5 constitutional right.

6 THE COURT:

7 Trooper, how many cars were stopped
8 during that 30-minute period?

9 TROOPER ASHLEY:

10 Your Honor, I -- I -- I can't estimate
11 that. I don't know. That time in the morning, I
12 mean, it's varying in traffic.

13 MR. BLACK:

14 Your Honor, (inaudible)

15 THE COURT:

16 Yes.

17 MR. BLACK:

18 Thank you. The factors that Mr.
19 Tinsley enumerated basically come from Brown vs.
20 Texas, a U.S. Supreme case. The first -- the
21 first prong it doesn't seem like that was really
22 -- it wasn't very -- it wasn't contested
23 (inaudible) public concerns, so it seems that
24 there is a -- the public does have concern for,
25 you know, people driving without license and

1 people driving impaired and making sure all the
2 vehicles, everything is working properly. As
3 well as the third prong, it doesn't seem that was
4 contested either, the severity of the
5 interference with the individual liberty. The
6 Trooper testified it was about 30 to 45 seconds.
7 It's not a very -- it's a very minimal part of
8 time that these vehicles were stopped, especially
9 since every vehicle was stopped. The second
10 prong seems to be the one that is being
11 challenged by the Defense. And the second prong
12 basically goes towards the effectiveness of a
13 roadblock, how effective it is. And according to
14 the inspection report that we have, we know for
15 one that there was a DUI arrest that Trooper
16 Ashley made. And there was -- I think there was
17 a DUS as well; and if I'm not mistaken, warnings,
18 where I'm guessing other maybe fractions for the
19 vehicle maybe having a busted tail light; people
20 were warned about that. So we do know that they
21 -- that they were effective in that. Mr. Tinsley
22 argued that we have to have empirical data.
23 While I appreciate his argument, that -- and I
24 appreciate the people that -- actually, the
25 attorneys in this town that are challenging that,

1 that's not the law, Your Honor. And that State
2 vs. Vickery case, which I believe Mr. Henderson
3 and Mr. Garrett put before the Court of Appeals,
4 that -- that law has not been passed. In fact,
5 State vs. Vickery, of the Court of Appeals, says,
6 "The cases on point do not require the State to
7 present pre-existing empirical data to justify
8 setting up the checkpoint." It does require some
9 basis for the location of the checkpoint, and I
10 think the officer provided plenty of basis when
11 he said that he's made personally six arrests
12 there. He knows from firsthand knowledge that
13 that's a problem area. So I think the second
14 prong has been met as well with the data, with --
15 with the -- through the inspection report and
16 through the officer's testimony. As far as the
17 discovery and him just -- the Defense attorney
18 getting the -- a report yesterday, I also
19 received that report yesterday as well. And as
20 soon as I got it, I forwarded it to Mr. Tinsley.
21 I think that -- I think the standard is that they
22 have to show that they have a prejudice by
23 receiving it yesterday. And I -- I don't think
24 that Mr. Tinsley has in any way shown he's been
25 prejudice by this, other than the fact that

1 possibly if we had provided this the case would
2 get tossed. And I don't -- it's kind of you're
3 damned if you do and you're damned if you don't.
4 Either way, they're going to make this Motion
5 about constitutionality of the road check, and I
6 think the State has provided plenty of evidence
7 to show that this road check would be
8 constitutional.

9 THE COURT:

10 Defense want to respond?

11 MR. TINSLEY:

12 As to, Your Honor, to the last point, I
13 mean, if you're not prejudice by a last-minute
14 dump after jury selection, I don't think
15 prejudice should ever exist with discovery
16 (inaudible) but the Vickery case, my
17 understanding of it, is that it essentially --
18 (inaudible) said it hadn't said how much evidence
19 of effectiveness is required to pass
20 constitutional muster for a roadblock site, but
21 (inaudible) and I don't think we have. They're
22 relying on the fact that two tickets were written
23 that night (inaudible) effective, and they say he
24 made -- he made five or six and guessing under a
25 seven-year period. I don't -- I don't think that

1 is certainly the requisite proof of effectiveness
2 that the State has the burden of showing. And
3 once again, none of this was -- was provided in
4 any discovery. And I think that is clearly under
5 Rule 5 and Brady. It's material to -- material
6 to the case (inaudible) and I think it's Brady as
7 well as Rule 5.

8 MR. BLACK:

9 Your Honor, if I just may respond
10 briefly. In the Vickery case, it cites the Sitz
11 case, which I believe out of Michigan. And
12 there's -- there's data within the Sitz case that
13 126 vehicles, they entered the checkpoint, and
14 two were arrested for DUI. That's a 1.6 percent
15 people that pass through, and so we pretty much
16 have the same. They have two people who have
17 warnings (inaudible) as well. It doesn't --
18 there's no -- there's no set threshold number
19 that the Court -- that we have to prove to make
20 it effective. It seems that if you've got two
21 people and were there for about -- I believe when
22 I read it yesterday it said an hour or two, that
23 that -- that's enough and it shows effective.

24 MR. TINSLEY:

25 If I may point out, he -- Vickery, it

1 gives the exact number that came through. When
2 you asked the officer how many came through, he
3 couldn't give you a response. We don't know how
4 effective, Your Honor.

5 THE COURT:

6 Okay. With regards to your Motion to
7 have the case dismissed because of
8 constitutionality, constitutionality of the
9 roadblock, I'm going to just deny that Motion at
10 this time. And also with regards to the
11 (inaudible) violation, the Court's not condoning,
12 heavy encourages early sharing of discoverable
13 material, I don't see how this seemed prejudice
14 in this, so I'm not going to dismiss the charge
15 or to suppress it by its tardiness in being
16 presented.

17 MR. TINSLEY:

18 And I just want to -- at this point I'd
19 like my (inaudible) on the record that the State
20 had (inaudible) that the State has not produced
21 -- proved the constitutionality of this roadblock
22 and (inaudible) and discovery is required by Rule
23 5.

24 THE COURT:

25 So noted. Anything else before we

1 bring the jury back in?

2 MR. TINSLEY:

3 Nothing at this time, Your Honor.

4 THE COURT:

5 From the State?

6 MR. BLACK:

7 No, sir.

8 THE COURT:

9 Ladies and Gentlemen, I appreciate your
10 patience; and we'll continue with the questioning
11 of the officer.

12 MR. BLACK:

13 Thank you, Your Honor.

14 EXAMINATION RESUMED BY MR. BLACK:

15 Q. Before we left off, we were talking about that
16 you had setup a checkpoint in Greenwood. Can you
17 tell the jury where that was?

18 A. This checkpoint in question, it was taken place
19 on what's known as North Main Street. If you're
20 coming down Montague or, I think, it's Hampton
21 Avenue, the red light right there at the Big Mac
22 Tire, if you turn back to the left like you're
23 headed back out to Cambridge Avenue, there's two
24 churches on that road. We usually have a
25 checkpoint right there between those two

1 churches. It's a very, very short stretch of
2 roadway and very well lit, and so it's a good
3 place to have a, you know, the safety checkpoint.

4 Q. And what time? About what time did y'all do
5 that?

6 A. I think around about midnight or one. I can't
7 recall.

8 Q. Okay. Can you tell the jury kind of what your --
9 what you kind of -- tell the jury what you
10 typically do on these checkpoints, how you go
11 about it, and what you did with this particular
12 case.

13 A. Usually in these checkpoints, they're clearly
14 marked (inaudible), two signs at the beginning at
15 both sides at the checkpoint. It's got a big
16 stop; and it says, "Safety checkpoint ahead."
17 All the troopers or officers involved always have
18 on a traffic vest. Usually, if it's in an
19 poorly-lit area, a flare will be lit at the -- at
20 the signs so it can be clear to see. We'll have
21 flashlights and things of that nature just to
22 help visibility. Every car that comes through
23 gets stopped and checked briefly; check for any
24 equipment violations they may have, check for a
25 valid driver's license or any driver's license --

1 any impaired drivers or open containers of
2 alcohol or anything like that is what we focus
3 on.

4 Q. Did Mr. Williams drive through that checkpoint
5 that day?

6 A. He did, that morning.

7 Q. And who made contact with him at the checkpoint?

8 A. I believe, I did, was first to make contact.

9 Q. Can you tell us what you -- what you noticed when
10 you made contact.

11 A. As soon as Mr. Williams approached (inaudible)
12 and made contact with us, overselling odor of
13 alcohol about his vehicle. It was very strong.
14 I noticed that his eyes were -- were bloodshot
15 and also were red and just made me believe that
16 he had been drinking that night.

17 Q. What's the next step once you determine that?

18 A. After I determined that he had been drinking,
19 after and, of course, getting his identification
20 or attempt to get his identification. He's asked
21 to exit the vehicle and is taken over to a patrol
22 vehicle and put him in front. Another trooper
23 would move his vehicle from the roadway. And
24 he's not allowed to move or drive at that point,
25 after we determined that he's -- he's had a few

1 to drink.

2 Q. Did you take him in front of your car to offer a
3 field sobriety test?

4 A. I did.

5 MR. TINSLEY:

6 Your Honor, we have another matter we
7 need to take up outside the presence of the jury.

8 THE COURT:

9 All right. Ladies and Gentlemen, there
10 will be an issue I need to discuss outside of
11 your presence, so I ask that you, please, head
12 back in the room. Does anybody need to use the
13 restroom at all?

14 UNKNOWN SPEAKER:

15 Yeah, I do.

16 THE COURT:

17 Okay. You can feel free to go ahead
18 and do that, just sure you return in here and
19 close the door when you're finished. Thank you.
20 Please do not discuss the case.

21 Yes, sir.

22 MR. TINSLEY:

23 Your Honor, this is an incident site
24 for objection to the field sobriety test. 56-5-
25 2953 requires that the person have the -- his

1 conduct at the incident site there recorded and
2 requires a recorded field sobriety test. This
3 one on the video during at least part of his
4 walk-and-turn test, you can't see his feet. And
5 under a recent case, Court of Appeals case, of
6 State vs. Gordon, it was the case was discussed
7 on the HGN tape on grounds that the HGN test not
8 being able to see the person's head throughout
9 the test. And I think that this falls
10 (inaudible) the statute as well on the walk-and-
11 turn because his feet are blocked while he's
12 taking part of the test. You can't see them on
13 the video. And if the Court would like copies, I
14 don't -- I did not make extra copies of this
15 case, but I can give you that.

