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**May 28 2021**  
**SC Court of Appeals**

**STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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**APPEAL FROM YORK COUNTY**

**Daniel D. Hall, Circuit Court Judge**

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**Appellate Case No.: 2020-001105**

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**The State.....Respondent,**

**v.**

**Daniel McMichael Belk.....Appellant.**

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**RECORD ON APPEAL**

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**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), SCRPC.

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ELECTRONICALLY FILED - 2020 Jul 15 2:30 PM - YORK - COMMON PLEAS - CASE#2020CP4600996



York Common Pleas

**Case Caption:** Daniel McMichael Belk VS South Carolina State Of  
**Case Number:** 2020CP4600996  
**Type:** Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2020-07-15 14:24:47 page 3 of 3

ELECTRONICALLY FILED - 2020 Jul 15 2:30 PM - YORK - COMMON PLEAS - CASE#2020CP4600996

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4600996

Daniel Mcmichael Belk  
PLAINTIFF(S)

South Carolina State Of  
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

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:

After the Court's consideration, the prior ruling of the Magistrate's Court in the above referenced case is Affirmed, it is so ordered.

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 06/25/2020 .

Matthew W. Shelton for South Carolina State Of

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), SCRCP.

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ELECTRONICALLY FILED - 2020 Jun 25 10:05 AM - YORK - COMMON PLEAS - CASE#2020CP4600996



York Common Pleas

**Case Caption:** Daniel Mcmichael Belk VS South Carolina State Of  
**Case Number:** 2020CP4600996  
**Type:** Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2020-06-25 09:52:47 page 3 of 3

ELECTRONICALLY FILED - 2020 Jun 25 10:05 AM - YORK - COMMON PLEAS - CASE#2020CP4600996

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )  
 )  
Daniel McMichael Belk, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
State of South Carolina, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

**MOTION TO RECONSIDER**

Docket No. 2020-CP-46-996

TO: THE HONORABLE DANIEL D. HALL, CIRCUIT COURT JUDGE

**PLEASE TAKE NOTICE** that the Appellant, Daniel McMichael Belk, by and through counsel, respectfully moves before this Court for a Motion to Alter or Amend a Judgment pursuant to Rule 59 and 60 of the South Carolina Rules of Civil Procedure on the above captioned case. The Appellant asks for a specific finding from the Court as to whether the advisement of rights given in this case and presented through the arresting officer’s roadside video is sufficient to satisfy the video recording requirements of S.C. Code 56-5-2953. Further, the Appellant asks for a hearing before the court on this matter.

**BACKGROUND**

On March 4, 2020, the Appellant was convicted at a bench trial before the Honorable Clayburn Barnette, magistrate for the York County Centralized DUI Court of the offense Driving Under the Influence, First Offense – BAC Level Less than 0.10%, in violation of S.C. 56-5-2930(A)(1). At trial, the Appellant, through counsel, moved for a dismissal of the charge due to a violation of S.C. Code 56-5-2953(A)(1)(a)(iii), claiming the incident site video did not show him being advised of his Miranda right. The court denied the motion and the Appellant was

subsequently convicted. The Appellant timely filed for an appeal of this conviction on March 11, 2020.

An appeal hearing was held on June 22, 2020, before the Honorable Daniel D. Hall regarding the Magistrate Court Criminal Appeal of the conviction of the appellant. Representing the Appellant was Benjamin Hasty and representing the Respondent State of South Carolina was Assistant Solicitor Alexander Harper. The Court heard arguments from both parties and took the matter under advisement. On June 25, 2020, the Court rendered a judgment on the matter through a Form 4 Order affirming the prior ruling of the magistrate court.

