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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

The Honorable Donald B. Hocker, Circuit Court Judge
The Honorable Susan G. Gladden, Magistrate Judge

Appellate Case No. 2021-001010

THE STATE,

Respondent,

v.

MICHAEL E. SANDERS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

S.C. Code Ann. §56-5-2953 requires an arresting officer to produce a video showing administration of field sobriety tests and arrest of a DUI suspect. In this case, Sanders was pulled over by a sheriff's deputy who called highway patrol to assist with a DUI investigation. The trooper video-recorded his investigation in compliance with §56-5-2953 and arrested Sanders for DUI. Was the trial court required to dismiss the case or grant a directed verdict because the deputy did not video-record the initial stop?

STATEMENT OF THE CASE

Michael Sanders was charged with DUI and proceeded to jury trial in the Abbeville County Magistrate's Court before the Honorable Susan G. Gladden. Sanders was convicted of DUI. He appealed his conviction to the Abbeville County Court of Common pleas, alleging the magistrate erred by refusing to dismiss his case or grant a directed verdict on the ground that the State did not comply with the DUI video requirement of S.C. Code Ann. §56-5-2953. A hearing on the motion was held before the Honorable Donald B. Hocker on July 20, 2021. Judge Hocker affirmed the magistrate's ruling. Sanders now appeals Judge Hocker's ruling on the same grounds.

STATEMENT OF FACTS

On October 23, 2020, Appellant Michael Sanders was driving a vehicle on SC Highway 28 in Abbeville County. An Abbeville Sheriff's Deputy pulled over Sanders "for drunk driving." (Magistrate's Return pp.1–2). The deputy called for assistance from the Highway Patrol. (Magistrate's Return pp.1-2). The responding trooper, Trooper Cwynar, arrived and conducted a DUI investigation. Sanders admitted to drinking two beers, and Trooper Cwynar discovered an open container of beer in the vehicle. (Magistrate's Return p.2). Based on Sanders' poor performance on field sobriety tests, Trooper Cwynar placed Sanders under arrest for DUI. Sanders agreed to give a breath sample, and his blood-alcohol level was found to be .11%. (Magistrate's Return p.2).

STANDARD OF REVIEW

A question of statutory interpretation is a question of law, which is subject to de novo review. State v. Taylor, 870 S.E.2d 168, 171 (S.C. 2022), reh'g denied (Apr. 5, 2022).

ARGUMENT

The circuit court correctly affirmed the magistrate's refusal to dismiss this DUI case or grant a directed verdict because the State complied with the video requirement of S.C. Code Ann. §56-5-2953.

The magistrate and circuit courts correctly refused to dismiss this case or grant a directed verdict because the State complied with S.C. Code Ann. §56-5-2953 by producing a video recording from the arresting officer showing the administration of field sobriety tests, reading of Miranda rights, and arrest for DUI. Even if the video did not comply with statutory requirements, dismissal and directed verdict were not appropriate remedies. This Court should affirm.

A. The State complied with S.C. Code Ann. §56-5-2953.

S.C. Code Ann. §56-5-2953 requires that an officer making an arrest for DUI must video-record the suspect's conduct at the incident site. The statute provides that 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 Ann. §56-5-2953(A)(1)(a).

In this case, a sheriff's deputy initiated a traffic stop of Sanders' vehicle. The officer suspected DUI but, presumably because his vehicle was not equipped with a camera, he called for assistance from the Highway Patrol. This is common practice, as sheriff's deputies are generally not equipped or trained to conduct complicated

DUI investigations. State troopers are. The responding trooper, Trooper Cwynar, video-recorded his DUI investigation. The video began at the initiation of his blue lights, included the field sobriety tests, and showed Sanders' arrest and the advisement of his Miranda rights. Accordingly, the video complied with §2953.

Sanders argues the video produced in this case is insufficient because it did not show him driving his vehicle in an incriminating manner. But the statute does not require that the video show the suspect driving. It must only show the arresting officer's DUI investigation with the specific acts enumerated in the statute.[1] The plain language of the statute forecloses Sanders' argument.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). 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. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted). "Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." State v. Dupree, 354 S.C. 676, 693, 583 S.E.2d 437, 446 (Ct. App. 2003) (internal citation omitted).

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[1] §2953(B) makes clear that it is the "arresting officer" who must produce the video.

Trooper Cwynar was the arresting officer in this case. He performed the DUI investigation and placed Sanders under arrest. Accordingly it was he, not the deputy who initiated the stop, who was required to produce a video of his investigation pursuant to §2953. See State v. Landis, 362 S.C. 97, 104, 606 S.E.2d 503, 506 (Ct. App. 2004) (explaining trooper who "conducted the field sobriety test, determined Landis was impaired, and placed him under arrest for DUI" was the "arresting officer").

Beyond that, Sanders' argument makes for horrible policy and would produce results that the legislature could not have intended. In many cases, such as accident cases, it will not be possible for the arresting officer to record the suspect driving. Under Appellant's view of the law, the State would practically never be able to prosecute a DUI case arising out of an accident, because the officer's recording would not include direct evidence of impaired driving. Surely, the legislature did not intend such an absurd result.