16 THE COURT:

17 That -- that's fine. I'm aware of the
18 case.

19 MR. TINSLEY:

20 Okay.

21 THE COURT:

22 Which way the CD player is on this
23 thing, and that's another matter.

24 MR. BLACK:

25 Your Honor, I'll make my argument after

1 we view the tape, if that's okay.

2 THE COURT:

3 All right. And this will be Court's
4 Exhibit No. 2, DVD version of the right side
5 tape; is that correct?

6 MR. BLACK:

7 That's correct.

8 UNKNOWN SPEAKER:

9 (Inaudible)

10 THE COURT:

11 And the only issue with regards to this
12 tape is the matter of the feet; is that correct?

13 MR. TINSLEY:

14 Well, on this Motion and on (inaudible)
15 dealing with the other issues I have with the
16 tape.

17 THE COURT:

18 I'm only watching the video and hearing
19 motions with regards to statute (inaudible)

20 MR. TINSLEY:

21 Okay. So you are watching all --

22 THE COURT:

23 -- and requirements once; yes.

24 MR. TINSLEY:

25 Okay. The only other thing I have is

1 he makes reference to being on blood medicine,
2 and I think that should be redacted from the jury
3 because we're going to need a scientist to come
4 in and testify regarding what affect that has
5 (inaudible) alcohol. And I think it needs to be
6 excluded. You know, it would be unfairly
7 prejudicial to have the jury speculating about
8 that (inaudible)

9 THE COURT:

10 What's the State's position in regards
11 to the blood medicine?

12 MR. BLACK:

13 He had already been Mirandized. He was
14 aware of his rights, and I think it should come
15 in as part of the case (inaudible) and let the
16 jury drawl an inference one way or the other.
17 And I think that -- that has to do with DUI. The
18 statute says drugs, alcohol, or a combination of
19 the two; and I think the jury has every right to
20 hear that, especially considering the officer
21 Mirandized the Defendant immediately upon placing
22 him under arrest and that came after the Miranda.

23 MR. TINSLEY:

24 And my (inaudible) is speculation and I
25 -- Your Honor, I don't have a pharmacologist or

1 any other type of scientist here to testify
2 regarding that affect, so I just think that's --
3 that would -- could possibly taint the jury
4 verdict and the jury deliberations.

5 UNKNOWN SPEAKER:

6 Is it not playing?

7 UNKNOWN SPEAKER:

8 Huh-uh (inaudible)

9 THE COURT:

10 If you can get (inaudible) well, the
11 cord's long enough to reach it. Do you have any
12 (inaudible) I don't see one; no. Kenneth, let me
13 see the disc that he gave you in discovery.

14 (Video played)

15 THE COURT:

16 What time? Did the statement come in
17 at that part (inaudible)

18 MR. TINSLEY:

19 Estimate 23:16:52 (inaudible)

20 THE COURT:

21 You said 23:16 what?

22 MR. TINSLEY:

23 50.

24 THE COURT:

25 And that's all (inaudible)

1 MR. TINSLEY:

2 (Inaudible) Well, and also he does
3 discuss a refusal on there, and I would -- I
4 would also move that the refusal be -- in
5 reference to refusing, be excluded from the trial
6 (inaudible) 5-2930 which requires that a breath
7 test be offered if arrested for an offense
8 arising out of (inaudible) and committed while
9 the person driving -- was driving a motor vehicle
10 under the influence of alcohol. I don't see any
11 allegations of bad driving, charging him with
12 tickets. I don't think they witnessed any bad
13 driving, so I would say he didn't have any right
14 to offer him a breath test. So any -- any
15 reference to him refusing should be excluded.

16 THE COURT:

17 Solicitor, your response to the motions
18 with regards to the blood pressure medicine, the
19 field sobriety, and then the refusal.

20 MR. BLACK:

21 Yes, sir. I'll start with the refusal,
22 State vs. Miller, a 1971 case, still good law,
23 (inaudible) state (inaudible) it's stated in the
24 law itself that a refusal can be used against you
25 in a court of law. That's regard -- with regard

1 to the field sobriety -- or to the breath test,
2 I'm sorry. And the other issue was the blood
3 medicine. As far as the blood medicine is
4 concerned, Judge, I think that Miranda was given
5 as soon as he was placed under arrest. Anything
6 that he says after that is fair game. Evidence
7 against the Defendant tends to be prejudicial in
8 nature, and that's just what this says. The
9 Defense doesn't have a right to (inaudible)
10 because it's prejudicial. And lastly, as far as
11 the -- the feet going off camera, it appears that
12 maybe his feet did go off camera towards the end;
13 but as you could see from the -- from the test,
14 Your Honor, he was not walking heel to toe. He
15 was taking regular-size steps, and he was -- he
16 was going off the camera, and he started veering
17 off to the right. Because the Defendant can't
18 walk a straight line, I don't think the State
19 should be prejudiced by having that, by having
20 that redacted because the Defendant can't walk a
21 straight line because he's had too much to drink.
22 And that's what we're alleging, Your Honor, and
23 the evidence clearly shows that.

24 THE COURT:

25 Yes, sir.

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MR. TINSLEY:

From the Defense (inaudible), he has no -- he has no duty to stay in the camera. The duty's on the State to -- to make sure he's on camera, regardless of what's he doing. If he's doing cartwheels or jumping jacks, they should still have the duty to tape him. He doesn't even -- he may not even know there's a camera there. So it's really irrelevant what he's doing. If they're giving him field sobriety tests, as long as the field sobriety test is going, it has to be on camera. And just like the main thing to see on the horizontal gaze is the head, I think the main thing on the walk-and-turn is -- is the feet. And you're talking about an imaginary line and (inaudible) something to do with him being on blood medication, I just don't -- it's -- it's unfairly prejudicial possibly. We don't know what they're going to do with it. It's just something that they don't need to be talking about in there because they're not -- they're not scientists and they're not pharmacologist and there's not going to any testimony from anyone like that. And -- and I agree with Mr. Black that a refusal can be used against you under law,

1 but he's quoting a 1971 case, which the statute
2 is different than 1971 and the current version.
3 And I don't think they had the right to offer him
4 a breath test, so they can't go into anything
5 about the breath test or his refusal. I agree
6 (inaudible) offered breath test, he can't -- a
7 refusal can be used against a defendant, and I
8 don't -- I don't that applies in this case.
9 Thank you.

10 MR. BLACK:

11 And, Your Honor, just briefly. As you
12 can tell, that the Defendant was clearly veering
13 off and there was actually a highway patrol
14 vehicle. And if the Defendant trips and falls
15 and substantially hurts himself, I'm sure Mr.
16 Tinsley would be happy to take the civil case too
17 and sue the highway patrol for letting an
18 intoxicated man harm himself on a -- on a patrol
19 vehicle. I think that he can't penalize the
20 highway patrol in here for -- for clearly taking
21 an intoxicated man after he had too much drink
22 and stumbling all over the place and saying
23 'That's enough. We've got enough evidence here;
24 we don't want you to hurt yourself. It's time,
25 you know, for you to go to bed.'

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MR. TINSLEY:

I mean, that's not -- that's not the issue. I didn't argue that (inaudible) stop the test (inaudible). I just said that his feet aren't on video the entire time. And pursuant to the same line of reasoning in State vs. Gordon, under 2953, it -- that should be excluded. That's an violation of the requirement that any field sobriety test administered be on video and be recorded.

THE COURT:

All right. With regards to the refusal, statute clearly allows that a person charged with driving under the influence can be required to have a breath test given; and if they refuse, it can be used against them. In this case, Mr. Williams had been placed under arrest for driving under the influence and the test was offered; he refused, so therefore, I will not suppress the refusal or suppress the evidence of the refusal.

And with regards to the feet on the field sobriety test, 99 percent of the field sobriety test is on there. I'm not going to find that it's a violation of the statute because 1 percent

1 of part of his foot is not visible on the camera,
2 so your motion with regards to that is denied.

3 And the -- the issue with the medication,
4 I'm going to allow it to be played in the video
5 tape. For further argument to be made with it,
6 you'd have to have some sort of evidence to
7 support that whatever medication it was would
8 impair him ability to drive. So it's allowed and
9 it would be improper without more to argue that
10 that's what made him impaired. Okay?

11 MR. BLACK:

12 And just to clarify, Your Honor, could
13 I -- in closing, when we get that far, I can
14 still mention alcohol, drugs, combination of the
15 two like the statute (inaudible)

16 THE COURT:

17 You can reference the statute; yes.

18 MR. BLACK:

19 Okay. Thank you, Your Honor.

20 THE COURT:

21 All right. Anything else before we
22 being the jury in?

23 MR. TINSLEY:

24 No, sir. I just wanted to make sure
25 that the objections are --

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THE COURT:

They are presented and noted on the
record. All right, bring the jury back in.

(End of excerpt)

COPY

AUG 28 '14 PM 12:26

AS

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
STATE OF SOUTH CAROLINA)
)
)
v.)
)
THOMAS A. WILLIAMS,)
)
)
Defendant.)
_____)

IN THE MAGISTRATE'S COURT

EIGHTH JUDICIAL CIRCUIT

**DEFENDANT'S NOTICE OF INTENT
TO APPEAL**

Ticket #G000332 (DUI 1st)

TO: HON. C. RYAN JOHNSON, GREENWOOD COUNTY MAGISTRATE:

YOU WILL PLEASE TAKE NOTICE that the Defendant, through his undersigned attorney,
intends to appeal the jury's guilty verdict from the trial on Tuesday, August 26, 2014, in the above-
referenced matter.

RESPECTFULLY SUBMITTED.

TINSLEY & TINSLEY, P.C.
Attorney for the Defendant

By: R. J. Tinsley, Jr.
R. Jamison Tinsley, Jr.
212 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 223-0770
Facsimile: (864) 229-8001

Greenwood, South Carolina

August 27, 2014

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT

COUNTY OF GREENWOOD)

EIGHTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

CERTIFICATE OF HAND DELIVERY

v.)

