THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.: 2011-CP-46-3645

THE CITY OF ROCK HILL,
Appellant,

v.

RONNIE PICKETT,
Respondent.

RECORD ON APPEAL

CHRISTOPHER E. A. BARTON
Senior City Solicitor
201 E. Main Street, Suite 300
Rock Hill, South Carolina 29730
(803) 329-5619
Attorney for Appellant

MICHAEL L. BROWN, JR.
Post Office Box 1025
Rock Hill, South Carolina 29731
(803) 981-6857
Attorney for Respondent

INDEX

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.: 2011-CP-46-3645

THE CITY OF ROCK HILL,
Appellant,

v.

RONNIE PICKETT,
Respondent.

RECORD ON APPEAL

CHRISTOPHER E. A. BARTON
Senior City Solicitor
201 E. Main Street, Suite 300
Rock Hill, South Carolina 29730
(803) 329-5619
Attorney for Appellant

MICHAEL L. BROWN, JR.
Post Office Box 1025
Rock Hill, South Carolina 29731
(803) 981-6857
Attorney for Respondent

INDEX

TRUE & CERTIFIED
ROCK HILL MUNICIPAL COURT
NAME: S. Coren
DATE: 3-8-11

Form Rev.'s

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR ~~COUNTY~~ OF ROCK HILL — VERSUS

FIRST NAME	MIDDLE NAME	LAST NAME
RONNIE		PICKETT

STREET AND NO.	CITY	STATE	ZIP CODE
1185 ANDREA CT	ROCK HILL	SC	29730

STATE LICENSED	DRIVER'S LICENSE NO.	CDL	DRI. LIC. CLASS
SC	004967426	☒ YES ☐ NO	A

VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR	COMM. VEH.	AUTO	16 PSGR. VEH.	COMB.
CIF893	SC	DODG	99	HAZ. MT.	MOPED	MTRCYCL.	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT	STREET AND NO.
CITY COURT	120 E BLACK ST

DATE	OF	TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE
03	31	2011	1:00	ROCK HILL	SC	29730

VIOLATION - COURT APPEARANCE REQUIRED (YES) NO — VIOLATION SECTION NO.: DUAC 1ST (.10 LESS THEN .16) — 56-5-2933

OWNER OF VEHICLE: SAME AS — DATE OF ARREST: 02 | 26 | 2011

ADDRESS OF OWNER: DRIVER — DATE OF VIOLATION: 02 | 26 | 2011

BAIL DEPOSITED	NAME OF ARRESTING OFFICER	RANK
NONE	ROWE, C.E	PFC

DESCRIPTION OF ACCUSED

RACE	SEX	BIRTH DATE	HT.	HAIR	WT.	EYES
B	M	05 21 1960	508	BLK	145	BRO

DATE BAIL REC'D. | BY

COUNTY: YRK — NUMBER: 46

BADGE: 5518 — TROOP

DOCKET NO.: 0222611

DAY	S 1	M 2	T 3	W 4	T 5	F 6	S 7

CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☑ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

TIME OF VIOLATION: 0035 A.M.-1 P.M.-2 — WEATHER: CLR

NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE.

DISTANCE IN FEET FROM INTERSECTION OF SALUDA ST AND HEYWARD ST.

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION
NOLLE PROSSED ☐ GUILTY ☐
FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐

MILES	N 1	E 2	S 3	W 4

TRIAL BY: TRIAL JUDGE ☐ JURY ☐

HWY NO.	CITY
	R.H.

VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ — DATE OF TRIAL IF ANY: | | 20

Lat: ° ' "

Long: ° ' "

JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED

OFFENSE CODE	B.A. LEVEL
99	.15

COMMITTED TO: — Vehicle Searched Y — Arrest as Result of Collision N

CERTIFIED CORRECT — DATE | | 20

34150 FL

DRIVER'S RECORD COPY

1,229.50

1

STATE OF SOUTH CAROLINA	)	IN THE CITY OF ROCK HILL
	)	MUNICIPAL COURT
COUNTY OF YORK	)	
	)	
The City of Rock Hill,	)	
	)	CITY OF ROCK HILL'S REPLY
v.	)	TO DEFENDANT'S MOTION TO
	)	DISMISS OR SUPPRESS
Ronnie Pickett,	)	
Defendant	)	

This matter comes before the Court on the Defendant's Motion to Dismiss or Suppress and the subsequent hearing that was held on Friday, July 22, 2011.

FACTS

On February 26, 2011 at approximately 12:27 a.m., Officer Rowe with the City of Rock Hill Police Department was on routine patrol when he observed a vehicle (1999 Dodge Ram pick-up) being operated by the Defendant on Saluda Street within the city limits without an operating driver side headlight. Officer Rowe conducted a traffic stop of the vehicle. Upon his encounter with the defendant, Officer Rowe became concerned that the defendant may be under the influence of alcohol. The defendant had a strong odor of alcoholic beverage coming from about his person and his eyes were glassy and bloodshot. Based upon his observations of the defendant, Officer Rowe asked him to exit the vehicle for field sobriety testing. Based on his observations of the defendant and his poor performance on the field sobriety tests, the defendant was arrested for driving under the influence and Officer Rowe proceeded to read the defendant Miranda warnings. Officer Rowe stated to the defendant, "You have the right to remain silent anything that you say may be used against you in court. You have the right to have a

lawyer and consult with him before and while answering any questions, and if you cannot afford a lawyer one will be appointed for you without cost."

Officer Rowe then asked whether the defendant understood his rights. The defendant acknowledged that he did.

The defendant was then placed in Officer Rowe's patrol vehicle and transported down to the City of Rock Hill Law Center. At the Law Center, Officer Rowe offered the defendant a datamaster examination pursuant to South Carolinas implied consent law and SLED policy and the defendant registered a 0.15% blood alcohol content. He was subsequently charged under Section 56-5-2933 for Driving With an Unlawful Alcohol Concentration (citation #34150 FL).

