

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2011-201808

THE STATE,

Respondent,

vs.

CHRISTOPHER LEE JOHNSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly declined to dismiss Appellant's driving under the influence case because, although the arresting officer's vehicle was not equipped with video recording equipment at the time of Appellant's arrest, the Greenville Police Department provided a valid reason for failing to comply with the video recording requirement of S.C. Code Ann. § 56-5-2953 and made substantial, good-faith efforts to obtain recording equipment for its vehicles prior to Appellant's arrest by requesting camera systems from the South Carolina Department of Public Safety and by independently purchasing its own camera systems.

STATEMENT OF THE CASE

In March of 2010, Appellant Christopher Lee Johnson was arrested following a traffic stop in Greenville, South Carolina. In April of 2011, the Greenville County grand jury indicted Appellant for one count of second-offense driving under the influence and one count of driving under suspension. On October 10, 2011, a jury trial was commenced in the Greenville County court of general sessions with the Honorable G. Edward Welmaker, circuit court judge, presiding. During trial, Appellant was represented by Daniel J. Farnsworth, and the State was represented by Assistant Solicitor Sara Lee Drawdy. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a one-year term of imprisonment suspended to time served and fifteen months of probation for the driving under the influence conviction and a concurrent thirty-day term of imprisonment for the driving under suspension conviction. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In the early morning hours of March 18, 2010, Officer Jesse Lowe of the Greenville Police Department was on patrol in the downtown area of Greenville, South Carolina. (R. p. 16; pp. 128-129). At that time, he was driving a seven-year-old marked patrol car that had not been equipped with video recording equipment. (R. pp. 16-17; pp. 22-23; pp. 149-150). Around approximately 2:00 a.m., he observed the driver of a red Ford Explorer back out of a parking spot and begin driving without activating his vehicle's headlights. (R. p. 38; p. 144; p. 154; pp. 179-180). The driver, Appellant Christopher Lee Johnson, then drove through a red light and stopped his vehicle in the middle of an intersection. (R. p. 18; p. 129). As a result, Officer Lowe initiated a traffic stop. (R. p. 18; pp. 129-130).

After stopping Appellant's vehicle, Officer Lowe made contact with Appellant and immediately noticed Appellant's eyes were glassy, he was wearing a wristband from a local bar, and he smelled of alcohol. (R. p. 18; pp. 130-131; p. 136). Officer Lowe then advised Appellant that he stopped him for several driving infractions and asked him if he had been drinking. (R. p. 130). Appellant responded that he drank "too much" and indicated he had at least six or seven beers. (R. pp. 130-131). Officer Lowe then ordered Appellant out of his vehicle and administered a series of field sobriety tests to him. (R. p. 19; pp. 131-136). The field sobriety tests were recorded on a personal camera by Officer Donnie Ng, another officer of the Greenville Police Department who arrived at the scene of the traffic stop shortly after the stop began, and Appellant was unable to successfully complete the tests. (R. pp. 18-19; p. 117; p. 119; p. 121; pp. 124-125; p. 150; Court's Ex. # 2 – D.V.D. Pocket Video). As a result, Officer Lowe arrested Appellant for driving under the influence. (R. p. 16; pp. 132-137).

Following Appellant's arrest, Officer Lowe transported Appellant to the Greenville County Detention Center for a breath alcohol test and advised Appellant of his implied consent rights. (R. p. 137; p. 139). Appellant signed an advisement of rights form but refused to submit to the breath alcohol test. (R. p. 139; p. 141; pp. 216-217). Thereafter, Officer Lowe prepared an affidavit in regards to his failure to produce a video recording of Appellant's conduct at the scene of the traffic stop stating his vehicle had not yet been equipped with recording equipment at the time of the stop. (R. p. 17; p. 167).

Subsequently, Appellant was indicted for second-offense driving under the influence and driving under suspension, and he proceeded to trial. (R. pp. 8-9; pp. 218-219; pp. 221-222). At the outset of trial, defense counsel moved for Appellant's case to be dismissed due to the fact that the traffic stop was not recorded as mandated by S.C. Code Ann. § 56-5-2953 as a result of Officer Lowe's vehicle not being equipped with video recording equipment at the time of the stop, and the trial judge conducted a pre-trial hearing on the motion. (R. pp. 10-13; p. 16).

