

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2014-001599

S.C. Supreme Court

THE STATE,

Respondent,

vs.

CHRISTOPHER LEE JOHNSON,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals correctly affirmed the trial judge's denial of Johnson's motion to dismiss his driving under the influence case because, although the arresting officer's vehicle was not equipped with video recording equipment at the time of Johnson'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 Johnson'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

Procedural History

In March of 2010, Petitioner Christopher Lee Johnson was arrested following a traffic stop in Greenville, South Carolina. In April of 2011, the Greenville County grand jury indicted Johnson 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. At the conclusion of trial, the jury convicted Johnson as indicted. Following the verdict, the trial judge sentenced Johnson 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. Johnson then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals issued a published opinion affirming Johnson's convictions. State v. Johnson, __ S.C. __, 758 S.E.2d 911 (Ct. App. 2014). Thereafter, Johnson petitioned the Court of Appeals for rehearing, and the petition was denied. Johnson then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

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, Petitioner 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 Johnson's vehicle, Officer Lowe made contact with Johnson and immediately noticed Johnson'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 Johnson he stopped him for several driving infractions and asked him if he had been drinking. (R. p. 130). Johnson responded he drank "too much" and indicated he had at least six or seven beers. (R. pp. 130-131). Officer Lowe then ordered Johnson 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 Johnson 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 Johnson for driving under the influence. (R. p. 16; pp. 132-137).

Following Johnson's arrest, Officer Lowe transported Johnson to the Greenville County Detention Center for a breath alcohol test and advised Johnson of his implied consent rights. (R. p. 137; p. 139). Johnson 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 Johnson'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, Johnson 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 Johnson's case to be dismissed due to the fact 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 Johnson'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

¹ At the time of Johnson'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 Johnson'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).

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 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 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

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 Johnson’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 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).

systems by the date of Johnson'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, Director 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 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

⁴ At the time of Johnson'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 Johnson'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).

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 Johnson's case. (R. p. 108). Based on the evidence presented in Johnson'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] 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.

⁶ Notably, Director Johnson indicated 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).

109). Regarding the specific circumstances of Johnson'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 Johnson's motion to dismiss the case. (R. p. 113). In reaching that decision, the trial judge found Johnson's case was distinguishable from the circumstances involved in Roberts based on the fact the Greenville Police Department, unlike the law enforcement agency in the Roberts case, "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, Johnson 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 Johnson's arrest. (R. pp. 115-117; pp. 119-125; pp. 128-142; p. 215). Subsequently, at the conclusion of trial, the jury convicted Johnson as indicted. (R. p. 158). Following the verdict, the trial judge sentenced Johnson to an aggregate sentence of a one-year term of imprisonment suspended to time served and fifteen months of probation. (R. p. 166). Johnson then timely appealed his driving under the influence conviction.

On appeal, the Court of Appeals affirmed. State v. Johnson, __ S.C. __, 758 S.E.2d 911 (Ct. App. 2014). In affirming, the Court of Appeals found the Greenville Police Department "established a valid reason for its failure to equip a patrol vehicle with a video recording system" based on the Greenville Police Department's "extensive efforts" to obtain camera systems for its vehicles. Id. at __, 758 S.E.2d at 915. Specifically, the Court of Appeals noted the Greenville Police Department – unlike the

law enforcement agency involved in the Roberts case – requested camera systems from D.P.S. at every available opportunity and had already begun the process of using its own funds to purchase camera systems before Johnson’s arrest. Id. Based on the Greenville Police Department’s concerted efforts to obtain camera systems, the Court of Appeals determined Section § 56-5-2953(G) was still applicable to Johnson’s case and, even if it had not been, the Greenville Police Department’s actions satisfied an exception under Section § 56-5-2953(B). Id. Accordingly, the Court of Appeals concluded the trial judge committed no error in denying Johnson’s motion to dismiss his driving under the influence charge. Id. at ___, 758 S.E.2d at 916.

ARGUMENT

The Court of Appeals correctly affirmed the trial judge's denial of Johnson's motion to dismiss his driving under the influence case because, although the arresting officer's vehicle was not equipped with video recording equipment at the time of Johnson'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 Johnson's arrest by requesting camera systems from the South Carolina Department of Public Safety and by independently purchasing its own camera systems.

Johnson contends the Court of Appeals committed reversible error in affirming the trial judge's denial of his motion to dismiss his driving under the influence case. In support of that contention, Johnson's maintains the decisions of both the Court of Appeals and the trial judge were erroneous because 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. Contrary to Johnson's contentions, neither the Court of Appeals nor the trial judge erred in Johnson's case because, although the arresting officer's vehicle was not equipped with video recording equipment at the time of Johnson'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 denied

Johnson's dismissal motion after determining the Greenville Police Department presented a valid reason for the arresting officer's failure to record Johnson's conduct in accordance with the requirements of Section 56-5-2953, and the Court of Appeals correctly affirmed the trial judge's ruling. Johnson's petition for a writ of certiorari should be denied.

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), this 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 this Court certified the town's appeal. Id. at 341, 713 S.E.2d at 282.

Subsequently, this 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, this 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, this 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, this 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, this 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 Court of Appeals correctly affirmed the trial judge's denial of Johnson'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 despite the fact the legislature did

not intend for individual law enforcement agencies to be required to independently purchase camera systems in order to comply with the statutory requirements of Section 56-5-2953. See S.C. Code Ann. § 56-5-2953(D) (placing the responsibility for “purchasing, maintaining, and supplying all videotaping equipment for use in all law enforcement vehicles used for traffic enforcement” solely upon D.P.S.). 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 Johnson’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 Roberts, 393 S.C. 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 Johnson’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 Johnson’s case, the trial judge properly determined the Greenville Police Department established a valid reason for failing to equip Officer Lowe’s vehicle with video recording equipment at the time of Johnson’s arrest, and the Court of Appeals committed no error in affirming the trial judge’s decision to deny Johnson’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 to the contrary, Johnson 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, Johnson maintains – for the first time on appeal – the department did not make efforts to obtain camera systems for its vehicles in a sufficient-enough or timely-enough manner to comply with the requirements of Section 56-5-2953 or the Roberts decision while focusing on the fact the department did not request “immediately available” VHS-based

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).

camera systems from D.P.S. in 2009.⁸ Initially, contrary to Johnson's contentions, the department's concerted efforts to comply with the requirements of Section 56-5-2953 were substantial, began in 2001 nearly nine years before Johnson's arrest, and involved independently purchasing camera systems and making request for camera system to D.P.S. at every available opportunity. Moreover, although the Greenville Police Department did not elect to request any V.H.S.-based camera systems from D.P.S. in 2009, the department's decision not to do so was governed by its desire to obtain digital recording systems compatible with the systems it was currently using and which it expended a substantial amount of its own funds to obtain as opposed to a desire to evade the mandates of Section 56-5-2953, and the department requested those compatible digital recording systems from D.P.S. at that time. 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 still would not have received those systems by the time of Johnson'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

⁸ Because the specific argument Johnson 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., l'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)).

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 Johnson'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 Johnson'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 Johnson'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 Johnson'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[.]"); see also Roberts, 393 S.C. at 349, 713 S.E.2d at 286-287 ("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."). Accordingly, the Court of

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 Johnson's arrest. (R. pp. 208-214).

Appeals committed no error in affirming the trial judge's ruling. Johnson's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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ATTORNEYS FOR RESPONDENT

July 28, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2014-001599

THE STATE,

Respondent,

vs.

CHRISTOPHER LEE JOHNSON,


Petitioner.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of July, 2014.


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