CITY OF ROCK HILL'S REPLY TO DEFENDANT'S MOTION TO DISMISS

Section 56-5-2953(A)(1)(a)(iii) Requires the Incident Site Video Recording Show the Person Being Advised on his Miranda Rights.

The defendant was arrested and charged with Driving Under the Influence pursuant to the South Carolina Code of Laws Section 56-5-2930. At the time of arrest Officer Rowe informed the defendant of his Miranda rights as follows:

> "You have the right to remain silent, anything that you say may be used against you in court. You have the right to have a lawyer and consult with him before and while answering any questions, and if you cannot afford a lawyer one will be appointed for you without cost."[1]

Officer Rowe's recitation of the traditional Miranda warning complied with the requirements of Section 56-5-2953 of the South Carolina Code of Laws.

[1] Incident site video at 16:09 minutes to 16:24 minutes.

The South Carolina Supreme Court recently announced the following well-established rules of statutory construction in The Town of Mt. Pleasant v. Roberts, Op. No. 27005 (S.C. Sup. Ct. filed July 11, 2011) (Shearouse Adv. Sh. No. 22 at 117). "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). However, "[a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (citation omitted).

In ascertaining legislative intent, "a court should not focus on any single section or provision but should consider the language of the statute as a whole." Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

If the statute is ambiguous, however, courts must construe the terms of the statute. Lester v. S.C. Workers' Comp. Comm'n, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606-07

(2006). In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

"Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993). Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

The well-established rules of statutory construction support the form of Miranda warning utilized by Officer Rowe. The case of Miranda v. Arizona, 384 U.S. 435 (1966) established the constitutional prophylactic requirement that before any custodial statements of a defendant made to law enforcement will be admitted as evidence, that the prosecution must show that the defendant was advised of their Fifth Amendment privilege against self-incrimination prior to any questioning by law enforcement. The Miranda Court outlined the following procedures must be observed by law enforcement to safeguard a defendant's Fifth Amendment privilege: a defendant "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that, if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Id. at 479.

The Miranda warning utilized in the current case is scrupulously faithful to the requirements laid out in Miranda v. Arizona. The legislature says what it means and means what is says, namely that Miranda warnings must be given at the time of a DUI arrest not Kennedy warnings from the South Carolina Court of Appeals.

When the South Carolina Legislature enacted the current version of the DUI/DUAC incident and breath testing site video recording statute, a basic premise is that the legislature acted mindful of the South Carolina appellate court decisions touching on Miranda. "There is a basic presumption the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects" State v. Ard, 332 S.C. 370, 505 S.E.2d 328 (1998). See also, State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (S.C. 2003) (SC legislature amended § 56-5-2930 to include the "materially and appreciably impaired" language following the decision of the South Carolina Court of Appeals in State v. Kerr, 330 S.C. 132, 498 S.E.2d 212 (Ct. App.1998) which used "material and appreciable" to define under the influence). The South Carolina legislature has demonstrated in the past that it will adopt language from the South Carolina Court of Appeals when drafting legislation relating to driving under the influence, however, when the current version of Section 56-5-2953 was adopted, the legislature chose to state only that Miranda warnings must be given. The South Carolina legislature could have easily defined what constitutes a Miranda warning. However, they chose not to define what a Miranda warning is and by direct implication the legislature chose to rely on the existing precedent of the United States Supreme Court and the South Carolina Supreme Court as to what constitutes a proper Miranda warning.

South Carolina Follows the Traditional Miranda Warning

In State v. Richardson, 253 S.C. 468, 171 S.E.2d 717 (1969) the South Carolina Supreme Court held that the warnings given by law enforcement in that case complied with the Unites States Supreme Court decision just three years earlier of Miranda v. Arizona, 384 U.S. 435 (1966). In Richardson the officer testified that prior to interrogating the defendant that he informed him as follows: "I told him that he had the right to remain silent. I told him that anything he could say, or anything that he did say could and would be used against him in a court of law. I told him that at that time, that he had a right to a lawyer and to have him present then and during any questioning of him. I also told him that if he could not afford to hire an attorney that one would be appointed for him by the court free of charge before any questioning of him." Id. at 472.

South Carolina continues to follow the traditional view of Miranda as laid out State v. Richardson. In State v. McCray, 332 S.C. 536, 506 S.E2d 301 (1998) the South Carolina Supreme Court affirmed McCray's convictions for first degree burglary and conspiracy. The McCray Court found that the appellant was properly advised of his Miranda warnings by the polygraph examiner, namely, "the right to remain silent, that anything he said could he used against him in court, and the right to have a lawyer present, and appellant signed a waiver form acknowledging he understood each of the rights." Id. at 543.

In State v. Kirton, 381 S.C. 7, 41, 671 S.E.2d 107, 124 (Ct. App. 2008) Judge Ralph King Anderson, Jr., opined that "[t]he well-known Miranda rights are that the accused must be informed of: the right to remain silent; any statement made may be used as evidence against him or her; and the right to the presence of an attorney." It

should be noted that Judge Anderson was also the author of the opinion in State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct.App.1996), aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998).

In State v. Breeze, 379 S.C. 538, 544, 665 S.E.2d 247, 250 (Ct. App. 2008) the South Carolina Court of Appeals cited to State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct.App.1996) for the proposition that the procedural safeguards as required by Miranda are "[b]efore the accused is subjected to custodial interrogation, he or she must be informed of the right to remain silent; any statement made may be used as evidence against him or her; the right to the presence of an attorney; and if he or she cannot afford an attorney one will be appointed prior to questioning." Noticeably absent in the citation to the South Carolina Court of Appeals decision of State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct.App.1996) by the South Carolina Court of Appeals is the Miranda plus additional warning language suggested by defense counsel in the present case (that a defendant has the right to terminate the interrogation at any time and not to answer any further questions).

