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November 18, 2013

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Re: The State v. Bailey Taylor

Dear Mr. Newton:

Enclosed please find two (2) copies of the Record on Appeal, along with proof of service, in the above-referenced State's appeal.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General

Enclosures

cc:  The Honorable Jenny A. Kitchings (original & 9 copies enclosed)  
Victim Services

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NOV 18 2013  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal From Oconee County  
Honorable Alexander S. Macaulay, Circuit Court Judge  
Appellate Case Tracking No. 2012-213018

---

THE STATE,

Appellant,

vs.

BAILEY TAYLOR,

Respondent.

---

**RECORD ON APPEAL**

---

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NOV 18 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL DISTRICT
	)	
The State,	)	
	)	
Plaintiff,	)	
	)	ORDER
Bailey Marrietta Taylor,	)	
	)	
Defendant.	)	CASE NO.: 2012 CP-37-00272
	)	
	)	

In this criminal action, The State of South Carolina (State) appeals the dismissal of the charge of Driving Under the Influence South Carolina Code of Laws Section 56-5-2930(A)(1). The Court of Common Pleas hereby affirms.


Facts

On July 22, 2011, South Carolina Highway Patrol Trooper E.S. Tolley charged Bailey Taylor (Taylor) with DUI. The traffic stop was initiated by blue lights and the video recording began. While at the incident site Taylor was asked to perform standardized field sobriety tests. Trooper Tolley administered field sobriety tests and determined Taylor was impaired. During the video recording at the incident site Trooper Tolley repositioned his patrol car to capture a full view of the white line wherein he was going to administer the Walk and Turn test, which subsequently omitted Taylor's conduct from being within the scope of view on the video recording for a period of several seconds. The video tape, however, was still recording during this time. The video recording did capture all the field sobriety tests administered, included the arrest of the Defendant, and showed the Defendant being advised of her Miranda rights.

The case was dismissed by the Magistrate's court for failing to comply with Section 56-5-2953 of the South Carolina Code of Laws stating that a person who violates Section 56-5-2930 must have his conduct at the incident site video recorded.

Standard of Review

"In criminal appeals from magistrate or municipal courts, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception." *State v. Hudson*, 347 S.C. 455, 457, 556 S.E. 2d 691, 692, (Ct.App.2001); accord *Rogers v. State*, 358 S.C. 266, 594, S.E. 2d

1/13  


278 (2004) (quoting *City of Landrum v. Sarratt*, 352 S.C. 139, 141, 572 S.E. 2d 476,477 (Ct.App.2002).

#### Law/Analysis

The State contends the Magistrate Court erred in the dismissal for Trooper Tolley's failure to comply with Section 56-5-2953 of the South Carolina Code of Laws requiring that the person who violates Section 56-5-2953 must have his conduct at the incident site recorded. First, the State argues that the Defendant does not need to remain in full view for the entire duration of the video recording to have his/her "conduct" recorded according to the requirements in Section 56-5-2953(A). Second, the State argues that an affidavit is not required when the Defendant is not in full view for the entire duration of the video recording per the exceptions set out in Section 56-5-2953(B).

SECTION 56-5-2953 (A) states in part:

A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded. (1)(a) The video recording at the incident site must: (i) not begin later than the activation of the officer's blue lights; (ii) include any field sobriety tests administered; and (iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and show the person being advised of his Miranda rights.

SECTION 56-5-2953 (B) states:

Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video

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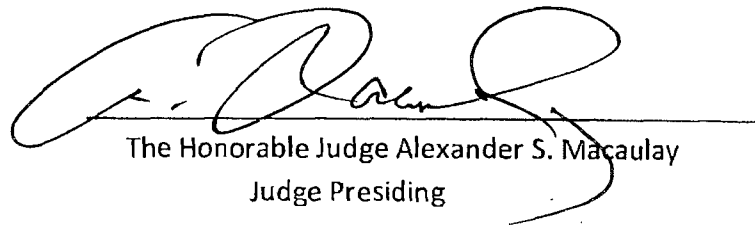
recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

In the above captioned case, Trooper Tolley moved his patrol car and consequently omitted Taylor's conduct from being within the scope of view on the videotape for a period of several seconds. Section 56-5-2953 states a person must have his conduct at the incident site video recorded. Section 56-5-2953 (B) allows an exception to the video requirement by submission of an affidavit by the arresting officer. In the above captioned case no affidavit was submitted by the arresting officer. The legislature has provided clear exceptions for instances where a person's conduct is not video recorded through the submission of an affidavit.

Based on Trooper Tolley's failure to video record conduct at the incident site with no affidavit to explain exceptions to the video requirement, the Court of Common Pleas holds the statutory requirements of Section 56-5-2953 were not satisfied.

Conclusion

Therefore, the order of the Magistrate's Court ruling is hereby AFFIRMED.

  
The Honorable Judge Alexander S. Macaulay  
Judge Presiding

This the 6<sup>th</sup> day of September, 2012

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STATE OF SOUTH ) IN THE COURT OF COMMON PLEAS  
CAROLINA ) NON-JURY  
 )  
COUNTY OF OCONEE ) CASE NO: 2012-CP-37-00272

STATE OF SOUTH )  
CAROLINA, )  
 )  
RESPONDENT ) TRANSCRIPT OF RECORD  
 ) MOTION HEARING  
-vs- )  
 )  
BAILY M. TAYLOR, )  
 )  
DEFENDANT/APPELLANT )

JULY 23, 2012  
OCONEE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

BETHANY A. BLUNDY, ESQ.  
ATTORNEY FOR THE STATE

TRAVIS NEWTON, ESQ.  
ATTORNEY FOR THE DEFENDANT/APPELLANT

JULIE ASHBROOK  
FAMILY COURT REPORTER  
TENTH JUDICIAL CIRCUIT

\*\* ORIGINAL TRANSCRIPT PROVIDED FOR B. BLUNDY, ESQ. \*\*

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EXHIBITS

NO.	DESCRIPTION	ID/EV
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**\*\*NO EXHIBITS WERE PROFERRED\*\***

1 \*\* START OF REQUESTED CERTIFIED TRANSCRIPT OF RECORD \*\*

2 THE COURT: All right. The next action is the  
3 State of South Carolina versus Bailey Marietta Taylor,  
4 2012-CP-37-272. Ms. Blundy with the State; Mr. Newton  
5 for ---

6 MR. NEWTON: Yes, sir.

7 THE COURT: --- the Appellant.

8 All right. Do you want to tell me a little bit  
9 about the case?

10 MS. BLUNDY: Sure, Your Honor. This appeal was  
11 filed today basically to have the Court review the  
12 statutory construction in the interpretation of the word  
13 conduct that's used within the statute. Basically the  
14 case that we had down in Magistrate's Court, the facts  
15 were that Trooper Tolley (phonetic) had pulled over a  
16 defendant for a DUI. On the video recording was the  
17 time from when he activated his blue lights all the way  
18 into following her into a parking lot.

19 At that point he was getting ready to administer  
20 the field sobriety test. He backed up his patrol car so  
21 that he could get a better view of the white line in  
22 which he was going to administer the walk and turn test.  
23 At that point there's a matter of a few seconds, Your  
24 Honor, where the Defendant goes outside of the scope of  
25 the camera. The rest of the requirements of the statute

1 are met. They're all on video and recorded.

2 The case was dismissed at the lower level for  
3 failure to capture the Defendant's conduct. I don't  
4 believe that's what the plain language intended.- Based  
5 on a view of the statutory construction and the  
6 interpretation of the case law from the higher courts  
7 they've actually stated that in the 2006 statute, which  
8 also uses the same legal term conduct, they held in  
9 Murphy versus State that nothing in the plain language  
10 of the statute requires the accused to remain in full  
11 view of the camera during the duration of the encounter  
12 for the recording to capture conduct.

