

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Marty Baggett, Appellant.

Appellate Case No. 2011-204146

---

Appeal From Williamsburg County  
George C. James, Jr., Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-311  
Heard October 6, 2014 – Filed June 24, 2015

---

**REVERSED**

---

Appellate Defender Susan Barber Hackett, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General William M. Blich, Jr., both of  
Columbia, for Respondent.

---

**PER CURIAM:** Marty Baggett appeals his conviction for felony driving under the influence (DUI), arguing the trial court erred in failing to direct a verdict of acquittal in his favor when the State failed to present evidence of video of his conduct at the incident site. We reverse.

We find the trial court erred in failing to direct a verdict of acquittal on the felony DUI charge. *See* S.C. Code Ann. § 56-5-2953(A) (2006)<sup>1</sup> (requiring video recording of the incident site when a person violates section 56-5-2945 of the South Carolina Code (Supp. 2014), the felony DUI statute); S.C. Code Ann. § 56-5-2953(A)(1)(a) (providing this recording generally must begin no later than the activation of the officer's blue lights; include advisement of *Miranda*<sup>2</sup> rights and any field sobriety tests administered; and conclude after the arrest of a person for a violation of section 56-5-2930 or section 56-5-2933, or a probable cause determination that the person violated section 56-5-2945); S.C. Code Ann. § 56-5-2953(B) (2006) ("[I]n circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the videotape."); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011) (stating the purpose of section 56-5-2953 is to create direct evidence of a DUI arrest); *id.* at 348, 713 S.E.2d at 286 ("[T]he Legislature specifically provided for the dismissal of a DUI charge unless the law enforcement agency can justify its failure to produce a videotape of a DUI arrest."); *id.* at 349, 713 S.E.2d at 286 ("By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance.").

The record contains no evidence to support the trial court's conclusion that the "totality of the circumstances" exception under section 56-5-2953(B) applies. The trial court explained the circumstances at the incident site did not immediately point to a DUI scenario and the law enforcement officers were investigating the

---

<sup>1</sup> Section 56-5-2953 was amended effective February 10, 2009. *See* Act No. 201, 2008 S.C. Acts 1682-85. The amended statute is not applicable to Baggett's March 8, 2007 arrest.

<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

incident as a kidnapping and murder. However, Baggett was charged only with DUI on the night of the incident. Sergeant Ballard testified he charged Baggett with DUI based on the initial investigation of the case that Baggett appeared highly intoxicated and Baggett had admitted to Corporal Stagers that he was driving. Baggett was not charged with murder until a few days later after further investigation. Investigator Boston confirmed the State's inquiry that "at first it was a DUI that kind of morphed into something else." Pursuant to section 56-5-2953(B), law enforcement must begin the videotaping as soon as practicable, which was as soon as law enforcement believed Baggett had been driving while intoxicated. By the time Corporal Stagers first read Baggett his *Miranda* rights, he knew or should have known this was a DUI case and should have begun videotaping the incident site. Accordingly, the trial court erred in denying Baggett's motion to dismiss the charge of felony DUI due to the State's failure to produce a videotaping of the incident site.

**REVERSED.**

**HUFF, SHORT, and KONDUROS, JJ., concur.**