During the pre-trial hearing, Officer Lowe testified he was driving an older vehicle at the time of the traffic stop that had not been equipped with video recording equipment. (R. p. 17). However, he noted he prepared an affidavit pursuant to the requirements of Section 56-5-2953 explaining why he failed to produce a video recording of Appellant's conduct at the scene of the traffic stop, and the affidavit was entered into evidence and presented to the trial judge. (R. pp. 17-18).

In addition to Officer Lowe's testimony, Lieutenant Joe Browning, who oversaw the budget of the Greenville Police Department and was responsible for dealing with procurement and supply issues for the department, testified about the efforts of the

Greenville Police Department to obtain and maintain video recording equipment for its fleet of law enforcement vehicles.¹ (R. pp. 24-25). During his testimony, Lieutenant Browning indicated the department initially received four vehicle camera systems prior to 2001 through a grant from the South Carolina Department of Public Safety ("D.P.S."). (R. p. 27; p. 30). Then, in December of 2001, he stated the department independently purchased approximately eighteen cameras from a private company at a cost of \$35,550 to the department, but those cameras began failing immediately after installation and were quickly taken out of service. (R. pp. 28-29). Subsequently, Lieutenant Browning indicated the department requested camera systems from D.P.S., was notified by D.P.S. in February of 2002 that it would begin receiving V.H.S.-based camera systems in response to the request, received a single camera system from D.P.S. in August of 2002, and received a total of twenty-one camera systems from D.P.S. by February of 2004.² (R. pp. 31-33; p. 60). Thereafter, Lieutenant Browning stated the department relied upon the camera systems provided by D.P.S. until the department elected to begin the process of independently purchasing digital recording systems towards the end of 2007 based on issues the department experienced with the V.H.S.-based camera systems provided by D.P.S.³ (R. pp. 34-35; p. 38; p. 42; p. 60). After deciding upon the digital recording

¹ At the time of Appellant's trial, the Greenville Police Department had approximately 160 to 170 marked patrol vehicles with only eight to ten vehicles primarily dedicated to traffic enforcement. (R. pp. 59-60). At the time of Appellant's arrest, Officer Lowe was not assigned to the traffic unit and, thus, was not driving one of the vehicles primarily dedicated to traffic enforcement. (R. pp. 23-24). However, as part of his job duties as an officer, Officer Lowe did conduct traffic stops and issue traffic citations. (R. p. 24).

² Lieutenant Browning confirmed all twenty-one camera systems received from D.P.S. were installed in department vehicles. (R. p. 31). However, none of those camera systems were still operational or in use by the time of Appellant's trial. (R. pp. 61-62; p. 181).

³ During that time period, the Greenville Police Department was not able to request any additional recording equipment from D.P.S. because D.P.S. decided to fully satisfy all of the initial requests for recording equipment before giving law enforcement agencies another opportunity to submit new requests for additional equipment. (R. pp. 62-63; p. 94; p. 97; pp. 101-102; p. 179). However, the Greenville Police Department was not aware it would be unable to request additional recording equipment while the initial

system that best served the department's needs, Lieutenant Browning testified the department began to purchase its own digital recording systems in February of 2010 and spent \$463,463.99 of its own funds in purchasing a total of eighty-nine digital recording systems by the date of Appellant's trial.⁴ (R. pp. 52-53; p. 56). In addition to purchasing the digital systems, Lieutenant also stated the department requested a total of forty additional digital recording systems from D.P.S. in April of 2009 and June of 2009, which was the first opportunity available to the department to request D.P.S. camera systems since 2002.⁵ (R. pp. 62-63; pp. 66-67; p. 78). Lieutenant Browning further testified the department intended to independently purchase more digital recording systems but noted the department's funding was limited. (R. pp. 69-71).

