

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

Jun 17 2020

SC Court of Appeals

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Appeal From Dorchester County  
Honorable Brian M. Gibbons, Circuit Court Judge  
Appellate Case Tracking No. 2019-001067

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THE STATE,

Appellant,

vs.

CHRISTOPHER HUGGINS,

Respondent.

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**RECORD ON APPEAL**

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Attorney General

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ATTORNEY FOR RESPONDENT

ATTORNEYS FOR APPELLANT

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )  
State of South Carolina, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Christopher Huggins, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

C/A # 2017-CP-18- 888  
Ticket No.: H409663

*Charles Richardson*  
CLERK OF COURT  
DORCHESTER COUNTY  
MAY 11 25 PM 1:03  
CERTIFIED COPY

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**NOTICE OF APPEAL  
AND APPEAL**

---

TO: The Honorable Tera S. Richardson, Dorchester County Magistrate Judge, and Adam J. Russo, Counsel for Respondent Christopher Huggins.

The State of South Carolina, by and through the undersigned counsel, hereby gives notice of its appeal and appeals from an order of the Honorable Tera S. Richardson dismissing the above-referenced case. The State received notice of said order on April 25, 2017.

On January 30, 2016, Trooper K. C. Davis charged Respondent Christopher Huggins with a violation of S.C. Code § 56-5-2930 (Driving Under the Influence). On March 10, 2017, Judge Richardson heard Respondent's motion to dismiss which was subsequently denied on March 21, 2017. Respondent's attorney then moved to reconsider the dismissal which was heard on April 25, 2017. At the hearing, Respondent's counsel argued that the charge should be dismissed because Trooper Davis failed to record each of the elements required by S.C. Code § 56-5-2953. In particular, Respondent complained that some of the steps taken by Respondent during Trooper Davis' administration of the walk and turn test were obscured by the front of the patrol vehicle.

Judge Richardson reviewed the video and dismissed the charge for a failure to comply with § 56-5-2953. Specifically, she found that the failure of the video to record a portion of the walk and turn test required dismissal. Additionally, she noted that the dismissal was based, in part, on Trooper Davis' failure to provide an affidavit as required by § 56-5-2953.

**A. Omission of a Portion of the Walk and Turn Test is Not a Violation of § 56-5-2953.**

The magistrate erred as a matter of law in dismissing the case for failure to video record the incident site pursuant to § 56-5-2953. The relevant portion of the statute reads 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.

(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.

S.C. Code § 56-5-2953(A)(1).

"[T]he plain language of the statute demonstrates the legislature intended video recording of the majority of an officer's encounter with a potential DUI suspect." State v. Taylor, 411 S.C. 294, 306, 768 S.E.2d 71, 77 (Ct. App. 2014). In an unpublished opinion, the Court of Appeals held that it was error to "to require [a] video recording to visibly display [the defendant's feet] in a manner that would show whether she walked heel-to-toe during the walk and turn test." State v. Dew, Op. No. 2016-UP-449 (S.C. Ct. App. filed November 9, 2016). Omission of a portion of the walk and turn test was acceptable because "a person's feet are just one of many considerations in the walk and turn test." Id. Insofar as the video here captures portions of the Respondent's performance on the walk and turn test, it satisfies the requirements of § 56-5-2953.

**B. Redaction, Not Dismissal Was the Appropriate Remedy.**

Even assuming that there was some flaw in Trooper Davis' video, the appropriate remedy was suppression of this portion of this video, not dismissal. Respondent's counsel argued that dismissal is the lone remedy for a violation of § 56-5-2953's videotaping requirements.<sup>1</sup> The Supreme Court, however, has made clear that dismissal is not the appropriate sanction for such a violation. In State v. Gordon, 414 S.C. 94, 777 S.E.2d 376 (2015), the Supreme Court evaluated an apparent violation of § 56-5-2953 involving the failure to record a portion of a field sobriety test. In describing the appropriate remedy for such a violation, the court noted:

Even if we assume that the video of a field sobriety test is of such poor quality that its admission is more prejudicial than probative, the remedy would not be to dismiss the DUI charge. Instead, the remedy would be to redact the field sobriety test from the video and exclude testimony about the test.

Gordon, 414 S.C. at 100, 777 S.E.2d at 379 (emphasis added). Dismissal was therefore not required, and redaction was appropriate.

In support of his argument that dismissal was mandated in a circumstance such as this one, Respondent's counsel cited a number of orders emanating from circuit judges and magistrates. None of these authorities were binding on Judge Richardson or this court. In fact, Gordon's clear directive on suppression would override any persuasive effect that these lower court orders might have.

**C. Trooper Davis Was Not Required to Provide an Affidavit.**

Respondent's counsel suggested that suppression was impossible in a situation such as the one here because Trooper Davis failed to produce an affidavit in compliance with § 56-5-2953. Judge Richardson also appeared to adopt this reasoning in dismissing the case. Section 56-5-

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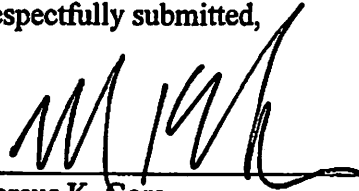
<sup>1</sup> In support of his proposition that dismissal was required, Respondent cited City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007). However, Suchenski does not mandate dismissal for violations of the videotaping requirements of § 56-5-2953. Rather, the Suchenski court describes dismissal as "an appropriate remedy" 374 S.C. at 17, 646 S.E.2d at 881(emphasis added), not the appropriate remedy.

2953 permits an affidavit to be used to excuse noncompliance with the videotaping requirements in a limited number of situations, none of which are applicable here. "Noncompliance is excusable: (1) if the arresting officer submits a sworn affidavit certifying the video equipment was inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it was impossible to produce the videotape because the defendant either (a) needed emergency medical treatment or (b) exigent circumstances existed...." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 346, 713 S.E.2d 278, 285 (2011). Trooper Davis could not have produced an affidavit because none of the enumerated exceptions applied, and her failure to do so was therefore irrelevant.

To the extent that Judge Richardson found that Trooper Davis failed to produce a video that complied with § 56-5-2953, she should also have considered "any other valid reason for the failure . . . based upon the totality of the circumstances." S.C. Code § 56-5-2953(B) Here, the quality of the overall video is good, save for the limited period of time when Respondent's feet are obscured during the walk and turn test. This is clearly the type of "valid reason" contemplated by the totality of the circumstances exception.