13 THE COURT: All right. Mr. Newton?

14 MR. NEWTON: Thank you, Your Honor. Your Honor,  
15 we don't dispute -- the statute provides for -- well,  
16 let me, let me back up.

17 Ms. Blundy cited State versus Murphy. In that  
18 case it does state that nothing in the plain language of  
19 the statute required that he was to remain in full view,  
20 but it should be noted that in that particular case, the  
21 Defendant is in view of the camera. It's merely from  
22 about the knees down that go out of range of the camera  
23 when the Defendant is doing the nine-step walk and turn.  
24 So at no point are they out of view of the camera.  
25 That's why it says remain in full view because the

1 Defendant is in view.

2 But really that's not the issue at hand here  
3 because we concede that it would be impractical to have  
4 to have the officer have every particular part on video  
5 based on what Ms. Blundy said. If he needs to back his  
6 vehicle up in order to put the Defendant on camera or in  
7 this case so that they can walk a line, which was a  
8 parking lot line, that's fine. The statute provides  
9 that you can do that; however, there has to be an  
10 affidavit that is submitted any time the entire arrest  
11 is not on camera.

12 So the issue here is not that my client went off  
13 camera for a period of seconds. The issue is that no  
14 affidavit was provided by the officer, and the statute  
15 spells that out very clearly in Section B -- or Section  
16 56-5-2953(B).

17 THE COURT: Do you have a copy of the statute  
18 that you can hand up to the Court?

19 MR. NEWTON: Do you want to see this copy, Your  
20 Honor?

21 THE COURT: Sure.

22 MR. NEWTON: It's laminated, if you don't mind.

23 THE COURT: Thank you.

24 MR. NEWTON: But it provides, it provides for  
25 those particular circumstances if something like that

1 happens. Now, there was no affidavit in this case. And  
2 when there is no -- when the video requirement is not  
3 met and there is no affidavit, Rock Hill versus  
4 Suchenski clearly states that the remedy was dismissal,  
5 which is what Judge Simmons articulated to us at the  
6 lower court. So that's the issue, is the fact that the  
7 videotape requirement was not met and an affidavit was  
8 not submitted in lieu of the video requirement not being  
9 met.

10 THE COURT: It's your position then Mr. Newton is  
11 under Subsection B 56-5-2953 ---

12 MR. NEWTON: Yes, sir.

13 THE COURT: --- that an affidavit and -- which  
14 affidavit are you talking about?

15 MR. NEWTON: Well, the statute reads that the  
16 videotape must begin at the activation of the officer's  
17 blue lights and must carry on throughout the entire  
18 arrest.

19 Rock Hill versus Suchenski clarifies that. In  
20 that particular case the videotape ran out and the  
21 officer was unable to produce the entire arrest, just  
22 like here. But if you look at Subsection B, what it  
23 says is that that in itself does not necessarily grant  
24 dismissal of the case. If the arresting officer submits  
25 a sworn affidavit certifying that reasonable efforts had

1 been made to maintain the video recording equipment or  
2 the reasons why. So my argument was ---

3 THE COURT: That's what I'm asking. As I read  
4 the statute there's more than one affidavit that's  
5 available.

6 MR. NEWTON: Yes, sir.

7 THE COURT: And you're using the one that is  
8 certifying no other ---

9 MR. NEWTON: Well, Your Honor ---

10 THE COURT: --- is reasonably impossible to  
11 produce or cause of exigent circumstances? That's what  
12 you're ---

13 MR. NEWTON: No. We didn't receive an affidavit  
14 period. And so I don't know what -- I don't know what  
15 their argument would be. We just -- there's one  
16 required. I don't know what the State, what category  
17 the State would put that under. I'm not sure. From my  
18 standpoint, the only, the only issue in my mind is that  
19 we've got an incomplete video with no affidavit. I  
20 mean, if they want to ---

21 THE COURT: All right. The incomplete video is  
22 that once the officer moved his car back the video was  
23 interrupted?

24 MR. NEWTON: That's correct.

25 THE COURT: All right, thank you.

1 MR. NEWTON: Thank you.

2 THE COURT: Ms. Blundy?

3 MS. BLUNDY: Just to clarify, Your Honor, the  
4 video was still running, it was not interrupted. I  
5 believe defense counsel's argument is that when the  
6 officer moved the stationary camera back, the Defendant,  
7 he was standing next to her car, went outside of the  
8 scope of the view of the camera. But we do not -- we're  
9 not dealing with an interrupted ---

10 THE COURT: Well, was the video running the whole  
11 time?

12 MS. BLUNDY: It was running the whole time.

13 THE COURT: It just didn't capture the Defendant  
14 while it was being repositioned?

15 MS. BLUNDY: That is correct. That is correct,  
16 Your Honor. And the State's position is that you don't  
17 even get to the affidavit exceptions and we need to  
18 review all the case law regarding DUI. It's very clear  
19 that there are specific requirements that need to be on  
20 the video.

21 Now the word conduct was to be all encompassing  
22 the entire view of the Defendant for the entire  
23 encounter with the Defendant, then there would have been  
24 no need for the legislature to go on and list specific  
25 requirements that must be on the video. Section A1(a)

1 goes down and lists those three requirements. It has to  
2 begin after the activation of blue lights; it has to  
3 include the field sobriety test; it has to include the  
4 arrest of via person; probable cause if it's a felony  
5 DUI; and then it also must include the person being  
6 advised of their Miranda rights.

7 All of those are on this video, Your Honor. The  
8 State does not feel that the officer needed to fill out  
9 an affidavit because the requirements of this video have  
10 been met. Now, if these requirements had not been met,  
11 then I believe an affidavit would be needed stating,  
12 well, why wasn't it? Was there a malfunction with the  
13 camera? That's when an affidavit needs to be used if  
14 the VHS wasn't working correctly or the tape buckled or  
15 something like that.

16 The other instances that the legislature sets out  
17 for use of an affidavit are if the Defendant needed  
18 emergency medical. Obviously the officer cannot bring a  
19 camera inside a hospital with it. There is another  
20 prong for exigent circumstances. Now, exigent in my  
21 mind is basically the same thing as emergency.

22 Something immediately happened where the  
23 officer's video was not recording. They don't see the  
24 Defendant -- the officer backing up the patrol car in  
25 order to capture a requirement that's required with a

1 stationary camera in exigent circumstance, and I don't  
2 think the legislature would have intended that.

3 I think the practicality of that would be to say  
4 that we have to have a camera man following the officer.  
5 I mean, what if we had a drunk defendant who happened to  
6 stumble outside of the view of the camera? Certainly I  
7 don't think that the legislature would say that that  
8 would fail to capture the accused conduct.

9 If I may say one more thing, Your Honor. Rock  
10 Hill versus Suchenski is different than the case that we  
11 have before us in that in Rock Hill they specifically  
12 stated that the requirements weren't met. And in that  
13 case, the officer's tape had actually ran out. The  
14 officer stated in that case that he didn't realize the  
15 tape had run out and it failed to capture the last field  
16 sobriety test and it failed to capture the arrest.

17 And the Court, the Supreme Court said based on  
18 failure to comply with the requirements, a dismissal is  
19 in order. And the Court never actually addressed if  
20 whether an affidavit would cover that or not, but they  
21 were clear to say that the requirements weren't met.  
22 They never mentioned anything about the Defendant's  
23 conduct not being recorded.

24 THE COURT: All right. Anything else Mr. Newton?

25 MR. NEWTON: Yes, sir. Just to clarify, the

1 statute says that the video must begin at the activation  
2 of the blue lights and it must record the entire arrest.  
3 When you move the video -- and also to be clear, my  
4 client didn't stumble out of the view of the video. It  
5 was the officer that moved the video. There are, I  
6 don't know how many seconds, six, seven, eight, nine  
7 seconds of conduct that's not recorded.