South Carolina Follows the Traditional Miranda Warning Analysis as Outlined in California v. Prysock

In California v. Prysock, 452 U.S. 355, 359 (1981) the United States Supreme Court held that there is no rigid rule requiring the content of warnings required by Miranda v. Arizona, 384 U.S. 436 be a precise recitation of the language in the Miranda opinion. "Quite the contrary, Miranda itself indicated that no talismanic incantation was required to satisfy its strictures." The Prysock Court went on to hold that the traditional

warnings given in the case complied with Miranda. The warnings consisted of the following:

> "Number one, you have the right to remain silent. This means you don't have to talk to me at all unless you so desire. If you give up your right to remain silent, anything you say can and will be used as evidence against you in a court of law. You have the right to talk to a lawyer before you are questioned, have him present with you while you are being questioned and all during the questioning. . . . [omitted right of juvenile to have parents present] You all, uh, -- if – you have the right to have a lawyer appointed to represent you at not cost to yourself." Id. at 356-357.

The Prysock Court did not require language as part of the traditional Miranda warning that a suspect has the right to terminate the interrogation at any time and not to answer any further questions.

The South Carolina Supreme Court in a capital murder case upheld the traditional Miranda warnings and cited with approval to California v. Prysock. The South Carolina Supreme Court in State v. Elmore, 286 S.C. 70, 73, 332 S.E.2d 762, 764 (1985) held that a "minor deviation from the verbatim Miranda warning had no effect on the validity of appellant's waiver." Earlier in State v. Tyson, 283 S.C. 375, 323 S.E.2d 770 (1984) the South Carolina Supreme Court held that "Miranda does not mandate rigidity and an effective equivalent of the warnings can fulfill the requirement. California v. Prysock, 453 U.S. 355 (1980). It would appear that Detective Friarson's warnings meet the effective equivalent standard of the familiar Miranda warnings." The familiar Miranda warnings as stated by the South Carolina Supreme Court in State v. Richardson, 253 S.C. 468, 171 S.E.2d 717 (1969) does not include the strict recitation of warning language required by the Defendant.

Defense counsel in the present cases requires not only a precise recitation of an advisement of Fifth Amendment rights, but a precise recitation based on a single opinion from the South Carolina Court of Appeals that was affirmed but modified by the South Carolina Supreme Court. The South Carolina Court of Appeals does not even cite to it's own decision in the Kennedy case for the proposition that the Miranda decision mandates the warnings as stated by the defense.[2] The Miranda plus supplemental language is not required by prior and subsequent United States and South Carolina appellate court opinions. The position of the Defendant that only one unique Miranda warning is mandated when a law enforcement officer in South Carolina arrests someone for DUI flies in the face of the Miranda decision, California v. Prysock and prior opinions from the South Carolina Supreme Court which all indicate there is no rigidity in the content of Miranda warnings.

The Court of Appeals Opinion in State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838 (Ct. App. 1996) is Not Binding Precedent and is Mere Dicta.

The South Carolina Court of Appeals opinion in State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838, (Ct. App. 1996) was affirmed but modified by the South Carolina Supreme Court in State v. Kennedy, 333 S.C. 426, 510 S.E.2d 714 (1998). When a case from the South Carolina Court of Appeals is addressed in a subsequent published opinion by the South Carolina Supreme Court that modifies the underlying opinion, the Court of Appeals opinion does not carry the same precedential value. The State

[2] The Defendant's legal proposition is built on the mandate that one and only one form of Miranda warning is applicable to all criminal cases in South Carolina. This warning must be a precise recitation of the language contained in State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838, (Ct. App. 1996), aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998).

Supreme Court opinion is the final authority on the matter[3]. The South Carolina Supreme Court ruling in Kennedy does not expressly or implied support the reading of what constitutes a proper Miranda warning as posited by the South Carolina Court of Appeals opinion in Kennedy. In fact, all of the published cases from the South Carolina appellate courts that cite to the Kennedy decision for what constitutes a proper Miranda warning, cite to Kennedy as supporting the traditional form of the Miranda warning.

In State v. Lynch, 375 S.C. 628, 654 S.E.2d 2929 (Ct. App. 2007) the South Carolina Court of Appeals in footnote five cites to Kennedy for the traditional proposition that "[t]he well-known Miranda rights are that the accused must be informed of: the right to remain silent; any statement made may be used as evidence against him or her; and the right to the presence of an attorney."

In State v. Breeze, 379 S.C. 538, 544, 665 S.E.2d 247, 250 (Ct. App. 2008) once again the South Carolina Court of Appeals cites to Kennedy for the traditional view of a proper Miranda warning. "Before the accused is subjected to custodial interrogation, he or she must be informed of the right to remain silent; any statement made may be used as evidence against him or her; the right to the presence of an attorney; and if he or she cannot afford an attorney one will be appointed prior to questioning."

Lastly, and most compelling, Judge Anderson, the author of the original opinion in Kennedy refers to his earlier opinion for the traditional view of a proper Miranda warning. State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008) found the defendant arguing that his statements made at a bond hearing were done without a proper advisement of his Miranda rights. Judge Anderson disagreed and stated ""[t]he well-known Miranda rights are that the accused must be informed of: the right to remain

[3] There is no further appeal to the US Supreme Court is reported.

11

silent; any statement made may be used as evidence against him or her; and the right to the presence of an attorney." Id. at 41. (citing to State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838, (Ct. App. 1996), aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998)).

Not one single published decision from the South Carolina Supreme Court or Court of Appeals cites to State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838, (Ct. App. 1996) for the proposition that the form of Miranda warning outlined in that decision. In fact all the decisions that cite to Kennedy support the traditional form of the Miranda warning. Six months prior to his authoring of the Kennedy decision, Judge Anderson authored the opinion of State v. Easler, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996) where one of the issues on appeal was defendant's allegation that his statements to law enforcement were given without the benefit of Miranda warnings. Judge Anderson citing to Miranda v. Arizona, 481 U.S. 436 stated that "[a] suspect in custody may not be subjected to interrogation unless he is informed that: he has the right to remain silent; anything he says can be used against him in a court of law; he has a right to the presence of an attorney; and, if he cannot afford an attorney, one will be appointed for him prior to any questioning, if he so desires." Id. at 338. Judge Anderson got it right the first time and in each time subsequent when he has followed the traditional Miranda warnings.

