

ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable Alexander S. Macaulay, Circuit Court Judge

Appellate Case No: 2013-000515

THE STATE,

APPELLANT,

v.

CODY ROY GORDON,

RESPONDENT.

RECORD ON APPEAL

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SC Court of Appeals

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1 State of South) In the Court of Common Pleas
 2 Carolina)
 3 County of Oconee) Case No: 2012-CP-37-00852
 4)
 5 Cody Roy Gordon,)
 6)
 7 Appellant,)
 8 -vs-) Transcript of Record
 9 State of South) Appeal from Magistrate's
 10 Carolina,) Court
 11 Respondent.)

January 22, 2013
 Walhalla, South Carolina

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B E F O R E:

The Honorable Alexander S. Macaulay, Judge.

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

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 Attorney for the Appellant

Blair Stoudemire, Esq.
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 Attorney For the Respondent

Robin Sue Hild, FCRR, RPR
 Circuit Court Reporter

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Witnesses

Page

No Witnesses were called.

The Court's Ruling

15

Certificate of Court Reporter

17

Exhibits

No exhibits were introduced.

1 ** Start of Requested Certified Transcript of Record **

2 January 22, 2013

3 10:26 a.m.

4 THE COURT: This is Cody Gordon versus the State of
5 South Carolina, 2012-CP-37-852. Mr. Denny on behalf of
6 the Appellant, Mr. Stoudemire on behalf of the
7 Respondent.

8 MR. DENNY: This case was before Judge Simmons last
9 September. And the issues before this Court simply
10 include the fact that the State failed to redact the
11 video in such a way that would prevent prejudicial
12 statements from being disclosed to the Jury.

13 There was an Order from the bench during that trial
14 that they must redact it. There was a time taken during
15 that trial. And when the tape was replayed, more
16 information, that not supposed to be displayed to the
17 jury, was.

18 Second, basically incident site recording
19 violations. And if you look at South Carolina
20 56-5-2953, incident site video is supposed to have, you
21 know, not starting with activation of blue lights, any
22 field sobriety tests, and the arrest, including Miranda.
23 Also, the breath site videos also are supposed to be
24 recorded, and any problems are supposed to be documented
25 in the affidavit showing why there is any noncompliance.

1 The video itself, the incident site, actually at
2 the road stop, has Mr. Gordon in the dark, you cannot
3 see him at his face or his head doing the HGN test.
4 Now, the Magistrate at that point in time said, Well, we
5 can see his body. But we couldn't see whether he was
6 actually doing the HGN test correctly, whether he was
7 tracking the stimulus.

8 In my opinion, as well as I believe the Court would
9 see if he views the video, is that it is impossible to
10 actually see his head. I do not believe that's in
11 compliance with the video. There is absolutely nothing
12 to prevent the Officer from bringing Mr. Gordon closer
13 to the Trooper's car so that he would be in full
14 visibility and actually having the HGN performed at that
15 point in time. He didn't do it. You can't see it.

16 I do have still shots of the video. I believe that
17 all the evidence was submitted up to the Court, but if
18 you would like it for reference, I will be happy to
19 provide it to the State as well as you at this point in
20 time.

21 **THE COURT:** Do you have stills?

22 **MR. DENNY:** Yes, Your Honor, I do (handing). And,
23 Your Honor, obviously this is a black-and-white
24 printout. There's nothing done to it. But I know the
25 black-and-white might be different here.

1 **THE COURT:** You say it's improved from what the
2 actual video looks like?

3 **MR. DENNY:** Right. That's a screen shot of exactly
4 what was there.

5 And again, 2953 required that the video show the
6 field sobriety test be performed. My contention at the
7 court that day was basically you could not see the HGN
8 being performed, it was impossible to see it. The State
9 had minimal effort to bring Mr. Gordon closer to the car
10 for that particular test. They didn't do it.

11 Now, that in and of itself I believe should have
12 been grounds for either exclusion of the tape or
13 dismissal.

14 When we look at the actual breath site test, the
15 breath site test actually starts out on October --

16 **THE COURT:** All right. What's the statute again?

17 **MR. DENNY:** It is 56-5-2953, and it's Section (A),
18 that (reading):

19 A person who violates 2930, '33 or '45 must have
20 this conduct at the incident site and breath test site
21 video recorded. The video recording at the incident
22 site must not begin later than the activation of blue
23 lights -- and in this case, Your Honor, this was a
24 roadblock and there was an affidavit to that effect --
25 and include any field sobriety test administered, any,

1 including the arrest of a person for violation of 2930
2 or '33, as well as showing the person first being
3 advised of their *Miranda* rights.

4 My contention with regard to this part of the
5 appeal is that you cannot see the HGN. That's the field
6 sobriety test is one of those performed. You cannot see
7 the actual conducting, you know, the Officer conducting
8 that weren't relevant, and the effort on the State was
9 minimal to bring that subject, bring the Defendant
10 closer to the car for his benefit. I mean, we've all
11 been told that basically the field sobriety tests are
12 for the benefit of not only the State but for the
13 Defendant to show that basically they are not
14 intoxicated. In this case it removed that ability of
15 that Defendant to have that argument because the State
16 intentionally in my belief kept him out of visibility of
17 the video.

18 Your Honor, I have a printout. I've got a copy.

19 **THE COURT:** Let me see it, if you would, please.

20 (The Court conferred with the law clerk off the
21 record.)

22 **THE COURT:** All right. Anything else?

23 **MR. DENNY:** Yes, Your Honor. There's several other
24 issues that were brought up at trial. There's the HGN
25 test. In addition, basically, the charging document

1 that was presented shows the arrest, and the Jury was
2 charged basically saying, showing that Mr. Gordon was
3 charged, as listed on the charging document, as driving
4 under the influence on October 30th, 2011.

5 Again, from the still photos I show you, this road
6 stop, everything that was done was on October 29th. He
7 was out of the car, he was actually handcuffed, which is
8 that bottom photo, on the 29th. The charging document
9 was wrong, the error in the instruction to the Jury
10 about it happening on the 30th was wrong.