8 And I don't want, I don't want Your Honor to  
9 think that I'm being nit picky here. The statute is  
10 clear on this, that that's okay. It's fine if that  
11 happens, but you -- the officer has to submit an  
12 affidavit stating why. That would fall under the  
13 category of exigent circumstances that the legislatures  
14 spells out ---

15 THE COURT: What would be exigent about having to  
16 move the car?

17 MR. NEWTON: Well, the exigent circumstances is  
18 that ---

19 THE COURT: I mean, it's not to get it out of the  
20 highway or anything like that?

21 MR. NEWTON: No, sir.

22 THE COURT: I mean, I can understand that.

23 MR. NEWTON: He wanted to move the camera only so  
24 that he could have her walk on a straight line. And so  
25 that was the circumstances. I mean, there's no

1 emergency.

2 THE COURT: How is that a critical time in  
3 the ---

4 MR. NEWTON: Well, it's conduct. That the  
5 statute ---

6 THE COURT: I'm gonna ask that, you're talking  
7 about exigent.

8 MR. NEWTON: Yes, sir.

9 THE COURT: You're talking about something that's  
10 critical and it's an emergency or otherwise it would  
11 be ---

12 MR. NEWTON: No. No. No.

13 THE COURT: --- lost.

14 MR. NEWTON: That's not what I'm saying. What  
15 I'm saying is ---

16 THE COURT: What are you saying? I mean, I  
17 guess ---

18 MR. NEWTON: My client has a statutory right to  
19 have her entire conduct recorded. If not, then an  
20 affidavit has to be submitted. The, the statute is  
21 clear. The activation of the blue lights and the entire  
22 arrest. You know, what happens if, if she's not on --  
23 there's a reason for the video requirement, it's so  
24 everybody's feet is held to the fire but the State and  
25 the defense so we can see exactly what happens.

1           And when that statute is clear when the entire  
2 arrest is not on video then we have to have an  
3 affidavit. That's the remedy for this. It's an easy  
4 remedy. It's all that has to be done, but it wasn't.

5           THE COURT: Maybe my analogy is a bit dated. I'm  
6 sure it's probably before your own birth dates, but does  
7 Marie Wood ring a bell?

8           MR. NEWTON: No, sir.

9           THE COURT: Ms. Blundy?

10          MS. BLUNDY: No, sir.

11          THE COURT: During the Watergate proceedings, one  
12 of them, Marie Wood was the secretary, stenographer,  
13 administrative assistant to the president of the United  
14 States. And he provided a tape recording, a transcript  
15 of a tape recording made during, in the oval office,  
16 during one of the conversations between the principals.  
17 And unfortunately she hit the erase button and  
18 16-and-a-half minutes of conversation was lost.

19                 And is that what you're saying or does it deal  
20 with some you don't know whether it was critical or not  
21 in the sense that it run, but it was incomplete?

22          MR. NEWTON: My argument, Your Honor, is that  
23 yes, yes, we don't know what happened with the conduct  
24 of my client. You know, DUI is so opinion oriented as  
25 far as the officer at the stop having to make a pretty

1 quick judgment. And so when we have an incomplete  
2 video, when the conduct is not recorded from the  
3 activation of the blue light to the -- through the  
4 entire arrest, that's, that's why the statute provide  
5 for that because if not, then the, the Defendant has not  
6 had an opportunity to have in this case her entire  
7 conduct videotaped. And, again, you know, whether it's  
8 critical or not is difficult to say because we don't  
9 have it. And so ---

10 THE COURT: Well that's the Marie Wood defense or  
11 whatever.

12 MR. NEWTON: Yes, sir. And listen, the thing is  
13 that we, we understand that things like this happen, but  
14 all they had to do was supply an affidavit. It's that  
15 simple. And state why, why she was out of view of the  
16 camera and then we wouldn't be here. Then we would have  
17 had the trial.

18 But the remedy or I'm sorry, the -- yeah, the  
19 remedy for them not, or the penalty for them not  
20 providing the affidavit is dismissal which is why the  
21 judge dismissed it at the magistrate level. It's not --  
22 we don't know what happened in those six seconds. We  
23 just know that her conduct is not on video.

24 THE COURT: Uh-huh. Thank you. Ms. Blundy, what  
25 do you say about that? Again, we don't know what was in

1 the 16-and-a-half minutes of the Watergate tapes. We  
2 don't know if it was critical or it was a coffee break  
3 or something like that. The fact was the conduct at the  
4 conversations were interrupted without explanation. And  
5 it seems like in the reading of the statute that that's  
6 what an affidavit is for is to explain why there was  
7 some interruption or lack of completeness as far as the  
8 record of the arrest was made.

9 MS. BLUNDY: I certainly understand your analogy,  
10 Your Honor, with the Watergate with there being a  
11 missing portion on the recording. But ---

12 THE COURT: But don't -- they have a -- the  
13 statute provides a starting and an ending time. I mean,  
14 that's part of the requirements of 1(a).

15 MS. BLUNDY: Well, Your Honor, and this is  
16 exactly why the DUI statute is a very technical statute  
17 and you have to get technical with it because the  
18 wording is very important in this case. In 2006 the old  
19 statute said that it had to begin with the activation of  
20 the blue lights and stop at the end of the arrest. It  
21 had to -- it had to capture that.

22 Our statute in 2009 is different. They've laid  
23 out three different requirements: The blue lights, the  
24 field sobriety test. And then it says, "Include the  
25 arrest of a person for DUI or DUAC or probable cause

1 determination for somebody for felony DUI."

2           And so I think the legislature clearly makes a  
3 distinction that arrest is when the person is not free  
4 to leave. The case law has said that a person, just  
5 because they've been pulled over and asked to do field  
6 sobriety does not mean necessarily they're under arrest.  
7 I think arrest is clearly when the person is handcuffed,  
8 put in the patrol car, not free to leave. That has to  
9 be on camera, otherwise there would have been no need  
10 for the legislature to go into a distinction on probable  
11 cause and a felony DUI. Probable cause in that case has  
12 to be on video. So I ---

13           THE COURT: Well, again, it begins when the  
14 officer's blue light was activated, not when they're put  
15 under arrest.

16           MS. BLUNDY: Right. I said that because I  
17 believe defense counsel had mentioned that it was  
18 continuing to the, to the point of arrest. But, yes, I  
19 mean we have a video that complies with all that. We  
20 have a video that begins at the activation of the blue  
21 lights and continues on ---

22           THE COURT: But it doesn't include for a period  
23 of time. I mean, he suggested six seconds or so might  
24 be involved. Um, it didn't have the, how does the  
25 statute refer to it? The arrested person, the person

1 being arrested?

2 MS. BLUNDY: It did include the person being  
3 arrested.

4 THE COURT: Oh, did it?

5 MR. NEWTON: The entire arrest.

6 THE COURT: What?

7 MR. NEWTON: It has to be the entire arrest, Your  
8 Honor, not just the handcuff.

9 THE COURT: No. I'm, I'm talking that, as I  
10 understand it, when the camera -- the vehicle was moved  
11 back which had the camera operating, it did not include  
12 the defendant.

13 MR. NEWTON: Correct.

14 THE COURT: Is that right?

15 MS. BLUNDY: The only time the Defendant is off  
16 camera ---

17 THE COURT: That's what we're talking about.

18 MS. BLUNDY: Yeah.

19 THE COURT: Was there a time when the Defendant  
20 was off camera?

21 MS. BLUNDY: Yes, Your Honor. It was a ---

22 THE COURT: And it was during the procedure on a  
23 1(a).

24 MR. NEWTON: Yes, sir. May I Your Honor or?

25 THE COURT: Let me ask ---

1 MR. NEWTON: Yes.

2 THE COURT: Let me do it one at a time.

3 MR. NEWTON: Yes, sir.

4 THE COURT: Ms. Blundy is that right?

5 MS. BLUNDY: Um...

6 THE COURT: That she was off camera after the  
7 camera started, after the camera was activated using the  
8 line under the statute?