Statutory Violations Do Not Support Suppression or Dismissal Absent Demonstrated Prejudice to the Defendant

Assuming that Officer Rowe's recitation of the Miranda warning was in error, this does not support the suppression or dismissal of the charge. "Exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the [defendant] cannot demonstrate prejudice at trial resulting from the

failure to follow statutory procedures." State v. Chandler, 267 S.C. 138, 143, 226 S.E.2D 553, 555 (1976).

Officer Rowe recited the classic Miranda warning approved by the South Carolina Supreme Court in State v. Richardson, 253 S.C. 468, 171 S.E.2d 717 (1969). Assuming that the South Carolina Court of Appeals overruled this prior precedent in State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838, (Ct. App. 1996), aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998) this still does not support either suppression or dismissal of the charge where the defendant has failed to demonstrate any prejudice. The Defendant is not seeking to suppress any statements allegedly made to Officer Rowe following his arrest, nor is the Defendant seeking to suppress the breath alcohol testing done following his arrest. The Defendant has failed to allege any prejudice resulting from the alleged failure to comply with the statute.

The South Carolina Supreme Court recently reaffirmed the concept that statutory violations do not support suppression, let alone dismissal of a charge, absent the defendant being able to demonstrate some type of prejudice from the violation. In State v. Hutto, 387 S.C. 244, 692 S.E.2d 196 (2010) the defendant alleged a violation of the privilege created by SC Code of Laws section 24-21-290. The Hutto court found that there was no violation, however, "assuming *arguendo*, there was a violation, such violation would not warrant exclusion of the evidence obtained from the information disclosed. Section 24-2-1290 only creates a statutory privilege and does not implicate a constitutional right; therefore, the exclusionary rule does not apply." Id. at 250 (Citing to State v. Chandler, 267 S.C. 138, 226 S.E.2D 553, (1976)). Absent the Defendant demonstrating prejudice from any alleged violation of Section 56-5-2953 of the South

Carolina Code of Laws, there should be no suppression of evidence, nor dismissal of the charge.

Conclusion

Section 56-5-2933 of the South Carolina Code of Laws mandates that the incident site video recording of show the defendant being advised of his Miranda rights. Nothing contained in the legislative history of Section 56-5-2933 mandates that the advisement of Miranda rights be done only according to the South Carolina Court of Appeals decision in State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838, (Ct. App. 1996), aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998).

Miranda v. Arizona, 481 U.S. 436 and California v. Prysock, 452 U.S. 355, 359 (1981) both support the position that traditional Miranda warnings do not require a precise incantation of the original language contained in Miranda and that an effective equivalent of the warnings can fulfill the requirement. South Carolina follows the traditional Miranda warning language in State v. Richardson, 253 S.C. 468, 171 S.E.2d 717 (1969).

The warnings given by Officer Rowe in the present case faithfully complied with Miranda and numerous South Carolina Appellate Courts interpretations of proper Miranda warnings. Requiring one isolated version of Miranda warnings found in a case modified by the South Carolina Supreme Court to control all criminal cases is South Carolina does not follow the precedent of both prior and subsequent rulings by the South Carolina Supreme and Court of Appeals as to what constitutes a valid Miranda warning.

The suppression of evidence and/or the dismissal of a criminal charge is not supported even when a statutory violation occurs absent prejudice to the defendant. In the present case, the Defendant has not alleged any prejudice resulting of the alleged statutory violation nor demonstrated any prejudice and neither suppression nor dismissal of the charge are warranted or mandated.

Respectfully submitted,

Christopher E. A. Barton
Senior City Solicitor

This 5th day of August, 2011
Rock Hill, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of the City of Rock Hill's Reply to the Defendant's Motion to Dismiss or Suppress by regular U.S. Mail on Michael L. Brown, Attorney for the Defendant, at P.O. Box 1025, Rock Hill, SC 29731.

Christopher E. A. Barton
Senior City Solicitor
City of Rock Hill

This 8th day of August, 2011
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE ROCK HILL MUNICIPAL COURT
COUNTY OF YORK	)	
CITY OF ROCK HILL	)	ORDER
VS.	)	
RONNIE PICKETT	)	
DEFENDANT	)	

CHARGE: DUAC
TICKET: 34150FL
DATE OF ARREST: February 26, 2011
ARRESTING OFFICER: C.E. Rowe

This matter is a July 22, 2011 pre-trial motion to dismiss or in the alternative to suppress pursuant to 56-5-2953 (A) (1) (b) for failure to administer proper Miranda warnings.

Both sides agree with the facts and with the fact that the officer read the following Miranda warnings to the defendant:

"You have the right to remain silent, anything that you say may be used against you in Court. You have the right to have a lawyer and consult with him before and while answering any questions, and if you cannot afford a lawyer one will be appointed for you without cost." (See City's Ex. #1 - On Site Video at 16:09 minutes).

The defense argues this recitation of Miranda is insufficient pursuant to State v. Kennedy, 479 S.E. 2d 838, SC Court of Appeals and our Circuit Court Judge, Judge Alford's Final Order on Appeal in State of S.C. v. Lauren Thomas, Case No: 2009-CP-46-879 because, "it is not clear when she would be entitled to have an attorney present".

The Solicitor argues that Miranda is sufficient in this case as Officer Rowe recited warnings "scrupulously faithful to the requirements laid out in Miranda v. Arizona". (p.5 City of Rock Hill's Reply).

The Court agrees with the City in this matter. In the State of S.C. v. Lauren Thomas, the officer neglected to advise the Defendant that she had the right to consult with an attorney before and while answering any questions as Miranda v. Arizona demands. In said case, the Defendant was so advised.

Therefore the defense's Motion to Dismiss or Suppress is denied.

IT IS SO ORDERED.