Wherefore, the State respectfully requests that the decision of the magistrate be reversed and that the case be remanded to the lower court for trial and for such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



---

Marcus K. Gore  
Interim General Counsel  
S.C. Department of Public Safety  
P.O. Box 1993  
Blythewood, South Carolina 29016  
Telephone: (803) 896-7965  
Fax: (803) 896-7967  
Email: MarcusGore@scdps.gov  
Attorney for Appellant

This 22<sup>nd</sup> day of May, 2017  
Blythewood, South Carolina

STATE OF SOUTH CAROLINA :  
COUNTY OF DORCHESTER :

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA :

C/A # 2017-CP-18- 888

Appellant,

vs.

CERTIFICATE OF SERVICE

CHRISTOPHER K. HUGGINS,

Respondent

Ticket No.: H409663

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of May, 2017, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Tera S. Richardson  
Dorchester County Magistrate Judge  
Troy Knight Judicial Complex  
212 Deming Way, Box 10  
Summerville, SC 29483-4707

Adam J. Russo, Esq.  
Drennan Law Firm, LLC  
1350B Chuck Dawley Blvd  
Mount Pleasant, SC 29464

CERTIFIED COPY  
2017 MAY 25 PM 1:08  
*Christy Richardson*  
CLERK OF COURT  
DORCHESTER COUNTY

*ML Davis*  
Monishia L. Davis  
Paralegal  
S. C. Department of Public Safety

Dated: May 22, 2017

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DORCHESTER )  
 )  
STATE OF SOUTH CAROLINA )  
 )  
VS )  
 )  
Christopher Huggins )  
 )  
DEFENDANT )

**H409663**  
**CASE NUMBER**  
**IN THE SUMMARY COURT**  
**2017-CP-18-888**  
**TRANSMITTAL OF**  
**CRIMINAL APPEAL**

As required by Sec. 18-3-40, SC Code of Laws, this information is transmitted to the Court of Common Pleas as the result of an appeal.

**Date of Transmittal:** July 28, 2017  
**Transmitted to:** Dorchester County Clerk of Court  
**Transmitted by:** ✓ Summerville Magistrate  
**Case Caption:** State of South Carolina vs. Christopher Huggins  
**Case Number:** H409663

2017 JUL 31 PM 4:42  
DORCHESTER COUNTY  
CLERK OF COURT

Received and verified by Rosalie Bablun on 7-31-17

**Summerville Magistrate**  
**212 Deming Way, Box 10**  
**Summerville, SC 29483**  
**Phone: (843) 832-0370**  
**Fax: (843) 832-0371**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 State of South Carolina, )  
 Appellant )  
 )  
 v. )  
 )  
 )  
 Christopher Huggins, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT

CP Docket No.: 2017-CP-18-0888

Original Ticket No.(s): H409663

Return

2017 JUL 31 PM 4:42  
 DORCHESTER COUNTY  
 CLERK OF COURT

**INTRODUCTION**

This matter came before the Court on March 14, 2017. Upon calling the hearing to order, Adam Russo, Attorney for Defendant, Christopher Huggins, made a motion to dismiss the case pursuant to S.C. Code 56-5-2953, City of Rock Hill v. Suchenski, State v. Gordon, and numerous other appellate and local cases and orders. Defense’s motion was based on the following facts:

1. Subsequent to a traffic stop due to speeding, Trp. K.C. Davis of the South Carolina Highway Patrol initiated an investigation of the Defendant for suspicion of Driving Under the Influence. Trp. Davis offered Defendant Standardized Field Sobriety Tests, (SFSTs) which he performed.
2. During the performance of the Walk-and-Turn SFST, the vast majority of Defendant’s steps, and indeed, Defendant’s lower body, are occluded by the hood of Trp. Davis’ patrol vehicle.

During the motion hearing, Trp. Davis did not cite to any statute or judicial decision which supported her point. On March 21, 2017, I denied Defense’s motion. Pursuant to a Motion to Reconsider, I granted Defense’s motion to dismiss on April 25, 2017. Thirty (30) days later, the State filed an appeal.

**LAW AND ANALYSIS**

I do not believe my decision should be overturned on appeal for the following reasons:

**A. THE STATE’S APPEAL IS UNTIMELY**

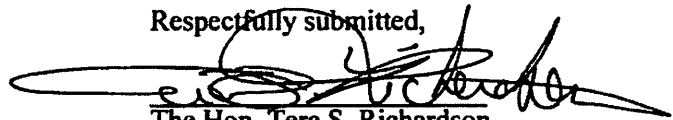
S.C. Code 18-3-20 indicates that “all appeals” from magistrate criminal matters “shall be taken [. . .] as prescribed in this chapter.” Further, S.C. Code 18-3-30 indicates that a party will have only ten (10) days in which to file an appeal. There is no other authority in South Carolina to control how criminal appeals in magistrate court are to proceed. Clearly, the Magistrate Court Rules do not apply to criminal appeals, as, South Carolina Rule of Magistrate Court No. 2 limits the authority of the Magistrate court rules to civil cases, and indicate that *statutes* are to fill the gap where there is no other applicable rule. Finally, Circuit Courts, sitting in appellate jurisdiction previously, have held that the State’s time limit for filing an appeal is limited to ten (10) days under equal protection principles. (See Exhibit A.)

B. IN THE EVENT THE COURT DOES NOT DISMISS THE APPEAL FOR ITS UNTIMELINESS, THE VIDEOTAPE PROVIDED BY THE STATE VIOLATES S.C. CODE 56-5-2953(A) AND THE ONLY REMEDY FOR A VIOLATION OF THIS NATURE IS A DISMISSAL OF THE CASE.