Ticket #G000332 (DUI 1st)

THOMAS A. WILLIAMS,)

Defendant.)

28th (RST)

The undersigned does hereby certify that on the 27th day of August, 2014, he served Notice of Intent to Appeal, by hand delivering the same to the person(s) listed below at the address(es) listed below:

Honorable C. Ryan Johnson
Greenwood County Magistrate's Court
Greenwood County Courthouse, Room 100
Greenwood, S.C. 29646

Micah Black, Esquire
Eighth Circuit Solicitor's Office
(via clerk's box)

1. Notice of Intent to Appeal
2. Certificate of Hand Delivery

TINSLEY & TINSLEY, P.C.
Attorney for the Defendant

By: R. Jamison Tinsley, Jr.
R. Jamison Tinsley, Jr.
212 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 223-0770
Facsimile: (864) 229-8001

Greenwood, South Carolina
28 (RST)
August 27, 2014

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

THOMAS A. WILLIAMS,

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA,

Defendant(s)

COPY IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 24- 01091

FILED COMMON PLEAS 8TH JUDICIAL CIRCUIT GREENWOOD S.C. 2014 AUG 28 PM 1:16

Submitted By: R. JAMISON TINSLEY, JR. Address: 212 OAK AVENUE, GREENWOOD, S.C. 29646

SC Bar #: Telephone #: 864-223-0770 Fax #: 864-229-8001 Other: E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. [X] NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-..., Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), [X] Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: AUGUST 27, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

COPY

APPEAL TO THE COURT OF COMMON PLEAS FOR GREENWOOD COUNTY
FROM THE GREENWOOD MAGISTRATE'S COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
THOMAS A. WILLIAMS,)
)
Appellant,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

APPELLANT'S PETITION IN SUPPORT
OF APPEAL

C/A No. 2014-CP-24- 01091

2014 AUG 29 PM 1:16

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

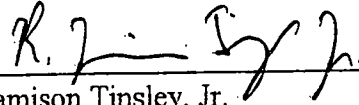
The Appellant Thomas A. Williams appeals the jury's guilty verdict from the trial on Tuesday, August 26, 2014, on ticket #G000332 (DUI 1st).

The Appellant sets forth the following grounds for appeal:

1. The Magistrate erred by refusing to dismiss the case and/or suppressing evidence against the Appellant because of the State's Rule 5 violations and/or Brady violations.
2. The Magistrate erred by refusing to dismiss the case and/or suppressing evidence against the Appellant because of the State's failure to establish the constitutionality of the roadblock at which the Appellant was stopped.
3. The Magistrate erred by refusing to dismiss the case pursuant to Code Section 56-5-2953 (video recording statute).
4. Such other grounds as may be set forth after the Appellant receives the typed trial transcript and the Magistrate's return.

RESPECTFULLY SUBMITTED.

TINSLEY & TINSLEY, P.C.
Attorney for the Appellant

By: 
R. Jamison Tinsley, Jr.
212 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 223-0770
Facsimile: (864) 229-8001

Greenwood, South Carolina

August 27, 2014

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

THOMAS A. WILLIAMS,)
)
Appellant,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CERTIFICATE OF HAND DELIVERY

C/A No. 2014-CP-24- 01091

2014 AUG 28 PM 1:16

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

125th (RJT)

The undersigned does hereby certify that on the 27th day of August, 2014, he served Civil Action Coversheet and Petition in Support of Appeal, by hand delivering the same to the person(s) listed below at the address(es) listed below:

Honorable C. Ryan Johnson
Greenwood County Magistrate's Court
Greenwood County Courthouse, Room 100
Greenwood, S.C. 29646

Micah Black, Esquire
Eighth Circuit Solicitor's Office
(via clerk's box)

1. Civil Action Coversheet
2. Petition in Support of Appeal
3. Certificate of Hand Delivery

TINSLEY & TINSLEY, P.C.
Attorney for the Appellant

By: R. Jamison Tinsley, Jr.
R. Jamison Tinsley, Jr.
212 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 223-0770
Facsimile: (864) 229-8001

Greenwood, South Carolina

28 (RJT)
August 27, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
 THOMAS A WILLIAMS)
 APPELLANT)
 -vs.-)
)
 STATE OF SOUTH CAROLINA)
 RESPONDENT)
)

IN THE EIGHTH CIRCUIT COURT
 OF COMMON PLEAS

RETURN TO APPEAL

2014-CP-24-01091

G000332

CASE NUMBERS

2014 AUG 29 PM 1:27

FILED COMMON PLEAS
 8TH JUDICIAL CIRCUIT
 GREENWOOD, S.C.

In regard to the Defendant's appeal, the Court would respond as follows:

1. On March 30, 2013, the defendant entered a Highway Patrol safety checkpoint and was subsequently charged with DUI on ticket G000332. The defendant attempted two field sobriety tests and refused the DataMaster.
2. The defendant, through his attorney, R. Jamison Tinsley Jr., consented to the court's jurisdiction, requested a jury trial, and provided the court with a copy of his discovery requests on April 16, 2013. The trial was scheduled for August 26, 2014 and jury selection was held on August 25, 2014.
3. Present at the trial were the defendant, Thomas Williams, his attorney, R. Jamison Tinsley Jr., and his co-counsel, Robert J. Tinsley Sr. Present for the prosecution were Assistant Solicitor Micah Black and J.C. Ashley of the South Carolina Highway Patrol. There were no pretrial motions made by either the party. All six jurors appear and were sworn in.
4. Trooper Ashley was called as the first and only witness by the State. He testified that on March 30, 2013, he and other officers of the Highway Patrol set up a roadblock on North Main Street in the Greenwood City limits. The location was picked out by Trooper Ashley's supervisor off of a preapproved safety checkpoint list. The roadblock began around midnight and lasted for approximately 30 minutes. Each vehicle that entered the roadblock was

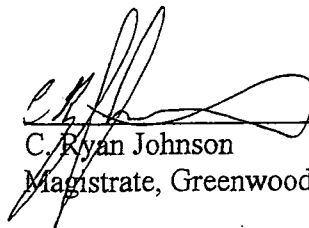
1 of 3 pg

stopped and detained for a few seconds. In total, the roadblock resulted in the issuance of four warnings, one driving under suspension arrest, and the defendant's arrest for DUI. The State proffered an inspection report (Court's Exhibit #1) through Trooper Ashley's testimony. The trooper testified that he did not know how many vehicles entered the roadblock.

5. The witness went on to further testify that he approached the defendant after the defendant had stopped at the roadblock. As he communicated with the defendant, Trooper Ashley stated he could smell a strong odor of alcohol coming from the defendant. Ashley had the defendant exit the vehicle, positioned him in front of his patrol vehicle, and administered two field sobriety tests. The trooper's in-car camera was already running when the defendant entered into the area in front of the patrol car.
6. The roadside video (State's exhibit # 1) shows the defendant attempting the field sobriety tests. First, Trooper Ashley administered the HGN test. After the HGN test, the trooper attempted to administer the "walk and turn" test. As the defendant attempts the walk and turn for the second time, he walks at an angle of about 60 degrees off of the straight line he was instructed to walk and takes multiple large steps as opposed to the "heel to toe" steps that he was instructed to take. As a result of the defendant's staggered walk, his last two steps were hidden from view by the hood of the patrol vehicle. The defendant was immediately placed under arrest for DUI and provided his *Miranda* warnings.
7. Trooper Ashley testified that the defendant's attempts at the field sobriety tests provided multiple clues that he was driving under the influence. The trooper further testified that the defendant admitted to consuming 5 beers.

8. After the defendant's arrest, Trooper Ashley testified that he brought him to the Greenwood County Detention Center in order to administer the DataMaster. The trooper testified to his qualifications as supported by State's exhibit #3 and supplied and read the defendant his implied consent rights (State's exhibit #2). The defendant refused to take the DataMaster test and a refusal report was created (State's exhibit #4). The defendant's conduct in the DataMaster room was recorded and a copy was introduced into evidence as State's exhibit #5.
9. Once the trooper concluded his testimony, the State rested and the defendant was called as a witness by his attorney. The defendant attributed his poor performance on the roadside video to a lifelong speech impediment, bad knees, and the fact that he did not have his glasses on. After the defendant's testimony, the defense rested.
10. After the jury received their instruction, they began their deliberations and returned a guilty verdict. The defendant was sentenced to 30 days in jail or the payment of a fine of \$1,022.00, including court costs and assessments. The defendant paid the fine and notified the court of his intent to appeal.
11. The proceedings were digitally recorded and a digital copy was provided to the defendant as he requested.

Respectfully Submitted,



C. Ryan Johnson
Magistrate, Greenwood County

August 29th, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

THOMAS A. WILLIAMS,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA)
 DEFENDANT.)
 _____)

CASE NO.: 2014-CP-24-01091

TRANSCRIPT OF RECORD

SEPTEMBER 2, 2015
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE DONALD B. HOCKER, JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

ROBERT JAMISON TINSLEY, JR., ESQUIRE

ATTORNEY FOR DEFENDANT:

MICAH BLACK, ASSISTANT SOLICITOR

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

1 THE COURT: The next case we have is *Thomas Williams v*
2 *State*. It's a 2014 case, -1091. Jamison Tinsley represents
3 the appellant and Solicitor Micah Black is present on behalf
4 of the State. Mr. Tinsley, I'll be glad to hear from you,
5 sir.

6 MR. TINSLEY: Okay, Your Honor. I'm going to begin by
7 handing you up some case law as well as a copy of the
8 statute that is relevant and the transcript from the --
9 well, the relevant portion of the transcript of the trial
10 which took place in August of last year down in Magistrate
11 Court in front of Ryan Johnson. It's a DUI case. My client
12 was convicted, and we have a few different arguments for why
13 we believe there was reversible error downstairs. The first
14 of which is kind of dovetailed together. We don't believe
15 the roadblock was constitutional and there was nothing
16 produced in discovery under Rule 5 and Brady to establish
17 the constitutionality of the roadblock. This was a
18 roadblock case.

