

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia Verdin, Circuit Court Judge

Case No. 2011-CP-23-04392

City of Greer,

Respondent,

v.

Shawn P. Humble,

Appellant.

RECORD ON APPEAL

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INDEX

Transcript of hearing.....3-19
Trial Exhibits.....20-26
Affidavit of Officer Kellett.....27
Return of the Hon. Henry J. Mims.....28-30
Order of the Honorable Letitia Verdin.....31-36

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Case No(s) : 2011CP2304392
)	
City of Greer,)	
)	
Plaintiff,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
Shawn Humble,)	
)	
Defendant.)	
)	

December 15, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

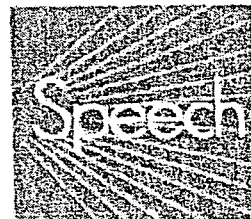
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Motions	4
Certificate of Reporter	17

EXHIBITS PAGE

NO.

DESCRIPTION

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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 15th day of December, 2011 at approximately 2:14 p.m.)

THE COURT: All right. The next case is City of Greer versus Shawn Humble. (Pause.)

Yes, sir.

MR. ANTHONY: Good afternoon. My name is Jay Anthony. I'm representing the City of Greer. This might take a longer than the previous two. We are here on an appeal for a DUI dismissal. And I'll give you just a little bit of the facts, if that's okay.

THE COURT: All right.

MR. ANTHONY: This stems from a DUI charge. An officer in the City of Greer responded to a reported traffic accident. The officer was driving a vehicle that was equipped with a camera. The officer got in his car to go respond. Logged in. And then hit his blue lights, which he testified should have activated the system. He got out to the accident scene and made contact with the defendant, did the field sobriety test, took him back to the Blood Alcohol Room and administered that test. Decided to charge him with DUI. And then later found that the video would not upload to

1 the system.

2 **THE COURT:** All right.

3 **MR. ANTHONY:** Uh, prior to trial, Mr. Hiller
4 moved to dismiss based on failure to comply with
5 videotape requirements. And after arguments, Judge
6 Mims granted that motion.

7 Uh, as you know, the law on this is pretty
8 well contained in one section and that's 56-5-2953.
9 Subsection A requires that a person who violates
10 the DUI statute must have his conduct at the
11 incident site and the breath test site videotaped.
12 We have video of the breath test site, but we have
13 no video of the incident site.

14 However, Subsection B provides that that alone
15 is not, uh, grounds for dismissal. The officer
16 submits an affidavit where he certifies that the
17 video equipment was inoperable at the time of the
18 probable cause and arrest and that -- and stated
19 which reasonable efforts have been made to maintain
20 the equipment in its operable condition. We
21 presented an affidavit from the arresting officer,
22 Jim Williams, who states that at the time of the
23 arrest and probable cause determination, the video
24 recording equipment was in inoperable condition.
25 And it also stated that reasonable efforts had been

1 made to maintain the equipment in operable
2 condition.

3 Admittedly, that affidavit isn't sufficient to
4 satisfy the statute because it says -- does not say
5 which reasonable efforts had been made. So we
6 supplemented that affidavit with live testimony
7 from Officer Williams. During that testimony, he
8 testified the city occasionally had these type of
9 problems, that they manifest themselves when they
10 go to uplift the videos to the system and that
11 whenever they had a problem, uh, he or any of the
12 department officers would contact a company called
13 Digital Ally which serviced the video equipment for
14 the city.

15 He had numerous fixes with his car and others.
16 And he reviewed Defendant's Exhibit 1, which was a
17 log of the complaints and the fixes that had taken
18 place. He testified that his department contacted
19 Digital Ally every time they had a problem. He
20 testified that he attempted to remedy every problem
21 he had with this vehicle.

22 At the conclusion of that testimony, the court
23 granted the motion to dismiss. The court found
24 that the officer's testimony demonstrated
25 reactions, but not maintenance. And the judge

1 viewed those as two different things. Judge Mims
2 said specifically that reaction was, quote, not the
3 same thing as having, for example, a maintenance
4 schedule or a routine schedule. And he used an
5 example of his wife parking his car and then
6 reporting to him the brakes. That's a repair, a
7 reaction. That's not maintenance.

8 With respect to the court, I think that the
9 judge was reading words into the statute. There's
10 nothing in the language that says that there needs
11 to be routine or scheduled maintenance. But in
12 essence, that's really what the court said. It
13 said that only routine or scheduled maintenance
14 constitute reasonable efforts to maintain a system
15 in an operable condition.

16 Now, I submit that if done promptly and
17 properly as Judge Mims found that it was, a system
18 of reaction constitutes reasonable efforts to keep
19 the system in an operating condition. That is,
20 when they find the system has left the operating
21 condition, they take efforts to put it back in the
22 operating condition. Uh, the cardinal rule of the
23 statutory construction is to effectuate the intent
24 of the legislature.

25 So that I guess the question is did the

1 legislature intend that only scheduled and routine
2 maintenance constitutes reasonable efforts under
3 this statute. I think if they did, they would have
4 said so. I think there are good reasons that they
5 didn't say so here. One of them being that we are
6 dealing with a video camera and not a car. So
7 there's not a need for scheduled maintenance with a
8 video camera the same way there is with a car. So
9 we don't need an oil change every 5000 miles or
10 change the tires out, things like that.

11 Uh, we don't do preventative maintenance on
12 computers, which is really what this is. You
13 wouldn't change out the keyboard every year. You
14 wouldn't change out your monitor after so many
15 hours. Uh, and all of this was argued to the
16 court. Basically, a camera system is not like a
17 car.

18 Every time an officer goes and uploads a
19 video, that constitutes a check on the system. If
20 it uploads successfully, then it's in operating
21 condition. If it doesn't, then they take some
22 steps, document it in that log and make that fix.