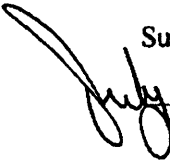
In State v. Taylor, 411 S.C. 294, which the State cites to, the Court of Appeals held that the state needed to include in the videotape any of “those events that either create direct evidence of DUI or serve important rights of the defendant.” Id. It is clear that the placement of the Defendant’s feet, specifically his ability to maintain heel-to-toe contact and the straightness of his steps, are important “clues” which the investigating officer uses to come to a conclusion as to whether or not the individual is materially and appreciably under the influence of alcohol, drugs, or a combination thereof. Given that these steps literally create direct evidence of DUI, the failure by Trp. Davis to adequately place a compliant, non-aggressive Defendant in such a manner so that all of his steps would be videotaped is a violation of the statute. The only authority which the State cites to which indicates otherwise is an admittedly unpublished case which is of no precedential value, and which was not even placed before the court, nor mentioned by Trp. Davis, during either the original motion to dismiss or the subsequent motion to reconsider.

Likewise, it is clear that the only remedy available in a factual scenario such as the one outlined in the “Facts” section of this return is dismissal. In State v. Sawyer, 409 S.C. 475 (2014), the Court, in Footnote 6 (which is a footnote on the holding of the case) indicated that “[t]he only arguable error of law was the circuit court’s failure to dismiss the charges once it determined that the State did not produce a videotape meeting the requirements of [subsection] (A).” Id. at 482. Critically, the Court indicates in said footnote that *if* the State does not produce a videotape compliant with subsection (A) – the Court makes no distinction as to whether said subsection is the incident site tape or the breath-test site tape – *then*, the proper remedy is dismissal. The Court never later overturned this holding, nor altered this footnote in any way in the section of State v. Gordon which the State cites to. Indeed, the language of that section specifically indicates that the suppression is remedy for SFSTs videotaped in “such poor quality” that to show them to a jury would be “more prejudicial than probative” which is an analysis under South Carolina Rule of Evidence 403 and is not the correct analysis here. Instead, the analysis is, as it is under Taylor, whether a portion of the DUI investigation that creates direct evidence of DUI is videotaped or not, and, if it is not, then, conclusively, pursuant to Sawyer, the only remedy is dismissal. Given that direct evidence of DUI in this circumstance was not videotaped, I properly, and in accord with South Carolina law, dismissed the case.

Respectfully submitted,



The Hon. Tera S. Richardson  
Magistrate, Dorchester County



Summerville, South Carolina

July 18, 2017

2017 JUL 31 PM 4:42  
CLERK OF COURT  
SHERIFFS DEPARTMENT  
SHERIFFS DEPARTMENT  
SHERIFFS DEPARTMENT

**EXHIBIT A**

**HUGGINS MAGISTRATE'S RETURN 3**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

The State of South Carolina,

v.

Norman B. Dudley

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) C/A #2014-CP-08-00010  
) Ticket No.: F594836

RECEIVED

2017-CP-18-~~888~~ AUG 21 2015

SC Court of Appeals

) ORDER DISMISSING APPEAL

2017 JUL 31 PM 4:42  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

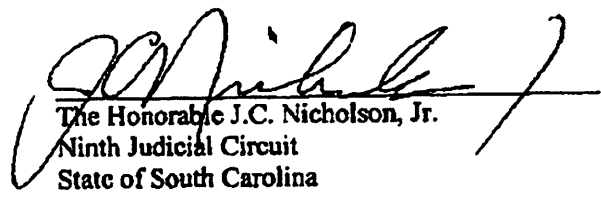
THIS MATTER came before the Court upon the State's Appeal of the Dismissal of Driving Under the Influence (First Offense) handed down by Honorable Edward L. Sessions, Berkeley County Magistrate Judge, on December 3, 2013. The Court issued its Order of Dismissal on that date and the State received notice at that time.

FINDINGS OF FACT

The Court finds upon a review of the record that the State failed to file a timely appeal in this matter having done so January 3, 2014. Section 18-3-30 of the South Carolina Code of Laws governs appeals from criminal matters in Magistrate Court. The statute provides that the notice of appeals from criminal matters in Magistrate Court shall be filed within ten days. It would be a violation of the Equal Protection Clause to not hold the prosecuting agency to the same standard as an accused in the courts of this state.

THEREFORE, IT IS HEREBY ordered that the State's Appeal is hereby dismissed.

AND IT IS ORDERED.

  
The Honorable J.C. Nicholson, Jr.  
Ninth Judicial Circuit  
State of South Carolina

30:DTM  
Aug 3, 2015  
Charleston, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1800888

South Carolina State Of  
PLAINTIFF(S)

Christopher Huggins  
DEFENDANT(S)

**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
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other **Appeal is hereby Denied.**

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:

Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/28/2019 .

Summerville Magistrate Dorchester County  
John L. Drennan for Christopher Huggins  
Adam Joseph Russo for Christopher Huggins

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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Dorchester Common Pleas

**Case Caption:** South Carolina State Of VS Christopher Huggins

**Case Number:** 2017CP1800888

**Type:** Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-05-28 16:24:22 page 3 of 3



**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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State of South Carolina ) In the Court of Common Pleas  
 ) First Judicial Circuit  
County of Dorchester ) 2017-CP-18-00888  
 2017-CP-18-01241

State of South Carolina )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Christopher Huggins, )  
 )  
Defendant. )  
 )  
and )  
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Tyler James Evans, )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

May 28, 2019

St. George, South Carolina

B e f o r e:

The Honorable Brian M. Gibbons, Judge

A p p e a r a n c e s:

Mark Moore, Esquire  
Attorney for the Plaintiff

Adam Russo, Esquire  
Tara Frost, Esquire  
Attorneys for the Defendants

Bonnie H. Kelly, CVR  
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/The Court	4
Motion/Mr. Moore	5
Response/Mr. Russo	11
Response/Ms. Frost	13
Reply/Mr. Moore	14
Response/Mr. Russo	19
Decision by the Court	20
Certificate Page	24

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

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(On the record 10:55 a.m.)

THE COURT: All right. That takes it to the next case. And that's -- I don't need the files on that one. I know what this one's about.

MS. FROST: Yes, sir.

THE COURT: *State of South Carolina v Christopher Huggins* and the *State of South Carolina v Tyler James Evans*. And it's also No. 1 and 2 on the motion docket. They'll all be heard at the same time 'cause they all involving the same matter. So we'll not write your stuff off, and -- did you give that to the court reporter?

(Brief pause.)