11 THE COURT: What was the prejudice in that? Did he
12 have an alibi?

13 MR. DENNY: Well, Your Honor, I mean, we expect
14 the --

15 THE COURT: Well, I think there are cases, I
16 haven't looked at them, I'm sure Mr. Stoudemire has,
17 which say that, of course, scriveners' errors and things
18 of that nature are not fatal unless they do have a
19 prejudicial consequence.

20 MR. DENNY: Well, Your Honor, in this --

21 THE COURT: In other words, it goes to the element
22 of the crime or something of that nature.

23 MR. DENNY: Your Honor, I understand. However,
24 going back to 2953 and the recording statute, when we
25 look at everything that went across on the day of this

1 incident, the Officer on the stand then testified, Well,
2 this is daylight savings time, it was actually the 30th
3 and it wasn't a scrivener's error, it was actually
4 daylight savings time, as if to explain why his camera
5 listed it as the 29th when, in fact, it wasn't daylight
6 savings time. The Court took judicial notice that it
7 was an error all the way around.

8 So we have a Defendant who has been taken out of
9 his car at night and put through a series of tests in a
10 way that does not give him the protection because he's
11 outside the visibility of the video --

12 THE COURT: Well, that is a different argument,
13 different grounds.

14 MR. DENNY: Right. But I'm looking at the
15 compounding issues here as far as the time goes. The
16 scrivener's error might be he wrote the wrong date.

17 THE COURT: Well, no. A scrivener's error is
18 usually before we had all of our technology and we had
19 scribes --

20 MR. DENNY: Yes, sir.

21 THE COURT: -- making the record. And now we have
22 machines making the record. And, but I think that the
23 analogy or the rule is the same, that if it's something
24 that doesn't go to the element of the crime or to some
25 defense such as alibi that adds, that harms there.

1 MR. DENNY: I understand, Your Honor.

2 THE COURT: Let's go on to something else.

3 I want to hear Mr. Stoudemire on your first
4 argument, though, because I've looked at the statute
5 that you have given us, and I don't know how there's an
6 exception in that. And the (B) part, too.

7 MR. DENNY: And, in addition, going back to the
8 recording statute, again, there's testimony that it was
9 daylight savings time, that his camera had not been
10 adjusted for daylight savings time, that it was actually
11 supposed to be the next day.

12 2953 as well as I'm gonna look at 2954 which talks
13 about -- 2953 talks about if there was an exception or
14 if there was a problem with any of the equipment.

15 THE COURT: But you have to have an affidavit.

16 MR. DENNY: There's an affidavit, correct. But the
17 only thing the State supplied was an affidavit, and it
18 was part of State's Exhibit Number 2. (Reading):

19 The only valid reason for failing to produce a
20 videotape based upon the totality of the circumstance,
21 the arrest came from the traffic safety check point or
22 video recording began as soon as possible.

23 That was the only explanation -- I believe it was
24 part of the record -- however, I do have a copy if the
25 Court would like it.

1 So nothing that was presented explained why the
2 dates were wrong on the video. I believe they do not
3 comply with 2953 under the recording statute, and those
4 are two examples of it.

5 I do have some other issues if you want to have the
6 State address that one point.

7 **THE COURT:** All right, Mr. Stoudemire?

8 **MR. STOUDEMIRE:** Which point do you want to go with
9 first?

10 **THE COURT:** The one that I'm concerned about is
11 apparently section 56-5-2953 (A) speaks in absolutes
12 almost that -- I say almost -- but does speak in
13 absolutes. They include the entire breath test
14 procedure, they include the person taking or refusing a
15 breath test.

16 **MR. STOUDEMIRE:** Yes, sir.

17 **THE COURT:** So, I mean -- and again, the fact that
18 they're out of range in the sense that light doesn't
19 penetrate the darkness, it's one of those things that
20 perhaps would interfere with recording the field
21 sobriety test. Go ahead.

22 **MR. STOUDEMIRE:** Yes, sir. Judge, I think what the
23 Courts seemed to have focused on over time with regard
24 to the incident site recording, and of course that would
25 be with regard to the HGN and other field sobriety

1 tests, seems to be that it must capture the conduct of
2 the accused.

3 THE COURT: Well, before we start down that road,
4 did they perform the HGN test?

5 MR. STOUDEMIRE: I'm going with what Mr. Denny said
6 is that it wasn't visible in the video.

7 THE COURT: Well, did they perform it? Was that
8 part of the testimony?

9 MR. DENNY: Yes, Your Honor, it was. Part of the
10 testimony was that they performed the HGN test and
11 subsequently Mr. Gordon did not pass the HGN test, as
12 well.

13 THE COURT: Well, in other words, if they performed
14 it, that meant that they were relying on it, and if they
15 were relying on it, there has to be some image of it.

16 MR. STOUDEMIRE: Correct.

17 THE COURT: Readable, viewable. I mean, in other
18 words, don't do the test if you're out of sight.

19 MR. STOUDEMIRE: I agree. And, Judge, what I would
20 rely on is *Murphy versus State*, which 392 S.C. 626,
21 which is a 2011 case, and in that particular case they
22 dealt with the issue of failure to record a full view of
23 all field sobriety tests. And just reading from the
24 case it says here, the statute provides that (reading):

25 A person must have his conduct at the incident site

1 and breath test site videotaped. The videotaping at the
2 incident site must, A, begin not later than the
3 activation of blue lights and conclude after the arrest
4 and, B, include the person being advised of Miranda
5 before field sobriety tests are administered, or after.

6 And it goes on to say that (reading):

7 The plain language of the statute is not violated
8 as long as the recording captures, one, the accused
9 conduct, and, two, *Miranda* warning provided prior to the
10 field sobriety test if such test occurred.

11 It further goes on to say that Murphy -- the
12 Defendant in that case -- does not allege the video
13 fails to capture her being advised of Miranda but only
14 that this statute requires that she remain in full view
15 and record all field sobriety tests.

16 However, nothing in the plain language of the
17 statute indicates that an accused remain in full view of
18 the camera for the duration of the encounter; rather,
19 the statute only requires that her conduct be recorded.