23 So the gist of my argument is that reaction,
24 though the judge may have saw that as different
25 from maintenance, I think it's the same thing. I

1 think if it was done well, it is, uh, -- it does
2 constitute reasonable efforts to keep the system in
3 working order. I would ask Mr. Hiller when his
4 time comes to say if that's not reasonable efforts,
5 what should have been written in that affidavit and
6 what should they do to constitute reasonable
7 efforts.

8 If he say they should do a test every time
9 before a call, which I think is unreasonable, but
10 just assume that. Say take some video and try to
11 upload that, that's still a reaction. You're
12 looking at it to see if it uploads and it's fine.
13 If it doesn't upload, then there's a problem and
14 you reacting to that to institute a fix.

15 Uh, I'd like to raise just a couple of more
16 issues before I sit down. I could address these
17 later if you prefer. But regarding what arguments
18 I think are properly before this court with respect
19 -- I think that the return filed by the court does
20 not accurately reflect the arguments that were
21 raised below. It does address the argument that I
22 just finished addressing, which is maintenance
23 versus reaction, but it also spends a lot of time
24 focused on the specific car operated by Officer
25 Williams. It largely based the dismissal on the

1 fact that, quote, intermittent camera was allowed
2 on the road. That just really wasn't argued.

3 At the conclusion of our arguments with an eye
4 towards this appeal, I asked Judge Mims if I could
5 restate for him the basis for his appeal. I said
6 the following, I think you're saying the affidavit
7 does not contain what the statute requires, which
8 is which reasonable efforts specifically have been
9 made. You're saying within his testimony, he did
10 not state which reasonable efforts had been made.
11 He responded yes and moreover that I took his
12 testimony to show me what the reactions were of the
13 police department when they had a problem from
14 which I could easily infer that if they didn't have
15 a problem, they wouldn't have checked it. So I
16 think really our argument is limited to that under
17 preservation.

18 Now, Mr. Hiller did raise one additional
19 sustaining ground. That specifically relates to an
20 entry on the log for February the 14th. Uh, he
21 argued they were told they would have to pay for a
22 service car -- service call. They didn't go like
23 they should. So I think that supports your
24 position, Your Honor. They had an opportunity to
25 correct it and they didn't want to pay for it.

1 They were certainly advised there was corrective
2 action available and elected not to do it.

3 I then asked that Mr. Hiller be allowed to
4 cross-examine the officer on that issue. And he
5 was. He didn't elicit any testimony to show that
6 the repair never took place. And the log doesn't
7 support that either. If you look at the entry, it
8 really says that there was a dispute over who
9 should pay for it. But the log entry really ends
10 with the two of them saying that they're going to
11 get together and resolve this.

12 So I just again would say that, uh, I think
13 that Judge Mims saw a distinction between reaction
14 and maintenance. I don't think that that is
15 correct. I think that a system of reaction done
16 well and promptly and properly, all as the judge
17 admitted they were, uh, that constitutes reasonable
18 efforts to maintain the system in operable
19 condition. And I think that it has to be a system
20 of reaction when you're dealing with what is, in
21 essence, just a computer. If that's not sufficient
22 again, I would just ask Mr. Hiller to state what it
23 should have said.

24 **THE COURT:** All right.

25 **MR. ANTHONY:** Thank you.

1 **THE COURT:** Thank you. Mr. Hiller?

2 **MR. HILLER:** Thank you, Your Honor. Of
3 course, our primary position with regards to the,
4 uh, issues raised on the appeal and, first, on the
5 return issues by Judge Mims as required by statute
6 is that this is not a de novo review. This is not
7 a factual determination by the Court. It's only
8 correct matter -- errors of law. Essentially
9 everything that Mr. Anthony just argued to the
10 court was he didn't like what the judge's factual
11 determinations were.

12 The statute's very clear. It doesn't say --
13 it says -- and -- and -- and -- the statute is very
14 clear. It says reasonable efforts to maintain. To
15 maintain. And Judge Mims read that literally. And
16 then I had actually subpoenaed in the facts of this
17 case the maintenance logs for this particular
18 vehicle and the particular camera that indicated
19 that it had had a continuing series of problems and
20 ultimately had arrived at a problem where there was
21 a dispute between the manufacturer and the police
22 department as to who had to pay to get it fixed,
23 and yet, they put it back out on the road and let
24 it get DUIs. I don't think Judge Mims particularly
25 cared for that, nor did he consider it reasonable

1 maintained.

2 But ultimately, it was a factual determination
3 to him on the basis of the facts of this specific
4 case that this statute was not followed and not a
5 misinterpretation or improper interpretation of the
6 law. He -- he -- he made decisions based upon
7 their supplemental testimony, which I objected to.

8 Uh, there is no appeal that the fact that the
9 affidavit itself was invalid on its face, did not
10 conform to the statute. He allowed them to
11 supplement it with oral testimony, to which I
12 introduced the maintenance log to rebut that. Then
13 based on that evidence, not the statute, but on the
14 evidence, he made a determination that in this
15 particular instance, it was grounds for a
16 dismissal. It's not a precedent setting event
17 because it was specifically based on the facts and
18 not the statute itself.

19 **THE COURT:** All right. Anything in
20 response?

21 **MR. ANTHONY:** Yes, ma'am. I think Mr.
22 Hiller argued that I -- this only the correct area
23 of law. I agree with that. I think it's a
24 question of law though as to what constitutes
25 reasonable efforts under the statute. As he said,

1 I didn't like the facts that the judge found.

2 I'd just point out the return is not an order.
3 The return is the recorded posture of litigants for
4 all intents and purposes. So any factual findings
5 he made in that I think are fair game at this
6 point. And they must be supported by the record.