Furthermore, Elaine Johnson, an employee of D.P.S. and the Director of the Department of Resource Management at the time Section 56-5-2953 was enacted, testified about the efforts of D.P.S. to implement the legislation and provide video recording equipment to law enforcement agencies in South Carolina. (R. pp. 79-80). During her testimony, Johnson indicated the agency's funding was limited and was insufficient to purchase and provide all of the camera systems requested by the various law enforcement agencies throughout the state. (R. p. 84; p. 103). She testified D.P.S. only received sufficient funding to provide 600 camera systems in 2002, 260 camera systems in 2003, 390 camera systems in 2004, 330 camera systems in 2005, 380 camera

requests were still pending at the time it made its initial request to D.P.S. (R. p. 94; p. 102). Significantly, it took D.P.S. seven years to fully satisfy the initial requests. (R. p. 95).

⁴ At the time of Appellant's arrest in March of 2010, approximately thirteen of the independently-purchased digital systems had been installed and approximately seven or eight of the camera systems that the department received from D.P.S. were installed and still operational. (R. p. 77).

⁵ None of the digital recording systems requested from D.P.S. had been provided or received by the time of Appellant's trial due to pending requests from other law enforcement agencies that were considered to be higher priorities. (R. p. 74; pp. 97-101; pp. 208-214).

systems in 2006, 240 camera systems in 2007, 315 camera systems in 2008, 30 camera systems in 2009, and 500 camera systems in 2010 to the approximately 281 law enforcement agencies statewide eligible to receive the camera systems. (R. p. 96). She further stated it would take approximately fifteen additional years to equip every law enforcement vehicle in South Carolina with a camera system under the current funding structure, which only resulted in an average of \$165,000 per month in funding.⁶ (R. p. 83; p. 101). Regarding the Greenville Police Department, she testified the department was provide with one camera system in 2002, five camera systems in 2003, and fifteen camera systems in 2004. (R. pp. 93-94). She further stated the department requested additional digital camera systems and the request was currently pending. (R. p. 100).

At the conclusion of the pre-trial hearing, defense counsel asserted the decision in Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011), which he noted involved a law enforcement agency that asserted it had no obligation to purchase or request video recording equipment for its vehicles, was reached without the benefit of the testimony and evidence presented in Appellant's case. (R. p. 108). Based on the evidence presented in Appellant's case, defense counsel conceded the statutory video-recording requirement "was doomed from the start," stating:

I think this statute was doomed from the start because it was just so totally and inadequately funded that it was doomed to get in the financial shape it is now. In other words, all the state agencies are having problems, but I don't think the – this one was ever going to get off the ground just as we've heard today.

(R. pp. 108-109). However, defense counsel argued the requirements of Section 56-5-2953 were still in effect and asked the trial judge to "just consider everything [he had]

⁶ Johnson noted the cost of just one-hundred camera systems was \$285,000 for purchasing the systems, \$190,000 for installing the systems, \$250,000 for the first year of a warranty for the systems, \$225,000 for the second year of the warranty for the systems, and \$200,000 for the third year of the warranty for the systems. (R. p. 81).

heard today on the motion and render [his] decision.” (R. p. 109). In response, the solicitor noted the decision in Roberts recognized Section 56-5-2953(G) was a valid statutory provision and non-compliance with the requirements of Section 56-5-2953 could be excused in the event it was factually appropriate under the circumstances. (R. p. 109). Regarding the specific circumstances of Appellant’s case, the solicitor asserted the Greenville Police Department made substantial efforts to equip its vehicles with video recording equipment and had acted entirely in good faith. (R. pp. 112-113).

After considering the testimony and evidence presented during the pre-trial hearing along with the statements and arguments of counsel, the trial judge denied Appellant’s motion to dismiss the case. (R. p. 113). In reaching that decision, the trial judge found Appellant’s case was distinguishable from the circumstances involved in Roberts based on the fact that, unlike the law enforcement agency in that case, the Greenville Police Department “was always seeking to get to the trough to get the equipment when they could, expending their own dollars in addition.” (R. pp. 113-114).

Thereafter, during trial, Appellant stipulated he was knowingly driving with a suspended license on March 18, 2010, and Officer Lowe and Sergeant Ng recounted the circumstances of the traffic stop and Appellant’s arrest. (R. pp. 115-117; pp. 119-125; pp. 128-142; p. 215). Subsequently, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 158). Following the verdict, the trial judge sentenced Appellant to an aggregate sentence of a one-year term of imprisonment suspended to time served and fifteen months of probation. (R. p. 166).