THE COURT: So this is going to be Item 6 and 7 on the appeal roster, as well as Item No. 1 and 2 on the motions roster. And so why don't -- why don't we, to kinda set the stage for what we're doing -- well, let's do it in order. Then it'll be easier for the -- for the purpose of a record. So Mr. Moore?

MR. MOORE: Yes, Your Honor?

THE COURT: You represent the State of South Carolina, who has appealed a decision made by the Summary Court on both Item 6 and 7 on the appeal roster. State your position.

I'm going to let you come back -- I'm going to let all of the lawyers make a full record, but we'll just kinda go

1 in that way.

2 MR. MOORE: You want me to start with the appeal?

3 THE COURT: If you could identify yourself -- yeah.  
4 Let's go ahead and deal with the appeal first --

5 MR. MOORE: Okay.

6 THE COURT: -- and then we'll deal with the motion to  
7 -- they'll make their motion to dismiss, and then we'll  
8 come back and I'll hear from you on your motion to -- their  
9 motion -- your position on their motion to dismiss, and  
10 then we'll go that way.

11 MR. MOORE: Okay.

12 THE COURT: Just for -- for the purpose of the court  
13 reporter, identify yourselves, please.

14 MR. MOORE: Your Honor, my name is Mark Moore. I  
15 represent yhe Department of Public Safety and the State of  
16 South Carolina.

17 THE COURT: All right.

18 MR. MOORE: Your Honor, this was a case -- or two  
19 cases that were down in Magistrate's Court. They were  
20 both dismissed because in both cases, the video did not  
21 show feet during the walk and turn. I believe in the  
22 Evans case, there's also -- the video did not show the  
23 feet and the one-legged stand, if I'm not mistaken.

24 The Magistrate in both those cases determined that  
25 the remedy in -- in that situation was dismissal, and the

1 State has filed this appeal.

2 THE COURT: All right.

3 MR. MOORE: Your Honor, the State's position is, is  
4 that the 56-5-2953 does not require the report of -- I'm  
5 sorry. Let me go back. I apologize. The State's  
6 position is, is that neither of these cases should've been  
7 dismissed.

8 THE COURT: All right.

9 MR. MOORE: I was dealing with that other appeal  
10 first. I apologize.

11 Basically, 29 -- or 56-5-2953 does not require the  
12 recording of the performance of field sobriety tests,  
13 rather the administration of the field sobriety test.  
14 Under Section A-1/A-2, it says that (as read): "The video  
15 recording at the incident site must include any field  
16 sobriety tests administered."

17 THE COURT REPORTER: Sir, you need to read a little  
18 bit slower. Just read a little bit slower if you're going  
19 to read.

20 MR. MOORE: Okay. That again, repeating 56-5-2953  
21 A1/A2 (as read): "The video recording at the incident  
22 site must include any field sobriety tests administered."

23 The reading of field sobriety tests can -- as  
24 mandated by 20 -- 56-5-2953, has never been interpreted to  
25 require demonstration of a subject's performance on the

1 individual test. Most recently in *State v Gordon*, the  
2 Supreme Court description of the video requirement focused  
3 solely on the administration of the test rather than the  
4 performance.

5 If you look at that case, there's a passage where  
6 they indicate (as read): "The officer's administration of  
7 the HGN is visible in the video recording. It's  
8 undisputed that Gordon's face is depicted in the video.  
9 It's axiomatic that the face is part of the head, the  
10 officer's flashlight and arm are visible as he administers  
11 the test, and the officer's instructions were audible.

12 "Thus the requirements that the head be visible on  
13 the video are met in the statutory requirement that the  
14 administration of the HGN field sobriety test must -- test  
15 must be video recorded as satisfied."

16 The Respondent's concern in this case is -- and  
17 specifically with Evans, I believe, is that the failure of  
18 the video to demonstrate performance did not violate 56-5-  
19 2953.

20 Furthermore, *Gordon* says nothing about the walk and  
21 turn test. It addressed whether the head must be shown in  
22 the recording of the HGN field sobriety test analysis, was  
23 limited to HGN, and it doesn't address what constitutes an  
24 acceptable reporting of other field sobriety tests,  
25 including the one-legged turn -- or the walk-and-turn or

1 the one-legged stand test at issue here.

2 Omission of a portion of the walk-and-turn test is  
3 not a violation of 56-5-2953. The plain language of the  
4 statute demonstrates the legislature intended the video  
5 recording of the majority of an officer's encounter with a  
6 potential DUI suspect. The video reporting does not  
7 report -- or the video reporting, under 56-5-2953, does  
8 not require visible display of the Defendant speaking in a  
9 manner that would show whether he walked heel-to-toe  
10 during the walk-and-turn test, unlike the *Gordon* analysis  
11 of the HGN test where the head is only -- the only  
12 relevant body part.

13 Omission of a portion of the walk-and-turn test is  
14 acceptable because the person's feet are just one of many  
15 considerations of the walk-and-turn test. I believe in  
16 the brief that -- or the Appellate's motion they did  
17 indicate there was a case, it's an unpublished opinion or  
18 just went up with the Court of Appeals, and that was the  
19 rationale in that situation. But obviously that's not the  
20 -- that doesn't establish any precedent.

21 In so far as a video captures portions of the  
22 Defendant's walk-and-turn test, it satisfies the  
23 requirements of 56-5-2953.

24 Your Honor, turning to the remedy in these  
25 situations, if the -- if the video is not adequate, I

1 would -- again would say that the Supreme Court's made it  
2 clear that dismissal's not the appropriate sanction for a  
3 violation of 56-5-2953. In *Gordon*, the Supreme Court  
4 evaluated an apparent violation of 56-5-2953 involving the  
5 failure to report the HGN field sobriety test. And rather  
6 than mandating dismissal for the failure, the Supreme  
7 Court observed that the appropriate remedy would be the --  
8 to redact the field sobriety test from the video and  
9 exclude the testimony about the test.

10 And that's the State's position in this case is even  
11 if you found the video was inadequate of the walk-and-turn  
12 or the one-legged stand, those tests be redacted and the  
13 State should be able to proceed on the prosecution. And -  
14 -

15 THE COURT: Which, I guess, in this case were  
16 consistent with whatever other evidence was gathered. I  
17 mean, I don't know. I hadn't got to the -- what was  
18 actually gathered in it, whether there was any DataMaster  
19 test or results, whether or not there were refusals, or  
20 other stuff at the scene.

