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**Jul 17 2020**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From Dorchester County  
Honorable Brian M. Gibbons, Circuit Court Judge  
Appellate Case Tracking No. 2019-001068

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THE STATE,

Appellant,

vs.

TYLER J. EVANS,

Respondent.

---

**RECORD ON APPEAL**

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Attorney General

TARA LEIGH FROST

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Senior Assistant Deputy 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. )  
 )  
Tyler James Evans, )  
 )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

C/A # 2017-CP-18- 1241  
Ticket No.: 5102P06760001

2017 JUL 21 PM 5:05  
CLERK OF COURT  
DORCHESTER COUNTY

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**NOTICE OF APPEAL  
AND APPEAL**

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TO: The Honorable Tera S. Richardson, Dorchester County Magistrate Judge, and Tara Frost, Counsel for Respondent Tyler James Evans.

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 June 28, 2017.

On December 15, 2016, Trooper S. A. Pence charged Respondent Tyler James Evans with a violation of S.C. Code § 56-5-2930 (Driving Under the Influence). The case was subsequently called for a pre-trial hearing on June 27, 2017. At the hearing, Respondent's counsel moved to dismiss the charge based on Trooper Pence's failure to record each of the elements required by S.C. Code § 56-5-2953. In particular, Respondent complained that the walk and turn and one-legged stand field sobriety tests were not visible in their entirety on the video recording.

Judge Richardson reviewed the video and issued her ruling via e-mail the next day dismissing the charge for a failure to comply with § 56-5-2953.

**A. Section 56-5-2953 Does Not Require the Recording of the Performance of Field Sobriety Tests.**

Respondent's counsel argued that the video's failure to record certain field sobriety tests would prevent a jury from "see[ing] the whole person's body in understanding how that test is supposed to be performed." Section 56-5-2953 sets forth the following requirements for recording at the incident site:

(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. The recording of field sobriety testing as mandated by § 56-5-2953 has never been interpreted to require demonstration of a subject's performance on the individual tests. In State v. Gordon, the Supreme Court's most recent pronouncement on what § 56-5-2953 requires, the court's description of the video requirement focused solely on the *administration* of the test rather than the *performance*.

Here, the officer's administration of the HGN test is visible on the video recording. It is undisputed that Gordon's face is depicted in the video; it is axiomatic that the face is a part of the head. The officer's flashlight and arm are visible as he administers the test. Also, the officer's instructions were audible. Thus, the requirement that the head be visible on the video is met and the statutory requirement that the administration of the HGN field sobriety test be video recorded is satisfied.

State v. Gordon, , 414 S.C. 94, 99-100, 777 S.E.2d 376, 379 (2015).

Given Gordon's clear mandate that *administration* rather than *performance* is the benchmark, the Respondent's concern with the failure of the video to demonstrate performance did not violate § 56-5-2953.<sup>1</sup>

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

Even if the failure to record portions of certain field sobriety tests amounted to a violation of § 56-5-2953, the Supreme Court has made clear that dismissal is not the appropriate sanction for such a

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<sup>1</sup> Respondent's counsel also noted that Trooper Pence's instructions for performance of the tests was also not visible. There is no such requirement in § 56-5-2953, and the statute has never been interpreted to require such a showing.

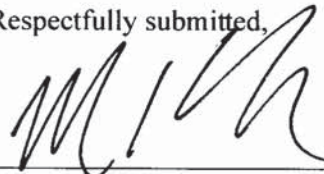
violation. In Gordon, the Supreme Court evaluated an apparent violation of § 56-5-2953 involving the failure to record the HGN field sobriety test. Rather than mandating dismissal for the failure, the Supreme Court observed that the appropriate "remedy would be to redact the field sobriety test from the video and exclude testimony about the test." Gordon, 414 S.C. at 100, 777 S.E.2d at 379. Thus, even assuming that there was some flaw in the recording here, the appropriate remedy was suppression of the portion of the video depicting the two tests, not dismissal.

**C. Gordon Says Nothing About the Walk and Turn Test.**

At issue in Gordon was the question of whether the head must be shown in the recording of the HGN field sobriety test." Gordon, 414 S.C. at 96, 777 S.E.2d at 377. The analysis in Gordon was limited to the HGN test – it said nothing about other standard field sobriety tests, including the walk and turn test and one-legged stand test at issue here. The Gordon opinion therefore cannot be read to say anything about what constitutes an acceptable recording of either of these tests, and any reading that implies otherwise was error.

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  
General Counsel  
S.C. Department of Public Safety  
P.O. Box 1993  
Blythewood, South Carolina 29016  
Telephone: (803) 896-7965  
Fax: (803) 896-7967  
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Attorney for Appellant

July 18, 2017  
Blythewood, 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- 1241  
:

Appellant, :

vs. :

TYLER JAMES EVANS, :

Respondent :

CERTIFICATE OF SERVICE

Ticket No.: 5102P06760001

I HEREBY CERTIFY that on this 18th day of July, 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

Tara Frost, Esq.  
136 W. Richardson Avenue  
Summerville, SC 29418

2017 JUL 21 PM 5:05  
RECORDED  
CLERK OF COURT  
DORCHESTER COUNTY



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

Dated: July 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

Plaintiff(s)

vs.

TYLER JAMES EVANS

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 18-

1241  
2017 JUL 21 PM 5:05  
CLERK OF COURT  
DORCHESTER COUNTY

FILED-RECORDED

(Please Print)

Submitted By: Marcus K. Gore, Esq.

Address: Office of General Counsel  
S.C. DEP'T OF PUBLIC SAFETY

POST OFFICE BOX 1993  
BLYTHEWOOD, SC 29016

SC Bar #: 73647

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |   |  |   |  |
|---|--|---|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul>  | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20__-CP-____-</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>  | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>  |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Driver's License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture—Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul>  | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input checked="" type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Out-of State Depositions (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)</li> <li><input type="checkbox"/> Sexual Predator (500)</li> </ul> |  |   |  |

Submitting Party Signature:

Date:

July 18, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

MAGISTRATE'S COURT

COUNTY OF DORCHESTER

CASE NO: 5102P06760001

State of South Carolina,  
Plaintiff

2017-CP-18-1241

vs.