Jane Pittman Modla
Rock Hill Municipal Court Judge

Date: Aug. 22, 2011

cc: Chris Barton, Senior City Solicitor
Michael L. Brown, Defense Attorney

NOTICE OF APPEAL FROM THE BENCH TRIAL ORDER ISSUED BY THE CITY OF ROCK HILL MUNICIPAL COURT

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas for York County

APPEAL FROM ROCK HILL MUNICIPAL COURT
Jane Modla, Presiding Municipal Court Judge

Ticket No.: 34150 FL

Ronnie Pickett, Appellant,

v.

The City of Rock Hill, Respondent.

NOTICE OF APPEAL

Ronnie Pickett, Appellant, by and through counsel, MICHAEL L. BROWN, JR., hereby appeals the conviction and sentence dated September 16, 2011, and issued by the Honorable Jane Modla, Rock Hill Municipal Court Judge.

The grounds upon which this Appeal is based are as follows: 1.The lower Court erred in refusing to dismiss the above referenced matter, or in the alternative suppress the evidence as requested; the error being that the Miranda Rights were not read in full as required by Section 56-5-2953, SC Code of Laws, 1976, as amended.

DATED this 27th day of September, 2011.

MICHAEL L. BROWN, JR.
Law Offices of Michael L. Brown, Jr.
P.O. Box 1025
Rock Hill, South Carolina 29731
(803) 328.8822
(803) 328.0523 (via facsimile)

STATE OF SOUTH CAROLINA	)	IN THE ROCK HILL
	)	MUNICIPAL COURT
COUNTY OF YORK	)	
	)	
CITY OF ROCK HILL	)	
	)	
VS.	)	RETURN TO APPEAL
	)	
RONNIE PICKETT	)	
DEFENDANT	)	
	)	

This matter is on Appeal from a Bench Trial in the Rock Hill Municipal Court, Rock Hill, South Carolina, Jane Pitman Modla, presiding Judge.

APPEARANCES:

City Prosecutor: Chris Barton
Arresting Officer: C. E. Rowe
Defense Attorney: Michael Brown

CHARGE:

DUAC
Ticket: 34150FL
Date of Incident: February 26, 2011

PRE-TRIAL MOTION:

On July 22, 2011 the defense made a pre-trial motion to dismiss or in the alternative to suppress pursuant to 56-5-2953 (A) (1) (b) for failure to administer proper Miranda warnings.

Both sides agreed with the facts and with the fact that the officer read the following Miranda warnings to the defendant:

"You have the right to remain silent, anything that you say may be used against you in Court. You have the right to have a lawyer and consult with him before and while answering any questions, and if you cannot afford a lawyer one will be appointed for you without cost." (See City's Ex. #1 - On Site Video at 16:09 minutes).

The defense argued that this recitation of Miranda was insufficient pursuant to State v. Kennedy, 479 S.E. 2d 838, SC Court of Appeals and our Circuit Court Judge, Judge Alford's Final Order on Appeal in State of S.C. v. Lauren Thomas, Case No: 2009-CP-46-879 because, "it is not clear when she would be entitled to have an attorney present".

The Solicitor argued that Miranda was sufficient in this case as Officer Rowe recited warnings "scrupulously faithful to the requirements laid out in Miranda v. Arizona". (p.5 City of

Rock Hill's Reply).

The Court agreed with the City in this matter. In the State of S.C. v. Lauren Thomas, the officer neglected to advise the Defendant that she had the right to consult with an attorney before and while answering any questions as Miranda v. Arizona demands. In said case, the Defendant was so advised.

Therefore the defense's Motion to Dismiss or Suppress was denied. The Order denying the motion was signed on August 22, 2011.

PROCEEDINGS:

A Bench Trial was held on September 12, 2011.

Officer Rowe testified that on February 26, 2011 about 12:30 a.m. he saw defendant on Saluda driving with no headlights. He stopped Defendant, smelled the odor of alcoholic beverage. The defendant admitted to having several beers. He performed poorly on 4 Field Sobriety Tests; The ABC Test, The Finger Dexterity Test, The One-Leg Stand and the Walk and Turn. He was placed under arrest for DUI and read his Miranda Rights. (The Defense made it's objection). Defendant was offered a breathalyzer test and blew .15%. Defendant was charged with DUAC.

CITY'S EXHIBITS:

1. Roadside Video
2. BA Room Video
3. Implied Consent Form
4. BA Test Report

The defense offered no evidence but renewed it's objection.

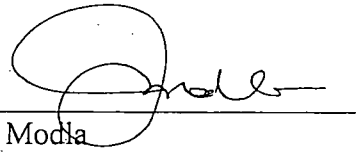
The Court found the defendant Guilty of DUAC and sentenced the defendant to a fine of $1229.50 or 30 days.

The Defense filed an Appeal which was received by the Court on September 28, 2011.

ATTACHMENTS:

1. Copy of Ticket
2. Copy of Appeal
3. Exhibits (1-4)
4. Defense Attorney's 23 page fax of case law supporting his oral argument for his motion to suppress or dismiss.
5. City's Reply Brief
6. Order

Respectfully Submitted,



Jane Pittman Modla
Rock Hill Municipal Court Associate Judge

Date: Oct. 17, 2011

cc: Brian Murphy, Solicitor
Michael Brown, Defense Attorney

State of South Carolina.,)
)
)
)
County of York.,)

In the Court of Common Pleas of York

Case No.: 2011-CP-46-03645

City of Rock Hill.,)
)
Plaintiff.,)
)
VS.)
)
Ronnie Pickett.,)
)
DEFENDANT.)

Transcript of Record

January 18, 2012
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III.

A P P E A R A N C E S:

Ms. Paula Knox Brown
Assistant Solicitor
Sixteenth Judicial Circuit
Rock Hill, South Carolina
803-329-5619
For the Plaintiff

ORIGINAL

Mr. Michael Brown
Attorney at Law
P.O. Box 1025
Rock Hill, South Carolina 29731
803-328-8822
For the Defendant

Wanda Nelson, CVR
Official Court Reporter
Sixteenth Judicial Circuit

THE COURT: Now we have another appeal. This is Ronnie Pickett and the City of Rock Hill. A Notice of Appeal based on the lower court refusing to dismiss or suppress evidence, *Miranda* not being read as required under Section 56-529-53 and whatever incarnation it was in at the time of this offense.

