

"South Carolina Supreme Court Mandates Both Video and Audio Recording in DUI/Drunk Driving Cases"

**CASE NAME: State vs Sawyer (SC Sup. Ct., Opinion No. 27393, June 4, 2014)**

**FACTS:**

In September 2007, respondent was taken to the Spartanburg County Jail by Deputy Evett, who picked him up following a traffic stop made by Lt. Woodward. Evett, a certified Data Master operator, placed respondent in the "subject test area" which is a room that adjoins the Data Master room. The rooms are separated by a glass panel. The deputy retrieved some forms from the Data Master room and then appeared to read respondent his Miranda rights and the implied consent information. Both respondent and Deputy Evett signed the forms. There are separate audio and video recording devices in both the subject test area and in the breathalyzer room. In this case, the audio device in the subject test area did not function.

**PROCEDURAL HISTORY:**

Respondent moved to suppress the evidence relating to the breath test site alleging the videotape did not meet the requirements of S.C. Code Ann. § 56-5-2953(A). Section (A) required that a person charged with DUI have his conduct at both the incident site and the breath test site videotaped.

The circuit court first held that the videotape itself must be excluded because "the videotape has no audio of the conversations between the testing officer and [respondent] concerning such matters as his Miranda warnings, the explanation of implied consent or other matters that may have been discussed between them." The judge held that evidence other than the videotape could be used, citing § 56-5-2953(B).

On respondent's motion for reconsideration, the circuit court clarified that it was suppressing not only the videotape, but also any evidence or testimony that respondent was offered and/or took a breath test, as well as the results of that test.

In the direct appeal, the State also argued that any defects in the audio portion of the tape went to its weight, not its admissibility, and that all the statute required was a video, which it produced.

**ISSUE:**

Did a breath test site video that did not include audio demonstrating that Miranda warnings were given, that the individual was informed that he was being videotaped, or that he has the right to refuse the breath test meet the requirements of § 56-5-2953(A) as it existed in September 2007?

**HOLDING:**

No. The State argues that the statute only required that the individual's "conduct" be recorded, and that conduct under the statute has been defined by the Court of Appeals as "one's behavior, action or demeanor." *Murphy v. State*. Thus, the State contends that only video of the individual is necessary to satisfy the statute. We disagree.

The statute required a videotape not merely of the individual's conduct while being read his Miranda and informed consent rights, but also that it "must include" "the reading of Miranda rights" and "the person being informed that he is being videotaped, and that he has the right to refuse the test." § 56-5-2953(A)(2)(b). A silent video simply cannot meet these statutory requirements.

The State argues that this defect in the videotape goes only to its weight, not its admissibility. Here we are concerned with a statute which governs the admissibility of certain evidence.

While defects in evidence do not generally affect admissibility, as the State maintains, the Court has interpreted the statute to require strict compliance with Section (A) as a prerequisite for admissibility, unless an exception in Section (B) applies. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007); *see also State v. Elwell*, 403 S.C. 606, 743 S.E.2d 802 (2013). The General Assembly is presumed to be aware of this Court's interpretation of a statute, and where that statute has been amended, but no change has been made that affects the Court's interpretation, the legislature's inaction is evidence that our interpretation is correct. *E.g. McLeod v. Starnes*, 396 S.C. 647, 723 S.E.2d 198 (2012). While the General Assembly has amended § 56-5-2953 following our *Suchenski* decision, nothing in the amended statute alters our holding that failure to comply with the statute's terms renders the evidence inadmissible.

As explained above, this tape did not satisfy § 56-52953(A). The Court of Appeals properly affirmed the circuit court's suppression order. *City of Rock Hill v. Suchenski, supra*.

The Court of Appeals' decision is affirmed.