19 I'll hand you up -- I don't know if I need to mark it.
20 I don't know how it's done in these appeals, but a --

21 THE COURT: You can just hand it up to me. I don't
22 believe we need to mark any exhibits in this.

23 MR. TINSLEY: Okay. This was the only thing ever
24 produced in discovery regarding the roadblock. It was
25 produced at 4:30 or thereabouts the afternoon of the trial

1 after the jury had been selected. I believe -- Mr. Black
2 says, and I one hundred percent believe, that the police
3 gave it to him and as soon as they did he produced it to me.
4 But that's all that was produced regarding the roadblock in
5 discovery. As you can see on the top right hand it says
6 "roving checkpoint". So I think that makes it
7 unconstitutional on the face of it. They were just riding
8 around that night, what the testimony showed, and setting up
9 roadblocks wherever they thought would be a good spot to set
10 one up. No pre-selection. No empirical data as required
11 under the line of cases with *Groom*, et cetera, to establish
12 the constitutionality of the road block. And furthermore,
13 all this testimony about why they selected that specific
14 location where my client was stopped, none of that was ever
15 produced. And I believe that was required under *Brady*,
16 because that's clearly material to innocence or guilt and
17 that's discoverable. None of that came out until during the
18 trial. So that's my first charge. Then the no
19 constitutionality and nothing establishing the -- even if it
20 were to be constitutional, nothing establishing the
21 constitutionality of the roadblock was ever produced to me.

22 THE COURT: Was that raised in the lower court?

23 MR. TINSLEY: Yes, sir, Your Honor. Pages four and five
24 go into that in the transcript as well as I believe page 19
25 there is a -- page 19 I say, "Once again, none of this was

1 provided in discovery."

2 THE COURT: Let me just turn it over to the Solicitor
3 just one second. Is there anything to produce on the issue
4 of whether or not this particular roadblock is
5 constitutional? Quite frankly, I would have to go back and
6 kind of re-educate myself on how these roadblocks past
7 muster. But is there anything to produce, Solicitor?

8 MR. BLACK: Yes, sir. I think you have that. It's
9 called an inspection report. Do you have that in what Mr.
10 Tinsley handed up to you?

11 THE COURT: This is what Mr. Tinsley just handed to me?

12 MR. BLACK: That's correct. Typically in these
13 roadblock cases we turn that over to the Defense. Mr.
14 Tinsley was correct. I think I gave that to him the day
15 before. The Trooper got it to me the day before and I
16 immediately sent a copy to Mr. Tinsley. Basically, that
17 just shows the activity that goes on at that particular
18 location. Mr. Tinsley was talking about the empirical data
19 that is needed. I've got a case for you, Your Honor. I
20 think he actually handed it up to you, the *State v Vickery*
21 case. It actually -- it's a roadblock case that actually
22 happened in Greenwood. I think it happened in 2009. In
23 fact, I think Mr. Garrett argued the case and I think Mr.
24 Tinsley, Jamison's father, sat with Mr. Garrett if I'm not
25 mistaken and I think they appealed it.

1 Basically, in this particular case, it was a city
2 checkpoint and they argued that the city didn't provide any
3 pre-existing empirical data. It went up on appeal and the
4 appeal court said -- I think that's the appellate decision
5 that says the State does not have to have any pre-existing
6 empirical data. The factors it talks about, I think it's
7 *Brown v. Texas*, it laid out those factors. It was
8 reiterated in *State v. Groom*, which is the South Carolina
9 case basically stating the same thing this U.S. Supreme
10 Court case talks about. In order for a roadblock to pass
11 constitutional muster there have to be three factors; the
12 gravity of the public interest served by the seizure, number
13 two is the degree to which the seizure serves the public
14 interest, and three the severity of the interference with
15 the individual liberty.

16 The first issue and the third issue really weren't an
17 issue. It's that second issue, the degree to which the
18 seizure serves the public interest, is basically going to
19 the effectiveness of the roadblock. Your Honor, the Supreme
20 Court in *State v Groom* and then reiterated in *State v*
21 *Vickery* in the Court of Appeals case basically all says that
22 the State doesn't have to prove any pre-existing empirical
23 data as to why they select this particular location. I
24 think in the transcript testimony was elicited that the
25 roadblock wasn't for general criminal activity. It was for

1 a specific reason. It was for people that were potential
2 impaired drivers. People violating -- you know, not having
3 their seatbelt. People driving without a license. I think
4 this particular Trooper in this case was Trooper Jamie
5 Ashley. He's been on patrol here in Greenwood since -- it's
6 either 2006, 2007, or 2008. He's been here a while. He
7 actually testified in court that he has pulled over 5, 6, 7
8 people in this particular area where they had this
9 particular checkpoint, so he actually had personal knowledge
10 and history of drunk drivers in that area.

11 Your Honor, he also testified on the pre-approved
12 checklist that the Highway Patrol -- typically they have
13 locations throughout the counties where they have pre-
14 approved checklists. I think it has to go up the chain of
15 command in the Highway Patrol and ultimately be approved by
16 someone in higher authority. One of the First Sergeants
17 maybe down in Columbia. I'm not sure of all of the details
18 on that, but he testified that it was on the pre-approved
19 checklist. Of course, we did not turn that over into
20 discovery to the Defense. The Defense would, I guess, love
21 to have that. It's never been the State's position, and the
22 Court has never ordered the State, to turn over this pre-
23 approved checklist of however many locations there are. So
24 Your Honor, the judge in this particular case -- I think it
25 was Judge Ryan Johnson downstairs, based on the Vickery

1 case, said that we did not have to have any kind of
2 empirical data showing why this particular location was
3 selected. He ruled that indeed it was a constitutional
4 checkpoint.

5 THE COURT: I'll turn it back over to you, Mr. Tinsley.

6 MR. TINSLEY: Two points in response. If you look at
7 *Vickery* it clearly says the roving checkpoints are
8 unconstitutional. This one on this inspection report
9 specifically says "roving checkpoint." My first position
10 would be that it's unconstitutional right there. Then back
11 to Rule 5 and Brady they've got to produce something showing
12 some kind of empirical data. It's unclear how much is
13 enough, but there's got to be some as to why this spot is
14 effective. You know, none of these stats that the Trooper
15 testified to, none of that was produced in discovery as far
16 as his number of arrests over the years and why it was an
17 effective location. This pre-approved checklist, it wasn't
18 produced. If you look at the inspection report it doesn't
19 even show the effectiveness of the spot, because -- it shows
20 two arrests, but that doesn't really tell us a whole lot.
21 Two arrests when 20 cars come by is a lot different than 200
22 come through. It's like a numerator without a denominator.
23 It doesn't tell you a whole lot. Doesn't give you any kind
24 of ratio.

25 THE COURT: Let me ask you this. This pre-approved

1 checklist, the State argues that that is something that they
2 should not have to produce because I guess the argument
3 would be is that that's going to put everybody on notice to
4 the locations in the county not to drive your car if you've
5 been drinking.

6 MR. TINSLEY: I think everybody knows there are hot
7 locations in the public, but I'm just saying something has
8 got to be produced for why that location was selected, and
9 nothing was. He testifies to it and the State could've
10 easily produced to me something saying that this location
11 was selected because he made seven arrests and witnessed
12 several others like he testified to, but none of that was
13 produced and I think that's clearly material to guilt or
14 innocence. How can we go check to the legitimacy of any of
15 this when we don't find out about it until he testifies at
16 trial.

17 THE COURT: Solicitor, Mr. Tinsley says that *Vickery* --
18 and I'll just have to read the *Vickery* case -- but says that
19 roaming checkpoints are not proper and your guy or somebody
20 has written on this inspection report "roaming checkpoints".
21 Is there any significance to that?

22 MR. BLACK: I don't think so. I think -- can I take a
23 look at that inspection report, Your Honor?

24 THE COURT: Yes.

25 MR. BLACK: Did Mr. Tinsley state where it said "roaming

1 checkpoints" in the *Vickery* case? Is there a page number on
2 that?

3 MR. TINSLEY: Yes. I'll find it. It says -- roving is
4 the term it uses. Page 6 on what I handed him, which would
5 be 222 on the one cite 515. It's page 6.

6 THE COURT: My copy doesn't have page numbers.

7 MR. TINSLEY: Does it have the cite pages?

8 THE COURT: Start me on "Law/Analysis". How many pages
9 past that?

10 MR. TINSLEY: It's the fourth paragraph down from there.

11 THE COURT: After the heading "Law/Analysis"?

12 MR. TINSLEY: Yes, sir.

13 (Whereupon, there was a brief pause in the proceeding.)

14 THE COURT: I don't see where it says roaming
15 checkpoints are unconstitutional.

16 MR. BLACK: It says roving, Your Honor.

17 MR. TINSLEY: It says roving patrol stops.

18 THE COURT: Excuse me. Roaming?

19 MR. BLACK: Roving.

20 MR. TINSLEY: Roving patrol stops.

21 THE COURT: Roving.

22 MR. BLACK: Which I think is different that what's
23 written on that report.

24 MR. TINSLEY: And it's my understanding that roaming --
25 the Supreme Court has allowed these type of roving/roaming

1 moving checkpoints around a border in a case, and that's the
2 only time that's been allowed is my understanding.

3 THE COURT: Solicitor, you're saying roaming and roving
4 are different?

5 MR. BLACK: Yes, sir, Your Honor. Is that the copy Mr.
6 Tinsley handed you that inspection report?

7 THE COURT: Yes.

8 MR. BLACK: Was there one in the file, in the appeal's
9 file?

10 THE COURT: I don't know. Let me look. All that's in
11 the file is the Magistrate's return and Mr. Tinsley's
12 appeal.

13 MR. TINSLEY: Here it is.

14 THE COURT: So what is the difference between roaming
15 and roving. If Vickery says roving checkpoints are not
16 permissible, and this has the designated roaming, what is
17 the difference?