7 Uh, Mr. Hiller did subpoena records that
8 relate to and have facts about the individual car.
9 He didn't raise that below as an argument for, uh,
10 an additional sustaining ground supporting a
11 dismissal. I think that under the case law, you
12 have discretion to still accept that and to rule on
13 that, find that as an additional sustaining ground.
14 Under the Ion (phonetically) case, the court very
15 much ground on that for reasons of fairness, uh,
16 and otherwise and suggests that the appellate court
17 really just ignore any additional sustaining ground
18 not raised below.

19 As far as the testimony supplementing the
20 affidavit, I don't know if Mr. Hiller is raising
21 that as a ground for appeal today or sustain the
22 ground that we shouldn't have been allowed to
23 supplement. But out of abundance of caution, I
24 would just say that the same arguments I made to
25 Judge Mims, that the cross-examination is the

1 golden standard of the ultimate truth-telling
2 machine, as the Supreme Court says. So to say that
3 an affidavit only, and not live testimony, has to
4 be the way to present something just seems not
5 sensible to me. That essentially says that we want
6 a less reliable form of testimony not subject to
7 cross-examination rather than affidavit.

8 There's also some case law I cite to you
9 McKnight, uh, State versus McKnight, State versus,
10 uh, McHenry, I believe it is, as supporting --
11 supporting that position that an affidavit can be
12 supplemented with testimony. Uh, I don't think I
13 have anything further.

14 **THE COURT:** All right. Thank you. Well, I
15 do find that as a matter of law, Judge Mims too
16 narrowly construed this statute. And after
17 reviewing the statute and reviewing the return in
18 this case, I find that he erred in dismissing this
19 case. I reverse it on that ground.

20 I'm going to ask you to prepare an order
21 please, sir, a proposed order and submit to Mr.
22 Hiller in the same manner you send it to my office
23 for review. I'll wait to get any objections from
24 Mr. Hiller as to the order. All right. Thank you.

25 **MR. HILLER:** Thank you.

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MR. ANTHONY: Thank you, Your Honor.

(WHEREUPON, the proceedings conclude at
approximately 2:31 p.m.)

Customer	Title	Stage	Case Type	Case Number	Serial Number	Product	Created On	Subject	Description
Greer Police Department	RMA11620 DVM750: door lock broke	Approved by RMA Coordinator	RMA - Replace	CAS-32615-1B9T0V	01E4-0F65	DVM750 VERSION 2 MIRROR ONLY	6/2/2011	DVM-750	The replacement mirror we sent on CAS-29214-DX9NHW the door lock is not engaging when the door is closed. The mirror just says locking door but never locks.
Greer Police Department	VM open error	Closed	Problem	CAS-32493-B41JC5			6/31/2011	VideoManager	VM was erroring out when it was opening, the external HO they upload to was offline
Greer Police Department	RMA10545 customer returned camera without contacting support first	Closed	RMA - Return	CAS-30930-BCRD8G	CB10-0AD9	750 Camera	4/21/2011	DVM-750	customer returned camera without contacting support first 2 camera's sent, only 1 needed.
Greer Police Department	VMII Core Server problem	Closed	Problem	CAS-30856-33NOBH			4/21/2011	VideoManager	Had him start the service and he was fine
Greer Police Department	RMA10350 DVM-750: No audio	Received	RMA - Replace	CAS-30500-B528HB	01E4-034B	DVM750 VERSION 2 MIRROR ONLY	4/14/2011	DVM-750	System records no audio from internal mic or remote mic. Tried playing audio on both mirror and computer. Green light illuminates on mirror and record light activates on remote mic, but no audio is captured on videos.
Greer Police Department	Needs Big ball mount	Closed	RMA - Replace	CAS-29544-YWKX5V		Bracket, DVM750 Replacement Magna Mount	3/24/2011	DVM-750	We sent the customer a replacement mirror, it has the new back for the big ball mount. He has the old mount. Needs the big ball mount.
Greer Police Department	RMA9787 DVM: Front facing camera has no image	Received	RMA - Replace	CAS-29539-LXZ6ZY	CB10-0132	750 Camera	3/24/2011	DVM-750	Per Don, They have a camera that has went out CB10-0132 it will not bring up an image, I had they change out the wire from mirror to the camera. The new wire did not bring up an image, after they changed out the camera they had an image.
Greer Police Department	RMA9529 DVM: No internal camera found	Approved by RMA Coordinator	RMA - Replace	CAS-29214-DX9NHW	01E4-04B1	DVM750 VERSION 2 MIRROR ONLY	3/15/2011	DVM-750	Jason updated their mirror to 1503 and the internal camera now doesn't work. They had just recorded a video earlier in the day that had internal camera. Can't back the camera down in firmware and have it work, also, pulling the fuses and resetting the mirror don't work either, the internal camera is just out.
Greer Police Department	RMA9530 DVM: Radar cables not working	Received	RMA - Replace	CAS-29200-KWR2K2		Radar Interface Cable, Kustom	3/15/2011	DVM-750	Customer has *2* Kustom GEII cables that aren't working with their systems. Jason at ITS is onsite and we went through all of the setup and neither one of the cables they have are registering with their GEIIs. Please send 2 replacement cables