ARGUMENT

The trial judge properly declined to dismiss Appellant's driving under the influence case because, although the arresting officer's vehicle was not equipped with video recording equipment at the time of Appellant's arrest, the Greenville Police Department provided a valid reason for failing to comply with the video recording requirement of S.C. Code Ann. § 56-5-2953 and made substantial, good-faith efforts to obtain recording equipment for its vehicles prior to Appellant's arrest by requesting camera systems from the South Carolina Department of Public Safety and by independently purchasing its own camera systems.

Appellant contends the trial judge erred in denying his motion to dismiss his driving under the influence case. In support of that contention, Appellant maintains the arresting officer in his case failed to comply with the video recording requirement of S.C. Code Ann. § 56-5-2953 and the Greenville Police Department failed to provide a valid reason for its allegedly "willful" violation of the provisions of the statute. To the contrary, although the arresting officer's vehicle was not equipped with video recording equipment at the time of Appellant's arrest, the Greenville Police Department provided a valid reason to the trial judge that excused its failure to comply with the video recording requirement. Specifically, the evidence and testimony presented during the pre-trial hearing established the Greenville Police Department made concerted, good-faith efforts to obtain video recording equipment for its law enforcement vehicles by requesting video recording equipment from D.P.S. at every available opportunity and by expending a substantial amount of its own funds to independently purchase video recording equipment. Accordingly, in light of the actions taken by the Greenville Police Department to comply with the statutory requirements, the trial judge properly determined the Greenville Police Department presented a valid reason for the arresting officer's failure to record Appellant's conduct in accordance with the requirements of Section 56-5-2953. Appellant's convictions should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 828 (2001). “[A]n appellate court is bound by the circuit court’s factual findings unless they are clearly erroneous.” State v. Manning, 400 S.C. 257, 264, 734 S.E.2d 314, 317 (Ct. App. 2012).

Pursuant to Section 56-5-2953(A), a person who commits the offense of driving under the influence “must have his conduct at the incident site and the breath test site video recorded.” S.C. Code Ann. § 56-5-2953(A). However, the failure of an officer to record the conduct of an individual suspected of driving under the influence does not automatically entitle the individual to dismissal of the charges. S.C. Code Ann. § 56-5-2953(B). Instead, under the mandates of the statute:

Failure to comply with the video recording requirement is excused: (1) if the arresting officer submits a sworn affidavit certifying the video equipment was inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it was impossible to produce the video recording because either (a) the defendant needed emergency medical treatment or (b) exigent circumstances existed; (3) in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizen’s arrests; or (4) **for any other valid reason for the failure to produce the video recording based upon the totality of the circumstances.**

Manning, 400 S.C. at 264, 734 S.E.2d at 317-138 (emphasis added). Furthermore, pursuant to Section 56-5-2953(G), the statute’s video recording requirement only takes effect “once the law enforcement vehicle is equipped with a video recording device.” S.C. Code Ann. § 56-5-2953(G).

Significantly, in Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011), the Supreme Court considered the issue of whether the requirements of Section 56-5-2953 applied in cases where a law enforcement vehicle had never been equipped with video recording equipment. In that case, Roberts was arrested for driving

under the influence at the conclusion of a traffic stop, but her conduct was not recorded because the arresting officer's vehicle had not been equipped with video recording equipment. Id. at 336, 713 S.E.2d at 280. Based on the failure of the arresting officer to record her conduct as required by Section 56-5-2953, Roberts moved to have her case dismissed. Id. at 337, 713 S.E.2d at 280. In support of her dismissal motion, Roberts presented testimony establishing that the Town of Mt. Pleasant Police Department had fewer cameras installed in its vehicles than other law enforcement agencies even though it had a significantly higher number of arrests for driving under the influence. Id. at 338, 713 S.E.2d at 281. Additionally, Roberts presented evidence establishing that the town was financially capable of purchasing additional cameras but had elected not to do so. Id. In response, counsel for the Town of Mt. Pleasant argued D.P.S. was solely responsible for providing cameras for law enforcement vehicles while contending the town had no duty whatsoever to either request or purchase any cameras. Id. at 339, 713 S.E.2d at 281. Despite the evidence presented by Roberts, the municipal court judge denied the dismissal motion, but a circuit court judge reversed the municipal court judge's ruling. Id. at 339-340, 713 S.E.2d at 281-282. Thereafter, the town appealed the circuit court judge's ruling, and the Supreme Court certified the town's appeal. Id. at 341, 713 S.E.2d at 282.