RETURN OF APPEAL

Tyler James Evans,  
Defendant(s)

FILED - RECORDED  
2017 OCT 11 AM 8:32  
CHERYL SMITH  
CLERK OF COURT  
DORCHESTER COUNTY

**Introduction**

This matter came before the Court on June 27, 2017 on a motion to dismiss. Upon calling the hearing to order, Tara L. Frost, Attorney for Defendant, Tyler Evans, made a motion to dismiss the case pursuant to S.C. Code 56-5-2953. The Defense's motion was based on the City of Rock Hill v. Suchenski, State v. Gordon, along with other appellate and local cases and orders, wherein the conduct of the person must be recorded to include any field sobriety tests administered. Subsequent to an accident call, Trooper Pence of the South Carolina Highway Patrol initiated an investigation of the Defendant for suspicion of Driving under the Influence. Trooper Pence offered Standardized Field Sobriety Tests in which Mr. Evans performed. The majority of the performance of the Walk-and Turn SFST and the One Legged Lift SFST, the Defendant's lower body is obscured by the trooper's car.

Trooper Pence did not cite to any statute or judicial decision which supported her point. Because of a heavy afternoon court docket, I delayed the Defendant's motion so that I could review the case. Pursuant to a Delayed Decision, I granted the Defense's motion to dismiss on June 28, 2017. On July 24, 2017, the State filed an appeal.

**Law and Analysis**

The State's appeal is untimely. South Carolina Code 18-3-20 indicates that "all appeals" from magistrate criminal matters "shall be taken [ . . . ] as prescribed in this chapter. "Further, South Carolina Code 18-3-30 indicates that a party will have only ten (10) days in which to file a criminal appeal.

S.C. Code 56-5-2953 indicates that a person, who violates Section 56-5-2930, must have his conduct at the incident site and the breath test site video recorded. 56-5-2953 (A) (1) (a), indicates the video recording at the incident site must include any field sobriety tests administered. In this matter, the court properly and in accordance with South Carolina law, dismissed the case.

Dated this 5 day of October, 2017.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tera S. Richardson', with a large, sweeping flourish extending to the left.

Tera S. Richardson

Magistrate, Dorchester County

2017-CP-18-1241

2017 OCT 11 AM 8:33  
 CHERYL SMITH  
 CLERK OF COURT  
 DORCHESTER COUNTY

VIOLATOR		VEHICLE		TRIAL COURT		VIOLATION		OFFICER		ARREST		COURT INFORMATION			
Form S-438 Rev. 06/2014 <b>UNIFORM TRAFFIC TICKET</b>															
STATE OF SOUTH CAROLINA VERSUS															
FIRST NAME TYLER		MIDDLE NAME JAMES		LAST NAME EVANS		STREET		CITY		STATE		ZIP CODE			
DL STATE SC		DRIVERS LICENSE NO. 101999074		CLASS D		CDL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		RACE W		SEX M		HAIR BRN		EYES BLU	
VEH. REG. NO.		STATE SC		MAKE OF VEH. ISUZU		YEAR 95		MOTOR VEH. <input checked="" type="checkbox"/> AUTO		BICYCLE <input type="checkbox"/>		COMM. VEH. <input type="checkbox"/>		OTHER <input type="checkbox"/>	
VEHICLE OWNER FIRST NAME		MIDDLE NAME		LAST NAME		OWNER STREET		CITY		STATE		ZIP CODE			
SAME															
<b>YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT</b>															
NAME OF TRIAL COURT CJC		STREET 212 DENNING WAY		DATE OF TRIAL 11/3/17		TIME OF TRIAL 1400		CITY SUMMERVILLE		STATE SC		ZIP CODE 29403			
VIOLATION SECTION NO. 56-5-2930		VIOLATION - COURT APPEARANCE REQUIRED DUI 1st		DATE OF VIOLATION 12/15/16		TIME OF VIOLATION 0910		SC POINTS -		B.A. LEVEL .19		VIOLATION LOCATION APPIAN WAY @ SC 642			
LAT 32 550406		LONG 8006 4837		CITY SUMMERVILLE		COUNTY DORCHESTER		NAME AND RANK OF ARRESTING OFFICER STARR SA PENCE		SCCA OFFICER NUMBER 4117-8422		BAIL DEPOSITED JAIL			
DATE BAIL REC'D.		DATE OF ARREST 12/15/16		BOND AMOUNT REQUESTED \$7262		BY		CASE BEFORE: <input type="checkbox"/> MAGISTRATE <input type="checkbox"/> MUN. COURT <input type="checkbox"/> CIRCUIT COURT <input type="checkbox"/> FAMILY COURT <input type="checkbox"/> FEDERAL COURT		NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:		TRIAL BY: TRIAL JUDGE <input type="checkbox"/> JURY <input type="checkbox"/> DEFENDANT: DID NOT APPEAR <input type="checkbox"/> APPEARED <input type="checkbox"/>			
DISPOSITION DATE		DISPOSITION: NOLLE PROSSED <input type="checkbox"/> FORFEITED BOND <input type="checkbox"/>		GUILTY <input type="checkbox"/> NOT GUILTY <input type="checkbox"/>		PLED: NOLLE CONTENDERE <input type="checkbox"/>		CHARGE CONVICTED OF SAME AS ORIGINAL <input type="checkbox"/>		SC POINTS		JAIL <input type="checkbox"/> SUSPEND <input type="checkbox"/> FINE <input type="checkbox"/> AMT. COLLECTED <input type="checkbox"/> AMT. SUSPENDED <input type="checkbox"/> COMMITTED TO: <input type="checkbox"/>			
CERTIFIED CORRECT		DATE		Arrest as Result of Collision		Vehicle Searched		TRIAL COURT COPY		TICKET#		5102P0676001			

CITY/COUNTY OF: INCIDENT NO: 16CH191796 AGENCY/TROOP: SC496



# South Carolina Department of Public Safety

OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S.C. 29016  
Tel: (803) 896-7965 • Fax: (803) 896-7967

July 18, 2017

FILED JUL 24 2017

Cheryl L. Graham, Clerk  
Dorchester County Circuit Court  
5200 E. Jim Bilton Blvd  
St. George, SC 29477-8020

Re: State of South Carolina vs. Tyler James Evans  
Ticket No. 5102P06760001  
Appeal # 2017-CP-18- 1241

Dear Ms. Graham:

Please find enclosed the State's Notice of Appeal and Appeal and a Certificate of Service to be filed of record. Please provide me with a clocked-in copy of both documents. A return envelope is enclosed.

A copy of this Notice has been served upon all parties.