### STANDARD OF REVIEW

“In criminal appeals from a municipal court, the circuit court does not conduct a de novo review; rather, it reviews the case for preserved errors raised to it by an appropriate exception.” *City of Cayce v. Norfolk S. Ry. Co.*, 391 S.C. 395, 399, 706 S.E.2d 6, 8 (2011); *see* S.C. Code Ann. § 14–25–105 (Supp.2010) (“There shall be no trial de novo on any appeal from a municipal court.”). “Therefore, our scope of review is limited to correcting the circuit court's order for errors of law.” *Suchenski*, 374 S.C. at 15, 646 S.E.2d at 880. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011)

### FACTS

When Appellant was arrested the arresting officer advised the Appellant of certain rights as follows, “You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney one will be appointed. Do you understand your rights?” The advisement of these rights was recorded on video. (*See* Summary Court Return). At trial, the Respondent admitted the advisement of rights was not sufficient to comply with the requirements of *Miranda v. Arizona* for a voluntary

statement and raised no exception or excuse under S.C. Code 56-5-2953(B) for any noncompliance with S.C. Code 56-5-2953(A) of the roadside video recording.

#### LAW

S.C. Code 56-5-2953(A)(1)(a) requires that a video recording be made of a person charged with violating S.C. Code 56-5-2930 (the charge against Appellant) and that the video recording from 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 violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination that the person violated Section 56-5-2945, and show the person being advised of his *Miranda* rights.

The *Miranda* advisement requirements of this statute is a reference to the notification given by police to a suspect in custody derived from the 1966 U.S. Supreme Court case *Miranda v. Arizona*, 384 U.S. 436 (1966). *See State v. Hoyle*, 397 S.C. 622 (Ct. App. 2012) (*Hoyle* being the only appellate case interpreting the *Miranda* advisement requirements of S.C. Code 56-5-2953). In *State v. Hoyle*, the South Carolina Court of Appeals reviewed the *Miranda* advisement required for an arrest on a charge of Driving Under the Influence and determined that a proper *Miranda* advisement requires four warnings: "A suspect in custody must be warned prior to any questioning that [1] he has a right to remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Id.* at 627-628. The court in *Hoyle* went even further and stated, for the bench, bar, and law

enforcement, stating that the South Carolina Supreme Court's opinion in *State v. Cannon*<sup>1</sup> shall be the controlling precedent for the purposes of a DUI charge *Miranda* advisement review. See *Hoyle*, at 629.

Further, the U.S. Supreme Court has ruled that a *Miranda* advisement does not require a "talismanic incantation," but must, at a minimum, "reasonably convey to a suspect his rights as required by *Miranda*," but must, at minimum, inform the person that "he has the right to an attorney before and during questioning..." See *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989)

Where law enforcement fails to comply with the mandatory requirements of S.C. Code § 56-5-2953(A), the Supreme Court has determined that the statute is strictly construed and that the Legislature clearly intended for a *per se* dismissal of the charge for the law enforcement agency's violation of the mandatory provisions of . *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 348-349, (S.C. 2011) citing *City of Rock Hill v. Suchenski*, 374 S.C. 12 (2007).

The Court of Appeals, in *State v. Taylor*, stated again that the legislative intent for the video recording requirements of the incident site was "specifically requiring the video to 'include any field sobriety test administered' ... [and] ... requiring video recording of the person's arrest and of the officer issuing *Miranda* warnings serves to protect important rights of the defendant." *State v. Taylor*, 411 S.C. 294, 305 (Ct. App. 2014).

### RESPONDENT'S ARGUMENT

At the oral arguments for this case, the Respondent agreed the advisement given in this case did not comply with the rights advisement requirements of *Miranda v. Arizona*; however,

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<sup>1</sup> In *State v. Cannon*, 260 S.C. 537, 542-543 (1973), the South Carolina Supreme Court ruled that the following advisement given by an officer to a suspect would satisfy the requirements of *Miranda v. Arizona*, 384 U.S. 486 (1966): "You have the right to remain silent; anything you say can and will be used against you in a court of law; you have the right to talk to a lawyer and have him present with you while you are being questioned; if you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one." (emphasis added).

argued that the incomplete rights advisement was not a violation of the roadside video recording requirements found in S.C. Code 56-5-2953. The Respondent cited the South Carolina Court of Appeals decision of *State v. Taylor* as his sole argument against dismissal of the charge against Appellant due to a violation of the recording requirements. In *Taylor*, the court conducted a statutory construction analysis as a means of determining the legislative intent behind S.C. Code 56-5-2953. *State v. Taylor*, 411 S.C. 294 (Ct. App. 2014).

