

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4600239

Rock Hill City Of	Brenda Stroupe
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (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 and a decision rendered. See Page 2 for additional information.
- 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; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

ORDER:

RECEIVED

NOV 03 2014

This order ends does not end the case.

Additional Information for the Clerk: _____

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/John C. Hayes, 999
Circuit Court Judge

2049
Judge Code

10/7/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on **October 8, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **October 8, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Christopher Edward Barton 201 East Main Street 3Rd Floor
Rock Hill, SC 29730

Christopher A. Wellborn 142 Oakland Avenue Rock Hill,
SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
City of Rock Hill,)
)
Plaintiff/Respondent,)
)
v.)
)
Brenda M. Stroupe,)
)
Defendant/Appellant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-46-00239

ORDER

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

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The City of Rock Hill (the City) requests relief relative to this Court's Order of September 11, 2014, pursuant to Rule 59(e) SCRPC.

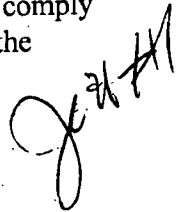
The City timely filed a Motion to Alter or Amend and raised three exceptions therein. This Court will address the exceptions *seriatim*.

First, the City asks the Court to rule specifically why an exigent circumstances and a totality of the circumstances analysis pursuant to Section 56-5-2953(B) is not appropriate in this case.¹ The argument of the City, and by all prosecutors, seems to be that regardless of the failure of the arresting officer to comply with Section 56-5-2953(A) in a driving under the influence case, the prosecutor may proceed on a defective tape² if the Court finds the totality of the circumstances warrant.

The undersigned may be misreading Section 56-5-2953(B). Section 56-5-2953(B) sets forth a set of four exceptions when "production" of the video tape is excused (not grounds for

¹ For reasons more fully set forth at footnote 4, the issue is not preserved for Circuit Court consideration. However, since this is an issue in perpetuity the Court will gratuitously address the issue.

² The word defective seems to be as good as any to signify an existing tape which fails to comply with Section 56-5-2953(A). In *Sawyer, infra*, the Supreme Court speaks of a "defect" in the videotape there at issue and refers to the tape as a "flawed tape."



dismissal). Black's Law Dictionary defines the word "produce," in the definition applicable here as "to bring into existence, to create." (7th Ed., 1969, p. 1225). The American Heritage College dictionary defined the word "produce," for purposes I believe applicable to the statute, as "to create by physical . . . effort, to manufacture; to cause to occur or exist." (4th Ed., 2002, p. 1111).

The above definitions have lead the undersigned to apply the word "produce" as used in Section 56-5-2953(B) as meaning the creation of video tape. Further, the undersigned finds that the 56-5-2953(B) exception does not apply when the arresting officer or breathalyzer officer produces a tape, but the tape fails to comply with Section 56-5-2953(A) (i.e the tape is defective/flawed). If the undersigned's interpretation is incorrect then Section 56-5-2953(A) is neutered.

Pursuant to the language of the statute, the undersigned finds that Section 56-5-2953(B) applies only when a videotape is not produced (i.e., made, created) and does not apply in cases where a video tape is produced and the tape fails to comply with Section 56-5-2953(A) and is therefore defective/flawed.

The City contends that State v. Sawyer³, 2014 WL 42144291 (S. Ct. 2014) "provide that before dismissal is appropriate a court must look to see if an exception provided subsection (B) applies." Sawyer affirmatively does not address the "totality of circumstances" provision of §56-5-2953. This issue was not before the Court. The issue before the court, as stated under the heading "Issue" is, a Section 56-5-2953(A) issue and the majority opinion's last paragraph makes it clear the Court is declining consideration of any 56-5-2953(B) "totality of the circumstances exception."

³ It is interesting to note that in Sawyer the State argued that a videotape was "produced" and that "only video of the individual is necessary to satisfy this statute."

The City presented an affidavit before the lower court in an effort to rely on the exigent circumstances provisions of 5-56-2953(B). However, the lower court did not rule on Section 56-5-2953(B) exception and therefore this issue is not preserved.⁴

Second, the City contends that neither Constitutional or statutory violations are present in this case. However, this Court found that the videotape that was produced did not comply with §56-5-2953(A). Therefore, this case does present a statutory violation. Accordingly, as stated in *City of Rock Hill v. Suchenski* 374 S.C. 12, 646 S.E. 2d 879 (2007), the only remedy for a Section 56-5-2953 violation is dismissal.⁵

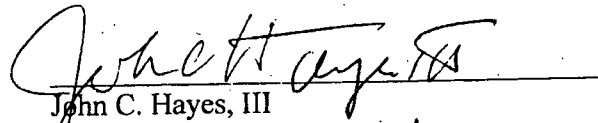
Third, the City alleges that the trial court never made a specific factual finding in the record; and thus, the case should be remanded. However, Judge Lenzi's Order did find that "we can hear the Defendant clearly but cannot see her clearly attempting to perform the Finger Dexterity Test." This finding of fact by the trial judge is a finding of lack of compliance with Section 56-5-2953(A). This is a finding that the videotape was defective/flawed. The trial judge found that despite the lack of compliance Ms. Stroupe's "conduct" during the administration of the three sobriety test was "captured" by one or more video cameras at the scene.

⁴ If the City wished a ruling from the Lower Court on a Section 56-5-2953(B) exception, it could have moved the lower court for reconsideration but it did not.

⁵ Candidly, the Court has been unable to digest this argument although the City raises it regularly.

Wherefore, the City of Rock Hill's Motion to Alter or Amend the Court's September 11, 2014 Order is denied. As observed in Sawyer, supra, the Supreme Court has held that absent a Section 56-5-2953(B) exception strict compliance with Section 56-5-2953(A) is required. [See also City of Rock Hill v. Suchenski, 646 S.E. 2d 879 (Sup. Ct. 2007)]

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge

October 7th
September 7th, 2014
York, South Carolina