

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF GENERAL SESSIONS

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Sep 13 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
vs.)
)
MICHAEL E. SANDERS)
)
Defendant)
)
_____)

ORDER
2021-CP-01-00135

The Defendant filed this appeal from his conviction in Magistrate’s Court. Myreon Williams represents the Defendant and Micah Black represents the State. A hearing was held on July 20, 2021 at which time the Court took oral argument from both sides. At this hearing, the Court was provided the following Exhibits all marked for identification:

- Plaintiff's (Appellant) Exhibit 1: In-Car Dashcam video;
- Court's 1: 911 CFS Report;
- Court's 2: Information Sheet

After the hearing, the Court issued an Interim Order requesting additional information, however, that Order is now rescinded.

After the hearing, the Court was provided the Magistrate's Return.

The facts of the case are simply this. An Abbeville County Sheriff's Department deputy stopped the Appellant for suspected DUI and he then contacted the Highway Patrol who was dispatched to the incident cite. He engaged his blue lights when arriving and his in-car video came on to video everything at the incident cite. The deputy did not have an in-car video.

The Defendant filed a Memorandum setting forth his grounds for appeal which are:

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1. The Magistrate erred by finding that the State had not violated Rule 5 Brady Motion for discovery;

2. The Magistrate erred by finding that the State had not violated S.C. Code Section 56-5-2953(A);

3. The Magistrate erred by finding that the State had not violated S.C. Code Section 56-5-2953(B);

4. 5. The Magistrate erred in denying the Appellant's Motions for Dismissal and Directed Verdict as stated above in Nos. 1-3.

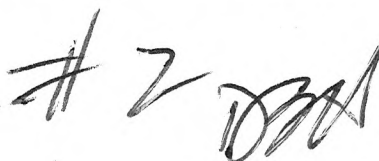
1. The Magistrate erred by finding that the State had not violated Rule 5 Brady Motion for discovery:

The Appellant actually raises several issues under this first appellate ground.

First, he argues a Brady violation. For there to be a Brady violation, the threshold question is what evidence did the State have or had access to that was not produced to the Defense. The Appellant argues that he was not provided a video of his alleged "impaired" driving giving probable cause for his arrest. The State argued at the hearing that such video does not exist due to the fact that the Deputy who initially pulled the Appellant over did not have video equipment in his vehicle.¹ Secondly, the Appellant seems to argue that probable cause² to first stop the Appellant is a requirement to make an arrest for DUI. The Court is unaware, nor was it provided, of any case law mandating this requirement. The trooper, the arresting officer in

¹ The Appellant provided this Court with an Order from The Honorable Frank Addy in a Magistrate Appeal, Epting v. State. This was a case where a Newberry County Sheriff's Department deputy was the initial law enforcement personnel to engage a suspected DUI Defendant and this deputy was without an in-car video. The Highway Patrol was then contacted. It was presented at that appeal hearing evidence of the number of DUI cases the Newberry Sheriff's Department investigates, their overall enforcement of traffic laws and the fact that the Newberry Sheriff's Office was offered cameras at no expense, Judge Addy believed that there was an "end run" around Mt. Pleasant case. Here we have no evidence of like character concerning the Abbeville County Sheriff's Department.

² Probable cause has been defined as circumstances within the arresting officer's knowledge sufficient enough to lead a reasonable person to believe that a crime has been committed. See SCDMV v. McC Carson, 391 SC 136 (2011).



the case, made the decision to arrest the Appellant after making observations, conducting field sobriety tests, and discussions with the Appellant.³ While evidence of alleged "impaired" driving certainly would be a positive for the State's case, this Court does not believe it is an absolute imperative.⁴ Thirdly, the Appellant raises the issue of Section 56-5-2953(A)(1)(a)(iii) as requiring a showing of probable cause by the State. This section only requires a video recording of the arrest of a person for violation of, as in this case, Section 56-5-2930-Driving Under the Influence, the advisement of Miranda rights and the recording of the field sobriety tests. See, State vs. Kinard, 427 SC 367 (2019). All were done in this case pursuant to the trooper's video. This is what is required under 56-5-2953(A).

2. The Magistrate erred by finding that the State had not violated S.C. Code Section 56-5-2953(A):

The Appellant again raises several issues under this appellate ground.

First, he argues that the trooper's video did not comply with the statute because activation of his blue lights was not accomplished for the initial stop of the Appellant as the deputy made the stop. This Court does not read the statute in the same manner. When the trooper arrived on the scene his blue lights were activated thus the start of his video recording. The statute only requires "the video recording at the incident cite must: (i) not begin later than activation of the officer's blue lights." There is no requirement that it be at the time a Defendant is pulled over. The intent of this part of the statute is to insure that all field sobriety tests are recorded as well as the arrest and advisement of rights. Secondly, the Appellant complains about the patrol car being at a distance thereby the video not capturing the HGN eye test as being the only field sobriety

³ This Court notes that the entire in-car video at the scene was viewed by this Court as provided by the Appellant.

⁴ This Court further notes that in the trooper's video, the deputy informs the trooper that the Appellant ran a stop sign as a reason for pulling the Appellant over. This Court is unaware of any redactions to this video when played to the jury as the case with redactions to the BA video.

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test conducted. First, there was more than just this one field sobriety test. There was an ABC's test and a numbers test. As to the HGN eye test, while the video is of poor quality, the Defendant and the trooper can be seen on the video and one can determine that the HGN eye test is being performed. The Appellant's head can be seen in the video thereby in compliance with the holdings in State v. Walters, 418 SC 303 (Ct. App 2016) and in State v. Gordon; 414 SC 94 (2015).

3. The Magistrate erred by finding that the State had not violated S.C. Code Section 56-5-2953(B):

The Appellant relies on the case of Town of Mt. Pleasant v. Roberts, 393 SC 332 (2011) but this Court would distinguish that case with the present case. In Roberts, the only officer involved was a city police officer who did not have any in-car video equipment in his car. In the present case we have the trooper who had the in-car video equipment notwithstanding the fact that the deputy sheriff pulled the Appellant over initially. Also instructive here is the case of State v. Landis, 362 SC 97 (Ct. App 2004) which specifically found that the State Transport Police Officer, who initially pulled that Defendant over, was not the arresting officer but the trooper who came up immediately behind who then handled the case.

In Conclusion

Based upon the above, this Court finds that the Magistrate did not err in his three rulings above and furthermore, the Magistrate did not err in denying Appellant's Motion for Dismissal and Motion for Directed Verdict. Finally, and not being critical whatsoever, since the Appellant has commingled some of his arguments in Nos. 1, 2, and 3, any rulings or responses made by the Court in this Order shall apply to any and all of the arguments made in Nos. 1, 2, and 3 by the Appellant.

A handwritten signature in black ink, appearing to be "H. J. [unclear]". The signature is written in a cursive, somewhat stylized font.

SO ORDERED.



DONALD B. HOCKER
CIRCUIT COURT JUDGE

Laurens, South Carolina
Date: 9-3-21

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