The issue before the court in *Taylor* was whether the defendant being briefly off camera while the arresting officer repositioned his patrol vehicle was a violation of the roadside video recording requirements of S.C. Code 56-5-2953(A)(1)(a). *Id.* at 298. The Court of Appeals' analysis stated that "if a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 300. "If the statute is ambiguous, however, courts must construe the terms of the statute." *Id.* However, where there is ambiguity in the statute, "courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." *Id.* at 301.

The facts before that court were that the defendant was omitted from the view of the camera for a few seconds while the arresting officer repositioned his patrol vehicle to conduct field sobriety tests. The Court of Appeals determined that the omission of the defendant during that brief period did not occur during any of the critical events or important rights of the defendant. *Id.* at 306. Further, that court stated that the recording of the *Miranda* warnings is essential to protect the important rights of the defendant. That court held that "interpreting the statute to require dismissal of the charges when the defendant is off camera for a short period of time and the gap does not occur during any of those events that either create direct evidence of a DUI or service important rights of the defendant would result in an absurdity that could not

possibly have been intended by the legislature.” *Id.* Accordingly, the Court of Appeals reversed the dismissal of the defendant’s charges and remanded the case to the magistrate court for trial.

The facts in the present case, where the advisement of the Appellant’s *Miranda* rights was not properly recorded, are distinguished from the facts in *State v. Taylor*, where that court found the brief omission of the defendant did not occur during any critical stage. In the present case, the advisement of *Miranda* rights is a listed requirement of S.C. Code 56-5-2953(A)(1)(a) and is an essential right of the defendant in *State v. Taylor*. Interpreting S.C. Code 56-5-2953 to require the incident site recording must include a complete advisement of the subject’s *Miranda* rights would not result in an absurd interpretation of the legislature’s intent, yet the inverse cannot be said. Accordingly, the Respondent’s reliance on the Court of Appeals’ analysis in *State v. Taylor* is unfounded and not applicable to the case before this Court.

#### APPELLANT’S ARGUMENT

In this case, the video recording of the incident site does not include the Appellant being advised of his *Miranda* rights, in violation of S.C. Code 56-5-2953. Here, the arresting officer did advise the Appellant of some rights that would be required pursuant to *Miranda v. Arizona*, *supra*, as adopted in *State v. Hoyle*, *supra*; however, the advisement of rights did not inform the Appellant that his right to an attorney, whether hired or appointed, would begin before or during any questions, as would be required, and instead left the Appellant’s ability to exercise his right to an attorney to exist at some vague period in the future. Further, at trial, the State and Appellant stipulated the *Miranda* advisement was incomplete and the Magistrate excluded all statements made by Appellant after his arrest from evidence. Accordingly, the advisement in this case does not meet the minimum mandatory requirements to be classified as a *Miranda* advisement that would satisfy the roadside video recording provisions S.C. Code 56-5-

2953(A)(1)(a). Consequently, the Magistrate should have dismissed the charges against Appellant pursuant to the *per se* remedy found in *City of Rock Hill v. Suchenski, supra*.

### CONCLUSION

The Appellant requests this court to reconsider its ruling in this matter and enter a judgement reversing Appellant's conviction and dismissing the charge of Driving Under the Influence, First Office (Ticket/Warrant # 20192381095047). The Appellant requests this court give a specific finding as to whether the advisement of rights given in this case is sufficient to satisfy the roadside video recording requirements of S.C. Code 56-5-2953. Finally, Appellant would request a hearing on the motion.

s/ Benjamin Hasty  
Benjamin B. Hasty  
SC Bar # 102265  
Law Offices of Michael L. Brown, Jr.  
403 East White Street  
Rock Hill, SC 29730  
(803)328-8822  
Attorney for Appellant

July 2, 2020  
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
 )  
State of South Carolina, )  
Respondent, )  
 )  
vs. )  
 )  
Daniel McMichael Belk, )  
Appellant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

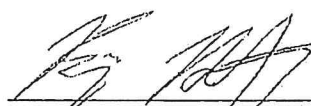
NOTICE OF APPEAL

Docket No. 2020-CP-46-\_\_\_\_\_

The appellant, DANIEL McMICHAEL BELK, by and through counsel of Michael L. Brown, Jr., hereby appeals his conviction for Driving Under the Influence of Alcohol, BAC Less Than 0.10% - First Offense, which occurred after a bench trial held in the York County Centralized DUI Court on March 4, 2020, in front of the Honorable Clayburn S. Barnette, Jr. The basis of this appeal is as follows:

1. The trial court erred in not granting Appellant's motion for dismissal in this case due to a violation of S.C. Code 56-5-2953(A)(1)(a)(iii). In this case, both prosecution and defense agreed that Appellant was not properly advised of his Miranda rights. Accordingly, the video recording did not show the Appellant being advised of his Miranda right and should have been dismissed pursuant to the remedy found in *City of Rock Hill v. Suchenski*, 375 S.C. 12 (2007).

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Benjamin B. Hasty - SC Bar # 102265  
Law Offices of Michael L. Brown, Jr.  
403 East White Street  
Rock Hill, SC 29730  
(803)328-8822  
Attorney for Appellant  
Daniel McMichael Belk

March 10, 2020



**YORK COUNTY CENTRALIZED DUI COURT**

ELECTRONICALLY FILED - 2020 Mar 24 2:46 PM - YORK - COMMON PLEAS - CASE#2020CP4600996

STATE OF SOUTH CAROLINA )  
 COUNTY OF YORK )

STATE )

VS )

DANIEL MCMICHAEL BELK )

DEFENDANT )

TICKET NO. 20192381095047 )

CHARGE: DRIVING UNDER THE INFLUENCE 1<sup>ST</sup> )  
 OFFENSE )

IN THE COURT OF COMMON PLEAS )

SUMMARY COURT RETURN )  
 OF )  
 NOTICE OF APPEAL )

CASE NO: 2020-CP-\_\_\_\_\_ )

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 COURT

The appellant Daniel McMichael Belk by through Counsel Benjamin B Hasty with the Law Offices of Michael L. Brown, Jr. asserts that his conviction for Driving under the Influence, which occurred at a bench trial on March 4<sup>th</sup>, 2020, should have been dismissed on the following grounds:

1. The Trial Court erred in not granting appellant's Motion for Dismissal in this case due to a violation of SC Code 56-5-2953 (A) (a) (iii) which states (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 test 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.

The Summary Court disagrees with the appellant's assertions and believes that the appellant's convictions should stand. After reviewing the evidence, the court found the following:

During pretrial motions before the bench trial, motions were made from Belk that the case should be dismissed because of a violation of SC Code 56-5-2953 (A)(a)(iii). The motion for dismissal was denied and the bench trial move forward.

1. The roadside video was offered into evidence. The Defendant made a motion to dismiss based on a violation of 56-5-2933(A)(a)(iii) which was denied. After a proper foundation was presented through sworn testimony by Trooper Jakell with the South Carolina Highway Patrol. The roadside video was admitted and published. The defendant was involved in an accident on S.C. 155/ Zoar Road, York County, South Carolina. The defendant rear ended the vehicle in from of him, and was sitting in the vehicle when the trooper arrived on the scene. After detecting the odor of alcohol, the trooper asked defendant to exit the vehicle and proceeded with: SFST's, HGN, W & T and one-legged stand.

1675 York Highway, York , South Carolina 29745

Telephone: 803-909-7650 Fax: 803-909-7636 Web: www.yorkcountygov.com

MV300

"York County provides an environment where all citizens and businesses can thrive and succeed"



## YORK COUNTY CENTRALIZED DUI COURT

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After tests were completed, defendant was placed under arrest for DUI and stated Miranda as follows:  
*"You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney one will be appointed. Do you understand your rights?"*

The roadside video was ended after Miranda. The prosecution was entering the B.A. video as evidence and the Defense objected based on the pre-trial motions. After proper foundation, the video was admitted and published and the video showed that the officer told the defendant he was being video recorded, read him his Implied Consent Rights, gave him a copy of his Implied Consent Rights, followed with an oral mouth check prior to test and observed the 20 minute waiting period leading to the test. After the 20 minutes the defendant was offered the test. After submitting a sample, the B.A. result was .13%. This was entered as evidence. Sled Agent, Nathan McCoy, was sworn in and testified that the Data Master was working properly at the time the test was given. After the State rest their case, the Court found the Defendant guilty of Driving under the Influence. The Defendant's Counsel immediately notified the court of an appeal.