20 So it seems that -- and it goes on to define
21 conduct, according to the *Oxford Dictionary*, is
22 generally defined as one's behavior, action, or
23 demeanor.

24 My argument would be that that's only her action
25 and demeanor are on there. For instance, if this were a

1 walk and turn, just because you don't see the bottom of
2 their legs doing the walk and turn, it doesn't mean that
3 that conduct wasn't recorded, and then specifically
4 that's what Murphy is dealing with.

5 THE COURT: Well, I can attest to legs not
6 performing like they used to. And it's not the bottom
7 that gives you the problem, it's when the legs at the
8 bottom give out or for some reason or another,
9 intoxication or just old age. Your top starts becoming
10 unstable.

11 MR. STOUDEMIRE: Yes, sir.

12 THE COURT: So, I mean, that's a little bit of a
13 difference because the nystagmus test, if I remember,
14 has to do with such things as eye movement, which is a
15 very, you know, precise type of thing. In other words,
16 I don't know if you can show the finger without showing
17 the eyes and how, the complete test.

18 MR. STOUDEMIRE: And that's true, Your Honor, and I
19 agree with that. But I would also say I have yet to see
20 any incident site recording where, regardless of how
21 close to the camera they are, that the viewer is able to
22 see the accused's eye movements during an HGN test.
23 Sometimes you'll be able to see head movements, but
24 generally you see a finger moving back and forth --

25 THE COURT: That's why it's not gonna be, they use

1 other tests or something, not something that wouldn't be
2 of benefit.

3 MR. STOUDEMIRE: Yes, sir.

4 THE COURT: If you can't see it, you can't see any
5 part of it, or you can't even see the head moving, like
6 you say, as I say, I know about stability when your
7 limbs kind of give out on you.

8 MR. STOUDEMIRE: Yes, sir. And, Judge, looking
9 through here, and I may be missing it in here. But I
10 don't see what, if any, other tests were performed at
11 the incident site other than HGN. There may have been
12 others.

13 THE COURT: I think unfortunately that's probably
14 gonna be the critical part because if you didn't have
15 any other tests, that's the only test.

16 MR. STOUDEMIRE: Yes, sir, I agree.

17 THE COURT: And if that test is not complete, is
18 not of benefit, because obviously there's nothing on
19 the -- and the video is supposed to give you an image of
20 the test used, the sobriety test used.

21 MR. STOUDEMIRE: Yes, sir.

22 THE COURT: All right. Anything else, Mr. Denny?

23 MR. DENNY: Your Honor, also in this appeal we
24 address the fact that under 2954 there is an error at
25 the breath site. The actual DataMaster at the video had

1 the wrong time stamp on it as well. Again, under the
2 next section, 2954, they are supposed to provide records
3 of maintenance, malfunctions or errors, and they didn't
4 do that.

5 The actual clock, you watch it on the video, starts
6 on Saturday, October 29th, 2011, at 2:19 a.m., and then
7 in the middle of the video it jumps to Sunday, October
8 30th, 2011, at 1:12 in the morning. And again I realize
9 that there's the image of what's going on, but all of
10 this consistently needs to be --

11 **THE COURT:** Again, that comes down to, as I say,
12 harmless error. Because I sometimes write checks, you
13 know, in the new year using the old year date, and the
14 bank has been very good to negotiate it. I wish they
15 wouldn't sometimes. As long as I put the sufficient
16 funds.

17 But I mean, in other words, I think life tells us
18 that there are certain things that have consequences.
19 And that's coming back to what I said on the video of
20 the arrest.

21 All right. Anything else?

22 **MR. DENNY:** Nothing further, Your Honor.

23 The Court's Ruling:

24 **THE COURT:** All right. Your motion is granted.

25 Draw the Order.

1 MR. DENNY: Thank you, Your Honor.

2 THE COURT: But let's concentrate on the 56-5-2953,
3 must include any field sobriety test administered.

4 MR. DENNY: Yes, Your Honor.

5 THE COURT: And "includes" means that it must be
6 reliable in the sense that it does have the
7 representation; in other words, you can discern what is
8 going on.

9 MR. DENNY: Yes, Your Honor. Thank you.

10 THE COURT: In other words, but also, if they're
11 gonna use that, that means that you do bring it a little
12 bit closer, but if it's out at the edge of the lighted
13 area, perhaps use some other test.

14 MR. STOUDEMIRE: Yes, sir.

15 MR. DENNY: Thank you, Your Honor.

16 THE COURT: All right.

17 (Whereupon, the Magistrate's Court Appeal was
18 concluded at approximately 10:50 a.m.)

19 ** End of Requested Certified Transcript of Record **

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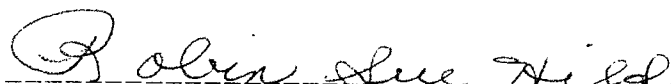
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of 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 the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Oconee County, South Carolina, on the 22nd day of January, 2013.

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

March 16, 2013


Robin Sue Hild, FCRR, RPR
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September 21, 2012 2012 SEP 21 P 2: 16

DELIVERED VIA HAND DELIVERY

Magistrate M. Todd Simmons
Oconee County Summary Court
207 A E.N. First Street
Seneca, South Carolina 29678

RECEIVED

RE: State of South Carolina v. Cody Roy Gordon; TKT F346464; Notice of Appeal


Dear Judge Simmons,

Please find the attached Notice of Appeal which has been filed regarding the above referenced case.

If you have any questions, please feel free to contact me.

Very truly yours,

KEITH G. DENNY, P.A.



Keith G. Denny
Attorney at Law

cc: Cody Roy Gordon

THE STATE OF SOUTH CAROLINA
In the Circuit Court
Tenth Judicial Circuit

FILED-OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2012 SEP 21 P 2:00

APPEAL FROM OCONEE COUNTY
Oconee County Magistrate Court

Hon. M. Todd Simmons, Magistrate Judge

2012 CP 37-852

TKT F346464

State of South Carolina

Respondent,

v.

Cody Gordon,

Appellant.

NOTICE OF APPEAL

Mr. Cody Gordon (the "Defendant") appeals the Order of the Magistrate M. Todd Simmons for the conviction of Driving Under the Influence, 1st Offense.

