

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia Verdin, Circuit Court Judge

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Case No. 2011-CP-23-04392

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City of Greer,

Respondent,

v.

Shawn P. Humble,

Appellant.

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Final Brief of Appellant

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**SC Court of Appeals**

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## EXCEPTIONS

1. The Circuit Court erred in reversing the decision of the Municipal Court dismissing the driving under the influence charge the error being that the affidavit required by Section 56-5-2953 *South Carolina Code of Laws* is deficient on its face.

2. The Circuit Court erred in reversing the decision of the Municipal Court dismissing the driving under the influence charge the error being the Circuit Court ignored the factual finding of the Municipal Court that the efforts of the Respondent under the facts of this case were not reasonable.

## STATEMENT OF CASE

On March 24, 2011 Appellant was arrested for driving under the influence. In response to discovery requests pursuant to S.C.R.C.P. Rule 5 Respondent submitted an affidavit which stated in pertinent part, "affidavit for failure to produce video tape from the vehicle I was operating because 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."

On June 16, 2011 the Municipal Court heard a motion to dismiss filed by the Defendant/Appellant that the City had violated Section 56-5-2953 *South Carolina Code of Laws* and that there was no video of the stop, arrest, Miranda warnings or field sobriety tests and that the officer's affidavit was insufficient. The Municipal Court granted the motion and the City timely appealed to the Circuit Court on July 1, 2011.

A hearing was held before the Honorable Letitia Verdin on December 15, 2011 in which the Circuit Court reversed the decision of the Municipal Court by Order dated January 5, 2012.

Appellant timely filed a motion to alter or amend on January 13, 2012 which was denied by Order of the Circuit Court filed January 20, 2012. This appeal timely followed.

### **FACTS**

On February 26, 2011 Officer Kellett of the City of Greer responded to a single vehicle accident and subsequently issued a ticket to the Appellant for driving under the influence, first offense.

On February 25, 2011, the day before the accident, Officer Kellett executed an affidavit for failure to produce video tape where he had checked a box stating, "the video equipment in the vehicle I was operating was in inoperable condition and reasonable efforts have been made to maintain the equipment in operable condition."

Appellant moved to dismiss the charge for failure to video tape the arrest, reading of Miranda warnings and failure to video tape the field sobriety test as required pursuant to Section 56-5-2953 *South Carolina Code of Laws*. Prior to the hearing Appellant subpoenaed the maintenance records for the vehicle being operated by Officer Kellett.

The maintenance records reflected that on February 14, 2011, ten days before the arrest date, the vehicle in questions video recording equipment was reported as malfunctioning to the manufacturer. The records further reflected that the manufacturer advised the Department that the service call would not be pursuant to warranty and that the City of Greer refused to pay for an on site visit to repair the video equipment.

### **ARGUMENTS**

**I. THE CIRCUIT COURT ERRED IN REVERSING THE DECISION OF THE MUNICIPAL COURT DISMISSING THE DRIVING UNDER THE INFLUENCE**

**CHARGE THE ERROR BEING THAT THE AFFIDAVIT REQUIRED BY SECTION 56-5-2953 SOUTH CAROLINA CODE OF LAWS IS DEFICIENT ON ITS FACE.**

Both the Circuit Court and the Municipal Court found that the affidavit submitted pursuant to Section 56-5-2953 was deficient on its face.

There being no exception or statutory procedure for the supplementation of the affidavit by further testimony, dismissal of the underlying charge was mandatory and the decision of the Circuit Court should be reversed.

**II. THE CIRCUIT COURT ERRED IN REVERSING THE DECISION OF THE MUNICIPAL COURT DISMISSING THE DRIVING UNDER THE INFLUENCE CHARGE THE ERROR BEING THE CIRCUIT COURT IGNORED THE FACTUAL FINDING OF THE MUNICIPAL COURT THAT THE EFFORTS OF THE DEFECTS OF THIS CASE WERE NOT REASONABLE.**

Even assuming, arguendo, that supplementation by oral testimony of the affidavit required when a video tape cannot be produced pursuant to Section 56-5-2953 is appropriate, the facts here clearly and obviously reflect that the efforts made to maintain the equipment were unreasonable.

The sole issue is whether "reasonable efforts had been made to maintain the equipment in operable condition". Under the specific facts of this case the evidence was uncontroverted that the video camera had malfunctioned ten days prior to this incident, the officer and the City were aware of the malfunction, the officer had reported the malfunction to the manufacturer, the manufacturer had agreed to send a service man to repair the equipment but the City was unwilling to bear the cost of doing so. Under these facts allowing the City to knowingly utilize vehicles with malfunctioning video equipment is the equivalent of a town consciously refusing to

install video cameras in the first instance and which was found to violate 56-5-2953 in the case of Town of Mt. Pleasant v. Treva Roberts, 713 S.E.2d 278 (2011).

The trial court's order ignores the actual facts of the case and discusses "routine maintenance" as being the basis of the lower court's order when the lower court specifically found that having notice that the equipment was defective, contacting the manufacturer and then refusing to pay the cost of having a technician come fix it were unreasonable. Remarkably, even though preventative maintenance was not the basis for the ruling, the Circuit Court read "which reasonable efforts had been made to maintain the equipment in an operable condition" as not requiring maintenance. Had the legislature intended the statute to say what the trial court ultimately determined it said then the only language necessary would have been that the arresting officer sign an affidavit stating the video equipment was not working. For more express reasons than that found in Mt. Pleasant, the legislature went beyond excusing the lack of a video tape solely because the equipment wasn't working and required an explanation of what reasonable efforts had been made to maintain the equipment in an operable condition.

The Municipal Judge's determination that no form of preventative or other maintenance was performed to reasonably insure the operation of the equipment and comply with the clear intent of the statute that video tapes be made of all such arrests is sufficient to support his decision. However, as previously stated, it is not necessary to reach that conclusion in order to sustain his factual findings regarding the actual maintenance of this video equipment, in this car, on this date in question. This equipment was not functional, the officer knew the equipment was not functional when he got in the vehicle to go to the accident site and, but for not being willing to pay for a service visit, it would have been functional. If that type of factual scenario is not a

violation of the video taping requirements then the requirements and rationale of Mt. Pleasant may be avoided by simply placing nonworking equipment in all police vehicles.

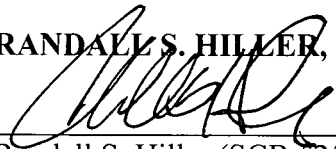
The construction of the statute in question by the Circuit Court does the exact opposite of what the Court declared in its Order it was to do. “The cardinal rule of statutory interpretation is to determine the intent of the legislature, See State vs. Sweat, 379 S.C. 367, 374, 665 S.C.2d 645, 649 (Ct.App. 2008) Affirmed as modified, 386 S.C. 339, 688 S.C.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.C.2d 503, 505 (Ct.App. 2004).” Here the decision of the Circuit Court is to completely remove from the statute the words “stating which reasonable efforts had been made to maintain the equipment in an operable condition”. Reasonable efforts have to be made, factual determinations as to the reasonable efforts have to be made. In this case the Municipal Court ruled that utilizing a vehicle with a known defective video camera which the City had made a conscious decision not to have repaired did not qualify as a reasonable effort to maintain the equipment.

**CONCLUSION**

The Municipal Court’s finding of fact that the affidavit, even as orally supplemented, reflected unreasonable efforts to maintain the video equipment in an operating condition was a correct interpretation of the law and facts and the Circuit Court’s reversal of that decision must be reversed.

*(signature on following page.)*

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July \_\_\_\_, 2012