Greer Police Department	RMA9048 DVM750: Mirror not shutting down	Received	RMA - Replace	CAS-28418-8NZ3X2	01E4-0DFD	DVM750 VERSION 2 MIRROR ONLY	3/1/2011	DVM-750	Ignition shutdown was enabled, they must have their wiring setup with blue on a hot wire because even with the car off and the door open the mirror would not shut down. As soon as we turned that off the mirror powered down 3/1/11 - Rick - Customer called back in and the mirror is still doing the same thing. It sounds like the wiring is incorrect and we must have sent them an ignition power up enabled mirror. ***Please replace without ignition power up.***
Greer Police Department	DVM: Mirror not shutting down	Closed	Problem	CAS-28337-9C1Q8C			2/28/2011	DVM-750	Ignition shutdown was enabled, they must have their wiring setup with blue on a hot wire because even with the car off and the door open the mirror would not shut down. As soon as we turned that off the mirror powered down
Greer Police Department	Needs Big Ball Mount	Closed	RMA - Replace	CAS-27692-XRNSR4		Bracket, DVM750 Replacement Magna Mount	2/16/2011	DVM-750	Customer received a replacement 750, it has the new style back, they have old style mounts. They need a big ball mount
Greer Police Department	RMA8667 DATA RECOVERY	Received	RMA - Repair - Under Warranty	CAS-27687-XN16HT		8 GB Compact Flash Card With Version 5	2/16/2011	DVM-750	DATA RECOVERY: Customer states that he has been having persistent problems with his system, he has lost multiple DUI's in the past because of camera problems. He said he believes there are 2 DUI's on this card and he's not sure what else is on the officers card. He does not have more specific info about the videos. He said most of the videos on the card appear to be ok, but on the 2 DUI's, he was told that the camera locked up. Video will likely show officer conducting field sobriety tests. Caller just wants to see if they can be recovered.

Def. # 1
94878FG

No. 8014 P. 4/8

Greer Police Department	DVM-750: Persistent Problems	Closed	Problem	CAS-27587-Q091V1		DVM750 VERSION 2 MIRROR ONLY	2/14/2011	DVM-750	Caller (Jim Williams) stated that they have been having persistent issues in two of their vehicles (P55 and P56) since they were installed over a year ago. He stated that they are having persistent issues in these 2 cars with mirrors locking up and green screen issues. He stated that 1 of these cars is on it's 4th mirror and has had the I/O box replaced and the CF card replaced, problem persists. We have also sent them the RFI chokes and V2 mirrors. He said the rest of their 12 cars are working fine except for these 2 vehicles. He said he just lost 2 DUI's on the latest cf card and has now lost a total of 9 DUI's because of camera malfunctions. He said they have talked to ITS about sending out a tech to look at the system, but they were told they would have to pay for a service call and didn't feel they should have to pay since the problems were present since day 1. Customer would like someone to come out and identify and fix the problem. Notified Larry Dado who will be contacting ITS. UPDATE: 2/16/2011 - LD spoke with Officer Jim Williams @ Greer. I advised that since ITS did not install the unit, they would be willing to come onsite... however... they would charge to do
Greer Police Department	VMI Upload problem	Closed	Problem	CAS-27157-FWJY06			2/3/2011	VideoManager	Got another VMI error because his HD wasn't found on the machine again.
Greer Police Department	Order: 2 Transcend 8 GB CF Cards	Closed	Order	CAS-27007-14QZGK		8 GB Compact Flash Card With Version 5	1/28/2011	DVM-750	Wants to order 2 Transcend (not secured) CF Cards for the DVM-750. Bill the department, attn: Chris Varney.
Greer Police Department	Wiring harness: cable may be pinched	Closed	RMA - Replace	CAS-27006-3WWJ6C		Cable Set for DVM550/750	1/28/2011	DVM-750	Have replaced everything else in this car. Only thing left that may be the problem is the wiring harness. The cable may be pinched or shorted out.
Greer Police Department	DVM: Intermittent video loss/black screen	Waiting for Customer	RMA - Replace	CAS-26694-BSRGH7	doesn't have	DVM750 VERSION 2 MIRROR ONLY	1/20/2011	DVM-750	Driving down the road the video feed will all of the sudden go black. He says he still has the metadata on the screen. I asked him to try to switch to the internal cam when he sees that to see if he gets video that way. he is going to call me back with the results and serial number. If he gets internal camera, we need to replace the front facing camera and cable, if he doesn't get anything we need to replace the mirror with a V2 mirror. He will call back with the serial number ****Please send main wiring harness as well 008-01287-00
Greer Police Department	RMA7991 DVM: Green screen	Received	RMA - Replace	CAS-26691-SDB7LH	01E4-0523	DVM750 VERSION 2 MIRROR ONLY	1/20/2011	DVM-750	Green screen continues. Customer was told by Brent Hutchinson that they needed the industrial CF Cards. They got those from ITS and the problem still continues. Officer says they have had problems like this from day 1. Replacing mirror again with V2 RFI hardened mirror. I am not sure if this will fix it, but they have done everything else.

3:37PM

May. 2. 2012

Greer Police Department	VMII Upload errors	Closed	Problem	CAS-26306-78N56P			1/12/2011	VideoManager	External HD was missing causing errors when they try to upload 1/12/11 - Rick - Customer called back in with upload problem. Changed stream url to local path from network path. Fixed problem. 1/26/11 - CCM - Customer said that he got an error when trying to upload. The source for uploading was the E drive, which is their external hard drive that they save videos to. I changed it to the J drive, their CF card, and it worked fine.
Greer Police Department	RMA6702 - IO Box: Went bad	Approved by RMA Coordinator	RMA - Replace	CAS-24922-JGKMVV		G-Forced Interface Box	11/30/2010	DVM-750	Per Don, something something something IO Box
Greer Police Department	VMII Update	Closed	Problem	CAS-24708-BL4SG7			11/23/2010	VideoManager	Updated his VMII to 2211
Greer Police Department	RMA6523 Camera: No video	Received	RMA - Replace	CAS-24629-Y5XJ3N	CB10-029E	750 Camera	11/19/2010	DVM-750	No video coming from front facing camera. Swapped front camera, resolved problem. *****ALSO SEND A 008-01273-00 FRONT CAMERA CABLE*****
Greer Police Department	RMA6524 DVM: Screen problems	Received	RMA - Replace	CAS-24628-90MJHK	01F4-5476	DVM500 Mirror Only	11/19/2010	DVM-500	Mirror has a white screen with lines on it. They have tried flashing the firmware. Brent with ITS believes it is a bad screen.
Greer Police Department	DVM: White screen	Closed	Problem	CAS-24625-VTX69D	01E4-0762		11/19/2010	OVM-750	Mirror has a reoccurring white screen. They were not sure if they had reflashed the mirror previously or it just went away on it's own. They reflashed the mirror this time and will notify us if it comes back. Waiting to see if the issue is resolved. ☺
Greer Police Department	DVM: Keeps Dying	Closed	Problem	CAS-24624-769KHX	01E4-0523		11/19/2010	DVM-750	Mirror keeps immediately dying when driving around. Installer checked all connections and all appear to be good. Asked customer to swap mirror heads between vehicles to see if problem follows the mirror or stays with the car.
Greer Police Department	DVM: White screen	Closed	Problem	CAS-24623-6LJLJN	01E4-076C		11/19/2010	DVM-750	Mirror had white screen. Re-flashed, fixed problem. Wanted note made. Waiting to see if the problem comes back.