21 MR. MOORE: Correct, Your Honor.

22 THE COURT: Okay. Go ahead. I'm listening

23 MR. MOORE: And then also the trooper was not  
24 required to provide an affidavit, which I believe is one  
25 of the arguments that Defendant Huggins has made. The

1 Respondent suggests that the suppression was impossible --  
2 or it's suppression was impossible because the trooper  
3 failed to provide an affidavit in compliance with 56-5-  
4 2953, and the trial court appears to have adopt -- to have  
5 adopted that reasoning in its decision to dismiss.

6 The trooper could've produced an affidavit -- or  
7 couldn't have produced an affidavit in this case because  
8 none of the enumerated exceptions apply and her failure to  
9 do so was irrelevant. Instead, the Court should've  
10 considered any other valid reasons for the failure based  
11 on the totality of the circumstances under Section B of  
12 56-5-2953.

13 So the State respectfully requests the decision of  
14 the Magistrate be reversed and that the case be remanded  
15 to lower court for trial and any other relief the Court  
16 deems appropriate.

17 THE COURT: All right. Thank you.

18 MR. MOORE: Thank you, Your Honor.

19 THE COURT: And Mr. Russo, why don't you go first?

20 MR. RUSSO: Sure. Your Honor, would you like me to  
21 hit the motion first?

22 THE COURT: Yeah. Hit your -- hit your motion 'cause  
23 it ties into --

24 MR. RUSSO: Sure.

25 THE COURT: -- you know, he -- I wanted him to give

1 me the substantive grounds of the State's appeal --

2 MR. RUSSO: Sure.

3 THE COURT: -- before I hear the procedural grounds  
4 of your motion to dismiss so I have an idea of the full  
5 scope of things.

6 MR. RUSSO: Your Honor, the -- we'd ask that you  
7 dismiss this appeal because we believe that the State has  
8 filed its appeal outside of the jurisdictional time limits  
9 for such an appeal of -- of this nature.

10 Your Honor, our belief on that -- on that comes from  
11 SC Code 18-320 and 18-330. 18-3 -- 320 states in  
12 pertinent part that (as read): "All appeals from  
13 magistrate's court in criminal cases shall be taken and  
14 prosecuted as prescribed in this chapter."

15 And then 18-330 indicates in pertinent part that (as  
16 read): "The appellate, within 10 days after sentence,  
17 shall file a notice of appeal."

18 Your Honor, in my case the -- the State did not file  
19 a notice of appeal unto -- until day 30. I believe in Ms.  
20 Frost's case, it was day 23?

21 MS. FROST: That is correct.

22 MR. RUSSO: Right. So Your Honor, in both of our  
23 cases, the State is somewhere between 13 and 20 days over  
24 the jurisdictional time limit.

25 Your Honor, I think that the statutes are clear and

1 unambiguous and speak for themselves. The State, I  
2 believe, in a prior case called "*State v Norman Dudley*,"  
3 attempted to argue what it will probably argue here which  
4 is that the State has 30 days to appeal a criminal case  
5 from magistrate court.

6 Your Honor, in that case, Judge Nicholson, sitting in  
7 an appellate jurisdiction -- in -- in an appellate  
8 jurisdiction, indicated that no, no the State's is not,  
9 that it only has 10 days; further, that to grant otherwise  
10 would violate the equal protection clause and essentially  
11 burden the Defendant with a quicker action than the State  
12 would have.

13 And further, Your Honor, when that went up to the  
14 Court of Appeals, the Court of Appeals determined the  
15 State had filed late in that case anyway. They'd filed on  
16 day 31. So it came to no -- it -- it -- it didn't find a  
17 relative conclusion that would've -- that would've  
18 terminated our motion in this case.

19 But Your Honor, I think again the facts are just --  
20 sorry, the statute's really clearly speak for themselves.  
21 And we all learn in the very first year of law school that  
22 the word "shall" means must.

23 I just don't think the State can provide any kind of  
24 justification to get around 18-3-20 which is clear and  
25 states that this chapter is the one that describes how

1 magistrates court's appeals from criminal actions are to  
2 be proceeded on.

3 THE COURT: Not to steal his thunder, but what about  
4 Rule 74 which says 30 days appeals to Circuit Court?

5 MR. RUSSO: Sure. Well, that would only be if you  
6 found that, one, 18-330 did not apply. So you'd have to  
7 get to that first; and even then you have to weave through  
8 an extremely narrow passageway to get there.

9 What the State says -- what it -- what at least said  
10 in -- in the *Dudley* case was that they first went to, I  
11 believe, Rule of Criminal Procedure, I think it was 29,  
12 which describes other rules of procedure which could be  
13 applicable, and only from there does it get to Rule 74.  
14 You have to go through an extremely winding passageway to  
15 get to Rule 74.

16 And while I agree that we are in Common Pleas now, we  
17 are in Civil Court, it's -- it's clear to -- that to get  
18 to here, you have to file the -- the notice of appeal  
19 within 10 days, from 18-320 or 18-330, I apologize.

20 THE COURT: Okay. Understood. Ms. Frost, you want  
21 to add anything?.

22 MS. FROST: No, Your -- only the -- just the idea  
23 that the State is asking this Court to require a higher  
24 burden for criminal defendants that -- versus what the  
25 State would -- would be required to, and -- and Judge

1 Nicholson said that that could be an issue of equal  
2 protection clause and we just want to make sure that's  
3 considered as well.

4 THE COURT: Thank you. Mr. Moore?

5 MR. MOORE: Thank you, Your Honor. Going back to the  
6 first issue, the State's position is, is that 18-3 -- or  
7 18-3-30 doesn't govern appeals by the State. It applies  
8 only to a defendant appealing his sentence in magistrate  
9 court upon conviction.

10 If you look at the statute again, Section A says (as  
11 read): "The Appellant, within 10 days after sentence,  
12 shall file a notice of an appeal with the Circuit Court."  
13 And then secondly, in Section B, it says (as read): "A  
14 person convicted ... " and in both these cases it's also  
15 applying to a post-conviction situation, not an  
16 interlocutory appeal which is what we have here.