With kind regards, I am

Yours very truly,

Monishia L. Davis  
Paralegal  
Office of General Counsel

/mld

Enclosures

cc: Honorable Tera S. Richardson  
Tara Frost, Esquire

FILED - RECORDED  
2017 OCT 11 AM 8:33  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

2017-CP-18-1241

414 S.C. 94  
777 S.E.2d 376

**The STATE, Petitioner**  
**v.**  
**Cody Roy GORDON, Respondent.**  
**Appellate Case No. 2014-001337.**  
**No. 27554.**  
**Supreme Court of South Carolina.**

**Heard June 3, 2015.**  
**Decided Aug. 5, 2015.**  
**Rehearing Denied Oct. 22, 2015.**

FILED - RECORDED  
2017 OCT 11 AM 8:33  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

**Summaries:**

**Source: Justia**

In October 2011, respondent Cody Gordon was stopped at a license and registration checkpoint by a South Carolina Highway Patrol Officer. The officer administered several field sobriety tests. The test at issue in this case was the Horizontal Gaze Nystagmus (HGN) test. The dashboard camera on the officer's patrol car recorded the entire incident, including all field sobriety tests, with continuous recording. The stop occurred at night, so the lighting was not perfect, but the officer had Gordon stand in the light of his patrol car's headlights and further illuminated Gordon by shining a flashlight directly on his face. The State appealed the Court of Appeals' affirmation of the circuit court's interpretation of section 56-5-2953 of the South Carolina Code. The appellate court found that the statute required officers to record the head of the motorist when administering the HGN field sobriety test and that respondent's head was not sufficiently visible. The State contended that a plain reading of the statute made no mention of the motorist's "head." Upon review, the Supreme Court affirmed the Court of Appeals' conclusion that the statute required that the motorist's head be recorded in the video; however, the Court vacated the mandate to remand to the magistrate court for further consideration. The Court reinstated respondent's conviction as it found that the officer complied with the statute in recording Gordon's HGN test.

[777 S.E.2d 377]

Attorney General, Alan McCrory Wilson and Assistant Attorney General, John Benjamin Aplin, both of Columbia, for petitioner.

Keith G. Denny, of Keith G. Denny, P.A., of Walhalla, for respondent.

**Opinion**



Justice BEATTY.

[414 S.C. 96]

The State appeals the Court of Appeals' affirmation of the circuit court's interpretation of section 56-5-2953 of the South Carolina Code. The Court of Appeals found that section 56-5-2953 requires officers to record the head of the motorist when administering the Horizontal Gaze Nystagmus (HGN) field sobriety test and that Cody Gordon's head was not sufficiently visible. The State posits that a plain reading of the statute makes no mention of the motorist's "head." We affirm the Court of Appeals' conclusion that the statute requires that the motorist's head be recorded in the video; however, we vacate the mandate to remand to the magistrate court for further consideration. We reinstate Gordon's conviction as we find that the officer complied with the statute in recording Gordon's HGN test.

### I. Factual/Procedural History

On October 29, 2011, Gordon was stopped at a license and registration checkpoint by a South Carolina Highway Patrol Officer. The officer administered several field sobriety tests.

[414 S.C. 97]

The test at issue in this case is the HGN test. The dashboard camera on the officer's patrol car recorded the entire incident, including all field sobriety tests, with continuous recording. The stop occurred at night, so the lighting was not perfect, but the officer had Gordon stand in the light of his patrol car's headlights and further illuminated Gordon by shining a flashlight directly on his face.

Following the tests, Gordon was placed under arrest. Gordon was charged with driving under the influence (DUI) for violating section 56-5-2930. The case was presented to a magistrate judge and a jury. The jury found Gordon guilty as charged. Gordon timely appealed his conviction.

Using still-shot photos of the video, Gordon argued that the video violated section 56-5-2953(A) because he was out of sight and in the dark during the HGN test. The circuit court concluded that section 56-5-2953(A) requires the motorist's head to be visible during the administration of the HGN field sobriety test. Section 56-5-2953(A) reads in pertinent part:

(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 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 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 Ann. § 56-5-2953(A) (Supp.2011) (emphasis added). The circuit court found Gordon's head was not "sufficiently visible through the entire administration of the [HGN] test." The circuit court reversed his conviction and dismissed the DUI charge. The State timely appealed to the Court of Appeals.

[777 S.E.2d 378]

The Court of Appeals affirmed in part, vacated in part, and remanded the case to the magistrate court. *State v. Gordon*, 408 S.C. 536, 759 S.E.2d 755 (Ct.App.2014). The court concluded

[414 S.C. 98]

that "the circuit court correctly found the head must be shown during the HGN test in order for that sobriety test to be recorded, and we affirm that finding." *Gordon*, 408 S.C. at 543, 759 S.E.2d at 758. The Court of Appeals remanded the case to the magistrate court with the instruction to "make factual findings in light of the circuit court and our determination that the test must be recorded on the camera; specifically for the HGN test, the head has to be visible on the recording." *Gordon*, 408 S.C. at 543-44, 759 S.E.2d at 759.

The Court of Appeals denied the State's petition for a rehearing.<sup>1</sup> This Court granted the State's petition for a writ of certiorari to review the Court of Appeals' decision.

## II. Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.*

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459.

## III. Discussion

**Whether the Court of Appeals erred in affirming the circuit court's decision to reverse Gordon's magistrate court conviction for driving under the influence?**

[414 S.C. 99]

### A. Argument

The State argues the Court of Appeals misconstrued the decision of the magistrate as lacking sufficient findings of fact. Specifically, the State contends that the Court of Appeals “misapprehended or overlooked the clear and unambiguous language of the statute, which does not include any requirement that ‘the head must be visible on the recording’ of an HGN field sobriety test.”

### B. Analysis

The State would have us review this case using the analytical framework of *Murphy v. State*, 392 S.C. 626, 709 S.E.2d 685 (Ct.App.2011). The court in *Murphy* held that section 56–5–2953 only requires that the conduct of the motorist be recorded. *Murphy*, 392 S.C. at 631, 709 S.E.2d at 688. The Court of Appeals and the circuit court correctly distinguished *Murphy* from Gordon's case. In *Murphy*, the prior version of the statute at issue in this case was in effect. The prior version of the statute did not include the explicit requirement that the videotape include “any field sobriety tests administered.” S.C.Code Ann. § 56–5–2953(A)(1)(a)(ii) (Supp.2011). The current version of the statute, which applies to Gordon, specifically requires that the officer record “any field sobriety tests administered.” Based on this distinction, the magistrate erred as a matter of law in finding that the officer's recording was only required to show Gordon's conduct generally.

The statute at issue in this case is clear and unambiguous and, therefore, this Court must give its words their ordinary meaning. The statute states that the video recording “must include any field sobriety test administered,” which necessarily includes the HGN test. Considering the fact that the HGN test focuses on eye movement, common sense dictates that the head must be visible on the video. Accordingly, the circuit court's finding that the head must be visible does not amount to a hyper-technicality, but merely states the obvious. The Court of

[777 S.E.2d 379]

Appeals did not err in affirming this requirement.