9 MS. BLUNDY: Your Honor, she was outside the  
10 scope of the camera for a matter of a few seconds ---

11 THE COURT: Uh-huh. And ---

12 MS. BLUNDY: --- while the officer was backing up  
13 because it's stationary.

14 THE COURT: Well, wouldn't it be a simple thing  
15 under the statute just to explain that so I wouldn't  
16 have to be having to deal with it?

17 MS. BLUNDY: Your Honor, the way I read the  
18 requirements, I believed that they were met at the time.  
19 His video recording ---

20 THE COURT: I understand. I'm just asking from a  
21 matter of convenience when he had an affidavit say well,  
22 for six seconds he's, I guess a lady, was not on camera  
23 while the vehicle was being moved back.

24 MS. BLUNDY: I definitely see where you're coming  
25 from, Your Honor. I don't think the exceptions, the way

1 the affidavits, what they're for are for the exceptions  
2 that are listed. You know, and those types of  
3 situations seem to be more of emergency type situations  
4 or a situation where you're dealing with the actual  
5 buckling of the tape or an inoperable camera. And I ---

6 THE COURT: Well, when you -- an inoperable  
7 camera, like in the case that you cited where you take  
8 it either ran out or it was not activated, you're  
9 talking about just the whole scenario was not recorded.

10 MS. BLUNDY: I was just explaining that the  
11 requirements ---

12 THE COURT: Well, I know and then that's just  
13 what they said.

14 MS. BLUNDY: Yes. But if you're telling ---

15 THE COURT: And if it's not being recorded there  
16 ought to be an explanation for it.

17 MS. BLUNDY: Right.

18 THE COURT: And if there's an explanation for it  
19 you include that by way of affidavit so the Court or  
20 either the jury or the judge can determine whether or  
21 not it's reliable.

22 MS. BLUNDY: That's true, Your Honor. I mean,  
23 the video is continuous. There wasn't a break in the  
24 video. In fact, the Defendant ---

25 THE COURT: Except it didn't include this time.

1 I mean, Rose Mary Wood's tape was continuous. It was  
2 just erased, it was blank.

3 MS. BLUNDY: I mean, then we'd have to go as far  
4 to say, well, if the Defendant was being put inside the  
5 patrol car and the camera is facing forward and ---

6 THE COURT: Well, why didn't you produce an  
7 affidavit to that effect ---

8 MS. BLUNDY: You'd have an affidavit in every  
9 case.

10 THE COURT: --- to explain why all of the sudden  
11 the person, the principal figure is absent. And it's a  
12 very simple, you know, explanation. You don't have to  
13 -- you say, well, just move the car back and say for a  
14 few moments and then the Court has something they can  
15 weigh and say well obviously this is not, you know,  
16 credible to the case. Okay. I just don't know. It  
17 would seem that that would be the better course, but  
18 it's up to -- now I've got to determine whether this is  
19 required or not.

20 All right. Anything else?

21 MS. BLUNDY: Nothing further.

22 MR. NEWTON: Real quickly, Your Honor. Just to  
23 Ms. Blundy's point where she says that the former  
24 statute didn't spell out particular things that have to  
25 be videotaped. She's right in that it does say that it

1 must include any field sobriety test administered and  
2 include the arrest of the person for a violation of the  
3 section or probable cause of determination that the  
4 person violated the section and show the person being  
5 advised of his Miranda rights.

6 But if the legislature's intent was for only  
7 those things to be on video, then they would not need to  
8 say that it must begin at the activation of the  
9 officer's blue lights. And if they only needed those  
10 things, then that, that first part, the activation of  
11 the officer's blue lights wouldn't be there.

12 MS. BLUNDY: Your Honor, if I may just reply to  
13 that real quick? The reason why they decided to start  
14 it with the activation of the blue lights is because in  
15 situations where you have a wreck an officer isn't  
16 necessarily administering a traffic stop with blue  
17 lights. And in that case is one of the things  
18 specifically in the exceptions, so...

19 THE COURT: And when that happens you have to  
20 have an affidavit that explains it.

21 MR. NEWTON: Yes, sir.

22 MS. BLUNDY: I don't believe so, Your Honor.

23 THE COURT: You don't?

24 MR. NEWTON: I said yes, sir.

25 MS. BLUNDY: Basically the standard is in if you

1 look at the second paragraph, it says in circumstances  
2 including but not limited to road blocks, traffic  
3 accident investigations, so that's listed. Where an  
4 arrest has been made and the video recording equipment  
5 has not been activated by blue lights, the failure of  
6 the arresting officer to produce a video recording does  
7 not alone require grounds for dismissal; however, as  
8 soon as the video recording is practical in these  
9 circumstances, the video recording must begin and  
10 conform with the provisions of this section.

11 So I believe the only duty on the officer is to  
12 start the video as soon as it is practicable.

13 MR. NEWTON: When there's a wreck.

14 MS. BLUNDY: When there's a wreck.

15 THE COURT: Unfortunately we have expressions to  
16 cover that and that's *Expressio unius est exclusio*  
17 *alterius*. In other words, the exception is limited to  
18 those expressed, and I don't think that that would save  
19 you in any event that it doesn't have to cover the  
20 conduct.

21 All right. Mr. Newton, I'm gonna ask you to  
22 prepare a proposed order. How long do you need?

23 MR. NEWTON: End of the week.

24 THE COURT: No. You need more than that. Let's  
25 say -- today is the 23rd. Can you have it by the 6th of

1 August?

2 MR. NEWTON: Yes, sir.

3 THE COURT: All right. And as Ms. Blundy, I want  
4 you to respond to it, and my policy is usually to wait  
5 five days before considering a proposed order in order  
6 to have the other side view it. Now, of course, if you  
7 want to reply in light fashion you can, but that I give  
8 you -- how long would you take on that?

9 MS. BLUNDY: Just to review the order, Your  
10 Honor?

11 THE COURT: To review the order, and if you want  
12 to reply, in other words, in a proposed order.

13 MS. BLUNDY: I might need another five days or  
14 so.

15 THE COURT: All right. Why don't we do this,  
16 we'll just say until the 20th. That would be two weeks.  
17 All right. Proposed order from the Defendant by the 6th  
18 or the Respondent in this case; and then the Appellant  
19 to reply by the 20th. Also, if you do it on -- I'd send  
20 it to me on e-mail and, of course, with a copy to the  
21 other side.

22 MR. NEWTON: Yes, sir.

23 THE COURT: All right.

24 MR. NEWTON: Thank you, Your Honor.

25 MS. BLUNDY: Thank you, Your Honor.

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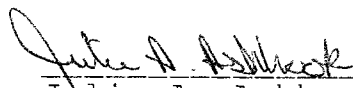
(Whereupon, hearing concluded at 11:07 a.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

1 CERTIFICATE OF REPORTER  
2  
3

4 I, the undersigned Julie A. Ashbrook, Court  
5 Reporter for the Tenth Judicial Circuit Family Court of  
6 the State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate, and complete transcript  
8 of record of all the proceedings and evidence introduced  
9 in the hearing and/or trial of the captioned case,  
10 relative to appeal, in the Family Court for Oconee  
11 County, South Carolina, on the 23rd day of July, 2012.

12 I do further certify that I am neither of kin,  
13 counsel, nor interest to any party hereto.  
14  
15  
16

17 

18 Julie A. Ashbrook  
19 Family Court Reporter  
20 Tenth Judicial Circuit  
21  
22  
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25

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas

APPEAL FROM OCONEE COUNTY MAGISTRATE COURT

M. Todd Simmons, Chief Magistrate Judge

Case No. F231574

FILED FOR  
BEVERLY H. WINFIELD  
CLERK OF COURT  
2012 MAR 20 P 4:19

The State of South Carolina.....Appellant,

v.