Subsequently, the Supreme Court affirmed the circuit court judge's decision to dismiss Roberts' case. Id. at 349-350, 713 S.E.2d at 287. In reaching that decision, the Supreme Court found "the Town's protracted failure to equip its patrol vehicles with video cameras, despite its 'priority' ranking, defeat[ed] the intent of the Legislature and violate[d] the statutorily-created obligation to videotape DUI arrests." Id. at 347, 713 S.E.2d at 285. Based on the circumstances of Roberts' case, the Supreme Court

determined the town's failure to request additional video cameras despite its "high ranking" for driving under the influence arrests was a disingenuous explanation for its failure to equip its vehicles with video recording equipment and did not constitute a valid reason pursuant to Section 56-5-2953(B) for excusing the officer's failure to record Roberts' conduct at the incident site. Id. at 348, 713 S.E.2d at 286. Accordingly, under the specific circumstances of Roberts' case, the Supreme Court found dismissal was the appropriate remedy. Id. at 349-350, 713 S.E.2d at 287. However, in affirming the dismissal of Roberts' case, the Supreme Court specifically noted:

Our decision should in no way be construed as eradicating subsection (G) of section 56-5-2953. Instead, **we emphasize that subsection (G) is still viable** and must be read in conjunction with subsection (B) as these exceptions, under the appropriate factual circumstances, could operate to excuse a law enforcement agency's noncompliance due to the failure to equip a patrol vehicle with a video camera. For example, we can conceive of a scenario where a law enforcement agency establishes a "valid reason" for failing to create a video of the incident side by offering documentation that, despite concerted efforts to request video cameras, it has not been supplied with the cameras from DPS.

Id. at 349, 713 S.E.2d at 286-287 (emphasis added).

In the case sub judice, the trial judge properly denied Appellant's motion to dismiss his case because, unlike the law enforcement agency in Roberts, the Greenville Police Department diligently attempted to obtain video recording equipment for its vehicles by requesting camera systems from D.P.S. at every available opportunity and by expending a substantial amount of its own funds to independently purchase camera systems for its vehicles. Specifically, contrary to the actions of the Town of Mt. Pleasant Police Department in Roberts, the Greenville Police Department requested camera systems from D.P.S. during the initial period for requesting cameras **and** requested additional camera systems at the next available opportunity to do so when D.P.S. first

began accepting new requests seven years later. However, D.P.S. had not yet been able to provide all of the requested camera systems to the Greenville Police Department at the time of Appellant's arrest due to its own funding issues and due to the number of higher-priority requests it had received from other law enforcement agencies. See id. at 349, 713 S.E.2d at 287 (acknowledging a law enforcement agency's concerted efforts to request cameras from D.P.S. that had not yet been supplied could constitute a valid reason for failing to create a video recording of the incident site in a driving under the influence case). Furthermore, unlike the Town of Mt. Pleasant Police Department in Roberts, the Greenville Police Department independently purchased video recording equipment using its own resources in 2001 and again beginning in 2009 at a cost to the department of approximately \$499,000 of its own limited funding. Thus, the testimony and evidence presented during the pre-trial hearing in Appellant's case established the Greenville Police Department did not intentionally seek to avoid its obligation to equip its vehicles with video recording equipment but, instead, both requested the equipment from D.P.S. as intended by the legislature and expended its own funds to secure additional equipment, which was not intended by the legislature in enacting the video recording requirement.⁷ See S.C. Code Ann. § 56-5-2953(B) ("Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances[.]"). Accordingly, under the specific circumstances of Appellant's case, the trial judge properly determined the

⁷ The legislature did not intend for individual law enforcement agencies to be required to pay the costs associated with equipping their vehicles with video recording equipment in order to comply with the statutory video recording requirement of Section 56-5-2953 and specifically provided for a funding source to pay for the recording equipment. (R. p. 80; p. 83). However, as defense counsel conceded during trial, the funding source provided by the legislature was simply unable to effectively meet the need of all of the law enforcement agencies in South Carolina requesting video recording equipment for their vehicles. (R. p. 90).

