

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Haley Singleton,)
) Appellant,)
 vs.)
)
)
)
 City of Columbia,)
) Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2016-CP-40-1417

ORDER

RECEIVED

MAY 30 2017

SC Court of Appeals

2017 APR -4 PM 5:04
 RICHLAND COUNTY
 FILED
 JEANETTE W. THOMPSON
 C. C. P. & C. J.

This is an appeal from a jury verdict in the Municipal Court for the City of Columbia. hearing was held before the Honorable Robert E. Hood on October 28, 2016, at which the Appellant Haley Singleton (hereinafter "Singleton") was represented by Lowell E. Bernstein and the City of Columbia (hereinafter "City") was represented by Jessica Mangum.

FACTUAL/PROCEDURAL HISTORY

On December 1, 2012, at approximately 3:30 a.m., City of Columbia patrol officer Scott B. Desrochers, Jr. (hereinafter "Officer Desrochers") was dispatched to the scene of a one-vehicle collision. (Trial Tr. 56-57). Shortly before arriving on scene, he activated his blue lights which automatically deployed the patrol vehicle's videotaping device. (Trial Tr. 116-118, 150). Upon arriving on scene, Officer Desrochers began examining the wreckage as part of his investigation while Singleton was being examined by emergency medical services (hereinafter "EMS") inside an ambulance. (Trial Tr. 56-57, 59-66). After EMS released Singleton from their care, Officer Desrochers initially questioned her at the back of the ambulance about the collision, at which time she allegedly admitted to drinking heavily and not having a recollection of the accident. (Motion Tr. 66, 68).

At some point during the course of his investigation, Officer Desrochers moved Singleton to the front of his patrol vehicle and in view of his videotaping device where he continued to question her about the collision. (Trial Tr. 66, 68, 118-120, 126-127). After hearing Singleton give multiple versions of how her vehicle crashed, Officer Desrochers determined that she was the driver. (Trial Tr. 67-74). Based upon Singleton's alleged inconsistent versions of the collision, admission of heavy alcohol consumption, slurred speech, and the strong smell of alcohol emanating from her breath and person, Officer Desrochers concluded that she was grossly intoxicated. (Trial Tr. 67-75). Officer Desrochers placed her under arrest for driving under the influence (hereinafter "DUI") and gave her *Miranda* warnings, all which occurred in front of his patrol vehicle. (Trial Tr. 75, 76, 119-120, 126-127). Due to a foot injury sustained by Singleton, field sobriety tests were not administered. (Trial Tr. 75).

Singleton's conduct, arrest, and the advisement of *Miranda* warnings at the incident site were all recorded by and stored to a video system unit mounted to Officer Desrocher's patrol vehicle which he was able view on a display unit subsequent to her arrest. (Motion Tr. 7, 9-11, 17-18, 24, 27; Trial Tr. 117-121, 126-127). At some point days after Singleton's arrest, he attempted to burn a copy of the incident site footage. However, the video system's internal DVD/CD burner would not permit the hard drive to transfer data onto a separate disc. (Motion Tr. 7, 9-12, 14-17, 27; Trial Tr. 120, 150-51). Thus, on December 3, 2012, Officer Desrochers took his patrol vehicle to Fleet Services, the City's vehicle maintenance department, where they repaired the video system's internal DVD/CD burner by performing a "hard drive boot" and destroying all footage stored in said hard drive, including the incident recording of Singleton. (Motion Tr. 7-14, 17-22, 24-28; Trial Tr. 126-127).

On February 5, 2013, Officer Desrochers prepared and submitted an affidavit asserting:

At the time of 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 camera was recording audio and video at the scene, however, an error occurred which prevented the system from burning the video to the disc. The vehicle was placed in the shop to repair the issue but the system was reset prior to burning the video to the disc. All hard drive footage was erased. (Motion Tr. 7-10; Trial Tr. 122-125).

Recognizing that the affidavit did not state *which reasonable efforts had been taken to maintain the video recording system*, on December 7, 2015, the City produced a revised version which asserted that *"the camera system is checked at the beginning of every shift and was in working order at the beginning of my shift on 11/30/2012. The vehicle and equipment is also regularly maintained by Fleet Services and repaired as needed."* (Id.). At the same time, the City also produced maintenance records for Officer Deroscher's patrol vehicle for the year immediately preceding Singleton's arrest. (Motion Tr. 4, 7-8).