MR. BROWN: I'm sorry, Your Honor.

THE COURT: I said in whatever incarnation that statute was in at the time of this offense. It might have changed this morning, I don't know.

All right, Mr. Brown.

MR. BROWN: May it please the Court.

This is a very simple one issue appeal. In the return to appeal on Page 1, --

Does the Court have the return?

THE COURT: I do.

MR. BROWN: Third paragraph down titled Pretrial Motion, we stipulated and that's without the Court having to watch the video; that's what was read, *Miranda* Rights were read. That is seventy-five percent of the *Miranda* Rights. It leaves out the last requirement of *Miranda* which states that it has the right to terminate the interrogation anytime and you do not have to answer any further questions.

Your Honor, 56-529-53 is clear. It doesn't say read

some of the *Miranda* Rights or part of the *Miranda* Rights. It says *Miranda* Rights which is all inclusive. I would like to hand up to the Court and order that Judge Alford signed. I know its not binding on this Court but I would like to offer it for guidance. Also the return from Judge Woods, the magistrate on that appeal, which upheld a reversal in a similar circumstances. And I would also like to hand up *State v. Suchenski* which I'm sure the court is aware of. And the *Town of Mt. Pleasant* --

THE COURT: Over my death.

MR. BROWN: *Town of Mt. Pleasant v. Trevor Roberts* a recent South Carolina Supreme Court case which reaffirms the *Suchenski* and in essence stated that our Supreme Court and this statute should be strictly construed because it's the only time the legislators required video taping. And, Your Honor, based on that the remedy is reversal and dismissal.

THE COURT: All right.

MS. BROWN: Your Honor, do you have a copy of Mr. Barton's reply brief?

THE COURT: Here's something. Actually this packet has the Thomas Order attached to it. Here is something from Judge Woods. City of Rock Hill Reply signed by Judge Mobley. I sure do, fourteen pages.

MS. BROWN: Your Honor, the city's argument is

basically based on the brief as prepared by Solicitor Barton. This case is one that he and Mr. Brown argued in the Municipal Court. Basically Mr. Barton's position in this case was before Judge Mobley, it is for purposes of this Court today that the State of South Carolina has consistently used a traditional *Miranda* warning which he states in his brief is what Officer Rowe provided to this defendant in this particular case. Judge Mobley looked over the materials and he did provide and looked over these *Miranda* warnings and said that they were consistent with the traditional *Miranda* warnings. What he calls, what Mr. Brown is asking is basically *Miranda* plus, essentially that you have to say to somebody that you have the right to stop asking or stop answering questions at any point in order for that to be full *Miranda* warnings. Mr. Barton's position in his brief is that every cited case both before and after the one that's presented to you today, the Kennedy case, says basically the same thing; Officer Rowe provided his *Miranda* warnings therefore those *Miranda* warnings were complete. There's nothing that this South Carolina law adds to that nor should there be. And he says that any deviation from that *Miranda* if it's a constitutional issue which this is not a statutory deviation or statutory problem, the remedy is not dismissal and he cites a case for that, the case I can't put my

finger on right now, but he cites a case in his brief for that position that is's a constitutional issue. If it's somehow a constitutional error and that warrants dismissal and warrants suppression, if it warrants suppression based on the deviation from the statutory requirements such as this. And again there has been no deviation from the statute because *Miranda* was read as it was intended both for the federal law and the South Carolina law reads consistently in its cases.

THE COURT: All right. Mr. Brown.

MR. BROWN: Just very briefly, Your Honor. I didn't know South Carolina had it's own *Miranda* warnings so specific. Of course South Carolina is first in a lot of things. You read those cases Mr. Barton cites with precedence they make the point that it doesn't have to be a verbatim reading of *Miranda;* it just has to cover the four basic prongs of *Miranda*. In this case its not applicable because the fourth prong is not mentioned in any shape, manner or form.

THE COURT: All right, I'll take this one under advisement too.

MR. BROWN: Thank you, Your Honor.

MS. BROWN: Thank you, Your Honor.

-- END OF TRANSCRIPT OF HEARING --

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 18th day of January 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 3-6 / 2012

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP4600879

South Carolina State Of *vs.* Lauren O Thomas

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.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other:

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Final Order On Appeal From Magistrate's Court

Dated at York, South Carolina, this 5th day of June, 2009.

Court Reporter:

s/Lee S. Alford

PRESIDING JUDGE - LEE S. ALFORD

This judgment was entered on the 22nd day of June, 2009, and a copy mailed first class this 22nd day of June, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew W Shelton Assistant Solicitor 529 S Cherry Rd Rock Hill, SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

Michael Langford Brown Jr P.O. Box 1025 Rock Hill, SC 29731

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

SCRCP APP-24/FORM 4

CIVFORM4M

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 16TH JUDICIAL CIRCUIT
COUNTY OF YORK	)	Case No.: 2009-CP-46-879
State of South Carolina,	)	
Appelant,	)	
v.	)	**FINAL ORDER ON APPEALS FROM MAGISTRATE'S COURT**
Lauren Thomas,	)	
Respondent.	)	

This matter is before the Court on appeal from York County Magistrate Court, Fort Mill Township. The trial court granted Defendant's motion to suppress evidence of field sobriety tests, arrest and the breath test result. The trial court ruled that the state failed to comply with the statutory requirement that a DUI suspect must be advised of his or her Miranda rights before field sobriety tests are administered or breath test given.

The State appeals on two grounds:

(1) That the Miranda warnings given by the arresting officer were adequate to comply with Miranda and

(2) That the required Miranda warnings in DUI cases are statutory rather than constitutional and the trial court was required to find that the Defendant was prejudiced by the failure to give a complete Miranda warning.