ARGUMENTS

Prior Bad Acts Disclosed To Jury

Failure To Adhere to Court's Order and Redact Prejudicial Statements

The State sought to move into evidence the DataMaster video from the breath testing site over the Defendant's objection. The Court ruled that the State must redact the video to prevent any statements regarding prior bad acts of the Defendant because of the prejudicial nature of the comments. The State was given time to identify appropriate video stopping points and portions of the video were published to the jury. The State failed to timely stop the video and specific statements regarding the Defendant's prior arrests and familiarity with law enforcement was

published to the jury. The Defendant's motion for a mistrial was denied. Rather, the Court issued a curative charging instruction whereby the jury was told to disregard what it heard. At the close of the trial, the Court charged the jury with its instructions. However, the subsequent restatement of the charge regarding the prior bad act was not consistent with the initial charge to the jury. In response to the Defendant's objection to the Court's error, the Court reissued the same original curative charge instruction.

Failure to declare a mistrial was reversible error that the Court compounded with the subsequent inconsistent charge and attempted re-correction. The State's failure to comply with the prior ruling and redact the tape was grounds for mistrial; however, the subsequent inconsistent charges further prejudiced the Defendant beyond the initial impact of the disclosure.

Incident Site Recording Violations

Defendant Avoidably Obscured During Field Sobriety Test

Pursuant to S.C. Code Ann. Sec. 56-5-2953(A)(1)(ii), the incident site video must include any field sobriety tests administered. In this case, the arresting officer positioned Mr. Gordon sufficiently far away from the front of his patrol car that it is not possible to see any substantive feature of Mr. Gordon during the administration of the horizontal gaze nystagmus (HGN) test. The State provided testimony that it could not adequately position Mr. Gordon closer to the patrol car because the trooper was afraid that doing so would possibly obscure the Defendant's feet. However, this is contradictory because the focus of the HGN test was the Defendant's upper body and moving the Defendant closer to the car to allow the video to accurately capture the Defendant's responses would have been beneficial to the defense. The arresting officer's intentional failure to move the Defendant closer in view of the dashcam video recorder

prejudiced the Defendant and failed to meet the requirement pursuant to S.C. Code Ann. Sec. 56-5-2953.

Breath Site Reporting and Recording Violations

Failure To Record Breath Testing Procedure at Seneca Police Department

Pursuant to S.C. Code Ann. Sec. 56-5-2953(A)(2)(a), the breath test site video must include the entire breath test procedure. In this case, the State admitted that Mr. Gordon was taken to the DataMaster room at the Seneca Police Department for a breath test. The State alleged that the DataMaster was not operational Mr. Gordon was then taken to the Oconee County Law Enforcement Center for a breath test. However, no records were provided as to any current malfunction for the Seneca DataMaster. A solution change was noted that it was performed several hours after Mr. Gordon had been taken to the Seneca DataMaster room; however, no record exists for any prior malfunction or reason for the inability to perform.

Pursuant to S.C. Code Ann. Sec. 56-5-2954, the State is required to maintain detailed records of malfunctions, repairs, complaints or other problems regarding breath testing devices at each site. In this case, the State provided testimony that the Seneca DataMaster was inoperable but could not provide any record as required by S.C. Code Ann. Sec. 56-5-2954. Therefore, the Court made a reversible error by ruling that the video from the Seneca DataMaster room could be excluded by the State without showing of a malfunction. Otherwise, S.C. Code Ann. Sec. 56-5-2953(A) mandates that the video be available which the State failed to produce.

Failure to Provide Maintenance Records for DataMaster Recording at Oconee Law Enforcement Center

The DataMaster video from the Oconee Law Enforcement Center clearly shows a date and start time of October 29, 2011 at 2:19 A.M with the Defendant on the video. Then, the video jumps and the date/time changes to sometime after midnight on October 30, 2011. When realizing this inconsistency on cross-examination, the arresting officer stated that he was not responsible for the equipment in the DataMaster room and that the video was wrong. However, he had previously authenticated and stated for the record that the video was accurate. The Court subsequently denied the Defendant's motion to exclude the tape based on the admission of its inaccuracy witness who had previously vouched for its accuracy. Furthermore, when pressed for records for any alleged malfunction pursuant to S.C. Code Ann. Sec. 56-5-2954, the State failed to produce any and alleged that the video was not encompassed as a "breath testing devices" as provided by statute. However, it is clear that S.C. Code Ann. Sec. 56-5-2953 clearly requires that video recording be part of the breath testing procedure; therefore, malfunctions with the video equipment must be addressed in the same manner. Without adherence to S.C. Code Ann. Sec. 56-5-2954 for all equipment used in the breath test procedure, the use of breath test video for the Defendant's use at trial is nullified. Relying on *State v. Elwell*, 396 S.C. 330, 721 S.E.2d 451 (Ct. App. 2011), S.C. Code Ann. Sec. 56-5-2953(A) requires that the breath test site be videotaped to protect both the State *and the Defendant* from unreliable memories of those testifying at trial. *Id.* fn6. Here, the Court chose to allow the State's witness to select those parts of the tape it wanted to say were accurate and which parts were inaccurate. The Court's reasoning to allow this is incomprehensible and defies logic.

Therefore, the Court's failure to dismiss the Defendant's charge based on the State's failure to comply with S.C. Code Ann. Sec. 56-5-2953 and S.C. Code Ann. Sec. 56-5-2954 was reversible error. The statute, case law and contradicting statements by the State's own witness negate any reliance on the DataMaster video.

Failure To Grant Directed Verdict for State's Failure To Provide Any Evidence That The Incident Occurred on October 30, 2011

The Defendant was charged with the offense of Driving Under the Influence, 1st offense having occurred on October 30, 2011. The Uniform Traffic Ticket, charging document, listed the arrest time as "00:51" (i.e. 12:51 A.M.). From all the evidence presented by the State, the Defendant was stopped and out of his vehicle as of 23:45 (i.e. 11:45 P.M. on October 29, 2011). When the State realized its error, the trooper attempted to allege that the night of the arrest was the night of Daylight Savings Time and the time on the dashcam video recording equipment had not been changed. This was an outright falsehood. The Court took judicial notice of the fact that the time change for Daylight Savings in 2011 ended on November 6, 2011 and not October 29, 2011. Moreover, the State failed to provide ANY affidavit regarding any purported malfunction of the dashcam video equipment; therefore, the State's claim that the dashcam recorder was malfunctioning was baseless.