18 MR. BLACK: I think in this particular case, Your Honor,
19 and I think it's in the transcript if you take a look at the
20 transcript -- I don't know the page number, but I read it
21 last week. Trooper Ashley testified in this case that they
22 were kind of driving around and nothing was really going on
23 that night and they talked to their supervisor and the
24 supervisor at that point made the decision to have the
25 checkpoint at this particular location. I'm thinking that's

1 why they put that on the inspection report, but otherwise
2 they complied with everything checkpoints are supposed to
3 comply with. They were in an area where they put up
4 signage. They wore vests like they are always required to
5 do. They put all the steps that they're supposed to do to
6 show that it was a checkpoint so that drivers just wouldn't
7 sneak up past it. It was well lit. He testified that
8 that's what happened. He testified that it was on the pre-
9 approved checklist. He testified that he'd made numerous
10 stops there in the past, so I think that merits
11 constitutional muster at that point.

12 THE COURT: I think what I hear from Mr. Tinsley he just
13 says that something -- some information of some sort needed
14 to be produced pursuant to Brady prior to trial and that was
15 not done. Whether it's whatever the police officer
16 testified to at trial or whatever that he was entitled to
17 something to provide some sort of justification for
18 selecting this particular location. What could have been
19 provided?

20 MR. BLACK: And, Your Honor, I think Vickery goes
21 against that. I know on the copy that I handed to you on
22 the third to last page the first paragraph or the paragraph
23 at the bottom of that page starts with, "Vickery argued and
24 the trial court found..."

25 THE COURT: Third to last page?

1 MR. BLACK: Yes, sir.

2 THE COURT: Okay. All right.

3 MR. BLACK: Do you see that paragraph where it says,
4 "Vickery argued"? The second sentence begins with,
5 "However, the cases on point do not require the State to
6 present pre-existing empirical data to justify setting up
7 the checkpoint. The case law does require some basis for
8 the checkpoint." I think Mr. Tinsley was aware, going into
9 trial, that it was on the pre-approved checklist. I believe
10 that I had communicated that to him.

11 The proceeding page before that, Your Honor, talks
12 about -- it's a Michigan case. *Michigan v. Sits*, I think.
13 It talks about in a particular checkpoint location there
14 were two violations out of 126 vehicles in the past. So as
15 far as that second prong under the *Texas v Brown* case that
16 was a U.S. Supreme Court Case, the effectiveness --
17 basically *Vickery* and the Supreme Court says it doesn't
18 really matter -- seems to indicate it doesn't matter if
19 there's one violation, two violations, three violations. As
20 long as there is something. This Michigan case kind of
21 seems to indicate the same thing.

22 THE COURT: Thank you. Mr. Tinsley, anything further
23 from you, sir?

24 MR. TINSLEY: Just to point out there's no publication
25 either of this roadblock. Moving along to my second issue

1 is with the videotape, which I will hand you up a copy of
2 the incident site road video. Under this *State v Gordon*
3 case, which I have handed up and Mr. Henderson referred to
4 earlier this morning, if the head on an HGN test is off then
5 it's inadmissible. If it's not on the video. Here I would
6 say the case should've been dismissed on the -- not under
7 the HGN test, but the walk and turn. Partially his feet
8 were not on there for the walk and turn. Just for Your
9 Honor's notes -- I'm sure you don't want to watch it now
10 while we argue. It starts 23:12:40 on the HGN is when the
11 video starts. His first three steps both feet are on the
12 video clearly, then on step four he steps behind the numbers
13 on the screen. So he is still actually on the video, but
14 it's blurred by the numbering on the screen. Fifth step
15 behind the numbering. Then when he gets to steps -- the
16 last three steps, six, seven, and eight it's off the four
17 corners of the screen. It can't be seen. So I would say
18 that should, since it's off the four corners of the screen,
19 both of his feet, that it should be excluded and the case
20 dismissed. And also alternatively under the same thing that
21 Mr. Henderson was referencing earlier in *Gordon* it talks
22 about, "Even if we assume that the video of the field
23 sobriety test is of such poor quality that its admission is
24 more prejudicial than probative, the remedy would not be to
25 dismiss the DUI charge. Instead, the remedy would be to

1 redact the field sobriety test from the video and exclude
2 the testimony about the test." So I would say that the
3 steps behind the numbering that makes it of such poor
4 quality that it's not probative at that point. It's just
5 misleading the jury and unfairly prejudicial, so it should
6 be redacted. Now in this *Gordon* case -- we clearly did not
7 have the advantage of this when we argued the case last year
8 since *Gordon* just came out a month ago. And I would say the
9 same goes that -- like I said, just to reiterate, first of
10 all I think it should have been excluded and dismissed
11 because his feet were off the screen -- his feet, at least
12 for three of the steps. So the three prior he is - it is
13 blocked by the numbering on the screen. So while that's not
14 a violation I think it should have redacted the test. And
15 also same logic on the horizontal gaze test. His head is on
16 there, but I think it's of poor quality because you can't
17 see his eyes and that's the whole point of the horizontal
18 gaze test is to test the eyes. So both tests, at the very
19 least, should have been redacted and I think he should be
20 entitled to a new trial on that ground if exclusion isn't
21 proper remedy. Even though I would say that it is based on
22 the feet being off the video for the last three steps.
23 That's my argument on the videotape. I have one other if
24 you want the State to respond first.

25 THE COURT: You still have one other after this?

1 O MR. TINSLEY: I've got one other one, yes, sir.

2 THE COURT: What about the video, Solicitor?

3 MR. BLACK: Yes, sir. I'm not sure if the head was ever
4 raised at the trial, the issue about the head. I don't
5 remember that being in the transcript. I could be wrong,
6 but I don't remember that issue.

7 MR. TINSLEY: It may not have been, but like I say this
8 *Gordon* case we didn't have the benefit of that.

9 MR. BLACK: I think the main argument at trial was the
10 walk and turn test. The feet being off the camera. The
11 judge found that -- and I haven't watched the video since
12 last year, Your Honor, so I could be wrong. I think Mr.
13 Tinsley is right when he's saying it was a couple of steps.
14 At the bottom it lists the date and the time, so I think
15 that's where Mr. Tinsley is saying the steps weren't
16 sufficiently clear. From what I can remember I could make
17 out the feet and everything. I could and the judge also
18 said as well that he could. There may have been an issue
19 where maybe the guy was off the camera for maybe one step.
20 I'm not sure. And I'm not sure if he fell off the camera.
21 I remember him stumbling, Judge, and I think the magistrates
22 have ruled and I think case law has determined that if the
23 Defendant is at fault for going off camera the case
24 shouldn't be tossed on that matter. And I'm not sure if he
25 was stumbling or not. I guess you would have to go back and

1 take a look at that video. But the judge did rule -- Judge
2 Johnson on page 33 of the transcript he said with regards to
3 the feet on the field sobriety test that 99 percent of the
4 field sobriety test is on there. I'm not going to find that
5 there is a violation because one percent or a part of the
6 foot is not visible on the camera. So he denied the motion.
7 The judge made a ruling that everything was visible
8 according to him and it was also visible to me as well, Your
9 Honor.

10 THE COURT: All right. The third issue, Mr. Tinsley?

11 MR. TINSLEY: The third issue is the refusal should have
12 been suppressed on the breath test under the implied consent
13 statute which I have handed up. Section 56-5-2950(a) says,
14 "A person that drives a motor vehicle in this state is
15 considered to have given consent to chemical tests of a
16 person's breath, blood, or urine for the purpose of
17 determining the presence of alcohol, drugs, or a combination
18 of alcohol and drugs if arrested for an offense arising out
19 of acts alleged to have been committed while a person was
20 driving a motor vehicle while under the influence of
21 alcohol, drugs, or a combination of alcohol and drugs."
22 There is no offense arising out of -- he's not arrested for
23 an offense arising out of acts alleged to have been
24 committed. There's no bad driving. There was testimony
25 that they saw no bad driving. Generally, in a DUI case,

1 this is going to be easy because you're pulling him over
2 because they're speeding, not maintaining their lane,
3 whatever it is. Here that doesn't -- there are no acts --
4 there's no offense arising out of acts alleged to have been
5 committed while he was driving under the influence. So I
6 would say that clearly under the language of the statute
7 he's -- the State can't offer him a breath test at that
8 point. So his refusal to -- he hadn't consented, so his
9 refusal to take the test is -- should've been excluded.
10 Shouldn't have been commented on.

11 THE COURT: Solicitor?

12 MR. BLACK: Your Honor, I don't think that they
13 witnessed any bad driving, but this was once again a
14 roadblock checkpoint. The Trooper testified that the
15 Defendant pulled up to the checkpoint. He was driving the
16 vehicle. There was no one else in the vehicle so he was
17 indeed driving the car. So he testified that I think he
18 said he smelled alcohol coming from the Defendant's breath
19 and also -- he smelled the alcohol and he also had bloodshot
20 eyes. I don't know if that's in the particular transcript,
21 but from what I remember during the course of the trial
22 those were the reasons. With these roadblock cases everyone
23 gets stopped that comes through the roadblock. They don't
24 randomly select cars or waive cars through. Everybody gets
25 stopped. So they made contact with him, asked him for his

1 drivers license, and that kind of sort of thing. Did their
2 inspection, smelled the alcohol, and at that point they got
3 him out of the vehicle and offered the field sobriety test
4 to the Defendant. The statute clearly states that people
5 that get arrested they get offered the DataMaster test and a
6 refusal can be used against them.

7 THE COURT: What triggers it is the arrest for the DUI
8 and not evidence in support of the arrest, whether it's bad
9 driving, bloodshot eyes, or whatever.

10 MR. BLACK: That's right. He was arrested for DUI at
11 the scene.

12 THE COURT: And that's the trigger, right?

13 MR. TINSLEY: I think the plain language of the statute
14 says if arrested for an offense arising out of acts alleged
15 to have been committed while a person was driving a motor
16 vehicle.

17 THE COURT: Right. And the offense being DUI.

18 MR. TINSLEY: See, I think the offense is something
19 beyond DUI is the way I read the plain language of that
20 statute. If arrested for an offense arising out of acts
21 alleged to have been committed. Because it -- it could
22 easily, you know -- these statutes are strictly construed
23 against the State. It could easily say if arrested for the
24 offense of driving while under the influence if that's what
25 it meant. That's my --

1 THE COURT: That's 56-5-2950 -

2 MR. TINSLEY: Section (a).

3 THE COURT: Okay. All right, guys. I'm going to put
4 this on the under advisement stack and take a look at what
5 you've given me and I'll let y'all know something.