17 The underlying statute authorizing criminal appeals  
18 for magistrate's court, 18-3-10, also is facially inactive  
19 -- in -- inapplicable to the State. It says (as read):  
20 "Every person convicted before magistrate's court of any  
21 offense, and whatever -- offense whatever and sentenced  
22 may appeal from the sentence of the Court of Common Pleas  
23 for the county." And again, you're dealing with a post-  
24 conviction situation.

25 By their own terms, neither of these statutes applies

1 to the State. The Court can employ rule -- rules of  
2 statutory construction to impose another meaning on them  
3 when the terms of the statute are plain, unambiguous, and  
4 convey a clear and definite meaning.

5 The State's right to appeal in South Carolina is  
6 generally controlled by case law rather than statute, and  
7 the State's right to appeal is a judicially created right.

8 In *State v Belviso*, the Court of Appeals reversed the  
9 Circuit Court's determination that it did not have  
10 jurisdiction to hear the State's interlocutory appeal when  
11 it incorrectly relied on 18-3-10, holding that because the  
12 State's right to appeal was judicially created, the Court  
13 would look into judicial opinions instead. Because no  
14 statute or cases set forth the time frame for appeals from  
15 magistrate's court by the State, the procedural rules  
16 would then apply.

17 The South Carolina Rule of Criminal Procedures apply  
18 to magistrate court under Rule 37, the applicability  
19 statute; and then if you look at the last line in Rule 37,  
20 it says (as read): "In any case where no provision is  
21 made by statute or -- or are --

22 THE COURT: Are you in Rule of Civil Procedure 37?

23 MR. MOORE: This is the Rules of Criminal Procedure

24 --

25 THE COURT: All right.

1 MR. MOORE: -- I'm looking at right now, the Rule 37.

2 THE COURT: Hang on. Let me -- let me find it.

3 Number 37?

4 MR. MOORE: Correct, Your Honor.

5 THE COURT: All right. I'm listening.

6 MR. MOORE: (As read): "And any case where no  
7 provision is made by statute or these rules, the procedure  
8 shall be according to the practices that heretofore  
9 existed in the Courts of the State."

10 South Carolina Rules of Civil Procedure 74 predates  
11 37, so that would've been in existence prior to. And  
12 under South Carolina Rule of Civil Procedure 74, which we  
13 -- was -- it's just been discussed, provides for a 30-day  
14 period for service and appeal when the cases are coming  
15 into the Court -- or to the common pleas.

16 The Appellant's appeal in this case, our appeal,  
17 filed within 30 days of the magistrate ruling, was,  
18 therefore, timely under Rule 74 of the South Carolina  
19 Rules of Civil Procedure, which should apply in this  
20 situation where we're dealing with an interlocutory appeal  
21 by the State and not an appeal by the Defendant of a  
22 criminal conviction.

23 THE COURT: All right.

24 MR. RUSSO: Let ---

25 MR. MOORE: As for the equal protection argument,

1 first argument is, is that because we're dealing with an  
2 interlocutory appeal, those sections, 18-3-30, wouldn't  
3 apply anyway and so it really would be an inter -- or  
4 there wouldn't be -- there would be an argument for a  
5 criminal defendant in the same position, that they could  
6 go forward in a 30-day window.

7 But regardless of that, let's say that you do look at  
8 the equal protection issue. There must be a showing that  
9 -- where similarly situated persons receiving desperate  
10 treatment -- in this case neither the South -- the State  
11 of South Carolina nor the Department of Public Safety is a  
12 person within the context of the clause. There's no basis  
13 to apply the equal protection clause to find a government  
14 agency is a person against whom a defendant's equal  
15 protection rights are measured.

16 And the State is not, and never -- can never be  
17 similarly situated to a criminal defendant and such an  
18 analysis is unsupported by law.

19 Even if it were possible to find that the parties are  
20 similarly situated such that an equal protection clause  
21 applies, there would be no constitutional violations.

22 In this case, neither the parties ability to appeal  
23 -- neither -- because neither parties ability to appeal  
24 from magistrate court involves a suspect class or any  
25 fundamental right, the existence of separate rules

1       prescribing different time strain -- time frames for  
2       appeal would be evaluated under the rational basis  
3       standard. Under this test, the requirements of equal  
4       protection are satisfied when the classification by the  
5       Government bears a reasonable relation to the legislative  
6       purpose sought to be affected, the members of the class  
7       are treated alike under similar circumstances and  
8       conditions, and the classification rests on some  
9       reasonable basis.

10           If the Court can discern any rational basis to  
11          support a classification, regardless of whether that basis  
12          was the original motivation for it, the classification  
13          will withstand constitutional scrutiny.

14           18-3-30 is viewed as creating a class of criminal  
15          defendants that must appeal their magistrate convictions  
16          within 10 days. The classification bears a reasonable  
17          relation to the legislative purpose of aiding the orderly  
18          administration of justice, all members of the class are  
19          treated the same, and the alleged classification rests on  
20          a reasonable basis that 10 days is sufficient for a  
21          criminal defendant to decide upon and file notice of  
22          appeal. And in that case, the statute passes  
23          constitutional muster.

24           If the legislatively approved court rule granting the  
25          State 30 days to perfect and file an appeal for magistrate

1 court is seen as creating a class of prosecutors subject  
2 to a different time for appeal, it too survives  
3 constitutional muster like 18-3-30. It would be  
4 reasonably related to aiding the administration of  
5 justice, all members are treated alike, and a reasonable  
6 basis exists for the creation of such a class.

7 Criminal cases in magistrate court are generally  
8 prosecuted by law enforcement officers, and not lawyers.  
9 Only attorneys can handle the appeals.

10 When an appellate attorney is not present during a  
11 magistrate court proceedings, it takes additional time to  
12 be notified by the officer that an appeal might need to be  
13 taken, establish what transpired, secure a recording of  
14 the -- or transcript of the proceedings, determine whether  
15 an app -- an appealable issue exists, evaluate pub --  
16 policy considerations in taking the appeal, and prepare  
17 and file an appeal, often in the area of the state where  
18 the attorney doesn't work.

19 So for those reasons, even if you did the equal  
20 protection analysis, we don't feel like there would be a  
21 violation under these circumstances, Your Honor.