Greer Police Department	RMA6337 : 11 CF cards	Received	RMA - Replace	CAS-24338-TFWBMP		8 GB Compact Flash Card With Version 5	11/15/2010	Miscellaneous Parts	Talk to me about this. Could you please send them 10 - Transcend 8 GB Cf card's (part # 200-08004-00) From: Don Graden (mailto:dgraden@itssales.com) Sent: Friday, November 12, 2010 3:13 PM To: support Subject: RE: test it locks up when going down the road, at a stop sign.....and even just sitting still. Now this is not just one it is about seven of them at this point, I have Chris Simans going up next week because of this. I would like to have new CF cards there when he arrives so that we can make sure he has all options covered. We are taking some I/O boxes with us and other piece for the 750 to make this a onetime trip, we are just not sure what they have going on at this time. Sincerely, Don Graden dgraden@itssales.com www.itssales.com Hour 8:30 - 4:30 pm Monday - Friday Office: 770-307-1467 Cell: 678-787-1732 Fax : 678-919-1087
Greer Police Department	Replace: RMT Antenna	Closed	RMA - Replace	CAS-22405-J20J2Y		ANTENNA 916 MHz RA 1/4 WAVE RPSMA	9/23/2010	DVM-750	Replace: RMT Antenna at n/c Customer sent antenna in with DVM by mistake
Greer Police Department	Replace: Big Ball Mirror Mount	Closed	RMA - Replace	CAS-22195-HXHL9D		Bracket, DVM750 Replacement Magne Mount	9/20/2010	DVM-750	Replace: Big Ball Mirror Mount - customer was sent a replacement mirror with newer style casing for the big ball mount
Greer Police Department	RMA4789 - I/O Box: Curtain effect	Received	RMA - Replace	CAS-21743-6YKKSJ	IFA90527060	G-Forced Interface Box	9/9/2010	DVM-750	I/O Box: Curtain effect when system is powered on
Greer Police Department	RMA4788 - OVM-750: Curtain effect	Received	RMA - Replace	CAS-21742-XX8KTK	01E4-0755	DVM750 VERSION 2 MIRROR ONLY	9/9/2010	DVM-750	DVM-750: Curtain effect when system is powered on
Greer Police Department	VM: External drive missing	Closed	Problem	CAS-21294-HP20Z1			9/1/2010	VideoManager	Had him unplug and replug in his external drive, it showed back up and he could upload fine
Greer Police Department	RMA3832 OVM: Green screen bootup	Received	RMA - Replace	CAS-19679-GYB7WS	01E4-0921	DVM750 VERSION 2 MIRROR ONLY	7/23/2010	DVM-750	Green screen on bootup, this was a replacement that we sent a week or so ago and as soon as he plugged it in it came up with a green screen. *****Please send cableset for 750 008-0016-00 *****Please send main vehicle wiring 008-01287-00
Greer Police Department	RMA3832 DVM: Won't power on	Received	RMA - Replace	CAS-19678-2YFLBF	01E4-0741	DVM750 VERSION 2 MIRROR ONLY	7/23/2010	DVM-750	DVM has not been powering on for a few days now, switched it to a different car still wouldn't power on. Another mirror in that car powered on fine, please send a replacement
Greer Police Department	Needs mic antenna	Closed	RMA - Replace	CAS-19376-0G5XJL		ANTENNA 916 MHz RA 1/4 WAVE RPSMA	7/16/2010	DVM-750	Customer received replacement mirror, shipped back old one, did not get antenna off old one before shipping back. Needs rubber duck antenna.