Bailey Taylor.....Respondent.

2012 CP 37 272

NOTICE OF APPEAL

The State hereby appeals the order of the Honorable M. Todd Simmons pronounced on March 13, 2012 which dismissed the Respondent's charge of Driving Under the Influence in Summary court. The judgment was announced in court prior to trial and all parties including their attorneys were present.

The grounds for the appeal are as follows:

The dismissal was granted after the Respondent's pre-trial motion under *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007). The Appellant had provided a continuous video and audio recording of the incident site. The recording had captured all the requirements as set out by South Carolina Code of Laws §56-5-2953 – it began upon activation of blue lights, included any field sobriety tests administered, and showed the recitation of Miranda and arrest of the Respondent.

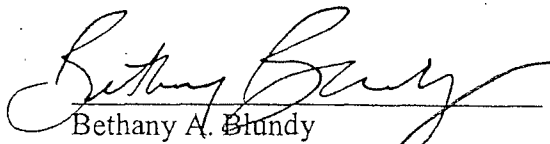
However, there were a few seconds *prior to* administration of the field sobriety tests where the audio continued to record, but the Respondent went outside of the view of the camera as S.C. Hwy. Patrolman Trooper Tolley moved his patrol car with the stationary camera inside to be able to capture the white line in the parking lot where he administered the walk and turn test. The Summary court concluded that this failed to capture the Respondent's "conduct" at the incident site.

The Appellant contends that *Rock Hill v. Suchenski*, 374 S.C. 12 (2007) does not apply to the facts of this case because we are not dealing with a situation of inoperable or missing videotape. Rather *Murphy v. State*, 392 S.C. 626; 709 S.E.2d 685 (2011), controls in dealing with the issue of whether the Respondent needs to remain in full view for the entire duration of the video in order to have her "conduct" recorded.

Additionally, the S.C. Court of Appeals in *State v. Woodard*, 2011-UP-113, further evaluates what "conduct" is necessary to meet the requirements of § 56-5-2953. The Summary court evaluated our case under *State v. Branham*, 392 S.C. 225, 708 S.E.2d 806 (2011) stating the dismissal was the appropriate remedy for failing to produce/bring into existence the video recording; therefore, the Appellant should have submitted an Affidavit under the §56-5-2953 part (B) exceptions.

Since the Appellant did produce/bring into existence a continuous video recording complying with all statutory requirements and based the statutory construction of §56-5-2953 the part (B) exceptions requiring an Affidavit do not apply.

March 20, 2012

  
Bethany A. Blundy  
Assistant Solicitor (Appellant)  
10<sup>th</sup> Circuit Solicitor's Office  
415 S. Pine St.  
Walhalla, SC 29691

Counsel for the Respondent:

Travis Newton, Esq.  
210 N. McDuffie St. Ste. LL1  
Anderson, SC 29621

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Appellant, )  
 )  
v. )  
 )  
BAILEY TAYLOR )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2012-CP-37-272

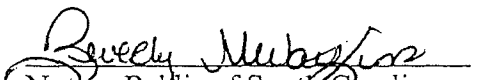
AFFIDAVIT OF MAILING

PERSONALLY appeared before me the undersigned who, after being duly sworn says that she is an employee of the Oconee County 10<sup>th</sup> Circuit Solicitor's Office. That in the course of her duties on March 20, 2012, she deposited in the U.S. Postal Service, **NOTICE OF APPEAL, CIVIL ACTION COVERSHEET, AFFIDIVT OF MAILING** the postage duly prepaid, addressed to:

Honorable Chief Judge M. Todd Simmons  
Seneca Magistrate's Court  
207- A.E.N. First Street  
Seneca, SC 29678

  
Bethany Blundy  
Attorney for Appellant  
10<sup>th</sup> Circuit Solicitor's Office

Sworn to before me this 20<sup>th</sup>  
Day of March, 2012.

  
Notary Public of South Carolina  
My commission expires: 8-29-15

2012 MAR 20 P 4:35  
BEVERLY MUBGISE  
CLERK OF COURT

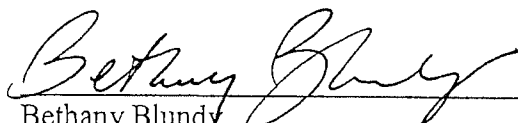
STATE OF SOUTH CAROLINA )  
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COUNTY OF OCONEE )  
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STATE OF SOUTH CAROLINA, )  
 )  
Appellant, )  
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v. )  
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 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2012-CP-37-272

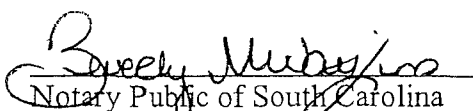
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Travis Newton  
Attorney for Respondent  
210 N. McDuffie St. Ste. LL1  
Anderson, SC 29621

  
Bethany Blundy  
Attorney for Appellant  
10<sup>th</sup> Circuit Solicitor's Office

Sworn to before me this 20<sup>th</sup>  
Day of March, 2012.

  
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FILED  
BEVERLY HAYHURFIELD  
CLERK OF COURT  
2012 MAR 20 P 4:35

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas

APPEAL FROM OCONEE COUNTY MAGISTRATE COURT

M. Todd Simmons, Chief Magistrate Judge

\_\_\_\_\_  
Ticket No. F231574

2012-CP-37-272

APPELLANT'S BRIEF  
\_\_\_\_\_

FILED OCONEE, SC  
BEVERLY H. WITT  
CLERK OF COURT  
2012 JUL 13 PM 4:00

THE STATE OF SOUTH CAROLINA.....Appellant,

v.

BAILEY TAYLOR.....Respondent.

TABLE OF AUTHORITIES

STATE CASE LAW

1. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007).....7  
2. *Murphy v. State*, 392 S.C. 626, 709 S.E.2d 685 (2011).....6  
3. *State v. Woodard*, \_\_\_ SCCA \_\_\_, 2011-UP-113.....7  
4. *State v. Branham*, 329 S.C. 225, 708 S.E.2d 806 (2011).....10  
5. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 713 SE2d 278 (2011).....4, 9

SOUTH CAROLINA STATUTES

1. *S.C. Code Ann. §56-5-2953(A)-(B)(2006) & (2009)*.....4,5,6,8,10

**STATEMENT OF ISSUE(S)**

**ISSUE 1:** Whether S.C. Code Ann. §56-5-2953(A) requires the Defendant to remain in full view for the entire duration of the video in order to have his/her “conduct” recorded?

**ISSUE 2:** Whether S.C. Code Ann. §56-5-2953(B) requires an affidavit to be submitted if the Defendant is not in full view for the entire duration of the video?

## ARGUMENT

### ISSUE 1

**Whether S.C. Code Ann. §56-5-2953(A) (2009) requires the Defendant to remain in full view for the entire duration of the video recording at the incident site in order to have his/her “conduct” recorded?**

The starting point when applying the rules of statutory construction to S.C. Code Ann. §56-5-2953(A) and (A)(1)(a) must be to determine the legislative intent. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). If the legislative intent can be determined through the plain language, then it must be evaluated by looking at the intended purpose of statute as a whole. *Id.* “A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *Id.* When the language is clear and unambiguous then the rules of statutory interpretation do not apply and the court cannot impose another meaning. *Id.* “Any ambiguity...should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Id.* Any statutory interpretation that defeats plain legislative intention or creates an outcome so plainly absurd that it could not have been the legislature’s intention then it must be rejected. *Id. at 343, 283.*

The first step must be to examine the plain language of the statute. Then the next step is to examine how the paragraphs are constructed so that it can be determined exactly how the plain language operates within the statute as a whole. S.C. Code Ann. §56-5-2953 titled “Incident Site and Breath Test Site Video Recording” begins with the plain language as follows:

“(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.”