This Court agrees with the ruling of the trial court on these two issues and adopts the language of the trial court in its Return on Appeal.

30

The Defendant was advised of her Miranda rights three separate times. The language used by the arresting officer was the same on each occasion. He did not advise her that she had the right to have an attorney present during questioning and to exercise her Miranda rights to stop answering questions at any time and until her attorney was present. It is not clear when she would be entitled to have an attorney present. A significant part of Miranda rights were not given.

A "talismanic incantation" is not required. State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838. State v. Singleton, 284 S.C. 388, 326 S.E.2d 153. However, the material factors must be included. See State v. Kennedy, *Id.*

The State next posits that this is a statutory rather than constitutional mandate which requires the trial court to find that the Defendant suffered prejudice before suppressing the evidence. This issue was not raised below nor ruled upon by the trial court and cannot be raised for the first time on appeal. Further, if the Defendant provided information at the request of the investigating officer which is then used against her in court, a presumption of prejudice would arise.

CONCLUSION

This Court finds the two grounds raised by the State on appeal to be without merit. The appeal is dismissed.

AND IT IS SO ORDERED!

Lee S. Alford
Resident 16th Circuit Judge

H 2
2006

31

June 5, 2009

York, South Carolina.

#3

32

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas of York County

APPEAL FROM YORK COUNTY
Fort Mill Township Magistrate's Court

David S. Wood, Magistrate

09-CP46-579
Z254820

State of South Carolina, Appellant

v.

Lauren Thomas, Respondent.

RETURN

On January 28, 2007 Respondent was charged under S.C. Code § 56-5-2930 with Driving Under the Influence (DUI) by Lance Corporal R.S. Bennett of the Highway Patrol. At the incident site, the arresting officer, pursuant to S.C. Code 56-5-2953 (A) (1) (b), advised the Respondent that:

> "You have the right to remain silent and anything you say can and will be used against you in court. You have the right to have an attorney and if you cannot afford one, one will be appointed to you. Do you have any questions about that?" (Exhibit 2)

The State stipulated that during the contact between the Trooper and Respondent, the Trooper advised the Respondent in the same manner as above on the three separate occasions required by S.C. Code Ann. § 56-5-2953.

(1) before conducting Standardized Field Sobriety Tests, (2) before placing the Respondent under arrest and, (3) before offering the Respondent a breath test.

On motion of defense counsel, the Magistrate suppressed the Standardized Field Sobriety Tests and the breath test result based on the State's failure to comply with the General Assembly's unequivocal mandate to advise Respondent of his Miranda rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602.

The General Assembly did not mandate partial compliance with this statute, the General Assembly clearly states in SC Code Ann. §56-5-2953(A)(1)(b):

"(1) The videotaping at the incident site *must*:

(b) include the person being advised of his Miranda *rights* before any field sobriety tests are administered, if the tests are administered. (emphasis added)"

The tests were administered, the *Miranda* rights were not.

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App.2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999) cert denied as improvidently granted, *State v. Hudson*, 346 S.C. 139, 551 S.E.2d 253

(2001). The determination of legislative intent is a matter of law. Hudson, 336 S.C. 237, 519 S.E.2d 577.

The legislature's intent should be ascertained primarily from the plain language of the statute. Morgan at 366, 574 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Id. When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). We should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. Hudson, 336 S.C. 237, 519 S.E.2d 577.

When a statute's language is plain and unambiguous, and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Id. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. Id.; City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct. App. 1998).

The General Assembly clearly and plainly states that the videotape must include the person being advised of his *Miranda* rights. "Rights" is plural. S.C. Code Ann. §56-5-2953 does not state "some of his *Miranda* rights" or "whichever *Miranda* rights the officer decides to include." *Miranda* rights, given the plain and ordinary meaning, can only mean all of those rights. There is no room for officer discretion as to which of the various and sundry *Miranda* rights are to be read to the suspect.

In *State v. Kennedy*, 325 S.C. 295, 479 S.E.2d 838, the Court of Appeals ruled that a defendant must be advised of the following:

> "He has the right to remain silent; anything he says can be used against him in a court of law; he has a right to the presence of an attorney; if he cannot afford an attorney, one will be appointed for him prior to any questioning, if he so desires; and he has the right to terminate the interrogation at any time and not answer any further questions."

The defendant in this case was not advised that she had the right to the presence of an attorney, that one would be appointed to her prior to any questioning, that she had the right to terminate the interrogation at any time and not answer any further questions.

The State argues in it's Notice of Appeal and Brief that the Trooper's warnings to the defendant were "very similar" to those endorsed by the United State Court of Appeals for the Fourth Circuit in *U.S. v. Frankson*, 83 F.3d 79. The rights endorsed in *Frankson* were as follows:

> "Now I want to advise you of your rights. First of all, you have the right to remain silent. Anything you say, do or write can and will be used against you. You have the right to an attorney, the Government will get one for you. I also explained to him he could answer some of my questions, all of my questions, or none of my questions. I also told him that while he was talking to me, he was free to stop talking to me at anytime."

The advisement by the Trooper was not even close to as thorough or complete as the rights endorsed in *Frankson*. Noticeably absent is the defendant's right to terminate the interrogation at any time and not to answer any further questions.

The statute does not call for an analysis based on custody or interrogation. If that was the case, then no Miranda warning would be necessary at such an early stage of a police investigation. Whether the suspect was in custody or being interrogated has no place in determining what rights the suspect should be advised of by the officer because the General Assembly specifically stated that the suspect must be advised of their *Miranda* rights at certain points during the investigation and arrest of an individual charged with DUI. No matter what *Miranda* has been interpreted to mean in the various federal courts, the General Assembly has the ability to afford suspects with more protection than the United States Constitution or the South Carolina Constitution.

The General Assembly mandated that a suspect be advised of his *Miranda* rights and the state failed to comply with the statute. Accordingly, short of dismissing the case, the evidence collected after the State failed to adequately

and fully advise the defendant of his *Miranda* rights was suppressed. The legislature has established a procedure that *must* be followed in the making if a DUI arrest. Here, the procedure was not followed.