6 MR. TINSLEY: If you would like to look at it, I don't
7 think I gave you the time on the HGN test. It begins at
8 23:09:20.

9 THE COURT: Got it. Thank you very much.

10 - - END OF REQUESTED TRANSCRIPT OF RECORD - - -

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Thomas A. Williams

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2167
 Judge Code

10/28/15
 Date

For Clerk of Court Office Use Only

2015 SEP 25 10 11 AM '15
SOUTH CAROLINA COURT

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)
THOMAS A. WILLIAMS,)
Appellant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

ORDER

C/A No. 2014-CP-24-1091

PRESIDING JUDGE:
COURT REPORTER:
APPELLANT'S ATTORNEY:
RESPONDENT'S ATTORNEY:
DATE OF HEARING:

HON. DONALD B. HOCKER
TARA T. SCOTT
R. JAMISON TINSLEY, JR.
MICAH BLACK
WEDNESDAY, SEPTEMBER 2, 2015

This matter came before the Court for an appeal hearing from Magistrate's Court on Wednesday, September 2, 2015, at 9:00 a.m. The Respondent was represented by Assistant Solicitor Micah Black of the Eighth Circuit Solicitor's Office. The Appellant was represented by R. Jamison Tinsley, Jr.

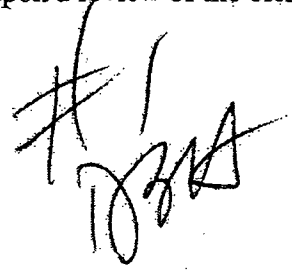
Procedural History

Appellant was arrested for DUI on March 30, 2013, by Trooper James C. Ashley of the South Carolina Highway Patrol. Appellant was issued Ticket Number G-000332.

A jury trial was held in this matter on Tuesday August 26, 2014, and Appellant was found guilty of driving under the influence.

During the course of the trial, Appellant timely objected on multiple grounds and timely appealed the Magistrate's ruling on the legal matters discussed herein.

Based upon a review of the clerk's file and arguments of counsel, the Court hereby makes



the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Court finds that the traffic safety checkpoint set up on North Main Street, just off Montague Avenue, in Greenwood, South Carolina, was constitutional pursuant to State v. Vickery 399 S.C. 507 (S.C. Ct. App. 2012).

2A. The Court finds that the walk and turn field sobriety test performed by Appellant was sufficiently captured on the incident site video so as to conform with the videotaping requirements set forth in Code Section 56-5-2953. Appellant argued that his feet were not captured on video during every step of the walk and turn test. The Court finds that the time Appellant's feet were not on video during the test to be insignificant.

2B. Appellant argued the applicability of State v. Gordon, Op. No. 27554 (S.C. August 5, 2015), which was decided after Appellant's trial. Appellant argued to this Court that, in the alternative, Gordon should apply because Appellant's feet were on video but could not be seen. Under this scenario, Appellant argued that Appellant's performance of the walk and turn field sobriety test should be suppressed and redacted if Appellant is granted a new trial. The Court rejects this argument.

3. The Court finds that the State did not violate Rule 5/Brady by turning over an Inspection Report (which sets forth and describes violations made at the checkpoint location on the night of Appellant's arrest) to the defense on the day before trial. The State turned over the document as soon as it received the document from law enforcement. The Court finds that Appellant was not prejudiced by this disclosure on the day before trial.

4. Appellant timely objected at trial that the State violated Rule 5/Brady by first producing evidence regarding the S.C. Highway Patrol's selection of this site for a roadblock

during Trooper Ashley's testimony under oath during trial. Appellant contends the failure to produce such evidence prior to trial constitutes a Rule 5/Brady violation. On April 16, 2013, Appellant filed and served the State with his Rule 5/Brady motion, which in pertinent part requested "[a]ny and all investigation reports, information, or material which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial." The Court finds that the State's failure to produce this evidence regarding the S.C. Highway Patrol's selection of this site for a roadblock, which was first disclosed by the State during Trooper Ashley's testimony during trial, was not a Rule 5/Brady violation because such evidence was not material to establish Appellant's guilt or innocence, did not mitigate punishment, and/or did not impeach, discredit, or contradict Trooper Ashley's testimony.

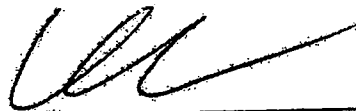
5A. Appellant timely objected at trial to the admissibility of Appellant's refusal to provide a breath sample. Appellant contends the Magistrate erred in allowing the State to introduce evidence of Appellant's refusal to provide a breath sample because Trooper Ashley did not have the statutory right to offer Appellant a breath test pursuant to Code Section 56-5-2950(A), which provides in pertinent part: "A person that drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination thereof."

5B. Trooper Ashley testified that Appellant drove up to the roadblock, but Trooper Ashley never testified to any bad driving by Appellant. (Tr. p. 24, ll. 4-10.) Appellant contends

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that he did not have to consent to a breath test because he was not arrested for an offense arising out of acts alleged to have been committed while he was driving a motor vehicle while under the influence. Appellant argues that he was merely arrested for driving under the influence. Appellant argues the State, therefore, should not have been allowed to introduce evidence of his refusal to provide a breath sample. The Court finds this argument is without merit because any person arrested for driving under the influence has consented to a breath test, so the Magistrate properly allowed the State to introduce evidence regarding Appellant's refusal to provide a breath sample.

IT IS SO ORDERED.



HON. DONALD B. HOCKER
Presiding Circuit Court Judge

Laurens, South Carolina

10-9, 2015

#4



COPY

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

THOMAS A. WILLIAMS)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

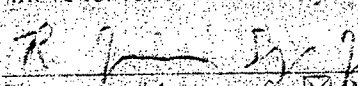
IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-24-1091

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

2015 NOV 16 09:11:49

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

Plaintiff's Attorney: R. JAMISON TINSLEY JR., Bar No. 79903 Address: 212 OAK AVE., GREENWOOD, SC 29646 Phone: 864-223-0770 Fax 864-377-8278 E-mail: Tinslerj@gmail.com Other:	Defendant's Attorney: MICAH ELIJAH BLACK, Bar No. 101119 Address: PO BOX 516, GREENWOOD, SC 29649 Phone: 864-942-8800 Fax E-mail: micaheblack@gmail.com Other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant 	NOVEMBER 16, 2015 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ 25.00 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status - <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	



COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
 THOMAS A. WILLIAMS,)
)
 Appellant,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT

**APPELLANT'S MOTION TO ALTER OR
 AMEND ORDER**

C/A No. 2014-CP-24-1091

FILED COMMON PLEAS
 8TH JUDICIAL CIRCUIT
 GREENWOOD, S.C.
 2015 NOV 16 PM 11:49

Pursuant to Rule 59, SCRPC, Appellant respectfully requests that the Court reconsider and amend its Order. The Order was issued October 9, 2015, and filed and received by Appellant's counsel on November 5, 2015. The Court erred in denying Appellant's requested relief for the following reasons discussed herein.

Appellant was convicted of DUI in magistrate's court on August 26, 2014. Appellant timely filed an appeal, and the circuit court heard the case September 2, 2015. Appellant argued, inter alia, that he was entitled to a new trial because the magistrate erred in allowing the State to introduce evidence of Appellant's refusal to provide a breath sample because Trooper James C. Ashley did not have the statutory right to offer Appellant a breath test pursuant to Code Section 56-5-2950(A). The circuit court upheld the conviction.

The implied consent statute states,
 A person that drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination thereof.

S.C. Code Ann. §56-5-2950(a) (2013). "If a statute's language is plain, unambiguous, and

conveys a clear meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning.... However, penal statutes will be strictly construed against the state.” State v. Elwell, 403 S.C. 606, 743 S.E2d. 802, 806 (2013) (internal citations omitted).

The statute states a person consents to a breath test if arrested for an offense arising out of acts alleged to have been committed while driving under the influence of alcohol. §56-5-2950(a). The clear requirement of this statute is that to offer a breath test to a defendant arrested for DUI, the State must make the arrest based on an act beyond merely driving under the influence. Any act of bad driving committed by the defendant while driving under the influence would suffice to allow the police to offer a breath test to the defendant. The offense could be speeding, driving left of center, a wreck, or any of the other numerous traffic violations.

Had the Legislature intended to require a person arrested merely for DUI to have given implied consent to a breath test, then the Legislature could have stated a person arrested for DUI impliedly consents to a breath test. But given the plain language of “an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol” included in the statute, an arrest for DUI by itself is not enough to qualify as giving implied consent to a breath test.

In the present case, Appellant was stopped at a roadblock. The State presented no evidence of bad driving by Appellant. (Tr. p. 24, ll. 4-10.) The State cannot point to any “offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol.” The magistrate, therefore, erred in allowing the State to produce evidence of Appellant’s refusal to take a breath test as the State cannot show Appellant gave implied consent to take a breath test.

The Court should amend its Order and grant Appellant a new trial because of the

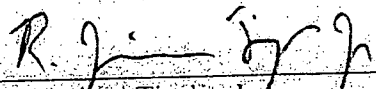
magistrate's prejudicial error in allowing the State to produce evidence of Appellant's refusal to take a breath test.

Furthermore, the Court erred in refusing to vacate Appellant's conviction based upon State v. Vickery, 399 S.C. 507, 732 S.E.2d 218 (Ct. App. 2012). Vickery requires the State to present evidence establishing "some basis for the location of the checkpoint." Id., at 224. At trial, the State first produced evidence regarding the S.C. Highway Patrol's selection of this site for a roadblock during Trooper Ashley's testimony under oath during trial. Appellant contends the failure to produce such evidence prior to trial constitutes a Rule 5/Brady violation. Appellant was denied the opportunity to investigate the subject matter testified to by Trooper Ashley, because Appellant first learned of this evidence during Trooper Ashley's trial testimony. Appellant contends that the Court erred in affirming his conviction because such evidence was material to the State being able to prove Appellant's guilt beyond a reasonable doubt and such evidence was necessary for the State to be able prosecute its case.