The Magistrate's failure to grant a directed verdict was an error because the State provided no evidence that Mr. Gordon committed the offense as charged by the charging document and subsequently charged by the Court. There was no evidence that the crime, as charged against the Defendant, occurred on October 30, 2011 and the State's video of the Defendant's arrest clearly indicates an arrest on October 29, 2011. Again, the Court was clearly


aware of the arresting officer's baseless statement by taking judicial notice that Daylight Savings Time ended later in November rather than in October. The State's introduction of the actual roadblock video whereby the State's witness authenticated that the video was accurate which clearly indicated that arrest occurred on October 29, 2011 negated any allegation of when the alleged act occurred. Therefore, the Court's failure to a verdict in light of the overwhelming evidence that no act occurred, as charged on October 30, 2011, is reversible error.

CONCLUSION

The reasons set forth above, the charge against the Defendant must be dismissed with prejudice.

September 21, 2012

Walhalla, S.C.



Keith G. Denny, Esq.
Post Office Box 101
30 Short Street
Walhalla, S.C. 29691
Phone: 864-638-2930
Fax: 864-638-2922

Other Counsel:
Attorney Bethany Blundy
Solicitor's Office, Tenth Judicial Circuit
205 W. Main Street
Walhalla, S.C. 29691

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF Oconee
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-37-00852

Cody Roy Gordon

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Keith G. Denny	Attorney for : <input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> 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.
- 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)
N/A	N/A	\$N/A
N/A	N/A	\$N/A
N/A	N/A	\$N/A

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.

s/Alexander S. Macaulay

2063

02/15/2013

Circuit Court Judge

Judge Code

Date

SCRPC Form 4C (12/2011)

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of February, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of February, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Keith G. Denny

Blair L. Stoudemire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Beverly H. Whitfield

CLERK OF COURT

Court Reporter: Robin S. Hild

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

CODY ROY GORDON,

Appellant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE CIRCUIT COURT

TENTH JUDICIAL CIRCUIT

ORDER

2012-CP-37-852

2013 FEB 15 PM 4 21

FILED
BEVERLY N. WHITEFIELD
CLERK OF COURT

Judge: Hon. Alexander S. Macaulay

Date of Hearing: January 22, 2013

Attorney for Appellant: Keith G. Denny, Esq.

Attorney for Respondent: Blair Stoudemire, Esq.

Court Reporter: Robin Hild

PROCEDURAL HISTORY

The Appellant was charged with Driving Under the Influence, 1st offense on October 30, 2011. This matter was brought to trial before Magistrate M. Todd Simmons in the Oconee County Summary Court. At trial, Appellant's counsel moved for dismissal of the case because the State failed to adhere to incident site recording requirements as provide in S.C. Code Ann. Sec. 56-5-2953. Specifically, Appellant's counsel argued that the arresting officer's placement of the Appellant too far away from the trooper's car caused the Appellant's head to not be sufficiently visible during the administration of the Horizontal Gaze Nystagmus standardized field sobriety test. The trial court determined that the fact that he was on the video was sufficient even if the Appellant's head could not be adequately seen. Furthermore, Appellant's counsel raised objections and moved for dismissal for the State's failure to provide records for alleged malfunctions of the trooper's video equipment, apparent malfunctions of the breath site recording system based on invalid date/timestamps on the video and the State's failure to appropriately redact the incident site and breath test site videos. The Appellant's counsel's objections were denied. This appeal followed.

FINDINGS

After a review of the record and arguments by counsel for the State and Appellant, I find the following:

1. I find that this Court has subject matter jurisdiction of the appeal issues and the parties before the Court.
2. I find that venue is proper.
3. I find that the Appellant's objections were properly preserved for appeal.
4. I find that the State's argument pursuant to *Murphy v. State*, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2007), that "the plain language of the statute does not require that the recording capture a continuous view of the accused, or capture all field sobriety tests. Rather, provided all other requirements are met, the video need only record the accused's conduct" is not applicable here as the "conduct" sought to be recorded during the Horizontal Gaze Nystagmus standardized field sobriety test was not, in fact, captured on the recording.
5. I find that as a matter of law, S.C. Code Ann. Sec. 56-5-2953(A) requires that the Defendant's head must be visible – unless an exception as provided for in S.C. Code Ann. Sec. 56-5-2953(B) applies – during the administration of the Horizontal Gaze Nystagmus field sobriety test. In this case, the Appellant was moved so far out of view in front of the arresting officer's patrol car for the administration of the test and into the dark which prevented the Appellant's head from being sufficiently visible through the entire administration of the Horizontal Gaze Nystagmus test.
6. Furthermore, at the roadblock incident site, nothing prevented the officer from moving the Appellant closer to the camera for administration of this Horizontal Gaze Nystagmus test.

7. I find that Magistrate Simmons' failure to dismiss the case for failure to comply with the incident site recording requirements was an error of law and the only remedy is the dismissal of the charge against the Appellant. The dismissal is with prejudice.

8. I find that the additional issues raised by defense counsel did not necessarily prejudice the Appellant as the Appellant had adequate notice of the charge and that scrivener errors were not fatal to the State's case. However, because charge is dismissed for failure to adhere to S.C. Code Ann. Sec. 2953(A), it is not necessary to evaluate defense counsel's additional objections further.