Greenville Police Department established a valid reason for failing to equip Officer Lowe's vehicle with video recording equipment at the time of Appellant's arrest, and the trial judge committed no error in denying Appellant's motion to dismiss his case. See Roberts, 393 S.C. at 338, n. 7, 713 S.E.2d at 281 ("[T]his argument [that the statutory video recording requirement was inapplicable until the law enforcement vehicle was equipped with video recording equipment] would be valid but for the Town's obvious intentional efforts to avoid complying with section 56-5-2953").

In arguing the trial judge erred in denying his dismissal motion, Appellant contends the Greenville Police Department failed to present a valid reason for not having Officer Lowe's vehicle equipped with video recording equipment at the time of the traffic stop. In support of that contention, Appellant maintains, for the first time on appeal, that the department "refused" V.H.S.-based camera systems that were allegedly available from D.P.S. prior to his arrest.⁸ (App. Br. p. 6). Initially, contrary to Appellant's contentions, the department did not "refuse" any camera systems offered by D.P.S. but, instead, simply requested digital recording systems compatible with the systems it was currently using and which it expended a substantial amount of its own funds to obtain. Furthermore, even if the Greenville Police Department had requested V.H.S.-based camera systems instead of or in addition to requesting the digital recording systems, it

⁸ Because the specific argument Appellant is now raising on appeal was not presented to the trial judge, it cannot properly be raised for the first time to the appellate court and should not be considered for the first time on appeal. See State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal."); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."); see also State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial."); West v. Morehead, 396 S.C. 1, 14, 720 S.E.2d 495, 502 (Ct. App. 2011) ("Appellants make arguments and cite authorities in their briefs that were not presented to the trial court. These arguments are not preserved."); see, e.g., I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 725 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments." (emphasis added)).

still would not have received those systems by the time of Appellant's arrest in March of 2010. Critically, of the twenty law enforcement agencies considered to have higher priority needs than the Greenville Police Department, six of the agencies requested V.H.S.-based camera systems from D.P.S. in 2009. (R. pp. 208-214). Of those agencies that requested V.H.S.-based camera systems, the Greenville Sheriff's Office, which was considered to be the highest priority agency requesting that particular type of system, did not receive any of the requested camera systems until April 22, 2010, which was over a month after Appellant's arrest.⁹ Thus, even if the Greenville Police Department had requested V.H.S.-based camera systems as opposed to digital recording systems and even assuming the department was considered to be the highest priority agency of any of the requesting agencies, the department would not have received the camera systems from D.P.S. until after the date of Appellant's arrest. Thus, despite the Greenville Police Department's concerted and good-faith efforts to obtain video recording equipment for its vehicles by requesting and independently purchasing camera systems, the department was and would have been unable to obtain sufficient equipment to equip the vehicle of Officer Lowe with recording equipment at the time of Appellant's arrest. As a result, the Greenville Police Department had a valid reason for failing to meet the recording requirement of Section 56-5-2953, and the trial judge properly declined to dismiss Appellant's case under the circumstances. See S.C. Code Ann. § 56-5-2953(B) ("Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances[.]"). Therefore, Appellant's convictions should be affirmed.

⁹ Notably, the Anderson Sheriff's Office, which was also considered to be a higher priority agency than the Greenville Police Department, did not receive the V.H.S.-based camera systems it requested from D.P.S. until May of 2011, which was over a year after Appellant's arrest. (R. pp. 208-214).

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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Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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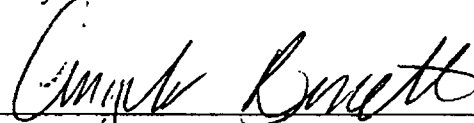
Appellant.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Dayne C. Phillips and Carmen V. Ganjehsani, Esquires
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I further certify that all parties required by Rule to be served have been served.
This 8th day of May, 2013.


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