The Court should amend its Order and reverse Appellant's conviction because of the magistrate's prejudicial error in allowing the State to introduce evidence concerning the basis for the location of the roadblock when such evidence had not been provided to Appellant prior to trial.

Respectfully submitted,

TINSLEY & TINSLEY, P.C.
Attorney for Appellant



R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278

Greenwood, South Carolina

November 16, 2015



COPY

STATE OF SOUTH CAROLINA)

COUNTY OF GREENWOOD)

THOMAS A. WILLIAMS,)

Appellant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE
BY HAND DELIVERY**

C/A No.: 2014-CP-24-1091

2015 NOV 16 AM 11:49

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

The undersigned of the Tinsley & Tinsley, P.C., does hereby certify that on the 16th day of November, 2015, he served the pleading specified below, by hand delivery to: Honorable Angela Woodhurst, Greenwood County Clerk of Court and Eighth Judicial Circuit Solicitor, at the addresses referenced below.

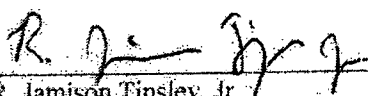
SERVED BY HAND DELIVERY:

Honorable Angela Woodhurst
Greenwood County Clerk of Court
Greenwood County Courthouse
Greenwood, South Carolina 29646

Eighth Judicial Circuit Solicitor
Park Plaza
Monument Street
Greenwood, South Carolina 29646

- 1. Appellant's Motion To Alter Or Amend Order

TINSLEY & TINSLEY, P.C.
Attorneys for Appellant


R. Jamison Tinsley, Jr.
PO Box 49145
Greenwood, SC 29649
Phone: (864) 223-0770
Fax: (864) 377-8278

November 16, 2015,

Greenwood, South Carolina.

1 State of South Carolina)
 2 County of Greenwood) Indictment No.: 2014-CP-23-1091
 3 Thomas A. Williams,)
 4 Appellant,)
 5 vs.) Transcript of Record
 6 State of South Carolina,)
 7 Defendant.)
 _____)

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January 14, 2016

Greenwood, South Carolina

BEFORE:

The Honorable Donald B. Hocker, Judge

APPEARANCES:

Robert James Tinsley, Esquire
Attorney for the Appellant

Micah Black, Assistant State Solicitor
Attorney for the State

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 January 14, 2016

2 BAILIFF: All rise.

3 THE COURT: Thank you very much. Have a seat. All
4 right. We're on the record this morning and this, I
5 believe this case is Thomas Williams versus State of
6 South Carolina. Or the State versus Thomas Williams.
7 2014-CP-24-1091. And Micah Black is here present for the
8 State. James Tinsley is present for the
9 defendant/appellant. This is your motion to alter or
10 amend, Mr. Tinsley?

11 MR. TINSLEY: Correct, Your Honor.

12 THE COURT: Okay. I have some familiarity or
13 I should have some familiarity with it or recollection of
14 the case, but if you will just kind of give me a little
15 factual background and then hit on those points that you
16 want me to consider with respect to your motion.

17 MR. TINSLEY: Yes, sir, Your Honor. May it please
18 the Court. Mr. Williams was arrested for DUI back on
19 March 30th, 2013. It's a road block case over at the
20 intersection of, I believe it was Main and Cambridge and
21 Mr. Williams approached the road block, was pulled out of
22 the car, given a couple field sobriety tests and taken
23 down to the station, offered the breathalyzer and
24 refused. He arrested for DUI. Subsequently convicted in
25 Magistrate Court in 2014.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 And the points that we have raised in the motion to
2 alter prior order was that first the Court should have
3 suppressed his breathalyzer refusal because the State
4 didn't have the right to offer him the breathalyzer under
5 the implied consent statute which is 56-5-2950 section A.
6 It specifies that a person that's consented to chemical
7 test, breathe, blood or urine for the presence of alcohol
8 or drugs or a combination if arrested for an offense
9 arising out of acts alleged to have been committed while
10 the person is driving a motor vehicle under the influence
11 of alcohol or drugs or a combination thereof. And our
12 argument is there's got to be something beyond just mere
13 DUI that he has done that he has been arrested for for
14 the State to offer him a breathe test.

15 And here there was no bad driving. There was no
16 evidence produced at trial of bad driving. Merely that
17 he drove up to the road block and when the officer
18 interacted with him, he was taken out and eventually
19 arrested and we think that offense arising out of acts
20 alleged to have been committed while the person is
21 driving under the influence requires, it just requires
22 something, or almost anything could do it. Driving left
23 of center. Speeding. No taillight. Whatever traffic
24 violation.

25 There was nothing else here and penal statutes are

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P.O. Box 184, Lexington, South Carolina 29071

1 strictly construed against the State and we think the
2 language of this statute is clear that there's got to be
3 something more than just driving under the influence so
4 the Magistrate Court should have suppressed the refusal
5 and he's entitled to a new trial.

6 And our second argument that we have raised in our
7 motion to alter or amend is that the Court should have
8 vacated the conviction under Vickery because the State
9 first produced evidence regarding site selection for this
10 road block at trial, testimony under oath. They gave us
11 nothing other than this sheet that should be in the court
12 file the day before trial. That just kind of gives the
13 arrest they made at the scene. It doesn't go into why
14 they selected this site and so this is a Brady violation
15 there. It's material to the statement to prove his guilt
16 beyond a reasonable doubt and given that it was not
17 turned over before trial giving anything related to why
18 the site was selected the Court should overturn the
19 conviction on that grounds. Thank you, Your Honor.

20 THE COURT: Thank you. Okay. Mr. Solicitor.

21 MR. BLACK: Thank you, Your Honor. As to the first
22 point that Mr. Tinsley raised was the implied consent
23 statute. The language that he's referring to states if
24 arrested for an offense arising out of acts alleged to
25 have been committed while the person was driving a motor

1 vehicle while under the influence of alcohol, I think the
2 language is very simple. The act that the driver, that
3 the defendant in this case committed was him actually
4 driving under the influence.

5 I will agree with Mr. Tinsley, he wasn't swerving
6 when he pulled up to the road block. He wasn't speeding.
7 There was no other offense other than the fact he pulled
8 up, the officer noticed a smell of alcohol and
9 at that point he become concerned and began questioning
10 him and the defendant admitted to consuming several
11 drinks. At that point the defendant got out of the
12 vehicle, failed the field sobriety tests and was
13 subsequently arrested. The act that the statute is
14 referring to quite simply is he was driving a vehicle
15 while impaired.

16 THE COURT: Let me just stop you just a minute. If
17 I understand, and I wanted to look at my order because I
18 did not recollect that argument being presented.
19 Evidently it was because it's addressed in my order. I
20 remember we talked at length about Vickery and there were
21 some other issues that you raised that apparently you're
22 not raising in your reconsideration motion, but you're
23 saying, Mr. Tinsley, and I'm gonna come back to you,
24 Solicitor, you're saying, Mr. Tinsley, that there has to
25 be an arrest for some traffic offense over and above the

1 DUI offense such as speeding, driving left of center and
2 that sort of thing.

3 Apart from whether or not that's a valid argument, I
4 have never seen a DUI case, and I tried tons of DUI cases
5 when I was in private practice in the older days, they
6 don't make as many DUI cases as they used to, but I never
7 saw where there was a ticket for speeding or a ticket for
8 driving left of center or any of that. They wrote a
9 ticket for DUI and that was it. So that's an interesting
10 argument that you make.

11 MR. TINSLEY: I don't think it necessarily has to be
12 an arrest but the officer has to --

13 THE COURT: Well, it says if arrested for an
14 offense. And you're saying the word offense connotes
15 speeding, driving left of center, something of that
16 nature. So taking your reading of that statute, it says
17 there has to be an arrest for some offense other than the
18 DUI.

19 MR. TINSLEY: And it may be the reason for the
20 original arrest or the original stop is the bad driving.
21 Because your standard, if it's not a road block case is
22 going to say I stopped him because of one of these
23 things.

24 THE COURT: Right. But in any road block case then
25 if your argument has merit to it, then there could never

1 be a breathalyzer offered in a DUI case when there is a
2 road block.

3 MR. TINSLEY: Not necessarily because a lot of times
4 there will be equipment violations on top of it.

5 THE COURT: Maybe so.

6 MR. TINSLEY: Or there is the rare occasion where
7 somebody comes up to the road block doing something. But
8 I just think legislature, if they wanted to say anybody
9 arrested for DUI consents, they could have said that.

10 THE COURT: Solicitor, your position is that the
11 word offense means the DUI?

12 MR. BLACK: Yes, sir, Your Honor. I think that that
13 is exactly what it means. It can mean any type of
14 infraction but I think sometimes the truth is so obvious
15 it kind of just hits you in the face and in this case the
16 offense arising out of acts alleged is the actual
17 driving. He was driving on the road while he was
18 impaired. And so I believe that in this particular case
19 that it's quite simply he was driving a vehicle while
20 drunk so the officer had every right to offer him a
21 breathe test in that regard.

22 THE COURT: Well, then, we didn't spend a whole lot
23 of time on this particular argument, did we?

24 MR. TINSLEY: We brought it up and it was I think
25 the last point probably.

1 THE COURT: Because I think we spent more time on
2 Vickery and more time on the video. Okay. All right.
3 Well, Solicitor, then if your argument has merit, then
4 why doesn't the sentence stop at vehicle? Why include
5 while under the influence? If you're saying the word
6 offense means the DUI, then why didn't the legislature
7 stop it after the word motor vehicle?

8 MR. BLACK: Judge, I wish I could explain what the
9 legislature thinks and I think a lot of people in this
10 room would love to know what goes on in the minds of the
11 legislature. I think when you get a lot of lawyers down
12 in Columbia writing laws, I think sometimes chaos ensues
13 and I think the DUI is a prime example of that. It's
14 very verbose, very wordy but I think if you quite simply
15 just look at what the legislature was intending, I think
16 that they intended for when a person was arrested for
17 DUI, field sobriety tests to be offered as well as the
18 breathe test to be offered for the State to ultimately
19 make a case.