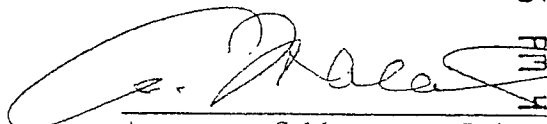
CONCLUSION

Therefore, it is the conclusion of this Court:

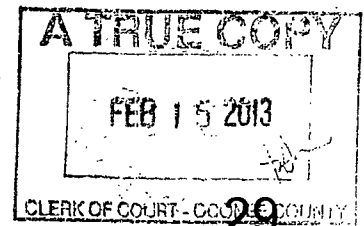
1. Magistrate Simmons' denial of the Appellant's motion to dismiss because the Appellant's head was not sufficiently visible during the entire administration of the Horizontal Gaze Nystagmus test was an error of law.
2. Because the arresting officer did not comply with S.C. Code Ann. Sec. 56-5-2953, the conviction in the Oconee County Summary Court for the Driving Under the Influence, 1st Offense (TKT F346464) is reversed the charge of Driving Under the Influence, 1st Offense (TKT F346464) is dismissed with prejudice.

AND IT IS SO ORDERED!

February 15, 2013
Walhalla, South Carolina


ALEXANDER S. MACAULAY, Judge

FILED OCONEE CO
BEVERLY H. WHITFIELD
CLERK OF COURT
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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE)

FILED OCONEE, SC TENTH JUDICIAL CIRCUIT
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA,)

2012 OCT 16 PM 4 54

V.)

RETURN OF THE CRIMINAL APPEAL

Cody Roy Gordon)
510 N. Depot Street)
Seneca, SC 29678,)

CASE NO.: 2012-CP-37-852

UNIFORM TRAFFIC TICKET NO.: F 346464

DEFENDANT.)

This matter is on appeal from the Court of M. Todd Simmons, Oconee County Summary Court, Seneca, South Carolina, M. Todd Simmons, Presiding Judge.

The Defendant, Cody Roy Gordon was charged with violating S.C. Code §56-5-2930, which is commonly referred to as Driving Under the Influence. This offense is alleged to have occurred on October 30, 2011.

This matter was heard in a jury trial on September 12, 2012 and the Notice of Appeal was filed on September 21, 2012. The Defendant was represented by Attorney Keith G. Denny. The State was represented by Assistant Solicitor Beth Blundy. The proceedings were recorded electronically. The jury list was prepared pursuant to S.C. Code §22-2-90. (Selection of jury list for a scheduled term of jury trials). The Defendant and the State were given an opportunity to exercise peremptory challenges on September 10, 2012 at 10 a.m.

The Defendant made the following pre-trial motions:

1. Motion to dismiss for failure to adhere to S.C. Code §56-5-2953 and 56-5-2954. This motion is recorded on Part 1 of the DVD beginning at 5:38 minutes and ends at 24:10 minutes. More discussion occurs at 28:22 minutes and ends at 31:15 minutes. The Court's ruling is recorded at 31:17 minutes. The Court reviewed S.C. Code §56-5-2953, §56-5-2954, State v. Elwell, 396 S.C. 330 (Ct. App. 2011), and Murphy v. State, 392 S.C. 626 (Ct. App. 2011). The Court ruled that the State properly

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captured on the roadside video the Defendant's conduct as required by S.C. Code §56-5-2953 and as interpreted by Murphy. Additionally, the Court ruled that the breath test site was in Walhalla and the State complied with the videotaping statute. The Court also ruled that there were records of the solution change on the breath machine in Seneca. The Defendant's Motion to dismiss was denied.

2. Motion to redact portions of videotapes pertaining to Defendant's statements regarding prior interactions with law enforcement or prior arrests. This motion is recorded on Part 1 of the DVD beginning at 24:18 minutes and ends at 27:54 minutes. This motion was granted and the State was ordered to redact any portions of the videotapes wherein the Defendant made any statements regarding his previous interactions with law enforcement and any statements regarding prior arrests.
3. Motion to sequester witnesses. This motion is recorded on Part 1 of the DVD beginning at 33:07 minutes and ends at 34:30 minutes. The Court denied this motion.

The State made the following pre-trial motions:

1. Motion to redact portions of videotapes pertaining to Defendant's statements regarding potential penalties if convicted of DUI. This motion is recorded on Part 1 of the DVD beginning at 27:54 minutes and ends at 28:22 minutes. This Motion was granted by the Court.

The State called the following Witnesses:

1. Cpl. Mayfield of the S.C. Highway Patrol
2. Lnc. Cpl. Greer of the S.C. Highway Patrol

See attached digital recording of the trial proceedings on DVD for the testimony from these witnesses. (Mayfield testimony begins at 17:21 minutes on Part 2 of DVD and ends at 42:25 minutes.) (Greer testimony begins at 43:28 minutes on Part 2 of DVD and ends at 37:20 minutes on Part 5 of DVD.)

The Defendant called the following witnesses:

1. NONE

The State made the following Motions:

1. NONE

The Defendant made the following Motions:

1. Motion for mistrial based upon State's inadvertent disclosure of a certain redacted portion of the Datamaster room videotape (Exhibit #6). The Defendant made the statement on the videotape "the other cops let me" while speaking to Trooper Greer in the Datamaster about smoking. (This is recorded at 46:00 minutes on part 3 of the trial DVD). Both parties agree that the disclosure was accidental and in violation of the Court's prior Order to redact the statement. The State argued that a curative instruction would remedy the matter. Upon review of State vs. Howard, 296 SC 481 (1988), the Court determined that the proper remedy under the circumstances was to issue a curative instruction to the jury. The Defendant's motion for mistrial was denied and a curative instruction was given to the jury. (Curative instruction is recorded at 7:41 minutes on part 4 of the trial DVD). Defendant renewed his motion for a mistrial at 11:40 minutes on part 4 of the DVD. Defendant's motion is based upon the fact that statements on the Datamaster video were published to the jury wherein he explained "you can ask anybody in the jail about me". This statement was not specifically ruled upon by the Court as it was not raised by the Defendant during the previous discussions with the parties. Defendant's motion was denied as it was not a prior crime, wrong, or act as he merely explained he knew people working at the jail.
2. Motion to dismiss based upon violation of S.C. Code §56-5-2954. Alternatively, motion to exclude videos from evidence. This motion is recorded on Part 5 of the DVD beginning at 15:16 minutes and ends at 34:16 minutes. Defendant did not object to the introduction of the roadside video (Exhibit #3) or Datamaster video (Exhibit #6), except for the portions which were redacted pursuant to the Defendant's pre-trial motion. The Defendant's position is that time stamps on the videos are inaccurate, and, therefore the videos are not in compliance with the video recording statutes and related case law. The Defendant argues that since