The State's assertion that the lower court should have articulated whether or not there was unfair prejudice to the Respondent due to non-compliance with S.C. Code Ann. § 56-5-2953 is not properly before the Circuit Court. The State did not seek a post-judgment ruling from the court regarding that issue. In order to preserve an issue for appellate review, a party must file a motion to alter or amend the judgment when the party raises an issue to the lower court and the court fails to rule on that issue. No ruling was made on that issue during the lower court proceeding.

Respectfully,

David S. Wood
York County Magistrate Judge
114 Spring Street
Fort Mill, SC 29715

March 30, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Ronnie Pickett,
Appellant,

v.

City of Rock Hill,
Appellee.

IN THE COURT OF COMMON PLEAS
FOR THE 16th JUDICIAL CIRCUIT

Case No. 2011-CP-46-3645

ORDER

This matter is before the Court on appeal from the Municipal Court, Rock Hill, South Carolina. The trial court denied Appellant's Motion to Dismiss or Suppress. A Bench Trial was held on September 12, 2011. Appellant was found guilty. Notice of Appeal was filed September 28, 2011. A hearing before this Court was held on January 17, 2012. Appellant Ronnie Pickett was represented by Michael Brown, Esquire. Appellee City of Rock Hill was represented by Paula Knox Brown, Esquire.

Appellant appeals on the grounds that the lower Court erred in refusing to dismiss the case, or, in the alternative, suppress the evidence. The basis of Appellant's appeal is that the Officer's recitation of Miranda warnings was insufficient and did not comply with South Carolina Code §56-5-2953.

South Carolina Code §56-5-2953(A)(1)(a)(iii) provides, in pertinent part, that "the video recording at the incident site must: . . . show the person being advised of his Miranda rights." Both parties have stipulated that the following Miranda warnings were given to the Appellant:

> "You have the right to remain silent, anything that you say may be used against you in Court. You have the right to have a lawyer and consult with him before and while answering any questions, and if you cannot afford a lawyer one will be appointed for you without cost." (See City's Ex. #1 – On Site Video at 16:09 minutes).

39

South Carolina precedent appears unclear as to what Miranda is required. In State v. Kennedy, 325 S.C. 295, 479 S.E. 2d 838 (Ct. App. 1996), the Court of Appeals made the following finding:

> "A suspect in custody may not be subjected to interrogation unless he is informed that: he has the right to remain silent; anything he says can be used against him in a court of law; he has a right to an attorney, one will be appointed for him prior to any questioning, if he so desires; **and he has a right to terminate the interrogation at any time and not to answer any further questions."** [Emphasis Added].

The City rightfully points out that case law both before and after Kennedy does not include the additional language highlighted above. In fact, in State v. Breeze, 379 S.C. 538, 544, the Court of Appeals cites Kennedy for the proper Miranda warning and explicitly leaves out the highlighted portion above.

To resolve this issue, the Court has looked to Miranda, which held:

> Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. **Opportunity to exercise these rights must be afforded to him throughout the interrogation.** After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." (Emphasis Added).

In order for a person to be afforded an opportunity to exercise his rights throughout the interrogation, he must know that such opportunity exists. Therefore, he must be advised of the opportunity. In Kennedy, the Court of Appeals phrased a sufficient advisement of that opportunity as "the right to terminate the interrogation at any time and not answer any further questions." In the instant case, there was no warning to the Appellant that he could exercise his

right to remain silent at any time during the interrogation or to terminate the interrogation at any time.

Additionally, it should be noted that the Officer in this case did not advise the Appellant that he had a right to have an attorney present, but only that the Appellant could "have an attorney" whom the Appellant could "consult" before, and during, questioning.

While the United States Supreme Court has held that "no talismanic incantation [of Miranda] is required," the warnings must at the minimum "reasonably convey to a suspect his rights as required by Miranda." *See* Kennedy, supra, *citing* Duckworth v. Eagan, 492 U.S. 195, 109 S.Ct. 2875 (1989). The Court finds that the Miranda warnings provided to the Appellant in this case were not sufficient to advise the suspect of rights as required by Miranda.

South Carolina Code §56-5-2953(A)(1)(a) provides, in pertinent part, that "The video recording at the incident site must: . . . show the person being advised of his Miranda rights." The Miranda warnings in this case were not sufficient, and, therefore, the video did not comply with the mandatory requirements of the statute. "As evidenced by this Court's decision in Suchenski, the Legislature clearly intended for a per se dismissal in the event a law enforcement agency violates the mandatory provisions of section 56-5-2953." Mt. Pleasant v. Roberts, Opinion No. 27005 (Decided July 11, 2011).

Therefore, the Judgment below is REVERSED. Appellant's DUAC charge is DISMISSED.

IT IS SO ORDERED.

John C. Hayes III

John C. Hayes, III
Presiding Judge #3

Janurary 20th, 2012
York, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.: 2011-CP-46-3645

THE CITY OF ROCK HILL,
Appellant,

v.

RONNIE PICKETT,
Respondent.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Christopher E. A. Barton
Senior City Solicitor
201 E. Main Street, Suite 300
Rock Hill, South Carolina 29730
(803) 329-5619
Attorney for Appellant

This 18th day of April, 2013
Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.: 2011-CP-46-3645

THE CITY OF ROCK HILL,
Appellant,

v.

RONNIE PICKETT,
Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies pursuant to the South Carolina Appellate Court Rules that a true copy of Record on Appeal in the above captioned case has been served upon Respondent by depositing one (1) copy via Regular United States. Mail, postage prepaid on the 18th day of April, 2013, to Michael L. Brown, Jr., Attorney for Respondent, 223 Main Street, Suite 550, Post Office Box 1025, Rock Hill, South Carolina 29731.

Christopher E. A. Barton
Senior City Solicitor
201 E. Main Street, Suite 300
Rock Hill, South Carolina 29730
(803) 329-5619
Attorney for Appellant