Here, the officer's administration of the HGN test is visible on the video recording. It is undisputed that Gordon's

[414 S.C. 100]

face is depicted in the video; it is axiomatic that the face is a part of the head. The officer's flashlight and arm are visible as he administers the test. Also, the officer's instructions were audible. Thus, the requirement that the head be visible on the video is met and the statutory requirement that the administration of the HGN field sobriety test be video recorded is satisfied. Therefore, the per se dismissal of the charge as discussed in *Town of Mount*

*Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (2011), and *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007) is not appropriate.

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.<sup>2</sup> If that remedy is applied here, there is still sufficient evidence to present this case to a jury for resolution. The evidence included the breath alcohol analysis report, video of other field sobriety tests, and Gordon's statement that he had consumed four beers.

Neither Gordon nor the State would have been prejudiced by the exclusion of the HGN test video or testimony because of the alleged poor quality of the video. Since the focus of the HGN test is the movement of the eyes, the jury would not have been able to determine if Gordon passed or failed by simply looking at this video. Moreover, the viewing of a video of an HGN field sobriety test has very little probative value to a jury because the eyes of the motorist are rarely, if ever, seen.<sup>3</sup>

The remaining issues raised by Gordon concerning discrepancies with the breath test site video's date and time stamp are without merit.

#### IV. Conclusion

The Court of Appeals' decision is affirmed as to the requirements for video recording the HGN field sobriety test. The mandate to remand to the magistrate court for further consideration is vacated. Gordon's conviction is reinstated.

[414 S.C. 101]

TOAL, C.J., HEARN, J., and Acting Justice ALISON RENEE LEE, concur. PLEICONES, J., concurring in result only.

Notes:

<sup>1</sup> Additionally, the Court of Appeals withdrew its original opinion and substituted a new published one. *Gordon*, 408 S.C. at 536, 759 S.E.2d at 755.

<sup>2</sup> It appears the solicitor unintentionally led the circuit court to believe that the HGN test was the only evidence against Gordon.

<sup>3</sup> Of course, this would not be the case if actual eye movement is recorded.

2017-CP-18-1241

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

The State, Appellant,

v.

Cody Roy Gordon, Respondent.

Appellate Case No. 2013-000515

FILED - RECORDED  
2017 OCT 11 AM 8:34  
CHERYL BRADMAN  
CLERK OF COURT  
DORCHESTER COUNTY

---

Appeal From Oconee County  
Alexander S. Macaulay, Circuit Court Judge

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Opinion No. 5226  
Heard March 6, 2014 – Filed April 23, 2014  
Withdrawn, Substituted, and Refiled June 11, 2014

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**AFFIRMED IN PART, VACATED IN PART, AND  
REMANDED**

---

Attorney General Alan McCrory Wilson and Assistant  
Attorney General John Benjamin Aplin, both of  
Columbia, for Appellant.

Keith G. Denny, of Keith G. Denny, P.A., of Walhalla,  
for Respondent.

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**KONDUROS, J.:** The State appeals the circuit court's reversal of the magistrate court's conviction of Cody Roy Gordon for driving under the influence (DUI). It contends the circuit court erred in finding the State did not comply with section 56-5-2953(A) of the South Carolina Code (Supp. 2013) because Gordon's head was

not visible on the required recording during one of the field sobriety tests administered. We affirm in part, vacate in part, and remand.

## FACTS

On October 29, 2011, the South Carolina Highway Patrol stopped Gordon at a license and registration checkpoint. Officers administered three tests to determine if Gordon was under the influence: the Horizontal-Gaze Nystagmus (HGN) test<sup>1</sup>, the walk and turn test, and the one-leg stand test. Following the tests, the officers charged Gordon with DUI. The dashboard camera in the arresting officer's car recorded the events leading to the arrest.

Prior to a trial before the magistrate court, Gordon moved to dismiss the charge on several grounds, including the State's failure to sufficiently record the HGN test because Gordon's head was not visible on the recording during the test. The magistrate denied the motion to dismiss, finding the State properly captured Gordon's conduct on the recording as required by section 56-5-2953 of the South Carolina Code (Supp. 2013) and *Murphy v. State*, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2011). Following a trial, a jury convicted Gordon of DUI.

Gordon appealed his conviction to the circuit court. At the hearing before the circuit court, Gordon argued the HGN test could not be seen on the recording. Gordon provided black and white photographs ("stills") of the recording to the circuit court without objection by the State. Following the conclusion of arguments, the circuit court granted Gordon's motion to dismiss. The court found section 56-5-2953(A) requires the defendant's head be visible during the administration of the HGN test, unless an exception in section 56-5-2953(B) applies. The court noted Gordon was "so far out of view in front of the arresting officer's patrol car for the administration of the test and into the dark[,] which

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<sup>1</sup> "Nystagmus is described as an involuntary jerking of the eyeball, a condition that may be aggravated by the effect of chemical depressants on the central nervous system." *State v. Sullivan*, 310 S.C. 311, 315 n.2, 426 S.E.2d 766, 769 n.2 (1993). "The HGN test consists of the driver being asked to cover one eye and focus the other on an object held at the driver's eye level by the officer. As the officer moves the object gradually out of the driver's field of vision toward his ear, he watches the driver's eyeballs to detect involuntary jerking." *Id.*

prevented [Gordon's] head from being sufficiently visible through the entire administration of the [HGN] test." This appeal followed.

## STANDARD OF REVIEW

"In criminal appeals from magistrate . . . court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception." *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001); S.C. Code Ann. § 18-3-70 (2014) ("The appeal [from the magistrate court in a criminal case] must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law."). This court will review the decision of the circuit court for errors of law only. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007); *Henderson*, 347 S.C. at 457, 556 S.E.2d at 692. "[Q]uestions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below." *City of Greer v. Humble*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013) (internal quotation marks omitted). The circuit court is bound by the magistrate court's findings of fact if any evidence in the record reasonably supports them. *Id.*

## LAW/ANALYSIS

The State argues the circuit court erred in reversing the magistrate court's conviction of Gordon for DUI. It contends the circuit court erred in finding the State did not comply with section 56-5-2953(A)(1)(a)(ii) of the South Carolina Code (Supp. 2013) because Gordon's head was not visible during the HGN test.<sup>2</sup> It

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<sup>2</sup> The State also contends the circuit court did not review the recording. However, the record does not indicate whether the circuit court reviewed the recording or not. Gordon indicated at the hearing that all of the evidence had been submitted to the circuit court. The record provides the circuit court conferred with its law clerk off the record after receiving the stills. Gordon asserts that at this time, the circuit court appeared to review the recording on its laptop on the bench with the assistance of its law clerk. The transcript of the hearing states no exhibits were introduced. The State did not put on the record the fact that the circuit court allegedly did not view the recording or raise any objection to the court allegedly

asserts the statute requires the recording include the field sobriety tests but not that the defendant's head must be visible. It further maintains that even if it is a requirement of the statute, the circuit court's factual finding that Gordon's head was not sufficiently visible during the HGN test lacked evidentiary support.