Please find enclosed documents and video tapes. If I can be of any further assistance, please do not hesitate to contact me.

Thank you,

Clayburn S. Barnette, Jr.

York County Centralized D.U.I. Court Magistrate

1675 York Highway, York, South Carolina 29745

Telephone: 803-909-7650 Fax: 803-909-7636 Web: [www.yorkcountygov.com](http://www.yorkcountygov.com)

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*"York County provides an environment where all citizens and businesses can thrive and succeed"*



I-N-D-E-X

WITNESSES:

(No testimony taken)

E-X-H-I-B-I-T-S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EV.</u> |
|------------|--------------------|------------|------------|
|------------|--------------------|------------|------------|

(NO EXHIBITS)

1           THE COURT - All right, we're on the record in the  
2 matter of State vs. Daniel McMichael Belk. This is an  
3 appeal from Magistrate's Court. This is case number 2020-  
4 CP-46-00996. It appears that this is an appeal brought on  
5 behalf of Mr. Belk who was found guilty of driving under  
6 the influence first offense at a bench trial before Judge  
7 Clayburn Barnette. He's represented today by Ben Hasty of  
8 the law offices of Michael Brown. Representing the State  
9 are Jake Isenburg and Mr. Harper from the solicitor's  
10 office. So, Mr. Hasty, it appears that this is your  
11 motion. I'll be glad to hear from you.

12           MR. HASTY - May it please the Court. Your Honor,  
13 this appeal -- and I've passed up a series -- the packet of  
14 case law -- but also the Magistrate's Return. It comes  
15 from a review of the Miranda advisement that was given in  
16 this case. While the audio of the bench trial I believe  
17 was corrupted and unable to give given, I do agree with the  
18 facts as the Magistrate Judge did allege them in his  
19 Return, but, specifically, the way the Miranda advisement  
20 was given in this case, it says that the officer advised  
21 him of the following: You have the right to remain silent;  
22 anything you say can and will be used against you in a  
23 court of law. You have the right to an attorney. If you  
24 cannot afford attorney, one will be appointed; do you  
25 understand your rights? And the rights ended there. Here,

1 the standard before your review is not a review of the case  
2 de novo but to correct errors of law, and I believe that  
3 the law is very clear under State v. Hoyle that Miranda is  
4 required per 56-5-2953 as that statute requires the person  
5 being -- that the video must show a person being advised of  
6 their Miranda rights. South Carolina case law has reviewed  
7 the Miranda rights, specifically, in the requirements of  
8 the DUI statute where in State vs. Hoyle they reviewed what  
9 was required. In State v. Hoyle they stated the specific  
10 rights must include the fact that the rights attach before  
11 any questioning if they wish, uh, or before any questioning  
12 is when these rights began. That advisement was not given  
13 in this case. In State v. Hoyle it limited the Miranda  
14 rights. They took the question upon them in a review of  
15 State vs. Kennedy as to whether or not there was a required  
16 advisement of the rights in questioning at any time, but  
17 they determined there were four specific requirements of  
18 the advisements, the first, of course, being the right to  
19 remain silent, the second, anything they said would be used  
20 against them, the third, the right to the presence of the  
21 attorney, and the fourth, if you could not afford an  
22 attorney, one would be appointed, but with the added line  
23 of prior to any questioning he so desires. Here, the  
24 appellant was not advised of his right to counsel whether  
25 appointed or not of when that would be available. That