On December 8, 2015, a hearing was held before the Honorable Dana Turner wherein Singleton moved to dismiss the DUI citation on the grounds that 1) the City failed to comply with video recording requirements of S.C. Code Annotated § 56-5-2953(A), and 2) the arresting officer's affidavit did not meet the exceptions enumerated in Section 56-5-2953(B), specifically, the videotaping device being operable at the time of Singleton's arrest. (Motion Tr. 1-6, 28-29).

In response, the City contended that the videotaping equipment was inoperable and that reasonable efforts had been made to maintain the equipment in an operable condition. (Motion Tr. 6-9, 26-28). However, the City acknowledged that the video and audio recording devices were working at the time of arrest. (Id.). The City argued that because the video recording equipment is all connected to one system, any portion that malfunctions makes the entire device inoperable for purposes of Section 56-5-2953(B). (Motion Tr. 6-10, 26-28). The City also

presented Officer Desrochers' two sworn affidavits which it argued were in compliance with Section 56-5-2953(B) and City of Greer v. Humble, 402 S.C. 609, 742 S.E.2d 15 (Ct.App. 2013). (Motion Tr. 6-10). The City also proffered testimony from Officer Desrochers and Edgar Huestess (hereinafter "Huestess"), the City's vehicle maintenance superintendent. (Motion Tr. 10-25).

According to Officer Desrochers, the video system recorded audio and video footage, and he was able to watch the same on a display unit. (Motion Tr. 11-14, 24-25; Trial Tr. 126-127). However, when he tried to burn a copy of the recording days after Singleton's arrest, the internal DVD/CD burner prohibited the hard drive from transferring footage onto a separate disc. (Id.).

According to Huestess, the video recording equipment is a single complete unit known as the video system. (Motion Tr. 17-18). It comprises a camera, a body and back seat recording device, a laptop computer which contains a hard drive for storing data, and an internal DVD/CD burner. (Motion Tr. 17-19). When the camera captures images or footage, the same is funneled to the laptop computer's hard drive where it can later be burned to a separate disc. (Motion Tr. 17). He further stated that to repair the underlying video equipment, it was necessary to reboot the laptop computer's hard drive which he knew would remove all of its content, including the video footage of Singleton from the incident site. (Motion Tr. 18-20, 22-25).

As a final argument, the City asserted that Singleton's motion for dismissal should be denied since she suffered no prejudice from the destruction of the incident site video. (Tr. 26-28). At the conclusion of all proffered testimony, the lower court denied Singleton's motion, finding that the arresting officer's affidavit was valid and that the City's noncompliance was mitigated by the inoperable video equipment exception of Section 56-5-2953(B). (Motion Tr. 30).

On February 23, 2016, a jury trial was held with the Honorable J. Steedley Bogan presiding. At trial, Singleton renewed all motions from the December 8th hearing and moved in the alternative to exclude any testimony related to the incident site. Singleton also moved for directed verdict and renewed her motion to dismiss at the conclusion of the City's case. Singleton's motions were denied and she was subsequently convicted. (Trial Tr. 1-8, 66-67, 157-159, 195).

A timely Notice of Appeal was filed setting forth grounds upon which Singleton seeks reversal or remand for a new trial. Transcripts of the trial and motion proceedings were filed by the lower court on April 15, 2016, and May 20, 2016, respectively.

ISSUE

Did the lower court err in denying Singleton's Motion to Dismiss and finding that the City's affidavit mitigated its noncompliance with the videotaping statute requirements of § 56-5-2953?

APPLICABLE LAW

§ 56-5-2953(A) provides in pertinent part:

A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and breath test site video recorded.

(1)(a) The video recording at the incident site must:

- (i) not begin later than the activation of the officer's blue lights;
- (ii) include any field sobriety tests administered; and
- (iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and show the person being advised of his Miranda rights.

§ 56-5-2953(B) provides in pertinent part:

Nothing in this section may be construed as prohibiting the introduction of other evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the videotapes required by this section is not alone ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that *the video recording*

equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone ground for dismissal. However, as soon as practicable in these circumstances, video recording 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. (emphasis added).