20 The offense, the language that I'm looking at in the
21 implied consent statute which I believe you have in front
22 of you, the offense arising out of the acts alleged to
23 have been committed. The offense is the DUI and I think
24 that maybe that's being overshadowed by the wordiness of
25 the statute but if you look at that word offense and then

1 you look at what's going on in this particular case,
2 somebody driving down the road, somebody committing a
3 crime, driving under the influence, that's what's
4 important.

5 I think if we were to take Mr. Tinsley's argument
6 and if we were to take the argument that they are making
7 and a trooper who is sitting out on the side of the road
8 and a person pulls up, doesn't commit any traffic
9 infractions but the trooper smells alcohol coming from
10 the person, what's that trooper supposed to do? Is he
11 supposed to just let them keep on driving down the road?
12 What happens when that defendant drives off the road and
13 kills himself or kills somebody two miles down the road?
14 Highway patrol gets sued. The trooper gets individually
15 sued. It's a total wreck. And I'm sure that any defense
16 attorney is gonna be lining up to take the personal
17 injury case. So in this case it's kind of you're damned
18 if you do and you're damned if you don't. I think if you
19 take a common sense approach to this you're gonna easily
20 rule in the State's favor.

21 THE COURT: Right. Right. Let Solicitor Black
22 address Vickery and then I'll turn it back over to you,
23 okay?

24 MR. BLACK: Yes, Your Honor. I think the point that
25 he was making with Vickery dealt primarily with the

1 inspection report and I'm not sure if you have a copy of
2 it or if you saw it previously. The inspection report is
3 basically a report of all of the infractions that occur
4 at that particular location on that particular night and
5 I have asked, in this particular case I had asked the
6 trooper to get it to me. He got it to me the day of
7 trial and I gave it to the defense the day of trial right
8 before the trial started.

9 The locations are selected based on a pre-approved
10 list that has to be kind of disclosed and mandated down
11 from the highway patrol every year. So there is a list
12 of places within each county that they can set up, check
13 points and this particular place they had set up a check
14 point. I believe the trooper testified at trial that he
15 had been on check points at that particular location for
16 several years in the past. I think he has been with the
17 highway patrol for eight years so he has done numerous
18 check points at this location. He's arrested individuals
19 at this particular location for traffic infractions and
20 that's the basis for why they selected these places.

21 I don't think that there is any kind of Brady
22 violation that the defense was prohibited from making an
23 argument. I don't think it hurt their case at all about
24 finding out this information the day of trial unless
25 you're gonna argue that the case should have been tossed

1 because they didn't have this information, but I think
2 that the testimony is enough. The inspection report is
3 enough for us to overcome getting him the discovery the
4 day of that - that particular sheet of paper that
5 basically just lays out, yeah, we arrested one person for
6 DUI, two people had their taillights out or they didn't
7 have their taillights working and somebody had their
8 music too loud. I don't think that hurts the State
9 whatsoever or the defense in this particular case.

10 THE COURT: All right. Thanks, Solicitor. Mr.
11 Tinsley.

12 MR. TINSLEY: Just to clean up the first argument
13 talking about the legislature's intent, all we've got to
14 go on or the best thing we have to go on are the words
15 they write and they chose to add that language and they
16 could have stopped it with arrested for DUI. Instead
17 they didn't so those words have to mean something and
18 these statutes are strictly construed against the State.

19 As for the comment, I would flip the other side and
20 say there's not enough lawyers in Columbia to try these
21 things getting drafted like that.

22 And for the second argument, that check, whatever
23 the name of that one sheet of paper is, just setting
24 aside the time limits of when it was produced to us, he
25 testified to all this stuff about why that site was

1 selected, the history of it and the supervisor making
2 that decision and we had none of that information before
3 trial. That was - he was under oath testifying when we
4 got all that information so we never had any opportunity
5 to verify checking into that. So I just don't think that
6 they can come producing material evidence at trial that
7 was never turned over in discovery. Thank you, Your
8 Honor.

9 MR. BLACK: Your Honor, may I pass up -- I was going
10 to actually use this for the next case, but it's just a
11 copy of the DUI statute 56-5-2953. There is a section
12 (a) and I have highlighted section (a), and under section
13 (a) there is a 1, 2 and 3, and under 2 it talks about the
14 video recording at the breathe site and it talks about
15 what must be included and if you strictly construe this
16 particular statute, it talks about what you must have and
17 it talks about including the entire breathe test
18 procedure. Person being informed that he's being video
19 recorded, that he has the right to refuse the test.
20 Under (b) it talks about including the person taking or
21 refusing the breathe test and the actions of the breathe
22 test operator and so on and so forth. So this particular
23 statute is saying that all of this must be video
24 recorded. So I think if you look at the plain language
25 of this particular statute it's pretty obvious that it's

1 got to be recorded for future purposes and that being the
2 jury trial.

3 THE COURT: All right, guys, I'm gonna take a look
4 at this once again and let y'all know something as soon
5 as possible. Appreciate your hard work.

6 MR. TINSLEY: Thank you, Your Honor.

7 MR. BLACK: Thank you, Your Honor.

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appreciates Appellant's argument of 56-5-2950, the Court does not interpret the statute to exclude implied consent for an arrest of solely DUI. Furthermore, the Court does not believe that Appellant was prejudiced in anyway with the evidence produced through Trooper Ashley's trial testimony. The evidence provided did not establish Appellant's innocence, mitigate punishment or impeach, discredit, or contradict the testimony of the State's witnesses.

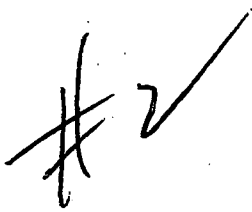
WHEREFORE, Appellant's Motion for Reconsideration is respectfully denied.

IT IS SO ORDERED.



Donald B. Hocker
Circuit Court Judge

February 12, 2016
Laurens, South Carolina



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Honorable Donald B. Hocker, Circuit Court Judge

Case No. 2014-CP-24-1091

Thomas A. Williams, Appellant,


vs.

State of South Carolina, Respondent.

NOTICE OF APPEAL

The Defendant, Thomas A. Williams appeals the order of the Honorable Donald B. Hocker dated February 12, 2016, and entered on February 18, 2016, and the order of Honorable Donald B. Hocker dated October 9, 2015.

February 23, 2016



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant

Other Counsel of Record:

Micah Elijah Black
PO Box 516
Greenwood SC 29649

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Thomas A. Williams
Subject's Name (Print)

3-4-55
Date of Birth

009713019
Driver's License Number



SC
State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → - Inform subject of video recording.
If answer is No, start here → - Inform subject of type samples requested (i.e. breath, blood, urine)
- (B) Provide subject with a written copy of the following advisement and read the advisement to the subject.
- You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
 - The arresting officer has directed that samples be taken for alcohol and/or drug testing.
 - The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least six (6) months and your refusal may be used against you in court.
 - If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
 - If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month.
 - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
 - You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
 - If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.
- If applicable, perform the following procedures:
- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
 - (D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
 - (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)

ADVERTENCIA PORMANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS(DUI)

- (A) ¿Se grabara en video el análisis? Si la respuesta es Si, empieza aqui → - Informe al sujeto que va a ser grabado en video.
Si la respuesta es No, empieza aqui → - Informe al sujeto de lo que se requiere (ejemplo: soplar, sangre, orina)
- (B) De al sujeto una copia escrita de la siguiente advertencia y lea la advertencia al sujeto.
- Usted queda detenido por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código de Leyes de Carolina del Sur de 1976, según su enmienda.
 - El agente que efectuó la detención dispuso que se sacaran muestras de alcohol y/o drogas para ser analizadas(s).
 - Se obtendrán y se analizarán las muestras según la Sección 56-5-2950 y las normas de SLED.
 - Usted no está obligado a hacerse los análisis ni a sacarse las muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar el derecho de manejar en Carolina del Sur por lo menos durante seis (6) meses y el hecho de que usted se niega, podrá usarse en su contra en un tribunal.
 - Si usted se somete a los análisis o se saca las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0.08%) o más, entonces se lo podría acusar de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
 - Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, se le deberá suspender el derecho de manejar en Carolina del Sur por lo menos durante un (1) mes.
 - Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice sus propios análisis adicionales, los cuales usted mismo tiene que pagar y en ese caso, el agente debe brindarle ayuda si usted lo solicita.
 - Usted tiene el derecho de solicitar una audiencia administrativa dentro de los treinta (30) días de la fecha en que se emitió la notificación de la suspensión.
 - Si usted no solicita una audiencia administrativa o si se le confirma la suspensión en la audiencia administrativa, usted tiene que matricularse en un Programa de Medidas Contra el Abuso del Consumo del Alcohol y las Drogas.
- Si aplica, efectúe los siguientes procedimientos:
- (C) Inspeccione la boca del sujeto y quite material extraño de la boca. (Ignora si se niega el sujeto.)
 - (D) Añade datos biográficos en el DataMaster DMT. (Esto es requerido para todos los exámenes aunque se niega el sujeto.)
 - (E) Observe al sujeto un mínimo de (20) minutos antes de obtener un ejemplar de su respiro. (Ignora si se niega.)

Refused to Sign
Subject's Signature
Firma del Sujeto (Recibió una copia)

[Signature] 3/30/13 0039 hrs
Officer's Signature
Firma del Agente
date/time
fecha/hora

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

FEB 17 2017

SC Court of Appeals

Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-000424

Thomas A. Williams.....Appellant,

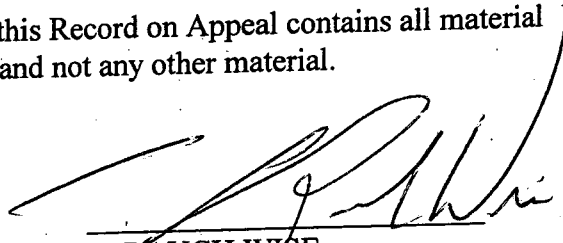
vs.

State of South Carolina.....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.

February 9th, 2017



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(8640 229-5010
S.C. Bar No. 00188

Attorney for Appellant