22 THE COURT: All right. Mr. Russo?

23 MR. RUSSO: Your Honor, as you saw, what they expect  
24 you to do is ignore 18-3-20, ignore 18-3-30, jump to rule  
25 37 of the Rules of Criminal Procedure; then from there,

1 leapfrog to rule 74 of the Rules of Civil Procedure.

2 Your Honor, I -- I just -- for whatever reason, I  
3 seem to doubt that when the legislature enacted 18-2 --  
4 18-3-20 and 18-3-30, that they expected that to be the  
5 rationale for how the State had a right to an appeal.

6 If anything, Your Honor, another questions arises,  
7 why not jump to rule 29 of the South Carolina Rules of  
8 Criminal Procedure which indicates that all post-trial  
9 motions shall be made within 10 days? The State provides  
10 no reason for that.

11 So Your Honor, I think that the clear, concise, and  
12 quite frankly obvious -- as there's been no argument to  
13 the contrary -- way to perceive these matters is to look  
14 at 18-3-20, all appeals shall, apply to 18-3-30 and see  
15 that the State filed 20 to 31 days late.

16 THE COURT: Anything you want to add, Ms. Frost?

17 MS. FROST: No, Your Honor.

18 THE COURT: See, the -- the problem I'm having for  
19 whoever reads this transcript down the road is, you know,  
20 I -- I've -- I've read the magistrate's court rule -- or  
21 the -- the -- statute 18-3-20. You know, the first  
22 section, A, talks about the Appellant; and then B,  
23 subsection B, or maybe it's under 30, says (as read): "A  
24 person convicted in magistrate's court..."

25 Well, to me that signals two different things: The

1 Appellant versus a person convicted. You know, does --  
2 did the legislature intend to mean the Appellant being the  
3 prosecuting agency as well or did they just mean that to  
4 be a person convicted in magistrate court?

5 If they just meant it to be a person convicted in --  
6 convicted in magistrate's court, why didn't they say it  
7 that way in -- in section A? And of course, I -- I'm --  
8 I'm well aware how this Court's supposed to interpret  
9 statutes, and I'm well aware when it -- how statutory  
10 interpretation should be strictly construed in favor of a  
11 criminal defendant. I understand that as well.

12 All right. What I want to do, and like I indicated  
13 to y'all back in chambers when y'all were giving me kind  
14 of the rundown of what we were going to put on the record  
15 here for the purposes of -- of any future appellate  
16 remedies for either side, I -- I do want to sit on this  
17 for awhile and digest everything y'all have argued to me.  
18 And I'll issue a ruling hopefully if not by the end of  
19 this week, certainly by the end of next week.

20 Yes, sir?

21 MR. RUSSO: Your Honor, just -- just for purpose of  
22 housekeeping.

23 THE COURT: Yes?

24 MR. RUSSO: When -- when the *Dudley* case was heard in  
25 front of Judge Nicholson, what had happened was the --

1 Judge Nicholson emailed both parties and indicated that he  
2 was going to reach the issue on motion and not reach the  
3 substantive issue. Your Honor, we haven't argued about  
4 the substantive issue on our side yet --

5 THE COURT: Yeah. That's right.

6 MR. RUSSO: Do you want us --

7 THE COURT: That's right.

8 MR. RUSSO: -- do you want us to go ahead and argue  
9 that, or do you want to send us an email and then we can  
10 come back if you have to -- if we have to argue --

11 THE COURT: That's what I'm going to do.

12 MR. RUSSO: Okay.

13 THE COURT: And the purpose -- in -- in the interest  
14 of time. In -- in -- in the event I deny the Defense's  
15 motion to dismiss on procedural grounds, we will -- I will  
16 revisit -- I'll retain jurisdiction and y'all can come see  
17 me instead of me coming to see y'all. Maybe we can meet  
18 in the middle somewhere.

19 MR. RUSSO: Fair --

20 THE COURT: Maybe we can meet in Columbia, who knows?  
21 But I will -- I will listen to -- I will deal with the  
22 substantive issues in the event I deny the Defense request  
23 for dismissal, okay?

24 MR. RUSSO: Thank you, Your Honor.

25 MR. MOORE: Thank you, Your Honor.

1 THE COURT: Thank you very much, sir.

2 MS. FROST: Thank you, Your Honor.

3 THE COURT: That concludes the hearing of this case.

4 (Off the record at 11:15 a.m.)

5 -- END OF TRANSCRIPT OF RECORD --

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**CERTIFICATE**

1  
2 I, the undersigned, Bonnie H. Kelly, Official Court  
3 Reporter for the Fifth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate excerpt of transcript of record of all the  
6 proceedings had and evidence introduced in the hearing of  
7 the captioned cause, relative to appeal, in the Circuit  
8 Court for Dorchester County, South Carolina, on the 28th  
9 day of May, 2019.

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

12  
13  
14 E/Bonnie H. Kelly

15 Bonnie H. Kelly, CVR

16 Court Reporter

17  
18 Columbia, South Carolina

19 December 15, 2019  
20  
21



WHEREFORE, the Defense would request as follows:

- A. An order dismissing the case; and,
- B. Such other relief as the court may decide to award.

Respectfully submitted,



John L. Drennan/Adam J. Russo  
Attorneys for Defendant  
1350B Chuck Dawley Blvd.  
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(843) 606-2971 (fax)

Mount Pleasant, South Carolina

5/30, 2017

**EXHIBIT A**

2017 JUL 31 PM 4:42  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

The State of South Carolina,

v.

Norman B. Dudley

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) C/A #2014-CP-08-00010  
) Ticket No.: F594836

RECEIVED

2017-CP-18- 888 AUG 21 2015

SC Court of Appeals

) ORDER DISMISSING APPEAL

2015 AUG 15 PM 12:26  
CLERK OF COURT  
BERKELEY COUNTY, S.C.  
2011 JUL 31 PM 4:12

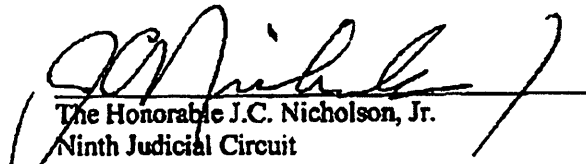
THIS MATTER came before the Court upon the State's Appeal of the Dismissal of Driving Under the Influence (First Offense) handed down by Honorable Edward L. Sessions, Berkeley County Magistrate Judge, on December 3, 2013. The Court issued its Order of Dismissal on that date and the State received notice at that time.