the video time stamps are not correct, the appropriate remedy is for the Court to dismiss the case. There is no dispute that both videotapes capture the Defendant on camera. The dispute is whether or not the State is required to keep the time stamps on each video accurate and to what degree of accuracy are the time stamps supposed to be maintained. At this point in the trial, the videos had already been introduced into evidence, and the Defendant did not raise any objection other than the redaction issue discussed in the Defendant's pretrial motion. Since the videos were already in evidence, to exclude them would be impossible. Additionally, a curative instruction would not be appropriate since the evidence was already admitted and published to the jury. The motion in the alternative to exclude the videos was denied. Since no objection was raised at the time the videos were admitted into evidence, since S.C. Code §56-5-2953 does not set forth any requirements of a time stamp on the videos, and since S.C. Code §56-5-2954 does not set forth any remedy for the State's failure to report time stamp discrepancies, the Court denied the Defendant's motion to dismiss.

3. Defendant made a Motion for Directed Verdict at the close of the State's evidence. This motion is recorded on Part 5 of the DVD beginning at 38:33 minutes and ends at 42:52 minutes. The Defendant asserts that there was no evidence which shows the he violated S.C. Code §56-5-2930 specifically on October 30, 2011. Upon review of the evidence, the Court determined that both of the State's witnesses testified that the alleged offense occurred on October 30, 2011. Specifically, Trooper Greer testified that he first came into contact with the Defendant at a license check point shortly after midnight on October 30, 2011. Additionally, Trooper Greer testified that he contacted dispatch at the time of the arrest and was told it was 00:51 on October 30, 2011. Trooper Greer also testified that Exhibit #5 contained the arrest time and that it was also 00:51, or 51 minutes after midnight on October 30, 2011. While there is conflicting time stamps on the videos involved in this case, there exists substantial evidence which reasonably tends to show the Defendant operated a motor vehicle upon the roads of the State on October 30,

2011. The Court denied the motion for directed verdict as there was evidence as to each element of the offense.

4. Motion to take judicial notice of the date of daylight savings time for 2011 and that October 29, 2011 was a Saturday. Judicial notice was taken and two exhibits were placed in evidence as Court Exhibit #1 and #2.
5. Motion to set aside jury verdict based upon prior motion for directed verdict. This motion was denied based upon same reasons for denial of directed verdict motion.

The State offered the following items into evidence:

1. SC Highway Patrol Driver Inspection Report (Exhibit #1)
2. Affidavit for failure to produce videotape (Exhibit #2)
3. DVD of roadside video (Exhibit # 3)
4. Advisement of Implied Consent Rights (Exhibit #4)
5. SLED breath alcohol analysis report (Exhibit #5)
6. DVD of Datamaster room video (Exhibit #6)

The Defendant raised the following objections to the items that the State sought to introduce into evidence:

1. Defendant objected to Exhibit #1 on relevance. Objection was overruled.
2. Defendant did not object to Exhibit #2.
3. Defendant objected to Exhibit #3 based upon the pre-trial motion to redact. Objection was sustained and the exhibit was admitted into evidence with the condition that the State redacts and not publish to the jury any portions of the videotape wherein the Defendant made any statements regarding his previous interactions with law enforcement and any statements regarding prior arrests. Defendant did not raise any other objections to the introduction of Exhibit #3.
4. Defendant did not object to Exhibit #4.
5. Defendant did not object to Exhibit #5.
6. Defendant objected to Exhibit #6 based upon the pre-trial motion to redact. Objection was sustained and the exhibit was admitted into evidence with the condition that the State redacts and not publish to the jury any portions of the videotape wherein the Defendant made any

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statements regarding his previous interactions with law enforcement and any statements regarding prior arrests. Defendant did not raise any other objections to the introduction of Exhibit #6.

The Defendant offered the following items into evidence.

1. NONE

The State raised the following objections to the items that the Defendant sought to introduce into evidence.

1. NONE

No case was presented by the Defendant.

The following items were placed into evidence as a Court Exhibit:

1. Daylight time calendar (Court Exhibit #1)
2. Calendar for October 2011 (Court Exhibit #2)

This jury trial was held on September 12, 2012. Following a trial, closing arguments, and deliberations, the jury found the Defendant guilty of violating S.C. Code §56-5-2930 "Driving Under the Influence" (Ticket #F 346464). Following a finding of guilt, the Court sentenced the Defendant to 30 days suspended upon the completion of 48 hours of public service employment within 8 weeks and payment of \$167 court costs on a scheduled time payment agreement of 6 weeks.

Attached are originals of the following items:

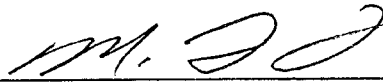
1. Uniform Traffic Ticket F 346464, public service employment time sheet, and scheduled time payment agreement.
2. Defendant's filed Notice of Appeal.
3. Jury verdict form.
4. Defendant's jury trial request.
5. Defendants Affidavit of Indigency and Application for Counsel.
6. Letter from Public Defender Office dated January 6, 2012.
7. Letter and Order determining the Defendant to be eligible for public defender representation.

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8. Notice of appearance, jury trial request, and pre-trial conference request.
9. Motion for discovery, Brady materials, and Rule 6 request.
10. Certificate of Service.
11. SLED breath records.

Also, attached are the original exhibits entered into evidence by the State and Court, and also the DVD recording of the trial.

Submitted by:


Judge M. Todd Simmons
Oconee County Magistrate
207-A East North First Street
Seneca, South Carolina 29678

October 9, 2012

Court
Exhibit #1

Daylight Time

Starting in 2007, daylight time begins in the United States on the second Sunday in March and ends on the first Sunday in November. On the second Sunday in March, clocks are set ahead one hour at 2:00 a.m. local standard time; which becomes 3:00 a.m. local daylight time. On the first Sunday in November, clocks are set back one hour at 2:00 a.m. local daylight time, which becomes 1:00 a.m. local standard time. These dates were established by Congress in the Energy Policy Act of 2005, Pub. L. no. 109-58, 119 Stat 594 (2005).

