

“South Carolina Court of Appeals Reverses Drunk Driving Conviction for Failure to Follow Video Taping Requirements”

CASE NAME: STATE V. HENKEL (Appellate CASE NO: 2011-184986, No. 5159, filed: July 10, 2013)

FACTS: In the early evening hours of January 19, 2008, Lillie Chastain called 911 and reported erratic driving by a motorist on Interstate-385 in Greenville County, South Carolina. Chastain followed the vehicle until it hit a bridge and overturned in a ditch. Chastain saw the driver get out of the vehicle and jump over a fence. Although a search was put together by the South Carolina Highway Patrol, officers were unable to locate the driver.

Several hours later, Sgt. Wes Hiott of the South Carolina Highway Patrol responded to the call of the possible driver of the truck, and that he had been located near the I-385 area (Greenville County). Shortly thereafter, Sgt. Hiott found Henkel (the defendant) being examined by EMS in an ambulance. Sgt. Hiott read Henkel his Miranda rights and performed a horizontal gaze nystagmus (HGN) field test inside the ambulance. Henkel later failed the ABC field test and admitted to Sgt. Hiott that he was the driver of the wrecked truck. Once inside the patrol car, Sgt. Hiott turned the dash board video camera to face Henkel and read his Miranda Rights to him again. Henkel was arrested for DUI/Drunk Driving.

PROCEDURAL HISTORY: Henkel was indicted for DUI/Drunk Driving and his trial was held in February of 2011 in the Greenville County, South Carolina Circuit Court. In a pre-trial motion, Henkel moved to dismiss the indictment on the grounds that neither the field sobriety tests nor the initial Miranda warning were videotaped as required by South Carolina Code Section 56-5-2953. The trial court reserved ruling on the defendant’s motion to dismiss until all of the testimony was presented. Two separate versions of the video tape from the incident site were admitted into evidence. In the version offered by the defense (exhibit 1), the video tape includes audio of the HGN test and ABC’s test but does not include video because these tests were not administered in front of Sgt. Hiott’s patrol car. The state’s version of the videotape (exhibit 2) is nearly identical to exhibit 1 but does not begin until after the HGN test. Critically, neither of the video tapes in evidence included any video or audio recording of the initial Miranda warning, or any video HGN test or the ABC’s test. In denying the defendant’s motion to dismiss, the trial court noted that Sgt. Hiott had activated the video camera recording system “as soon as practicable”. Based on all of the tests given and the evidence presented, the trial judge determined the video tape “met the requirements of the law”.

Henkel was convicted of DUI and sentenced to an active jail term of three (3) months followed by thirty (30) months of probation. The Defendant appealed the court’s ruling.

ISSUE: Did the trial court correctly find that the video tapes offered into evidence complied with South Carolina Code Section 56-5-2953?

HOLDING. NO. Accordingly, the trial court’s decision is reversed and the defendant’s conviction for DUI/ Drunk Driving is vacated.

SC Code Section 56-5-2953 (A) provides, in part, that “a person who violates this section must have his conduct at the incident site videotaped, ... and the incident site videotape must include the person being advised of his Miranda rights before any field sobriety tests are administered...”

“Our appellate courts have strictly construed Section 56-5-2953 and found that a law enforcement agency’s failure to comply with these provisions is fatal to the prosecution of a DUI case”. In City of Rock Hill v. Suchenski, our Supreme Court held that “dismissal of the DUAC charge is an appropriate remedy provided by Section 56-5-2953 where a violation of this statute occurs. Additionally, the South Carolina Supreme Court has also held that “the state’s non compliance with Section 56-5-2953, which is not mitigated by any statutory exceptions, warrants dismissal... Our legislature clearly intended for a per se dismissal in the event that a law enforcement agency violates the mandatory provisions of South Carolina Section 56-5-2953”.

In the case at bar, Sgt. Hiott testified that his patrol car was equipped with front and rear blue lights, which could be activated independently but that the car’s video camera only turned on when the front blue lights were activated. When he arrived at the scene, Sgt. Hiott activated only his rear blue lights. Because the testimony provided that the activation of the front blue lights that turned on the camera never occurred, the failure to video tape the Miranda warnings did not violate sub-section 56-5-2953.

This is a case where the videotaping equipment was not activated by the blue lights. The trial judge made a factual finding that Sgt. Hiott activated his patrol car video as soon as practical. Because there is evidence to support this finding by the court, we are bound by it. However, SC Code Section 56-5-2953 (A) also requires that the videotaping at the incident site “include the person being advised of his Miranda rights before any field sobriety tests are administered” if the tests are administered. Because the video tape did not include Sgt. Hiott giving the defendant Henkel his Miranda warnings, it did not conform to the provisions of SC Code Section 56-5-2953. Accordingly, the trial court was required to dismiss the charge, and it erred by not doing so.

The trial court’s decision is reversed and the defendant’s conviction is hereby vacated.