Section 56-5-2953(A) provides:

A person who [commits the offense of DUI] must have his conduct at the incident site . . . video recorded.

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

(ii) include any field sobriety tests administered . . . .

"As amended in 2009, the current version of section 56-5-2953 expressly requires the recording of field sobriety tests." *Murphy v. State*, 392 S.C. 626, 632 n.4, 709 S.E.2d 685, 688 n.4 (Ct. App. 2011) (citing S.C. Code Ann. § 56-5-2953(A)(1)(a)(ii) (Supp. 2010) ("The video recording at the incident site must: . . . include any field sobriety tests administered." (alteration by court))).

In *Murphy*, the defendant contended "the videotape of the incident [s]ite d[id] not comply with the statute because it fail[ed] to 'record most of the field sobriety tests.'" *Id.* at 631, 709 S.E.2d at 688. The court applied the prior version of section 56-5-2953, which was in effect at the time of the defendant's arrest, and found "the plain language of the statute does not require that the recording capture a continuous full view of the accused, or capture *all* field sobriety tests. Rather, provided all other requirements are met, the video need only record the accused's conduct." *Id.* at 632, 709 S.E.2d at 688. The version of the statute applied in *Murphy* did not include the explicit requirement that it "include any field sobriety tests administered" as the current version does. § 56-5-2953(A)(1)(a)(ii).

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." *State v. Elwell*, 403 S.C. 606, 612, 743 S.E.2d 802, 806 (2013) (internal quotation marks omitted). "What a legislature says in the text

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not reviewing the recording. The appellant has the burden of providing a sufficient record. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005). Generally, "the appellate court will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR. Accordingly, we cannot consider the State's assertion the circuit court did not review the recording.

of a statute is considered the best evidence of the legislative intent or will." *Id.* (internal quotation marks omitted). "Therefore, [i]f 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.* (first alteration by court) (internal quotation marks omitted); *see also State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used."). "However, penal statutes will be strictly construed against the state." *Elwell*, 403 S.C. at 612, 743 S.E.2d at 806.

"If the statute is ambiguous, however, courts must construe the terms of the statute." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). "In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Town of Mt. Pleasant*, 393 S.C. at 342, 713 S.E.2d at 283. "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." *Id.* (internal quotation marks omitted). "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 342-43, 713 S.E.2d at 283.

The purpose of section 56-5-2953 is to create direct evidence of a DUI arrest. *Town of Mt. Pleasant*, 393 S.C. at 347, 713 S.E.2d at 285. Dismissal of a DUI charge is an appropriate remedy provided by section 56-5-2953 when a violation of subsection (A) is not mitigated by subsection (B) exceptions. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007). "[T]he Legislature clearly intended for a *per se* dismissal in the event a law enforcement agency violates the mandatory provisions of section 56-5-2953." *Town of Mt. Pleasant*, 393 S.C. at 348, 713 S.E.2d at 286. "By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance." *Id.* at 349, 713 S.E.2d at 286.

The circuit court properly found the magistrate erred in finding the recording was only required to show the conduct of the defendant. The magistrate relied on *Murphy* in making that determination. Although *Murphy* holds that only the conduct of the defendant must be recorded, *Murphy* was based on a prior version of the statute, which did not include the specific language regarding the tests being recorded. The current version of the statute states: "The video recording at the incident site must . . . include any field sobriety tests administered . . ." § 56-5-2953(A)(1)(a)(ii). Because of the purpose of the videotaping to create direct evidence of the arrest, if the actual tests cannot be seen on the recording, the requirement is pointless. Accordingly, the circuit court correctly found the head must be shown during the HGN test in order for that sobriety test to be recorded, and we affirm that finding.

However, because the magistrate court found the recording only needed to capture the conduct, it did not make any findings as to whether the entire test, including the head, was on camera. The circuit court found Gordon's head was not "sufficiently visible through the entire administration of the [HGN] test." But "the circuit court, sitting in its appellate capacity, may not engage in fact finding." *City of Greer v. Humble*, 402 S.C. 609, 618, 742 S.E.2d 15, 20 (Ct. App. 2013) (quoting *Rogers v. State*, 358 S.C. 266, 270, 594 S.E.2d 278, 280 (Ct. App. 2004)). Because the circuit court engaged in fact finding and the magistrate never made such findings due to its misconstruction of the statute, we vacate the circuit court's finding Gordon's head was not visible and remand the case to the magistrate court.<sup>3</sup> The magistrate court is to make factual findings in light of the circuit court and our determination that the test must be recorded on camera; specifically for the HGN test, the head has to be visible on the recording.<sup>4</sup>

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<sup>3</sup> The dashcam recording that was available to the circuit court and the magistrate court was part of the record on appeal. This court viewed the recording, but our standard of review, just like the circuit court's standard of review in this matter, does not allow us to make findings of fact. That duty is left solely to the magistrate court. Accordingly, we will not make findings as to what the recording shows.

<sup>4</sup> Because we find the circuit court erred in making findings of fact, we need not address the State's argument the circuit court erred in reviewing the stills. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

**AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**

**WILLIAMS and LOCKEMY, JJ., concur.**



**FROST LAW GROUP, LLC**

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JACK FROST (INVESTIGATOR/ LAW CLERK):  
JACK@FROSTLAWGROUPSC.COM

2017-CP-18-1241

January 3, 2017

Facsimile 843-832-0371

Attn: Darlene

Summerville Municipal Court  
Attn: Jury Trial Division  
200 S. Main Street  
Summerville, South Carolina 29483

2017 OCT 11 AM 8:34  
RECORDED  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

Re: State of South Carolina vs. Tyler James Evans  
Ticket Number(s): 5102P0676001 and 5102P0676002  
Charge(s): Driving Under the Influence and Operating Uninsured

**Notice of Representation and Jury Trial Request**

Dear Sir or Madam:

Please be advised that our firm has been retained to represent the Defendant, Tyler James Evans, in regard to the above-referenced matter. Mr. Evans has been summoned to appear for court on January 3, 2017, at 2:00 p.m.; however, we are respectfully requesting a jury trial on his behalf.