Alternatively, Sanders argues the Deputy's failure to record the traffic stop violates S.C. Code Ann. §56-5-2953(B). §2953(B) provides that "[f]ailure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal" if the officer submits an affidavit giving sufficient reasons why a video was not produced. S.C. Code Ann. § 56-5-2953(B). The arresting officer in this case, Trooper Cwynar, produced a video in compliance with the statute. The deputy who initiated the traffic stop was not required to produce a video, and

therefore was not required to produce an affidavit explaining the absence of a video. §2953(B) does not apply.

Sanders further argues that the sheriff's deputy's failure to record the initial stop constitutes a Brady[2] or Rule 5 SCRCrimP violation. This argument fails because Brady and Rule 5 only require disclosure of evidence that exists and is in the possession of the State. State v. Durant, 430 S.C. 98, 107, 844 S.E.2d 49, 53 (2020). No video exists of the traffic stop. The State cannot disclose something that does not exist. There is no evidence or even an allegation that the State willfully destroyed a video taken by the deputy. The magistrate correctly found there is nothing in the record to support Sanders' claim of a Brady or Rule 5 violation. (Magistrate's return).

Because the arresting officer produced a video in accordance with §2953, the statute's requirements were met. The magistrate and circuit courts correctly held so. This Court should affirm.

B. Even if the State did not comply with S.C. Code Ann. §56-5-2953 or Brady, neither dismissal nor directed verdict is the appropriate remedy.

Even if the absence of a video from the deputy's vehicle violates §2953, dismissal or directed verdict is not the proper remedy. The Supreme Court recently held in State v. Taylor, 870 S.E.2d 168 (2022), that when the State produces a video of a DUI investigation that does not fully comply with §2953, the proper remedy is suppression of the video. State v. Taylor, 870 S.E.2d 168, 173 (2022), reh'g denied

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[2] Brady v. Maryland, 373 U.S. 83 (1963).

(Apr. 5, 2022). In Taylor, the video did not show Taylor being advised of his Miranda rights as required by §2953. The court rejected Taylor's argument that the failure to produce a video in compliance with the statute calls for per se dismissal of the case. Taylor built on earlier cases in which the State failed to produce a video altogether. These cases focus on whether the State's failure to produce a video is excused by §2953(B). See City of Rock Hill v. Suchenski, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007) (explaining "dismissal of [a] DUAC charge is an appropriate remedy provided by § 56-5-2953 where a violation of subsection (A) is not mitigated by subsection (B) exceptions"). As explained above, §2953(B) does not apply here because the State produced a video in compliance with §2953(A). But even if the statute was somehow violated, dismissal is not the appropriate remedy.

Likewise, even if the deputy's failure to produce a video violated Rule 5 or Brady, dismissal is not appropriate. Generally, the proper remedy for a Brady violation is suppression of the withheld evidence. If a material violation comes to light after conviction, a new trial may be ordered. See State v. Durant, 430 S.C. 98, 110, 844 S.E.2d 49, 55 (2020). A Brady violation "is material when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id. Outright dismissal is not the proper remedy, except in the most extreme cases involving willful misconduct and prejudice to a defendant. See Gov't of Virgin Islands v. Fahie, 419 F.3d 249, 257 (3d Cir. 2005). As stated above, there can be no Brady violation of material that does not exist. But even if a Brady violation occurred, dismissal would not be

appropriate. Rather, the proper course would have been for the trial court to suppress any material that was not disclosed. The trial court properly denied Sanders' motion to dismiss the case.

Similarly, the proper remedy for a Rule 5 violation is to "order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances." Rule 5, SCRCrimP. The trial court had all of these options available to him, but because there was no video from the deputy to disclose, there was no need for a discovery sanction. Certainly, outright dismissal was not appropriate. Furthermore, Sanders cannot show prejudice because there is no indication that, had the deputy produced a video, the result of the proceeding would have been different. State v. Kennerly, 331 S.C. 442, 453–54, 503 S.E.2d 214, 220 (Ct. App. 1998) ("Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation.").

Finally, the granting of a directed verdict was not appropriate in this case. A directed verdict is appropriate "where the State has failed to present evidence of the offense charged . . . ." State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408 (2013). The trial court is concerned with the existence or nonexistence of evidence, not its weight. Id. In this case, there was evidence of DUI. In addition to the trooper's testimony concerning Sanders' poor performance on field sobriety tests, Sanders agreed to give a breath sample, and his blood-alcohol level was found to be

.11%. (Magistrate's Return). Even if there was a defect in the video, this would not be a proper basis on which to grant a directed verdict. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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v.

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Myreon Williams, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served. This 12th day of May, 2022.

Anne Mueller

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Date:	Thursday, May 12, 2022 4:25:00 PM
Attachments:	image001.png Sanders Michael - 2021-001010 - Initial Brief Of Respondent and Designation Of Matter (02979307xD2C78).PDF

Good afternoon, Mr. Williams.
Attached to this email is the State's Initial Brief Of Respondent and Designation of Matter in the above criminal appeal. This brief will be electronically filed with the Court shortly.
If you would, please confirm your receipt of this email and the attachment by return email.
Thank you in advance for your cooperation.
Sincerely,
Anne Mueller, Legal Assistant to Assistant Attorney General Joshua A. Edwards

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