Greer Police Department	RMA3490 RMT: No audio from mic	Received	RMA - Replace	CAS-18953-WLPK49	RT08031559	Wireless, 900 MHz Microphone	7/8/2010	DVM-500	No audio coming from the mic ***Please send 4 replacement belt clips 004-0011
Greer Police Department	RMA3440 DVM: RFI Issues	Received	RMA - Replace	CAS-18857-BS3Q0C	01E4-0535	DVM750 VERSION 2 MIRROR ONLY	7/6/2010	DVM-750	Customer having problems with mirror locking up and video looking neon green on playback.
Greer Police Department	RMA2980 - I/O: Power Problems	Received	RMA - Replace	CAS-18006-3YMSKZ	103309430055	G-Forced Interface Box	6/17/2010	DVM-750	Mirror kept having screen problems then suddenly loosing power. Checked wiring, tried reselling, problem persisted. Swapped mirror into another vehicle, mirror worked fine. Checked main cable to I/O box, looks fine.
Greer Police Department	I/O: power trouble	Closed	RMA - Replace	CAS-17841-2NQWQL	103309430055	G-Forced Interface Box	6/14/2010	DVM-750	Cust having trouble keeping the system to stay powered on. ****Customer switched out IO Boxes with another working car, still has the same issues, is going to check the wiring and give me a call back and check the mirror if that doesn't work
Greer Police Department	RMA1229 DVM-750: Powers up to a blue/green screen	Received	RMA - Replace	CAS-18674-764WVK	01E4-0589	DVM750 VERSION 2 MIRROR ONLY	5/12/2010	DVM-750	DVM-750: Powers up to a blue/green screen, then the monitor has wavy lines on it.
Greer Police Department	Rm1613 RMT: not working	Received	RMA - Replace	CAS-16396-XNCC8B	RT08091296	Wireless, 900 MHz Microphone	5/5/2010	OVM-500	mic not working ****please also send (1) car charging kit 001-0902 ****
Greer Police Department	VM 1 and 2 questions	Closed	Problem	CAS-15897-7FBMDJ			4/23/2010	VideoManager	Video manager 2 had been switched to an external HD, file service had not been restarted so it was not uploading to that location yet. Video Manager 1 had not been changed to that location, so we changed that over as well
Greer Police Department	DVM: no sync	Received	RMA - Replace	CAS-14231-JS13DG	01E4-0121	MIRROR ASY (DVM750-00-1) V2	3/12/2010	DVM-750	This mirror will not go into sync mode. Plus it is old as shit.
Greer Police Department	Uploading Issues	In Progress		CAS-14088-Q3HNGK			3/9/2010	DVM-750	Issues uploading from the CF Card to the computer. Every single time that they try to upload from this one vehicle, it gives an error message (File was not uploaded. An unknown exception caught). Each time this occurs, DA Tech Support has to remote in and fix the issue.
Greer Police Department	RMT: will not sync	Received	RMA - Replace	CAS-10818-C3F8W8	RT08031707	Wireless, 900 MHz Microphone	11/11/2009	DVM-500	RMT will not sync with any working DVM
Greer Police Department	DVM: Blown Speaker	Received	RMA - Replace	CAS-10408-5Y57QF	01F4-3B16	DVM500 Minor Only	10/28/2009	DVM-500	Customer says that when he uploads video he has sound but not on mirror. Customer also states that he is able to activate the mirror with the RMT unit

Greer Police Department	DVM: Missing Hardware kit	Closed	RMA - Replace	CAS-7515-F4ZJYC		DVM Drop Mirror Mount Assembly (w/Lanyard) for 750	7/21/2009	DVM-750	Per David @ ITS: Dept missing set screws for two systems for stabilizer bracket. Please send screw/hardware kit for mirror mount. ***Not sure if this has a part number so added mount for 500+750, please send two*** REP8615
Greer Police Department	RMA1864 RMT: Will not stop recording when manually hold transmit	Received	RMA - Replace	CAS-7352-G9Q8JZ	0640-010B	VoiceVault Wireless Mic, 900 MHz	7/14/2009	DVM-750	RMT will not stop a recording when transmit button is pressed. Tried a resync and problem persists. Reset factory defaults as well. REP8489
Greer Police Department	Initializing CF Card	Closed	RMA - Replace	CAS-1118-MF0FQK	01F4-3C47	DVM500 Mirror	7/16/2008	DVM-500	DVM displays "Initializing CF Card" when powered on. They have checked the pins in the DVM and they appear to be fine. They have also tried to reflash the DVM. Greer PD has only had this unit for about 2 weeks. Please send a replacement to them via Next Day. REP3530



Greer Police Department

101 W. Poinsett Street
Greer, South Carolina 29687
Phone (864) 848-2155



Affidavit For Failure to Produce Videotape

Defendant's Name SHAWN HUMBLE Case Number 11-00332

I. From the vehicle I was operating because:

- A. At the time of the defendant's arrest the vehicle I was operating had not yet been equipped with videotaping device and therefore pursuant to Section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding vehicles is not applicable.
- B. At the time of the defendant's arrest or probable cause determination, the video equipment in the vehicle I was operating was in inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition.
- C. It was physically impossible to produce a videotape, from the vehicle I was operating, of the defendant at the time of the arrest or probable cause determination because:
 - The defendant needed emergency medical treatment, or
 - Exigent circumstances existed which are outlined below:
- Other _____

II. From the breath testing site because:

- A. At the time of the defendant's arrest the breath testing site had not yet been equipped with a video taping device and therefore pursuant to Section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding breath testing sites is not applicable.
- B. At the time of the defendant's arrest or probable cause determination, the video equipment at the breath testing site was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition and there was no other operable breath testing facility in the county. Operable breath test facility means a site with both an operable breath testing machine and operable videotaping equipment.
- C. It was physically impossible to produce a videotape, from the breath testing site, of the defendant because:
 - The defendant needed emergency medical treatment, or
 - Exigent circumstances existed which are outlined below:
- Other _____

[Signature] Signature of Officer James C. Williams Print Officers Name 2-25-11 Date

Sworn before me this 25 day of Feb 2011

[Signature] NOTARY PUBLIC FOR SOUTH CAROLINA FRANK C. KORNWORTH Print Notary Name [Signature] My Commission Expires

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 City of Greer,)
)
 Plaintiff,)
)
 vs.)
)
 Shawn Humble,)
)
 Defendant.)

IN THE MUNICIPAL COURT
 THIRTEENTH JUDICIAL CIRCUIT

(Warrant No: 94878FG)
 RETURN

Date of Hearing: June 16, 2011
Presiding Judge: Henry J. Mims
Prosecutor: Kenneth Jay Anthony
Counsel for Defendant: Randall Hiller
Witness: Greer Police Officer Jim Williams

This case was scheduled for jury trial before me. Defendant was charged with driving under the influence. At the call of the case, defense counsel withdrew Defendant's request for jury trial and advised the Court he had a Motion.

Defendant then made a Motion to Dismiss. He argued the City had violated §56-5-2953 in that there was no video of the incident site and the Officer's Affidavit was insufficient. I agreed and after testimony was taken, dismissed the case. The City appealed.