The first paragraph in S.C. Code Ann. §56-5-2953 Section (A) uses the word “conduct” to modify both incident site and breath test site. The issue arises as to whether “conduct” means a continuous full view of every action by the Defendant, or whether there are specific actions or interactions with the Defendant that must be recorded on the videotape.

Upon first examination of the plain language of the word “conduct” – it is apparent that is not defined within the statute. However, in applying the next step to determine the context in which the word “conduct” is used it is obvious from the literary construction of the paragraphs that Section (A)(1)(a) goes on to plainly set out the **requirements** of exactly what type of conduct must be on the video recording, which are as follows:

(A)(1)(a) The video recording at the incident site must:

- i) not begin later than the activation of the officer’s blue lights;
- ii) include any field sobriety tests administered; and
- iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and show the person being advised of his Miranda rights.

By dissecting the plain language of the statute it is apparent that the word “conduct” was not meant to encompass all or every action of the Defendant. If the legislature had intended the word “conduct” to mean a continuous full view of the Defendant, then there would be no need to write the following paragraph defining specific requirements necessary to be on the videotape.

The S. C. Supreme Court reiterated this statutory construction principal in *Murphy v State*, 3923 S.C. 626, 709 S.E.2d 685 (2011). *Murphy* discussed S.C. Code Ann. §56-5-2953(A)(1)(a-b)(2006) which

Provides a person ‘must have his **conduct** at the incident site and breath test site videotaped.’ The videotaping at the incident site must ‘(a) begin not later than the activation of ...blue lights and conclude after the arrest...’ and ‘(b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered.’ *Id.* @ 631, 688.

The S.C. Supreme Court defined “conduct” from the Oxford Dictionary 158 (2d ed. 2001) “as one’s behavior, action, or demeanor.” *Id.* They also held **that nothing in the plain language of the statute required the accused to remain in full view of the camera during the duration of the encounter for the recording to capture conduct.** *Id.*

As recently recognized in 2011 by the S.C. Supreme Court the word “conduct” took on a very specific legal meaning within the statute as reiterated above. The legislature had an opportunity to change or omit the term “conduct” when they amended the statute in 2009, but they chose to leave it the same. The legal definition of the word “conduct” did not change from year to year, so they instead added the requirement to include any field sobriety tests to further define exactly what type of conduct needs to be on the video recording. Therefore, the plain language, paragraph construction, and the recent holding in *Murphy* show that the statute does not require a continuous full view of the accused and demonstrates that the legislature’s intention is for the video recording to capture the set out requirements in Section (A)(1)(a).

*The City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2009), further supports that “conduct” has been interpreted by actions or demeanor as to specific requirements listed within the DUI statute. In *Rock Hill*, the law that controlled was S.C. Code Ann. § 56-5-2953 (2006). The S.C. Supreme Court held that the arresting officer’s videotape of the incident site did not meet the statutory requirements. *Id.* @ 14. The facts in the case regarding the videotape were that the arresting officer’s tape ran out before it captured the officer administering the third field sobriety test and the respondent’s arrest. *Id.* The S.C. Supreme Court in *Rock Hill* specifically went into what conduct was a requirement and indicated that “At the incident site, the arresting officer did not videotape **the entire arrest** as required by § 56-5-2953 ‘(2006)’...” *Id.*

*Rock Hill* further states that Section (A) of the statute outlines the requirement for videotaping at the incident site and the breath test site and Section (B) provides exceptions to those requirements. *Id.* @ 15. “In this case, both parties agreed that the arresting officer failed to comply with the requirements of subsection (A).” *Id.* The S.C. Supreme Court specifically addressed the issue of not complying with the **requirements** on the videotape. There is nothing in the analysis of the case that indicates a dismissal was the appropriate remedy for failing to capture the accused “conduct” on camera.

Even though, *State v. Woodard*, \_\_\_ SCCA \_\_\_, 2011-UP-113, is an unpublished opinion without precedential value, it does give insight as to how the S.C. Court of Appeals has interpreted the word “conduct” within the DUI statutes. The facts in this case are that the videotape did not capture the first eight minutes of video because the camera was facing inside the arresting officer’s patrol car; however, audio was recording and when the officer

administered Miranda it could be heard but you did not see the Defendant on the tape. The officer then realized the error, re-focused the camera and captured the accused conduct, including the three field sobriety tests. The S.C. Court of Appeals held that the videotape met the statutory requirements of S.C. Code Ann. §56-5-2953 (2006).

The facts in our case meet each and every statutory requirement as set out in S.C. Code Ann. 56-5-2953(A)(1)(a). The arresting officer Trooper E.S. Tolley of the South Carolina Highway Patrol produced a video recording beginning with the activation of his blue lights and capturing the Respondent, Bailey Taylor, driving and pulling over. The video recording continues to capture the officer's interactions with the accused and his request for her to perform field sobriety tests. At that point the accused steps out of the vehicle and stands next to her car. The officer goes back to his patrol car, backs up, and adjusts the camera to get a clearer view of the white line in the parking lot where he has the accused perform the standardized field sobriety test known as the Walk and Turn test. In our case the issue for failing to record the accused "conduct" arose over a matter of a few seconds when the Respondent goes outside the scope of the camera while the officer backs up his patrol car to adjust his stationary camera.

Trooper Tolley had to move his patrol car and stationary camera to be able to capture a clear view of one of the requirements as set out in S.C. Code Ann. 56-5-2953(A)(1)(a)(ii) – "include any field sobriety tests administered." There is an unbroken recording which contains all three of the requirements in Section (A)(1)(a); therefore, the videotape did not fail to capture the accused "conduct" as defined within our statute.

It would be an impossible mandate on the State to require a continuous full view of the accused on a video recording in order to capture "conduct." The officer's patrol cars have

stationary cameras that sometimes need to be moved, adjusted, or focused to capture the requirements in Section (A). For example if an accused pulls his car over in an area where the officer's view of him is obstructed or if an accused steps outside the scope of the camera – especially if they are unsteady on their feet. To impose such a vast reading of the word “conduct” would necessitate the use of a camera man. Any statutory interpretation that defeats plain legislative intention or creates an outcome *so plainly absurd* that it could not have been the legislature's intention then it must be rejected. *Town of Mt. Pleasant v. Roberts at 343, 283*. Since the videotape in our case met the statutory requirements in Section (A)(1)(a), the arresting officer did not need to utilize the exceptions in Section (B).

ISSUE 2**Whether S.C. Code Ann. §56-5-2953(B) requires an affidavit to be submitted if the Defendant is not in full view for the entire duration of the video?**

*State v. Branham*, 392 S.C. 225, 708 S.E.2d 806 (2011), specifically discusses S.C. Code Ann. §56-5-2953(B) exceptions to the videotaping requirements. The case takes an in depth look at the State's statutory obligation to "produce" as to create or bring into existence a videotape verses the State's obligation to "produce" or hand over the videotape pursuant to a discovery request. The S.C. Court of Appeals held that "produce" in Section (B) was defined as to create a videotape. *Id.* @ 232.

There are two categories of exceptions - one which requires an affidavit and the other which requires that the video recording start as soon as practicable. The S.C. Code Ann. §56-5-2953(B) exceptions requiring an affidavit from the arresting officer are listed as follows:

- 1) Video Equipment being inoperable;
- 2) Defendant needed emergency medical treatment; or
- 3) Exigent circumstances.

All three of these exceptions deal with an arresting officer not be able to produce or create a videotape at all based on faulty equipment or emergency situations.

The last category of exceptions deal with circumstances where an arrest has been made and the video recording has not been activated by blue lights and are listed as follows:

- 1) Road Blocks;
- 2) Traffic accident investigations; or
- 3) Citizens' arrest.

These exceptions do not require an affidavit by the arresting officer, but do require that the officer start the video recording as soon as practicable and that the recording must conform with the remaining requirements in Section (A).