ARGUMENT

The lower court erred in finding the City's sworn affidavit satisfied the inoperable equipment exception § 56-5-2953(B) and mitigated its noncompliance with the mandatory provisions of § 56-5-2953(A) when the video recording equipment was operable at the time of Singleton's arrest.

I. Videotape operable at the time of arrest and probable cause determination.

The lower court erred in finding that the video recording equipment was "inoperable" when the videotaping device recorded Singleton's conduct, arrest, and the advisement of *Miranda* warnings at the incident site. Thus, the sworn affidavits submitted by the City and the reasons contained therein are insufficient to mitigate its noncompliance with sections 56-5-2953(A) and (B). (Motion Tr. 1- 6, 28-29; Trial Tr. 1- 8, 66-67, 157-159).

The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct.App. 2005); Smith v. S.C. Ins. Co., 350 S.C. 82, 564 S.E.2d 358 (Ct.App. 2002). When a statute's terms are clear and unambiguous on its face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Miller v. Aiken, 364 S.C. 303, 613 S.E.2d 177 (1994); Jones v. State Farm

Mut. Auto. Ins. Co., 364 S.C. 222, 612 S.E.2d 719 (Ct.App. 2005). The legislature's intent should be ascertained primarily from the plain language of the statute. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct.App. 2002). Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. Id. In construing a statute, the court looks to the language as a whole in light of its manifest purpose. State v. Dawkins, 352 S.C. 162, 573 S.E.2d 783 (2002); Adams v. Texfi Indus., 320 S.C. 213, 464 S.E.2d 109 (1995). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct.App. 1997).

The City is correct that the Legislature envisioned instances where an incident site videotape would not be available as evinced by statutory exceptions outlined in subsection (B) of the statute. (Motion Tr. 7-8, 26-28). Applying the rules of statutory construction, subsection (B) of section 56-5-2953, plainly states that noncompliance with the requirements of subsection (A) of the statute is excusable if:

(1) the arresting officer submits a sworn affidavit certifying the video recording equipment was inoperable at the time of the arrest or probable cause determination, stating which efforts have been made to maintain the equipment in an operable condition; (2) the arresting officer submits a sworn affidavit certifying the video recording equipment at the breath test facility was inoperable stating which efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county; (3) submits a sworn affidavit certifying that it was physically impossible to produce the videotape because defendant either (a) needed emergency medical treatment or (b) exigent circumstances existed; (4) in circumstances including, but not limited to, road blocks, traffic accidents, and citizens' arrests, but as soon as practicable in these circumstances, video recording must begin and conform with the provisions of this section; or (5) other valid reasons for the failure to produce the videotape based upon the totality of the circumstances.

Conversely, when the prosecution's failure to produce video recordings does not satisfy the exceptions of subsection (B) of the statute, then noncompliance will not be excused.

A plain reading of the statute makes clear that any issues with operability in relation to a patrol vehicle's videotaping device must exist at the time of arrest or probable cause determination for purposes of subsection 56-5-2953(B). In examining the issue of operability, the Court must consider the meaning of the word "inoperable." The statute does not define "inoperable." Consequently, we must interpret this phrase in accord with its usual and customary meaning. Branch v. City of Myrtle Beach, 340 S.C. 405, 532 S.E.2d 289 (2000); Brassell, 486 S.E.2d 492 (stating when legislature elects not to define a term in a statute, courts will interpret term in accord with its usual and customary meaning.). "Inoperable" is defined as not capable of being used. Inoperable Definition, Merriam-Webster.Com, <http://merriam-webster.com/dictionary/inoperable> (last visited February 27, 2016); Singleton v. Cuthbert, 417 S.C. 555, 790 S.E.2d 213 (Ct.App. 2016) (considering common definitions and their uses within the rules of statutory construction).