§56-5-2953 requires video recording at the incident site of a DUI arrest. Subsection (B) reads in part:

"Failure by the arresting office to produce the video recording required by the section is not alone a ground for dismissal [of a DUI charge] if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest... was in an inoperable condition [and] stating which reasonable efforts have been made to maintain the equipment in an operable condition..." (Emphasis added)

At some point in response to the statute, the Greer Police Department developed a form titled *Affidavit for Failure to Produce Videotape*. §1.B. of the Affidavit says, "At the time of the defendant's arrest, or probable cause determination, the video equipment in the vehicle I was operating was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition." The Affidavit does not say which reasonable steps (or "efforts") were taken.

The City conceded the Affidavit alone was deficient in that it does not say which steps were taken and asked that the Affidavit be supplemented by live testimony. Over Defendant's objection, the arresting Officer Jim Williams was sworn in.

He testified there had been on-going problems with the camera in his car. The camera system used by the City of Greer has an eight gigabyte memory card and is built into the car mirror. When the camera malfunctions, there is no warning. Moreover, there is no real-time indication of malfunction. The Officer thinks he has a full recording until he attempts to upload the images from the data card.

Officer Williams testified further that whenever there was a problem, they called the manufacturer right away. It was clear the City reacts quickly to each malfunction. It was equally clear, the City only reacts.

Introduced as Defendant's Exhibit #1, was what was referred to as a "Maintenance Log". It actually was more of a complaint/problem activity log. There was nothing presented to me showing any steps being taken to keep the cameras operable. There was nothing presented to me indicating the system is maintenance free, and therefore in need of no maintenance.

The City may not have known the precise cause of the problem; but the City knew of an

on-going problem, specifically with the camera in the vehicle at the incident site. I found that to be unreasonable.

On the activity log (Defendant's #1), there is a comments section. One entry is dated February 14, 2011, ten days before the arrest date. The testimony and the log indicate that the entry refers to the vehicle involved here. The complaint was made by the arresting officer involved here.

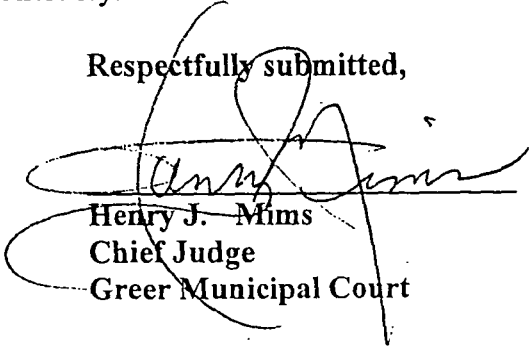
The comment quotes Officer Williams as saying the cameras in the other police cars are working fine, except for his and one other. He says the problems in the two vehicles have persisted for over a year. He asked the manufacturer to send someone out to find and fix the problem. The log indicates the City did not wish to pay for the on-site visit. The visit did not occur. I found that unreasonable.

Based on the testimony, the only checks made on this defective unit would occur only after an actual arrest. I found that unreasonable.

Conclusion-

The City decides how and where to expend its resources. But where as here, an intermitting camera is allowed on the road, I found no reasonable steps were shown to have been taken to keep the equipment in operable condition. The Affidavit was deficient on its face, and the supplemental testimony did not cure the deficiency.

Respectfully submitted,



Henry J. Mims
Chief Judge
Greer Municipal Court

November 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2304392

REC'D - CLERK OF COURT
GREENVILLE CO, S.C.
JAN - 9 PM 2: 12

Greer City Of vs. Shawn P Humble

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard a decision rendered.

- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____

- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 9th day of January, 2012.

Court Reporter:

PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the 9th day of January, 2012, and a copy mailed first class this 9th day of January, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

K Jay Anthony Love Thornton Arnold & Thomason
P.O. Box 10045 Greenville, SC 29603

Randall Scott Hiller Po Box 1716 850-B Wade
Hampton Blvd Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 City of Greer,)
)
 Appellant,)
)
 v.)
)
 Shawn P. Humble,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-23-4392

ORDER

2012 JAN -9 PM 2:12
 THE CLERK OF COURT
 GREENVILLE CO. S.C.
 101 S. BROADWAY
 GREENVILLE, S.C. 29601

Defendant Shawn P. Humble was arrested and charged with Driving Under the Influence (Ticket No. 94878 FG). Prior to trial, the Defendant moved for dismissal of the charge based on the alleged failure of the Respondent, City of Greer, to comply with the videotape requirements of S.C. Code Ann. § 56-5-2953. After hearing arguments on the motion, the Municipal Court granted Defendant's motion to dismiss. The City filed a Notice of Intent to Appeal and the matter was heard before the Court on December 15, 2011. Present before the Court was Jay Anthony, counsel for the City of Greer, and Randall S. Hiller, counsel for Shawn P. Humble. After considering the Notice of Appeal and Return and hearing arguments of counsel, the Court finds that the Municipal Court construed the requirements of § 56-5-2953 too narrowly, and reverses the dismissal.

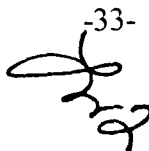
FACTS

As the result of an investigation of a traffic accident that took place in the late evening hours of February 25, 2011 and the early morning hours of February 26, 2011 in the City of Greer, South Carolina, Defendant Shawn Humble was charged with Driving Under the Influence. Defendant's case was called for trial on June 16, 2011. Prior to the trial, Defendant's

counsel, Randall S. Hiller, moved that the court dismiss the charge on the basis that the City had failed to comply with the requirements of S.C. Code Ann. § 56-5-2953(A).

S.C. Code Ann. § 56-5-2953(A) requires that “[a] person who violates section 56-5-2930 . . . must have his conduct at the incident site . . . video recorded.” S.C. Code Ann. § 56-5-2053(A) (2011). Subsection (B) of the same section provides, in relevant part, “[f]ailure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930 . . . if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination . . . was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition” S.C. Code Ann. § 56-5-2953(B) (2011).