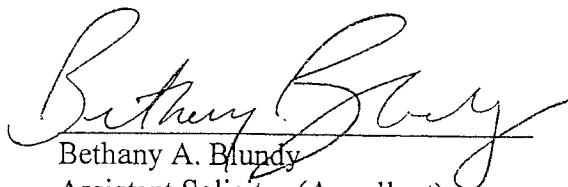
In our case the State has produced a videotape capturing the Respondent's "conduct" by a continuous video recording of all of the requirements as set out in Section (A) (1)(a); therefore, none of the exceptions in Section (B) apply. An affidavit for exigent circumstances should only be used in urgent or emergency type situations. A video recording where the Respondent is outside the scope of the camera for a few seconds while the arresting officer moves his patrol car to capture a better view of the field sobriety tests is not what the legislature would have intended as exigent.

#### CONCLUSION

We respectfully ask this Court to find that S.C. Code Ann. §56-5-2953(A) does not require the accused to remain in full view for the entire duration of the video in order to have his/her "conduct" recorded. Additionally, we respectfully ask this Court to find that the requirements of Section (A)(1)(a) were all met in this case and that the Section (B) exceptions for the failure to produce a videotape do not apply.

July 13, 2012

Respondent's Counsel of Record:  
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Anderson, SC 29621

  
Bethany A. Blundy  
Assistant Solicitor (Appellant)  
10<sup>th</sup> Circuit Solicitor's Office  
415 S. Pine St.  
Walhalla, SC 29691

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )  
 )  
STATE OF SOUTH CAROLINA, )  
 )  
Appellant, )  
 )  
v. )  
 )  
BAILEY TAYLOR, )  
 )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
2012-CP-37-272

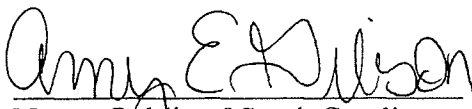
AFFIDAVIT OF MAILING

PERSONALLY appeared before me the undersigned who, after being duly sworn says that she is an employee of the Oconee County 10<sup>th</sup> Circuit Solicitor's Office. That in the course of her duties on July 13, 2012, she deposited in the U.S. Postal Service, **APPELLANT'S BRIEF AND AFFIDAVIT OF MAILING** the postage duly prepaid, addressed to:

Travis Newton, Esq.  
210 N. McDuffie St. Ste. LL1  
Anderson, SC 29622

  
Bethany Blundy  
Attorney for Appellant  
10<sup>th</sup> Circuit Solicitor's Office

Sworn to before me this 13th  
Day of July, 2012.

  
Notary Public of South Carolina  
My commission expires: 8/11/16

FILED OCONEE, SC  
BEVERLY H. WILFONG  
CLERK OF COURT  
2012 JUL 13 P 4: 04

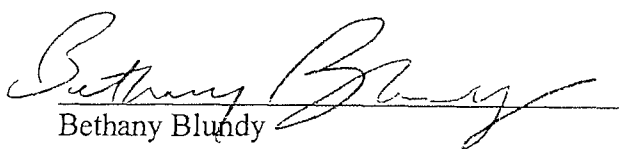
STATE OF SOUTH CAROLINA )  
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COUNTY OF OCONEE )  
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STATE OF SOUTH CAROLINA, )  
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Appellant, )  
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.....)

IN THE COURT OF COMMON PLEAS  
2012-CP-37-272

AFFIDAVIT OF MAILING


PERSONALLY appeared before me the undersigned who, after being duly sworn says that she is an employee of the Oconee County 10<sup>th</sup> Circuit Solicitor's Office. That in the course of her duties on July 13, 2012, she deposited in the U.S. Postal Service, **APPELLANT'S BRIEF AND AFFIDAVIT OF MAILING** the postage duly prepaid, addressed to:

Honorable Chief Judge M. Todd Simmons  
Seneca Magistrate's Court  
207- A.E.N. First Street  
Seneca, SC 29678



Bethany Blundy  
Attorney for Appellant  
10<sup>th</sup> Circuit Solicitor's Office

Sworn to before me this 13th  
Day of July, 2012.

  
Notary Public of South Carolina  
My commission expires: 8/11/16

FILED OCONEE, SC  
BEVERLY H. WHITEFIELD  
CLERK OF COURT  
2012 JUL 13 P 4:04

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE )

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

TENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )

2012-CP-37-272

2012 APR 5 P 3:47

V. )

RETURN OF THE CRIMINAL APPEAL

Bailey Marietta Taylor )

207 N. Insundega Street )

Westminster, SC 29693, )

UNIFORM TRAFFIC TICKET NO.: F231574

DEFENDANT. )

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

The Defendant, Bailey Marietta Taylor, was charged with violating S.C. Code Section 56-5-2933, which is commonly referred to as driving with an unlawful alcohol concentration (DUAC). This offense is alleged to have occurred on July 22, 2011.

This matter was set for a jury trial on March 13, 2012, but was dismissed before trial. The Notice of Appeal was filed on March 22, 2012. The Defendant was represented by Attorney Travis Newton. 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 March 12, 2012 at 10 a.m.

The State called the following Witnesses:

- 1. NONE

The Defendant called the following witnesses:

- 1. NONE

The State made the following Motions:

- 1. NONE

The Defendant made the following Motions:

- 1. Pre-Trial Motion to Dismiss. This motion is recorded on the attached DVD. Defense counsel moved to dismiss the charge against the Defendant based upon failure by the arresting officer to comply with the provisions of S.C. Code Section 56-5-2953 (videotaping statute). Counsel for the

ENTERED  
APR 5 2012  
BIB

Defendant argued that the arresting officer did not capture all of the Defendant's conduct at the incident scene, and failed to provide an affidavit as required under §56-5-2953. Defense counsel argued that this failure requires the Court to dismiss the charge as per City of Rock Hill v. Suchenski, 374 S.C. 12 (2007). Assistant Solicitor Beth Blundy argued for the State that no affidavit is required. Additionally, the State argued that Murphy v. State, 392 S.C. 626 (2011) and State v. Woodard, (unpublished opinion no. 2011-UP-113) are the controlling cases that fit this particular case. The State's position is that the arresting officer is not required to capture all of the Defendant's conduct in order to satisfy the requirements of §56-5-2953. Both parties agree that the holding in Murphy is based upon former S.C. Code Section 56-5-2953. Defense counsel argues that the remedy for failing to capture all of the Defendant's conduct is to provide an affidavit stating which exigent circumstance existed at the time which excused the recording of the Defendant's conduct. He further states that had an affidavit been submitted, then there would be no grounds for dismissal.

The Court reviewed S.C. Code Section 56-5-2953, City of Rock Hill v. Suchenski, 374 S.C. 12 (2007), State v. Branham, 392 S.C. 225 (2011), Murphy v. State, 392 S.C. 626 (2011), and State v. Woodard, (unpublished opinion no. 2011-UP-113). The Court determined that the videotaping statute does require the arresting officer to video record the conduct of the defendant at the incident site, and an excusable failure to do so requires the submission of an affidavit explaining why the conduct was not video recorded. S.C. Code Section 56-5-2953 provides in pertinent part: "*Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2933 if the arresting officer... submits a sworn affidavit certifying that it was physically impossible to produce the video recording because...exigent circumstances existed*" (emphasis added). In this case both parties agree that there is a gap on the video recording where the defendant is not on camera and her conduct is not being recorded. Following a review of State v. Branham, the Court opined that §56-5-2953 requires the arresting officer to "produce" or "create" a video of the defendant's conduct. There is a period of time on the video tape where the Defendant is off camera and her conduct is not captured. The Court also reviewed Murphy v. State. In Murphy, the arresting officer's camera did not capture a "head to toe" view of the accused. Rather, the video only contained the accused from the knees up, and at times only half of her body. In the present case, Defendant Taylor is taken entirely off camera for a period of time, and, as such, her conduct is not captured. The Court opined that this case is distinguishable from Murphy, and an affidavit is required due to the fact that the Defendant was removed entirely from the view of the camera. The Court also reviewed State v. Woodard upon request of the State, but did not apply the holding of said case as it has no precedential value. Lastly, the Court reviewed City of Rock Hill v. Suchenski. In said case, the South Carolina Supreme Court opined that dismissal of a DUAC charge is an appropriate remedy provided by §56-5-2953 where a

violation of the statute is not remedied by the submission of an affidavit by the arresting officer. In this case, there is a period of time wherein the Defendant's conduct at the incident scene is not captured. Most importantly, no affidavit was submitted by the arresting officer. The State did explain that the officer moved his patrol car to a location that was more suitable for field sobriety tests. This Court is of the opinion that an affidavit must be submitted per §56-5-2953. Moreover, the Defendant's actions during the period of time wherein the patrol car was moved qualifies as "conduct" which must be videotaped per §56-5-2953.

