



The Supreme Court of South Carolina

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March 13, 2019

The Honorable David Hamilton
Clerk of Court, York County
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Sean Robert Kelly
Lower Court Case No. 2015-CP-46-03747
Appellate Case No. 2018-000029

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc:

Heath Preston Taylor, Esquire

Kevin Scott Brackett, Esquire

William M. Blich, Jr., Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Sean Robert Kelly, Petitioner.

Appellate Case No. 2018-000029

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Opinion No. 2019-MO-013
Heard March 6, 2019 – Filed March 13, 2019

**CERTIORARI DISMISSED AS IMPROVIDENTLY
GRANTED**

Heath Preston Taylor, of Taylor Law Firm, LLC, of West
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant
Senior Attorney General William M. Blich, Jr., both of
Columbia, and Kevin Scott Brackett, of York, all for
Respondent.

PER CURIAM: We issued a writ of certiorari to review the court of appeals' decision in *State v. Kelly*, Op. No. 2017-UP-391 (S.C. Ct. App. filed Oct. 18, 2017). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Sean Robert Kelly, Respondent.

Appellate Case No. 2016-000875

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2017-UP-391
Submitted September 1, 2017 – Filed October 18, 2017

REVERSED AND REMANDED

Attorney General Alan McCrory Wilson and Assistant
Attorney General Susan Rane Saunders, both of
Columbia; and Solicitor Kevin Scott Brackett, of York,
all for Appellant.

Heath Preston Taylor, of Taylor Law Firm, LLC, of West
Columbia, for Respondent.

PER CURIAM: The State appeals an order of the circuit court affirming the magistrate's dismissal of Sean Robert Kelly's charge for driving under the influence (DUI), first offense. On appeal, the State argues the circuit court erred

by finding the State failed to comply with the mandatory video recording requirements of section 56-5-2953 of the South Carolina Code (Supp. 2016). We reverse and remand.¹

We hold the circuit court erred by requiring the officer who stopped Kelly but did not arrest him to produce the video recording of the incident site. *See City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007) ("[O]ur scope of review is limited to correcting the circuit court's order for errors of law."). Instead, we find the arresting officer was required to produce the video recording. *See State v. Landis*, 362 S.C. 97, 103-04, 606 S.E.2d 503, 506-07 (Ct. App. 2004) (holding the "arresting officer" is "responsible for meeting the statutory videotaping requirements of section 56-5-2953(A)"). We also find the arresting officer produced a video recording that fully complied with the statute because the recording began upon the activation of his blue lights and recorded the field sobriety tests, Kelly's arrest, and the *Miranda* warnings. *See* S.C. Code Ann. § 56-5-2953(A)(1)(a) (Supp. 2016). Accordingly, we reverse the circuit court and remand the case to the magistrate for a new trial.

REVERSED AND REMANDED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.