The City provided an affidavit from the arresting officer, Officer Jim Williams, stating that “[a]t the time of the defendant’s arrest or probable cause determination, the video equipment in the vehicle I was operating was in inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition.” At the hearing, the City was allowed to supplement the affidavit with sworn testimony from the officer. In his testimony, Officer Williams testified that he responded to a report of an accident on February 25, 2011. Officer Williams testified that the car he was operating was equipped with a camera and, as usual, he logged into the system and an image from the camera appeared on the screen, which led him to believe the system was working properly. The officer then activated his blue lights which he believed caused the camera to automatically begin recording, as it was programmed to do. At the scene, Officer Williams made contact with the Defendant and performed field sobriety tests. Later, when he attempted to upload the video, the system displayed an error message and the



video was not available. The video system did not record any part of his encounter with the Defendant.

Officer Williams testified that he has sometimes had such problems with the camera systems on patrol vehicles. These problems manifested themselves when he routinely uploaded videos from his in-car unit to the City's system. When videos failed to upload or exhibited problems, he or another representative of the City of Greer Police Department contacted Digital Ally, which services the City's in-car cameras. Officer Williams explained that Digital Ally either instructed the City as to a remedy or replaced a part. The officer stated that every time he discovered a problem with the camera system, he attempted to remedy the problem.

Officer Williams was given a document to review on the stand, Defendant's Exhibit 1, which he identified as a log of complaints reported to Digital Ally and the company's remedies. He agreed that this document reflected the reasonable efforts taken by the Greer Police Department to maintain the in-car cameras on its vehicles in operable condition. Specifically, Officer Williams testified as to one particular entry which he said reflected that he had contacted Digital Ally at least a dozen times based on problems with his car. The document reflects that Officer Williams changed out the unit in one car four times.

Following the testimony of Officer Williams, the Municipal Court determined that the statute was not satisfied. The Court stated that while Officer Williams testified as to the department's reaction to problems that arise with the equipment, no testimony was offered to show which reasonable efforts were made to maintain the equipment in an operable condition, which the Court viewed as a separate issue. The Court stated that the department reacting to problems was "not the same thing as having, for example, a maintenance schedule or routine schedule." Consequently, the Court dismissed the DUI charge against the Defendant.

STANDARD OF REVIEW

“In criminal appeals from magistrate or municipal court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception.” State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 505 (Ct. App. 2004).

DISCUSSION

The cardinal rule of statutory interpretation is to determine the intent of the Legislature. See State v. Sweat, 379 S.C. 367, 374, 665 S.E.2d 645, 649 (Ct. App. 2008) aff'd as modified, 386 S.C. 339, 688 S.E.2d 569 (2010). The Legislature's intent should be ascertained primarily from the plain language of the statute. See State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004).

The Court finds that the Municipal Court construed the language of § 56-5-2953 too narrowly. The plain language of the statute requires only that the City state “which reasonable efforts have been made to maintain the equipment in an operable condition” Nowhere in the statute does the Legislature require that the City conduct routine or scheduled maintenance. Had the Legislature intended that the City make such efforts, it could have said so.

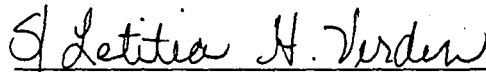
Moreover, given the issue addressed by the statute, the Court finds no reason to read a requirement for routine or scheduled maintenance into the language. A videocamera is, in essence, a computer, and by common knowledge does not require regular maintenance as is required for an automobile. Each time the officer attempts to upload a video, whether successful or not, this constitutes a check on the system. The Court finds that the City's system of

promptly reacting to unsuccessful uploads constitutes *reasonable* efforts to maintain the system in an operable condition.¹

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The decision of the Municipal Court dismissing the charge of Driving Under the Influence (Ticket No. 94878 FG) against Defendant is hereby reversed; and
2. The case is remanded for further proceedings consistent with this opinion.

IT IS SO ORDERED.

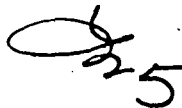


The Honorable Letitia H. Verdin
Circuit Court Judge – Thirteenth Judicial Circuit

Greenville, South Carolina

Jan. 5th, 2012

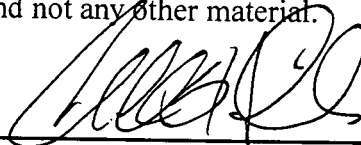
¹ At the pre-trial hearing, though the Municipal Court concluded the City's system of reaction did not comply with the statute, the Court acknowledged that the City "rather quickly" addressed problems with the video system.



Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July _____, 2012



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellant

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia Verdin, Circuit Court Judge

Case No. 2011-CP-23-04392

RECEIVED

JUL 25 2012

SC Court of Appeals

City of Greer,

Respondent,

v.

Shawn P. Humble,

Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief and Record on Appeal on the City of Greer by depositing a copy of it in the United States Mail, postage prepaid, on July 23, 2012, addressed to his attorney of record, Dan Hughes, Esq., P.O. Box 449, Greer, SC 29652.

July 23, 2012



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellant

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW

850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER
EMAIL: rsh@rshpa.org

(864) 232-0026
FAX (864) 242-4692

July 23, 2012

SC Court of Appeals
Attn: Clerk
1015 Sumter St.
Columbia, SC 29201

RECEIVED

JUL 25 2012

Re: Shawn Humble (Appellant) v. City of Greer (Respondent)
C.A. No.: 2011-CP-23-04392

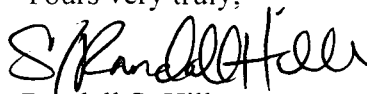
SC Court of Appeals

Dear Clerk:

Please find enclosed 15 copies of Appellant's Final Brief and 15 copies of the Record on Appeal in the above matter. I have enclosed an extra copy of the Brief and ask that you return it to our office marked "filed" in the envelope provided.

By copy of this letter I am providing opposing counsel with same.

Yours very truly,


Randall S. Hiller

RSH/ak

Enclosures.

Cc: Daniel R. Hughes, Esq.