1 requirement is that it must be given prior to any  
2 questioning and not some vague time in the future. At the  
3 trial, even the State stipulated that the Miranda  
4 advisement was incomplete. They reviewed in Duckworth vs.  
5 Eagan, which was a Supreme Court case. The citation on  
6 that was 492 US 195 from 1989. The State even agreed that  
7 this was an incomplete Miranda advisement. The Judge  
8 suppressed all the statements made by the defendant in that  
9 case, but for some reason did not -- did not dismiss the  
10 case under the Sechenski remedies for violations of 56-5-  
11 2953, and so while everyone in the courtroom agreed that  
12 Miranda was ineffective and not proper, the case still  
13 moved forward. Under 56-5-2953, it requires that the video  
14 must show the Miranda advisement and if the video does not  
15 comply, that the legislature's clear intent was for a per  
16 se dismissal in the event a law enforcement agency violates  
17 the mandatory provisions. That is from Mt. Pleasant v.  
18 Roberts, a South Carolina Supreme Court case from 2011.  
19 So, Your Honor, we come before you today to review the  
20 facts in this case. We ask that you overturn the Trial  
21 Court's decision to not dismiss this case under 56-5-2953  
22 as Miranda v. -- Miranda advisement all four prongs were  
23 not properly given, therefore, they were not captured on  
24 the video, so there is a violation of that statute and as

1 interpreted under the Sechenski ruling that the case must  
2 be dismissed per se. Thank you, Your Honor.

3 THE COURT - All right, thank you. Mr. Harper or  
4 Mr. Isenburg I will hear from you.

5 MR. HARPER - I'm sorry, Your Honor, I didn't hear  
6 that.

7 THE COURT - I'll be glad to hear from the State.

8 MR. HARPER - Thank you, Your Honor. May it  
9 please the Court. I'm going to start with a line from  
10 State v. Taylor, and I have copies of these cases if Your  
11 Honor wishes, but if you want, I can just give you the cite  
12 so you can pull it up rather than handing up actual papers  
13 to you.

14 THE COURT - Yeah, just give me the cite.

15 MR. HARPER - Okay, State v. Taylor is gonna be  
16 411 SC 294. In State v. Taylor, the Court said that Courts  
17 will reject a statutory interpretation that would lead to  
18 results so plainly absurd that it could not have been  
19 intended by the legislature or would defeat the plain  
20 legislative intention, and that, Your Honor, really is why  
21 the State did not dismiss this case outright as Mr. Hasty  
22 says should be appropriate. Mr. Hasty said this is a  
23 statute violation, when it's the State's position it  
24 absolutely is not. 2953 was meant to capture on video any  
25 evidence that would create direct evidence of DUI or that

1 protects important rights of the defendant. In this  
2 particular case, as Mr. Hasty said, Miranda was given; you  
3 have the right to remain silent; you have the right to  
4 attorney; if you can't afford an attorney, one will be  
5 appointed to you; do you understand these rights. The one  
6 part that wasn't said is when that right attaches, and what  
7 the State acknowledged at trial was that Miranda was not  
8 complete via Duckworth v. Eagan making this a Miranda  
9 violation. The correct remedy whenever Miranda is not read  
10 properly, as Your Honor knows, is suppression of all  
11 statements during custodial interrogation. Any statements  
12 made by the defendant after that point in response to  
13 questioning by officers must be suppressed and I -- if I --  
14 and remembering correctly, because this was not my trial,  
15 this was actually Jamie Nichols' trial, I believe that that  
16 was what actually happened. So the State acknowledged that  
17 there was a Miranda violation those statements needed to go  
18 away. What it's not is a 2953 violation. And to  
19 illustrate that, I'd like to go back to the case that Mr.  
20 Hasty cited, which was State vs. Hoyle. The cite on that  
21 is 397 ---

22 THE COURT - I have -- he has provided a copy of  
23 that.

24 MR. HARPER - Okay. So he cited State vs. Hoyle,  
25 which said that if Miranda is not given at the incident

1 sight or at -- or on video, then the remedy is dismissal.  
2 And State vs. Hoyle cited Rock Hill vs. Sechenski which I -  
3 - I don't know if you have up there, but I have the cite  
4 for that as well if you need it. But State v. -- or City  
5 of Rock Hill vs. Sechenski was a landmark case in 2007 that  
6 interpreted 2953 in a way that wreaked havoc on our DUI law  
7 for eight years until State vs. Gordon came out. Hoyle  
8 came out during that timeframe, so Hoyle used Sechenski to  
9 determine the remedy. At the time Sechenski was the only  
10 case that came out that actually stated a remedy for a 2953  
11 violation, and that was dismissal of an incomplete video.  
12 Then Gordon came out in 2015, and again I have a cite for  
13 that if you'd like it, Your Honor.