The lower court erred in finding that the videotaping device was inoperable as the word is ordinarily understood. Rather, the record establishes that the videotaping device was functioning and utilized by the City at the time of the probable cause determination and Singleton's arrest. Officer Desrochers testified his patrol vehicle's videotaping device recorded Singleton's conduct, arrest, and the *Miranda* warnings. (Motion Tr. 10-11, 14). He also testified that he watched the roadside footage of Defendant's conduct and that there was no problem with the camera itself. (Motion Tr. 10-14, 24-25). He took his vehicle to the City's vehicle maintenance department a few days later to address complications with the video system's internal DVD/CD burner which prevented the transmission of recorded footage from the laptop computer's hard

drive onto a separate disc. (Motion Tr. 11-14). Huestess merely corroborated Officer Desrochers' testimony. Nothing in Huestess' testimony indicates that the video recording device was inoperable at the time of Singleton's arrest or that the City was unable to produce video and audio footage of the incident site. (Motion Tr. 16-25).

At trial, Officer Desrochers testified that he activated his blue lights which also activated his camera, and it was operable at the time of Singleton's arrest. (Trial Tr. 116-118, 150). He testified Singleton's conduct, arrest and *Miranda* warnings were recorded by his patrol vehicle's videotaping device. (Trial Tr. 75-76, 119-120, 126-127). He also testified that it was working the very next day. (Trial Tr. 119-128).

The City concedes that the video recording device was utilized at the time of Singleton's arrest and captured her conduct. (Motion Tr. 7, 27; Trial Tr. 158). However, the City contends that the statute applies to video recording equipment in general rather than the camera exclusively. Hence, any portion of the video recording equipment deemed inoperable makes the entire device inoperable thereby absolving the City of its responsibility to produce the video recordings as outlined in subsection 56-5-2953(A). (Motion Tr. 7; Trial Tr. 158). I disagree.

First, the City's position would read Section 56-5-2953(B) to permit the intentional destruction of video recordings where such an exception does not exist, notwithstanding that Section (A) of that same statute mandates said recordings be produced when a person is prosecuted for DUI. Statutes must be read as a whole and sections that are part of the same statutory scheme must be construed together. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). Laws should be read harmoniously when possible. Johnston v. City of Myrtle Beach, 283 S.C. 288, 321 S.E.2d 627 (Ct.App. 1984); Busby v. State Farm Mut. Auto. Ins. Co., 280 S.C. 330, 312 S.E.2d 716 (Ct.App. 1984); Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

In essence, the City is asking the Court to excuse the destruction of mandatory recordings for maintenance purposes, despite the fact that said maintenance is unrelated to the videotaping device's ability to record, capture, and store footage as required by the statute. City's interpretation would lead to a result so patently absurd that it could not have been intended by the Legislature. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000). Statutes should be construed so as to avoid absurd results. Id.

Moreover, the City's expansive interpretation of the terms "video recording equipment" and "inoperable" is erroneous. If the Court were to accept the City's interpretation, the requirements of Section 56-5-2953 could be easily circumvented by the government virtually at will by discarding mandatory video recordings under the guise of general maintenance for video recording equipment. The City's stance would defeat the legislative intent of Section 56-5-2953. A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Ga.-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 579 S.E.2d 334 (Ct.App. 2003).

Furthermore, to accept the City's position and expand the statutory escape valves to include a video recording system's internal DVD/CD burner, which merely generates a copy of mandatory footage previously produced or captured by the recording device, would render the requirements of subsection (A) and the exceptions of subsection (B) both feckless and superfluous. "A statute should be so constructed that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous..." Savannah Bank & Trust Co. of Savannah v. Shuman, 250 S.C. 344, 157 S.E.2d 864 (1967). The City's liberal construction of "video recording equipment" and the broad application of "inoperable" would attenuate the video recording requirements and expand the inoperable equipment exception beyond its plain and

ordinary meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation. Whiteside v. Cherokee County School District No. One, 311 S.C. 335, 428 S.E.2d 886 (1992); First Baptist Church of Mauldin v. City of Mauldin, 308 S.C. 226, 417 S.E.2d 592 (1992).

A plain reading of Section (A) mandates that a person charged with DUI have his conduct at the incident site video recorded, not burned or copied onto a separate disc. An interpretation to the contrary would undermine the intention of the Legislature that the arresting officer produce video recordings of an accused's conduct at the incident site. Courts will reject a statutory interpretation that defeats or undermines the plain legislative intention. Schmidt, 529 S.E.2d 280.