The State offered the following items into evidence:

1. NONE

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

1. NONE

The Defendant offered the following items into evidence.

1. NONE

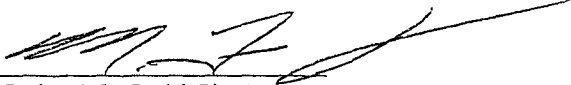
The State raised the following objections to the items that the Defendant sought to introduce into evidence.

1. NONE

**This case was set for jury trial on March 13, 2012. Before the trial began, the Defendant moved the Court to dismiss the case as set forth hereinabove. The Jury was not sworn. Following the arguments of counsel for both parties, the Court granted the Defendant's Motion to Dismiss.**

Attached are originals of the following items:

1. Uniform Traffic Ticket F231574.
2. DVD recording of pre-trial motion.
3. Notice of Intent to Appeal.

Submitted by: 

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

April 2, 2012

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

50

FIRST NAME Walter MIDDLE NAME Marlitta LAST NAME Taylor  
 STREET AND NO. 3411 W. W. WALKER DR CITY WALTON STATE SC ZIP CODE 29179  
 STATE LICENSED SC DRIVER'S LICENSE NO. 106075197 CDL  YES  NO DRI. LIC. CLASS D  
 VEH. LIC. NO. RTA 1660 STATE SC MAKE OF VEH FORD YEAR 83 COMM. VEH  AUTO  16 PSOR VEH  COMB   
 HAZ. MT.  MOPED  MTRCYCL  OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT  
 NAME OF TRIAL COURT Traffic Court STREET AND NO. 200A E. 1st St  
 DATE OF TRIAL 7-12-20 TIME OF TRIAL 9:00 AM CITY Walton STATE SC ZIP CODE 29179  
 VIOLATION: COURT APPEARANCE REQUIRED  YES  NO VIOLATION SECTION NO. 56-5-2933

OWNER OF VEHICLE John Wiley DATE OF ARREST 7/22/20  
 ADDRESS OF OWNER 12 WALKER SE DATE OF VIOLATION 7/22/20

BAIL DEPOSITED None NAME OF ARRESTING OFFICER Taylor RANK 1st Lt  
 RACE W SEX M BIRTH DATE 8/15/19 HT. 5'10" HAIR Blk WT. 160 EYES Brn COUNTY DeWitt NUMBER 303  
 DATE BAIL REC'D. 20 BY None BADGE 124 TROOP 3

CASE BEFORE MAGISTRATE  MUN. COURT   
 CIRCUIT COURT  FAMILY COURT  FEDERAL COURT   
 NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR  APPEARED   
 NOLLE PROSSED  DISPOSITION GUILTY   
 FORFEITED BOND  PLED: NOLLO CONTENDERE

TRIAL BY: TRIAL JUDGE  JURY   
 VERDICT OF TRIAL IF ANY GUILTY  NOT GUILTY  DATE OF TRIAL IF ANY 7/13/20  
 JAIL  SUSPEND  FINE  AMT COLLECTED  AMT SUSPENDED

COMMITTED TO: Vehicle Searched  Arrest as Result of Collision   
 OFFENSE CODE 99 B.A. LEVEL 160%  
 CERTIFIED CORRECT [Signature] DATE 7/21/20 F 231574

TRIAL COURT COPY  
 3368 OVER 7  
 2267/90

DOCKET NO.

2102 # 51  
SEP 28 2012

**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Alexander S. Macaulay, Circuit Court Judge

**RECEIVED**  
SEP 19 2012  
SC Court of Appeals

Case No. 2012-CP-37-00272

The State of South Carolina.....Appellant,

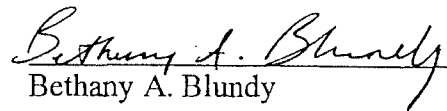
v.

Bailey Taylor.....Respondent.

**NOTICE OF APPEAL**

The State hereby appeals the order/judgment of the Honorable Alexander S. Macaulay dated September 6, 2012. Appellant received written notice of entry of this order/judgment on September 10, 2012.

September 14, 2012

  
Bethany A. Blundy  
Assistant Solicitor (Appellant)  
10<sup>th</sup> Circuit Solicitor's Office  
415 S. Pine St.  
Walhalla, SC 29691  
(864) 638-4294

Other Counsel of Record:  
Travis Newton, Esq.  
Attorney for Respondent  
210 N. McDuffie St. Ste. LL1  
Anderson, SC 29621  
(864) 965-9148

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Commons Pleas

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

SEP 19 2012

SC Court of Appeals

Case No. 2012-CP-37-00272

The State of South Carolina.....Appellant,

v.

Bailey Taylor.....Respondent.

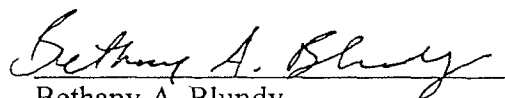
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Bailey Taylor by depositing a copy of it in the United States Mail, postage prepaid, on September 14, 2012, addressed to her attorney of record, Travis Newton, 210 N. McDuffie St., Ste. LL1, Anderson, SC 29621.

I certify that I have served the Notice of Appeal on Attorney General by depositing a copy of it in the United States Mail, postage prepaid, on September 14, 2012, addressed to Salley Elliott Senior Asst. Deputy Attorney General, P.O. Box 11549, Columbia, SC 29211.

I certify that I have served the Notice of Appeal on The Honorable Alexander S. Macaulay, by via hand delivery on September 14, 2012 to Clerk of Court for Oconee County, 205 W. Main St., Walhalla, SC 29691.

September 14, 2012



Bethany A. Blundy  
Assistant Solicitor (Appellant)  
10<sup>th</sup> Circuit Solicitor's Office  
415 S. Pine St.  
Walhalla, SC 29691  
(864) 638-4294

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal From Oconee County  
Honorable Alexander S. Macaulay, Circuit Court Judge  
Appellate Case Tracking No. 2012-213018

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THE STATE,

Appellant,

vs.

BAILEY TAYLOR,

Respondent.

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**PROOF OF SERVICE**

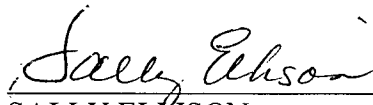
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I, Sally Ellison, certify that I have served the within Record on Appeal on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Travis A. Newton, Esquire  
210 N. McDuffie Street  
Exchange Building, Suite LL1  
Anderson, South Carolina 29621

I further certify that all parties required by Rule to be served have been served.

This 18<sup>th</sup> day of November, 2013.




---

SALLY ELLISON  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

**CERTIFICATE OF COUNSEL**

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.

By: \_\_\_\_\_

  
WILLIAM M. BLITCH, JR.  
Assistant Attorney General  
S.C. Bar Number 15608  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR APPELLANT

November 18, 2013