14 THE COURT - Give me Gordon.

15 MR. HARPER - Gordon is 414 South Carolina 94.

16 THE COURT - All right.

17 MR. HARPER - In State v. Gordon we've got a  
18 different remedy. In State vs. Gordon what the Court said  
19 was that if a video is incomplete, such as with a hood  
20 obstruction or a walk and turn test or you can't see  
21 someone's -- I don't know -- like where they walk off  
22 camera or something like that, then the State goes -- or  
23 the Court goes to a balancing test where they say is it  
24 more prejudicial than probative to allow this video in, and  
25 if so, if it is more prejudicial than the remedy is

1 suppression of that particular test. That's the remedy if  
2 there's an incomplete video, and so what the Court needs to  
3 turn to is that balancing test. Was it more prejudicial  
4 than probative to allow the video of the incomplete Miranda  
5 into evidence, and, Your Honor, I submit to you that I have  
6 wrapped my brain about this for months, and I cannot think  
7 of a single prejudicial thing about showing a video with  
8 incomplete Miranda since most people wouldn't even  
9 recognize that Miranda was incomplete. They just hear  
10 those rights and they don't realize there's one prong  
11 that's missing. So, essentially, what we're looking at  
12 here is Mr. Hasty is saying that the remedy in this case  
13 has to be Sechenski. Because Miranda was incomplete,  
14 there's a statute violation and, therefore, a dismissal of  
15 the DUI, where it's the State's position that the Miranda  
16 that was given was given on camera, and simply because it's  
17 incomplete doesn't -- doesn't make it a dismissal. It's  
18 akin to a hood obstruction. It's akin to the officer not  
19 giving complete instructions on a field sobriety test.  
20 It's simply just as -- was in State vs. Taylor a momentary  
21 exit from what was actually supposed to be going on. This  
22 wasn't a willful violation of the statute. This wasn't an  
23 accidental violation of the statute. It wasn't a violation  
24 of the statute. And so we have to look at the legislative  
25 intent. And as State vs. Taylor said, if interpretation of

1 the statute is so plainly absurd that it would lead to a  
2 conclusion that is completely contrary to what could  
3 possibly be contemplated by the legislature, then the Court  
4 can't go with that. And what Mr. Hasty is saying that I --  
5 in any DUI, a fourth offense DUI at a point three six, a  
6 felony DUI, in any of those situations if an officer leaves  
7 off of one prong of Miranda, that case has to be dismissed  
8 entirely, and I submit to you, Your Honor, and I'll end  
9 with this, that that is a conclusion so absurd, so plainly  
10 absurd that it could not have been contemplated by the  
11 legislature and could not be their intent. Thank you.

12 THE COURT - All right. Thank you, Mr. Harper.  
13 Mr. Hasty, I'll give you an opportunity to briefly respond.

14 MR. HASTY - Thank you, Your Honor. And I did  
15 bring a copy of State v. Gordon I would like to pass up to  
16 review the case that the defense -- or that the State is  
17 relying on. And I'd like to turn to page three where the  
18 Court, actually, did their analysis. This is not some  
19 modification of Sechenski or some modification of the rule.  
20 This was merely a review of a video that was given in that  
21 case and review of the HTN test that was done. They,  
22 ultimately, determined it was not a violation, therefore,  
23 Sechenski doesn't apply. This is not some modification of  
24 the rule of Sechenski. This is purely just -- and this is  
25 what would begin on page 100 of the South Carolina

1 Reporter, that section, the first full paragraph on page  
2 three -- is just simply a review of the video and they  
3 determined that the face was on the video and, therefore,  
4 it wasn't a violation of HTN. This is not a similar case  
5 to whether or not the face is on the video. It is agreed  
6 that Miranda was not provided. The statement's relying on  
7 some idea of quality of the Miranda advisement. A Miranda  
8 is a yes or no checkbox; was it given or was it not? An  
9 incomplete Miranda is also not Miranda. You cannot advise  
10 somebody to half their rights and skate past continuing to  
11 step on what the statutory requirements of 2953 are. Here  
12 they cite State v. Taylor resulting absurdity and then  
13 claiming that had this been an egregious action where  
14 somebody died that it would be absurd for the case to be  
15 dismissed. All the statute requires is for to prosecute  
16 somebody for a DUI, these are the things that must be shown  
17 on video, and that -- the State for them to come in and say  
18 that the video recording requirements are to protect the  
19 defendant, but for them to then say that but the State got  
20 close enough, completely results in an absurd result of no  
21 longer protecting the defendant, and so the statute under  
22 2953, which I've provided, it does require the inclusion of  
23 the person being advised of their Miranda rights, all  
24 parties agree that Miranda was not given. Gordon does not  
25 undo Sechenski. Gordon does not modify Sechenski. Gordon