Finally, there is no evidence in the record to support the finding that the video recording system was inoperable or incapable of recording and storing footage of Singleton from the incident site. Officer Desrochers and Fleet Services were able to view the incident recording before it was destroyed. It is obvious that the video recording was capable of being viewed by a third party, but the City never extended that opportunity to Singleton or the trier of fact. (Trial Tr. 126-127). At a minimum, the City could have made the laptop computer available to the Defendant for viewing, and presented the same at trial for the trier of fact.

Even if the Court were to accept the City's argument that the inoperability of one portion of the videotaping equipment makes it inoperable in its entirety, the record is bereft of any evidence that the burner was not capable of being used at the time of probable cause determination or Singleton's arrest. Moreover, an internal disc burner is not the mechanism used to capture and store a person's conduct at the time of arrest and probable cause determination, but rather the camera and the hard drive. The disc burner is not utilized at the time of arrest or

probable cause determination but subsequent thereto. The statute's mandate expressly pertains to video recordings of the incident site. Thus, it would be wrong to apply the statutory exceptions of mandatory video recordings to a faulty disc burner or any other mechanism not utilized at the incident site, or to maintenance efforts taking place post-arrest that result in the destruction of captured audio or video footage of a person's conduct.

When a statute is penal in nature, it must be strictly construed against the state and in favor of the Defendant. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). We must approach its interpretation by invoking the rule of strict statutory construction and resolve any uncertainty or ambiguity against the state and in favor of the respondent. State v. McCord, 258 S.C. 163, 187 S.E.2d 654 (1972). Strictly construing the statute against the City and in favor of Singleton, clearly, the Legislature did not intend for the recording requirements of Section 56-5-2953 and the exceptions thereto to extend to internal DVD/CD burners for videotaping devices, or the good-faith destruction of previously produced mandatory footage.

Since the videotaping device recorded footage of Singleton's conduct, arrest, and *Miranda* warnings, the device was unequivocally operable at the time of arrest and probable cause determination. Therefore, the City's failure to preserve the video recording from the roadside will not be excused by the Court.

II. Arresting officer must produce a sworn affidavit containing reasons that comport with the enumerated statutory exceptions when non-compliance with § 56-5-2953(A) occurs.

The City's noncompliance with Section 56-5-2953(A) should not be excused, particularly when it submitted affidavits that did not comport with the enumerated exceptions of Section (B).

The City contends that its noncompliance with Section 56-5-2953(A) should be excused because it submitted affidavits in accordance with Section (B), certifying that the videotaping

device was inoperable along with one year's worth of maintenance records which highlight the reasonable efforts made to maintain the arresting officer's vehicle. (Motion Tr. 6-10). In making this assertion, the City relies on City of Greer v. Humble, 402 S.C. 609, 742 S.E.2d 15 (Ct.App. 2013).

In Humble, the arresting officer submitted an affidavit certifying that the video recording equipment was inoperable at the time of the arrest and stating reasonable efforts had been made to maintain the equipment in operable condition. Recognizing that the affidavit did not state which *reasonable efforts had been taken to keep the video equipment in an operable condition*, the town of Greer attempted to supplement the affidavit with the arresting officer's testimony regarding the operability of the recording equipment. The arresting officer's testimony revealed that not only was the equipment completely inoperable, but the town of Greer had been aware of issues with video recording equipment for at least one year prior to Humble's arrest, and refused to take any steps to keep the same in working condition. The Court of Appeals found the affidavit was deficient on its face for failing to state which reasonable efforts had been taken keep the video recording device operable and pronounced that dismissal was the appropriate remedy. The court also found the town of Greer's willful failure to take steps to correct the problems and continual use of defective recording equipment alone justified a dismissal.

The case before this Court is distinguishable from Humble. Here, the City submitted a sworn affidavit stating efforts had made to maintain the vehicle and equipment as needed. While Singleton did not argue that the affidavits were deficient on its face, the camera and audio recorder were operable and captured video and audio footage of Singleton's conduct at the time of arrest, unlike in Humble where the recording device was completely inoperable. (Motion Tr. 7-14, 18-25; Trial Tr. 117-121, 126-127). The fact that Officer Desrocher's videotaping device

was operable at the time of Singleton's arrest makes the City's affidavits substantively incorrect. Hence, the City's reliance on Humble is misplaced.