Kindly forward all future correspondence and hearing notices directly to our office. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

*Jordan F. Guthrie*

Jordan F. Guthrie  
Law Clerk

Enclosure(s): as stated

2017-CP-18-1241

# DORCHESTER COUNTY

## Summary Court

### PR Bond (Bond Form I)

<b>COUNTY/MUNICIPALITY:</b> COUNTY	<b>TODAY'S DATE</b> December 16, 2016
<b>TRIAL COURT:</b> MAGISTRATE COURT OF COURT: SUMMERVILLE	

<b>DEFENDANT'S NAME AND ADDRESS</b> Name: Tyler James Evans Address: [REDACTED] City, State Zip: [REDACTED]	<b>SSN:</b> [REDACTED]
	<b>DATE OF BIRTH:</b> [REDACTED]
	<b>DRIVER'S LICENSE NO:</b> [REDACTED]
	<b>TELEPHONE:</b> [REDACTED]

<b>DEFENDANT ATTY:</b> None of Record	<b>JUDGE:</b> Katrina L. Patton
---------------------------------------	---------------------------------

<b>FIRST APPEARANCE DATE:</b> Tuesday, January 03, 2017	<b>FIRST APPEARANCE TIME:</b> 2:00 PM	<b>FIRST APPEARANCE PLACE:</b> 212 Deming Way, Summerville, SC	<b>BOND AMOUNT</b> \$2,702.00
--	--	---	----------------------------------

<b>CRIMINAL CHARGING DOCUMENT NUMBER(S):</b> 5102P0676001 5102P0676002          	<b>CHARGE(S):</b> Driving under Influence (BA -.19) - \$2, 262.00 Operating Uninsured - \$440.00	<b>CONDITIONS:</b> Must appear for court.
--	--	--

FILED - RECORDED  
 2017 OCT 11 AM 8:34  
 CHERYL GRAHAM  
 CLERK OF COURT  
 DORCHESTER COUNTY

### CONSENT TO VIDEOCONFERENCING

Tyler James Evans  
Name of Defendant

5102P0676001 5102P0676002  
Criminal Charging Document No.

**Type of Proceeding:**

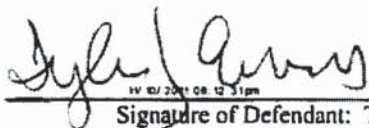
**COUNTY OF DORCHESTER**

- Initial Appearance
- Bond Hearing
- Preliminary Hearing
- Contested Motion
- Guilty Plea and Sentencing  
(Magistrate's / Municipal Court Offense)
- Bench Warrant Hearing
- Fugitive Warrant Hearing

**Trial Court: MAGISTRATE COURT OF SUMMERVILLE**

By my signature below, I, the defendant, consent to the use of videoconference equipment in this criminal proceeding. The court will maintain the audiotape of this proceeding for a period of sixty (60) days from today's date in all proceedings, except preliminary hearings, which must be maintained for three (3) years, after which the audiotape may be destroyed. I have been fully informed of my right to be personally present before the court for this criminal proceeding and, with that knowledge, I voluntarily waive that right.

None of Record  
Attorney for Defendant

  
Signature of Defendant: Tyler James Evans

December 16, 2016  
Date

2017 OCT 11 AM 8:34  
RECORDED  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

2017-CP-18-1241

Tyler James Evans  
Name of Defendant

FILED - RECORDED

5102P0676001 5102P0676002

Warrant/Ticket No.

2017 OCT 11 AM 8:34

County of

Charges: Driving under Influence (BA -.19) - \$2,262.00 Operating Uninsured - \$440.00	Trial Court:	Magistrate
---	--------------	------------

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must be provided a completed copy of this form.**

BAIL PROCEEDING

1. Form used at bail proceeding
  - Bond Form I (personal recognizance)
  - Bond Form II (surety, cash, percentage)
  - None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
  - a. Warrant for arrest will be issued for violation of any condition of bail bond order.
  - b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
  - c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of fine not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence was at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
  - Orally
  - In writing {NOTE: Defendant must be informed of right both orally and in writing.}
4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
  - a. Charges against defendant and nature of the charges.
  - b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
  - c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before the Office of Public Defender located at 107 W 6<sup>th</sup> N St., Summerville, SC, on M-F between 10:00 AM and 4:00 PM, Phone # 821-9800 for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

Appearance or Hearing Date: December 16, 2016

  
Judge's Signature

12/16/2016 10:24:52 am

FILED - RECORDED

2017 OCT 11 AM 8:34

BAIL PROCEEDING FORM I

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
DORCHESTER COUNTY  
STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT OF SUMMERVILLE

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

TYLER JAMES EVANS  
NAME OF DEFENDANT

Offense Charged: Driving under Influence (BA -.19) - \$2,262.00  
Operating Uninsured - \$440.00

IT IS HEREBY ORDERED

I

That the above named defendant be released from custody on his own recognizance without surety on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court, and not depart the State without permission of the court and be of good behavior.

II

That the above named defendant be released from custody upon a recognizance without surety executed by him.

Appearance Recognizance Without Surety

On the 16th day of December, 2016, personally appeared before the undersigned judge the defendant named above who acknowledged himself indebted to the State of South Carolina, in the sum of \$2,702.00 dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of the Order.

III

That the defendant will notify the court promptly if he changes his address from the one contained in this Order and will comply with the following other conditions of release: Must appear for court.

IV

That the defendant shall appear at (check one):

- the term of COURT OF GENERAL SESSIONS beginning on \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ at \_\_\_\_\_ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- the session of MAGISTRATE COURT OF SUMMERVILLE beginning on Tuesday, January 03, 2017 at 2:00 o'clock, PM, at 212 Deming Way, Summerville, SC. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

None of Record

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)  
*[Signature]*

12/16/2016 12:22 pm  
SIGNATURE OF JUDGE: Katrina L. Patton

December 16, 2016  
DATE

*[Signature]*  
SIGNATURE OF DEFENDANT: Tyler James Evans

7901 Elderberry Circle  
ADDRESS

North Charleston, SC 29418  
CITY/STATE/ZIP

490-92-2388  
SOCIAL SECURITY NUMBER

(816) 617-6932  
TELEPHONE

SC 101999074  
DRIVER'S LICENSE OR ID NUMBER

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED  
Original Copy For The Trial Court - Copy For The Defendant

# ORDER OF RELEASE

FILED - RECORDED  
 2017 OCT 11 AM 8:34  
 CHERYL BRANNAN  
 CLERK OF COURT  
 DORCHESTER COUNTY  
 2017-CP-18-1241

TO: Director, Dorchester County Detention Center/SCDC

DATE: December 16, 2016

You are hereby commanded by this court to immediately release from custody the following individual.

