

“South Carolina Supreme Court Clarifies Video Recording Requirements in DUI/Drunk Driving Cases”

On May 29, 2013, the South Carolina Supreme Court issued written decisions in two cases that had been joined for appellate purposes. Pending appeals from the South Carolina Court of Appeals in the cases of State v Ryan Hercheck and State v Justin Elwell were consolidated for the purposes of oral argument.

CASE NAMES: 1. State V Ryan Hercheck (Appellate Case No. 2011-195767; filed May 29, 2013) and State v Justin Elwell (Appellate Case No. 2012-209726; filed May 29, 2013)

FACTS:

Both of these cases involved defendants arrested and charged with DUI/drunk driving in South Carolina. Both defendants' arrests for DUI/drunk driving followed a traffic stop and failure to satisfactorily perform field sobriety tests. Subsequently, both defendants were offered a breath test, which they both lawfully refused. Both defendants verbally refused to offer a breath sample prior to the expiration of the 20 minute observation period which is required in South Carolina prior to providing a breath sample. In both cases, the police officers terminated or ended the statutorily required videotaping of the defendant concurrent with their refusal to take the test.

ISSUE:

Does South Carolina Code Section 56-5-2953 require law enforcement officers to videotape a 20 minute pre-test waiting period when the arrestee refuses to take the breath test?

HOLDING:

No. South Carolina Code Section 56-5-2953 does not require a law enforcement officer to videotape the entire 20 minute pre-test waiting period once the arrestee refuses a breath test. The South Carolina Supreme Court agreed with the State's position that the inclusion of the word, "pre-test" (which is a part of the statute) plainly requires a breath test be administered for the videotape requirement to apply, and if there is no breath test, the statute does not require a videotape. In other words, if no test is administered, then there can be no "pre-test waiting period." In the cases at bar, once the defendants refused the breath test and no breath test was administered, the statute did not require the arresting officer to continue to videotape the 20 minute pre-test waiting period. To require otherwise would result in the officer having to undergo a useless and absurd act since the evidence gathering phase of the case is over once an arrestee refuses the breath test. A valid legal construction of the statutory subsection at issue is that only when the waiting period is required can the videotape recording also be required; and if no test is administered, then the 20 minute waiting period is unnecessary and there does not have to be a videotape recording provided.