A. Dismissal is the appropriate remedy.

It is patently clear from a plain reading of the statute that the purpose of section 56-5-2953 is to create direct evidence of a DUI arrest. State v. Gordon, 408 S.C. 536, 759 S.E.2d 755 (Ct.App. 2014). In addition to field sobriety tests, a person must have his conduct at the incident site videotaped. Murphy v. State, 392 S.C. 626, 709 S.E.2d 685 (Ct.App. 2011) (*defining conduct under the statute as one's behavior, action, or demeanor*) (emphasis added). Further, the statute mandates that the videotape include the advisement of *Miranda* warnings. State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015). The City's expansive interpretation of the videotaping requirements of subsection (A) would render the statute as nothing more than literary surplusage which runs counter to the rules of statutory construction. State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977).

The videotaping provisions of § 56-5-2953(A) are mandatory and not optional. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011). Failure to comply with the videotaping provisions of Section 56-5-2953(A) is fatal to the prosecution of a DUI case. Id. Where a violation of Section (A) is not mitigated by a Section (B) exception, dismissal is warranted. Id. Our courts have acknowledged statutory escape valves the government failed to create a video recording of the DUI arrest because the camera malfunctioned. Id. However, the Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance when not mitigated by one of the enumerated exceptions. Id.

Subsection (B) carves out an exception for instances where the video recording equipment has not been activated by blue lights such as traffic accident investigations. However, there also is an unequivocal caveat that recording begin as soon as practicable under such circumstances and conform to the videotaping requirements of Section (A).

According to Officer Desrochers, he activated his blue lights which automatically deployed his videotaping device shortly before arriving on scene. (Trial Tr. 116-118, 150). At some point during his investigation, he moved Singleton to the front of his patrol vehicle where he recorded her conduct, arrest, and advisement of *Miranda* warnings. (Motion Tr. 10-11, 14; Trial Tr. 66, 68, 118-120, 126-128). Since videotaping took place as soon as practicable under the circumstances, the requirements of Section (A) are applicable. Although the City contends that fault cannot be imputed to the City for not preserving the recordings, this Court does not find an exception in Section (B) that forgives the intentional destruction of video recordings that are mandatory.

This Court also notes that DUI arrests are the only criminal context where videotaping is mandated. By requiring law enforcement agencies to videotape DUI arrests exclusively, the Legislature intended strict compliance with the statute and enacted a severe penalty for noncompliance. Hence, the requirements of Section 56-5-2953 are more than a mere technicality. While defects in evidence do not generally impact the admissibility of evidence, our courts have interpreted the statute to require strict compliance with Section (A) as a prerequisite for admissibility. State v. Sawyer, 409 S.C. 475, 763 S.E.2d 183 (2014).

B. Prejudice not a prerequisite for dismissal.

Furthermore, this Court rejects the City's assertion that Singleton show prejudice as a prerequisite for dismissal. Our courts have made it clear that under Section 56-5-2953, a

violation of the statute will result in the dismissal of a DUI charge without a showing of prejudice. City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007); Roberts, 713 S.E.2d 278. Therefore, dismissal of the charge is the appropriate remedy.

CONCLUSION

For the reasons set forth above, I find that the trial court erred in denying Singleton's motion to dismiss. I find that the video recording equipment was operable at the time of Singleton's arrest and the specific exception for inoperable video recording equipment of subsection 56-5-2953(B) does not encompass a faulty hard drive burner. Furthermore, I find that the exceptions enumerated in subsection 56-5-2953(B) do not extend to the intentional destruction of video recordings by a prosecuting agency, and the City's affidavits, which are substantively incorrect, do not mitigate its noncompliance with subsection 56-5-2953(A). Therefore, the lower court is reversed. Singleton's conviction is hereby vacated and the DUI charge against her is dismissed with prejudice.

IT IS SO ORDERED.

ReHood

Robert E. Hood
Presiding Circuit Court Judge

March 31, 2017
Columbia, South Carolina