1 merely reviews a single video from a single case and  
2 considered whether or not Sechenski still applies.  
3 Sechenski is still the proper interpretation ---

4 THE COURT - All right, let me ask you, the  
5 Magistrate you've stated, and I think part of the appeal  
6 is, and that the -- all parties agreed that Miranda was not  
7 given, however, the Magistrate had indicated in his Return  
8 that Miranda -- that Miranda as follows, after test were  
9 completed defendant was placed under arrest for DUI and  
10 stated Miranda as follows, and then he lists those. Tell  
11 me again, what is the portion of Miranda that you -- that  
12 was left out that you believe is fatal to the case?

13 MR. HASTY - Your Honor, that would be the -- what  
14 is often found tacked on to the third prong, that it's the  
15 advisement of when these rights began and more,  
16 specifically, when your right to an attorney begins, and  
17 that would be the -- begins before any questioning. That  
18 part of the advisement as we saw in Hoyle ---

19 THE COURT - So it was incomplete because the  
20 officer did not say you have a right to an attorney. He  
21 did say that, right to an attorney, and then he did not say  
22 before any questioning begins.

23 MR. HASTY - Yes, Your Honor, and the State v.  
24 Hoyle and in all of the Miranda cases that -- that is  
25 included as a requirement. In fact, even reviewed as to

1 the extent of that requirement in Duckworth v. Eagan, but  
2 that the language requires to include prior to any  
3 questioning if he so desires.

4 THE COURT - And you agree that once he gave the  
5 Miranda rights, there were no questions asked or no other  
6 tests given after -- after -- well, we're going to call  
7 them the Miranda rights -- I understand you argue that they  
8 were not complete Miranda rights -- but after the rights  
9 that he gave them ended, there was no further questioning.

10 MR. HASTY - Your Honor, there was additional  
11 questioning by the officer at trial. All of that was  
12 suppressed due to Miranda advisement, but ---

13 THE COURT - All right. So there's no -- there  
14 was no evidence -- there was no evidence admitted after --  
15 okay, you just answered my question.

16 All right, anything else?

17 (WHEREUPON, NO RESPONSE)

18 THE COURT - All right, thank y'all. We'll take  
19 that under consideration, and I'll notify you by the end of  
20 the week what -- the Court's ruling.

21 MR. HARPER - Thank you, Your Honor.

22 MR. HASTY - Thank you.

23 THE COURT - All right, thank y'all.

24 (END OF TRANSCRIPT)

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 14 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Daniel McMichael Belk vs. State of South Carolina, as taken by me in The Court of Common Pleas for the Sixteenth Judicial Circuit on June 22, 2020, and provided by me this the 1st day of November, 2020.

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

/S/SHIRLEY G. BROOM

Shirley Broom, CVR-M  
Official Court Reporter,  
Certified Verbatim Reporter, In and  
for the State of South Carolina

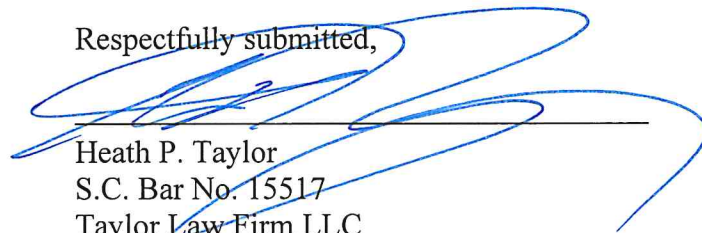
**CERTIFICATE OF COUNSEL**

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

May 28, 2021

**RECEIVED**  
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Respectfully submitted,



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