NAME:	Tyler James Evans		
ADDRESS:	7901 Elderberry Circle North Charleston, SC 29418		
CHARGED WITH THE OFFENSE OF:	Driving under Influence (BA -.19) - \$2,262.00 Operating Uninsured - \$440.00		
CRIMINAL CHARGING DOCUMENT NO.:	5102P0676001	5102P0676002	
AMOUNT OF BOND:	\$2,702.00		
TYPE OF BOND:	<input checked="" type="checkbox"/> Personal Recognizance <input type="checkbox"/> Cash <input type="checkbox"/> Surety		
AMOUNT OF FINE AND/OR TIME SERVED:			
DATE OF RELEASE:	December 16, 2016	TIME OF RELEASE:	8:45 AM

Provided, however, that you may after notice of this court continue custody of the above named person if there are other criminal charges outstanding against this person that by law require custody.



Judge-release order

12/16/2016 10:24:43 am

Judge's Signature

DORCHESTER COUNTY SHERIFF'S OFFICE

SUMMERVILLE  
212 Deming Way, Box #9  
Summerville S.C. 29483  
Office (843) 832-0300  
Fax (843) 832-0308



2017-CP-18-1241  
ST. GEORGE  
100 Sears Street  
St. George, S.C. 29477  
Office (843) 563-0259  
Fax (843) 563-0263

SHERIFF L.C. KNIGHT

BOND REQUEST

FILED - RECORDED  
2017 OCT 11 AM 8:34  
CHERYL GRANATH  
CLERK OF COURT  
DORCHESTER COUNTY

~~DCSO CASE NUMBER(S):~~ 5102P0676001 16CH191796

DEFENDANT'S NAME: TYLER JAMES EVANS

DATE OF BIRTH: [REDACTED] SSN: [REDACTED]

PRIOR ARREST: YES / NO SID #: \_\_\_\_\_ FBI #: \_\_\_\_\_

ARREST CHARGE # 1: DUI 1ST <sup>UTC</sup> WARRANT #: 5102P0676001

BOND RECOMMENDATION: PR

ARREST CHARGE #2: OPERATING UNINSURED WARRANT #: 5102P0676002

BOND RECOMMENDATION: PR

ARREST CHARGE #3: \_\_\_\_\_ WARRANT #: \_\_\_\_\_

BOND RECOMMENDATION: \_\_\_\_\_

ARREST CHARGE # 4: \_\_\_\_\_ WARRANT #: \_\_\_\_\_

BOND RECOMMENDATION: \_\_\_\_\_

ADDITIONAL INFORMATION:

ARRESTING OFFICER: SHERI A PENCE  
Print Name

SERVED WARRANTS: Sheri A Pence  
Signature and Date  
12-15-16



2017-CP-18-1241

**STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER**

Frost Law Group, LLC  
136 W. Richardson Ave.  
Summerville, SC 29483

FILED - RECORDS  
2017 OCT 11 AM 8:34  
CHERYL GRANHAM  
CLERK OF COURT  
DORCHESTER COUNTY

**SUMMARY COURT SUMMONS**

STATE VS. Tyler James Evans  
TICKET #(S) 5102P0676001  
CHARGE DUI / Driving under the Influence, .16 or higher, 1st Offense

A Jury Trial has been requested in the above listed case. Please be advised that this case is now scheduled for a Pre-Trial Hearing. You are required to be present to answer roll as instructed.

You are hereby summoned to appear in the

**Summerville Magistrate  
212 Deming Way, Box 10  
Summerville, SC**

on **June 22, 2017 @ 10:00 a.m.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES MADE AND PROVIDED.**

  
\_\_\_\_\_  
JUDGE

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

**May 16, 2017**

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

2017-CP-18-1241

Frost Law Group, LLC  
136 W. Richardson Ave.  
Summerville, SC 29483

FILED - RECORD  
2017 OCT 11 AM 8:34  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

**SUMMARY COURT SUMMONS**

STATE VS. Tyler James Evans  
TICKET #(S) 5102P0676002  
CHARGE Traffic / Uninsured motor vehicle fee violation, 1st offense


A Jury Trial has been requested in the above listed case. Please be advised that this case is now scheduled for a Pre-Trial Hearing. You are required to be present to answer roll as instructed.

You are hereby summoned to appear in the

**Summerville Magistrate**  
212 Deming Way, Box 10  
Summerville, SC

on **June 22, 2017 @ 10:00 a.m.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES MADE AND PROVIDED.**

  
\_\_\_\_\_  
JUDGE

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

**May 16, 2017**

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

VS

Tyler James Evans

DEFENDANT

5102P0676001  
CASE NUMBER

IN THE SUMMARY COURT

TRANSMITTAL OF  
CRIMINAL APPEAL

2017-CP-18-1241

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:** October 9, 2017

**Transmitted to:** Dorchester County Clerk of Court

**Transmitted by:** Summerville Magistrate

**Case Caption:** State of South Carolina vs. Tyler James Evans

**Case Number:** 5102P0676001

Received and verified by  on 10-11-17

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

FILED - RECORDS  
2017 OCT 11 AM 8:32  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

State of South Carolina et al  
PLAINTIFF(S)

Tyler James Evans et al  
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. Not timely filed.**

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 .

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.

---



Dorchester Common Pleas

**Case Caption:** State of South Carolina , plaintiff, et al VS Tyler James Evans ,  
defendant, et al  
**Case Number:** 2017CP1801241  
**Type:** Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-05-28 16:24:10 page 3 of 3

State of South Carolina et al  
PLAINTIFF(S)

Tyler James Evans et al  
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:

The State of South Carolina's Motion to Reconsider is hereby Denied.

**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 06/18/2019 .

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.

---



Dorchester Common Pleas

**Case Caption:** State of South Carolina , plaintiff, et al VS Tyler James Evans ,  
defendant, et al  
**Case Number:** 2017CP1801241  
**Type:** Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-06-18 07:03:27 page 3 of 3



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 --

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

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

5 MS. FROST: Yes, sir.

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

12 (Brief pause.)

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

19 MR. MOORE: Yes, Your Honor?

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

24 I'm going to let you come back -- I'm going to let all  
25 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.

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THE COURT: Thank you very much, sir.

MS. FROST: Thank you, Your Honor.

THE COURT: That concludes the hearing of this case.