Not all places in the U.S. observe daylight time. In particular, Hawaii and most of Arizona do not use it. Indiana adopted its use beginning in 2006.

Year	Begin	End
2006	April 2	October 29
2007 *	March 11	November 4
2008	March 9	November 2
2009	March 8	November 1
2010	March 14	November 7
2011	March 13	November 6
2012	March 11	November 4
2013	March 10	November 3
2014	March 9	November 2
2015	March 8	November 1

* New law went into effect.

Many countries observe some form of "summer time" and the dates when the changes are made are various and not determined by any international agreements.

Daylight time and time zones in the U.S. are defined in the U.S. Code, Title 15, Chapter 6, Subchapter IX - Standard Time.

History of Daylight Time in the U.S.

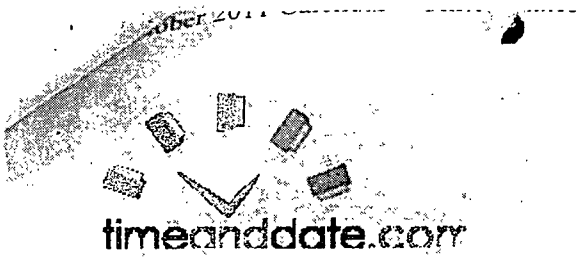
Although standard time in time zones was instituted in the U.S. and Canada by the railroads in 1883, it was not established in U.S. law until the Act of March 19, 1918, sometimes called the Standard Time Act. The act also established daylight saving time, a contentious idea then. Daylight saving time was repealed in 1919, but standard time in time zones remained in law. Daylight time became a local matter. It was re-established nationally early in World War II, and was continuously observed from 9 February 1942 to 30 September 1945. After the war its use varied among states and localities. The Uniform Time Act of 1966 provided standardization in the dates of beginning and end of daylight time in the U.S. but allowed for local exemptions from its observance. The act provided that daylight time begin on the last Sunday in April and end on the last Sunday in October, with the changeover to occur at 2 a.m. local time.

During the "energy crisis" years, Congress enacted earlier starting dates for daylight time. In 1974,

daylight time began on 6 January and in 1975 it began on 23 February. After those two years the starting date reverted back to the last Sunday in April. In 1986, a law was passed that shifted the starting date of daylight time to the first Sunday in April, beginning in 1987. The ending date of daylight time was not subject to such changes, and remained the last Sunday in October. The Energy Policy Act of 2005 changed both the starting and ending dates. Beginning in 2007, daylight time starts on the second Sunday in March and ends on the first Sunday in November.

For a very readable account of the history of standard and daylight time in the U.S., see

- Ian R. Bartky and Elizabeth Harrison: "Standard and Daylight-saving Time", *Scientific American*, May 1979 (Vol. 240, No. 5), pp. 46-53.



Court Exhibit #2

Calendar for October 2011 (United States)

October						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Phases of the moon: 3: ☉ 11: ☉ 19: ☉ 26: ●

Holidays and Observances: 10: Columbus Day (Most regions), 31: Halloween



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1107 10 AM

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Form 438
Rev. 9/10

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME MIDDLE NAME LAST NAME

Street and No. City State ZIP CODE

STATE LICENSED DRIVER'S LICENSE NO. CDL DRI. LIC. CLASS

VEH. LIC. NO. STATE MAKE OF VEH. YEAR COMM. VEH. HAZ. MT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT STREET AND NO.

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE

VIOLATION - COURT APPEARANCE REQUIRED YES, NO VIOLATION SECTION NO.

OWNER OF VEHICLE DATE OF ARREST

ADDRESS OF OWNER DATE OF VIOLATION

BAIL DEPOSITED NAME OF ARRESTING OFFICER RANK

RACE SEX DESCRIPTION OF ACCUSED HT. HAIR WT. EYES COUNTY NUMBER

DATE BAIL REC'D. BY BADGE TROOP

CASE BEFORE MAGISTRATE MUN. COURT

CIRCUIT COURT FAMILY COURT FEDERAL COURT

DEFENDANT: DID NOT APPEAR APPEARED

NOLLE PROSSED DISPOSITION FORFEITED BOND PLED: NOLO CONTENDERE

TRIAL BY: TRIAL JUDGE JURY

VERDICT OF TRIAL IF ANY GUILTY NOT GUILTY DATE OF TRIAL IF ANY

JAIL SUSPEND FINE AMT. COLLECTED AMT. SUSPENDED

COMMITTED TO: Vehicle Searched Arrest as Result of Collision

CERTIFIED CORRECT DATE

F 346464

TRIAL COURT COPY

**CERTIFIED TRUE COPY
JUDGE M. TODD SIMMONS**

State of South Carolina

)

In the Oconee County Summary Court

County of Oconee

)

Offense: Driving Under the Influence F346464

The State

)

JURY VERDICT

Vs.

)

Cody Roy Gordon

)

Defendant

)

We the Jury find the Defendant:

Not Guilty

Guilty

DATE: 9/12/2012

FOREPERSON:

Ashley Shick

Cory R. Davis

Debra Datas Chambers

Lonnie W. Sparks

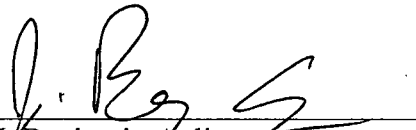
[Signature]

Henry D. A. [Signature]

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 7, 2013


J. Benjamin Aplin
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Attorney for Appellant



ALAN WILSON
ATTORNEY GENERAL

August 7, 2013

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

RE: State v. Cody Roy Gordon
Appellate Case No: 2013-000515

Dear Ms. Kitchings:

Enclosed please find the original and fourteen (14) copies of Appellant's Record on Appeal in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No: 8729

SWE/ab
Enclosures

cc: Keith G. Denney, Esquire

RECEIVED

AUG 07 2013

SC Court of Appeals