FINDINGS OF FACT

The Court finds upon a review of the record that the State failed to file a timely appeal in this matter having done so January 3, 2014. Section 18-3-30 of the South Carolina Code of Laws governs appeals from criminal matters in Magistrate Court. The statute provides that the notice of appeals from criminal matters in Magistrate Court shall be filed within ten days. It would be a violation of the Equal Protection Clause to not hold the prosecuting agency to the same standard as an accused in the courts of this state.

THEREFORE, IT IS HEREBY ordered that the State's Appeal is hereby dismissed.

AND IT IS ORDERED.

  
The Honorable J.C. Nicholson, Jr.  
Ninth Judicial Circuit  
State of South Carolina

32:CTM  
AUG 3, 2015  
Charleston, South Carolina



STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS  
: :  
COUNTY OF DORCHESTER : FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA : C/A # 2017-CP-18- 888

Appellant,

vs.

CHRISTOPHER K. HUGGINS,

Respondent

CERTIFICATE OF SERVICE

Ticket No.: H409663

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of May, 2017, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Tera S. Richardson  
Dorchester County Magistrate Judge  
Troy Knight Judicial Complex  
212 Deming Way, Box 10  
Summerville, SC 29483-4707

Adam J. Russo, Esq.  
Drennan Law Firm, LLC  
1350B Chuck Dawley Blvd  
Mount Pleasant, SC 29464

RECORDED  
2017 JUL 31 PM 4:42  
CLERK OF COURT  
DORCHESTER COUNTY



Monishia L. Davis  
Paralegal  
S. C. Department of Public Safety

Dated: May 22, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
State of South Carolina, )  
Appellant, )  
vs. )  
Christopher Huggins, )  
Respondent. )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT  
**MOTION FOR RECONSIDERATION  
PURSUANT TO SCRCP 59(e)**  
Civil Action No.: 2017-CP-18-00888  
Ticket No.: H409663

TO: THE HONORABLE BRIAN M. GIBBONS, CIRCUIT COURT JUDGE, AND  
ADAM JOSEPH RUSSO, ATTORNEY FOR RESPONDENT

On April 25, 2017, Dorchester County Magistrate Tera S. Richardson issued an order granting a defense motion to dismiss the State's charge of Driving Under the Influence against Christopher Huggins ("Respondent"). Judge Richardson found dismissal appropriate because the prosecution's roadside video failed to capture portions of the Walk and Turn field sobriety test in violation of section 56-5-2953 of the South Carolina Code, *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007), *State v. Gordon*, 414 S.C. 94, 777 S.E.2d 376 (2015), and other appellate and local cases and orders. In response, the State filed an appeal in the Dorchester County Court of Common Pleas arguing that the magistrate erroneously concluded as follows:

- (1) omission of a portion of the Walk and Turn test is a violation of section 56-5-2953;
- (2) failure to record portions of the Walk and Turn test results in dismissal of an entire case, as opposed to redaction/suppression of the tests and any related testimony. *See Gordon*, 414 S.C. at 100, 777 S.E.2d at 379; and
- (3) a sworn affidavit by Trooper Davis was required under section 56-5-2953.

The State's appeal was filed on May 25, 2017. On July 31, 2017, Judge Richardson filed her Return.

Prior to the issuance of the Return, on June 5, 2017, Respondent filed a motion requesting that this Court dismiss the State's appeal based upon the State's failure to timely file the appeal pursuant to sections 18-3-20 and 18-3-30 of the South Carolina Code. Included in the motion was a reference to the Equal Protection Clause. Specifically, Respondent contended that the State was required to file its appeal within ten (10) days of Judge Richardson's dismissal on April 25, 2017, and that the State's appeal filed on May 25, 2017 was untimely.

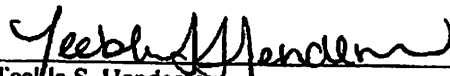
A hearing to consider the appeal and Respondent's Motion to Dismiss took place on May 28, 2019. During the hearing, the State was heard on its arguments regarding the underlying appeal of the DUI case. Additionally, Respondent argued in favor of dismissal as described above. In response, the State argued:

- (1) sections 18-3-10, 18-3-20, and 18-3-30, including the time limits, are applicable to criminal defendants only, not to appeals brought by the State;
- (2) because no statutory or case law sets forth the timeframe for appeals by the State from magistrate's court, the South Carolina Rules of Civil Procedure are implicated; and
- (3) any discrepancy between the time limits for appeal by either party is lawful and neither implicates nor violates the Equal Protection Clause.

On May 29, 2019, this Court issued a Form 4 Order stating that the "Appeal is hereby denied" and further, that "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed." Based upon the arguments made above, the State respectfully requests that the Court reconsider, alter, or amend its ruling to dismiss this appeal as untimely and proceed on the merits of the State's appeal.

In the alternative, the State moves the Court for a formal written order which sets forth the grounds upon which the Court has relied in dismissing this appeal.

Respectfully Submitted,



Teckla S. Henderson,  
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South Carolina Department of Public Safety  
Office of General Counsel  
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Telephone: (803) 896-7950

Blythewood, South Carolina  
June 4, 2019

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

State of South Carolina,

Appellant,

vs.

Christopher Huggins,

Respondent.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-18-00888

Ticket No.: H409663

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on the 14<sup>th</sup> day of June, 2019, I mailed, via first class Unites States mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Reconsideration to the presiding Circuit Court judge. Respondent's counsel of record was automatically served with the same via e-filing.

The Honorable Brian M. Gibbons  
Post Office Drawer 580  
Chester, South Carolina 29706

Adam J. Russo, Esquire  
1350B Chuck Dawley Boulevard  
Mount Pleasant, South Carolina 29464



Paula Davis, Paralegal  
SCDPS Office of General Counsel

Blythewood, South Carolina  
June 14, 2019

**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.

**RECEIVED**

**Jun 17 2020**

**SC Court of Appeals**

By: 

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