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

-- END OF TRANSCRIPT OF RECORD --

**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



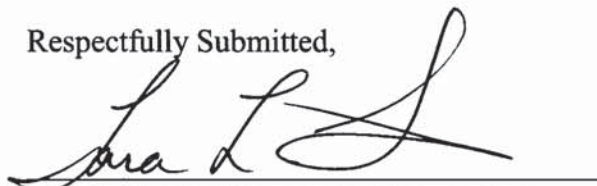
### LAW AND ANALYSIS

4. S.C. Code 18-3-20 states, in pertinent part, as follows: “**All appeals from magistrates’ courts in criminal causes** shall be taken and prosecuted by as prescribed in this chapter.” (emphasis added.)
5. S.C. Code 18-3-30 states, in pertinent part, as follows: “**The appellant, within ten days after sentence, shall file notice of appeal** with the clerk of circuit court and shall serve notice upon the magistrate who tried the case [...]” (emphasis added.)
6. Based on the foregoing, the State was between ten (10) and thirteen (13) days too late beyond the timing requirements for the appeal of this nature.
7. Further, South Carolina courts have determined- and written orders to the effect- that it would be a violation of the Equal Protection Clause to not hold a prosecuting agency to the same standard as an accused in the criminal courts of this state. (See Exhibit A.)

**WHEREFORE**, the Defense would request the following:

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

Respectfully Submitted,



---

Tara L. Frost, Attorney for Respondent  
FROST LAW GROUP, LLC  
126 E. 2<sup>nd</sup> North St.  
Summerville, SC 29483  
Telephone: 843-419-6653  
Fax: 843-419-6674  
[tara@frostlawgroupsc.com](mailto:tara@frostlawgroupsc.com)

This 19<sup>th</sup> day of December 2017  
Summerville, SC

FILED-RECORDED  
2017 DEC 21 PM 2:19

CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

# EXHIBIT A

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

) ORDER DISMISSING APPEAL

FILED-RECORDED  
2017 DEC 21 PM 2:19  
SHERYL L. BROWN  
CLERK OF COURT  
DORCHESTER COUNTY, S.C.  
15 AUG 14 PM 12:26  
BERKELEY COUNTY, S.C.

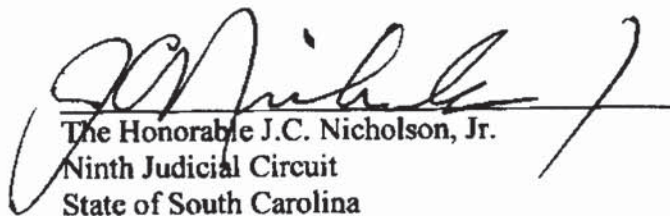
THIS MATTER came before the Court upon the State's Appeal of the Dismissal of Driving Under the Influence (First Offense) handed down by Honorable Edward L. Sessions, Berkeley County Magistrate Judge, on December 3, 2013. The Court issued its Order of Dismissal on that date and the State received notice 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: CTM  
Aug 3, 2015  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 STATE OF SOUTH CAROLINA )  
 Plaintiff, )  
 vs. )  
 TYLER JAMES EVANS )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT  
 CASE NO.: 2017-CP-18-1241

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

FILED - RECORDED  
 2017 DEC 21 PM 2:19  
 CLERK OF COURT  
 DORCHESTER COUNTY

Plaintiff's Attorney: Marcus K. Gore , Bar No. 73647 Address: SC DPS Office of Gen. Counsel PO Box 1993 Blythewood, SC 29016 Phone: 803-896-7965 Fax 803-896-7967 E-mail: marcusgore@scdps.gov Other: _____	Defendant's Attorney: Tara L. Frost, Bar No. 100610 Address: Phone: 843-419-6653 Fax 843-419-6674 E-mail: tara@frostlawgroupsc.com Other: _____
---	---

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**  
 **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**  
 **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

**SECTION I: Hearing Information**

Nature of Motion: Motion to Dismiss  
 Estimated Time Needed: 15 mins Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

- Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

*Tara L. Frost*  
 Signature of Attorney for  Plaintiff /  Defendant Date Submitted 1/19/17

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$ 25.00  
 EXEMPT: (check reason)  Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCPP)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_ JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF DORCHESTER )  
 )  
 State of South Carolina, )  
 )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Tyler James Evans, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT  
**MOTION FOR RECONSIDERATION  
 PURSUANT TO SCRPC 59(e)**  
 Civil Action No.: 2017-CP-18-01241  
 Ticket No.: 5102P0676002

TO: THE HONORABLE BRIAN M. GIBBONS, CIRCUIT COURT JUDGE, AND  
 TARA LEIGH FROST, ATTORNEY FOR RESPONDENT

On June 28, 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 Tyler James Evans ("Respondent"). Judge Richardson found dismissal appropriate because the prosecution's roadside video failed to capture portions of certain field sobriety tests 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) section 56-5-2953 requires the recording of a suspect's performance of field sobriety tests;
- (2) the *Gordon* analysis applies to the Walk and Turn and One-Legged Stand tests; and
- (3) failure to record portions of certain field sobriety test results in dismissal of an entire case, as opposed to redaction/suppression of such tests and any related testimony. *See Gordon*, 414 S.C. at 100, 777 S.E.2d at 379.

The State's appeal was filed on July 21, 2017. On October 11, 2017, Judge Richardson filed her Return.

On December 21, 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 June 28, 2017, and that the State's appeal filed on July 21, 2017 was untimely.

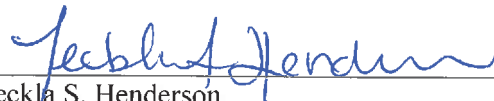
A hearing to consider the appeal and Respondent's Motion to Dismiss took place on May 28, 2019. During the hearing, the State was heard on its arguments regarding the underlying appeal of the DUI case. Additionally, Respondent argued in favor of dismissal as described above. In response, the State argued:

- (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 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 denied. Not timely filed," 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,  
Assistant General Counsel  
South Carolina Department of Public Safety  
Office of General Counsel  
Post Office Box 1993  
Blythewood, South Carolina 29016  
Email: [TecklaHenderson@scdps.gov](mailto:TecklaHenderson@scdps.gov)  
Telephone: (803) 896-7950

Blythewood, South Carolina  
June 4, 2019

Jul 17 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

State of South Carolina,  
Appellant,

vs.

Tyler James Evans,  
Respondent.

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-18-01241  
Ticket No.: 5102P0676002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4<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

Tara L. Frost, Esquire  
Frost Law Group, LLC  
Post Office Box 1986  
Summerville, South Carolina 29483



Paula Davis, Paralegal  
SCDPS Office of General Counsel

Blythewood, South Carolina  
June 4, 2019

**RECEIVED**

**Jul 17 2020**

**CERTIFICATE OF COUNSEL**

**SC Court of Appeals**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

WILLIAM M. BLITCH, JR.

Senior Assistant Deputy Attorney General

S.C. Bar Number 15608

Office of Attorney General

Post Office Box 11549

Columbia, South Carolina 29211

(803) 734-3727

ATTORNEYS FOR APPELLANT

July 17, 2020