

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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ORIGINAL

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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Case No.: 2017-CP-40-06169

RECEIVED  
AUG 08 2018  
SC Court of Appeals

THE CITY OF COLUMBIA,

APPELLANT,

V.

EDWARD HUFFMAN,

RESPONDENT

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MOTION TO DISMISS APPEAL

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Counsel for Respondent Edward Huffman seeks to dismiss this appeal for 1) Appellant's failure to timely file; and 2) Appellant's failure to timely serve the appeal. In support of this motion counsel for Respondent shows:

**Failure to Timely File**

1. Counsel for Appellant failed to timely file the Notice of Appeal as required by South Carolina Appellate Court Rule (SCACR) 203 and defined by SCACR 262.
2. The Order denying Appellant's appeal to the Court of Common Pleas was e-filed on May 29, 2018, thereby providing the City of Columbia with "written notice of entry of the order" on that date. A filed copy of this Order is attached hereto as Respondent's "Exhibit A."

Thus, the City of Columbia's thirty (30) days to appeal began to run with May 30, 2018 counting as "day one."

3. Counsel for the City of Columbia filed and served Notice of Motion and Motion Pursuant to Rule 59(e) on June 8, 2018. A filed copy of this Motion is attached hereto as Respondent's "Exhibit B." Thus, the City's 30-day time period was stayed on what would have been day ten (10).
4. The Order denying City of Columbia's Motion was filed on June 27, 2018. A filed copy of this Order is attached hereto as Respondent's "Exhibit C." Thus, the City of Columbia's time to appeal recommenced the following day (June 28, 2018) at day ten (10).
5. The City of Columbia's Notice of Appeal was filed July 20, 2018. This would be day thirty-two (32), even after factoring in the stay initiated by the 59(e) Motion.
6. Therefore, Counsel moves that this matter be dismissed as the plain and ordinary language of SCACR 203(d)(3) states "If the notice of appeal is not timely filed...the appeal *shall* be dismissed, and shall not be reinstated except as provided by Rule 260." [emphasis added]

#### Failure to Timely Serve

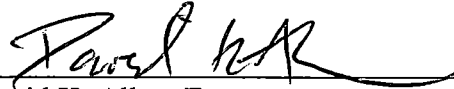
7. As a second ground to dismiss this Appeal, Counsel for Appellant failed to timely serve, or properly serve at all, the Notice of Appeal as required by South Carolina Appellate Court Rule (SCACR) 203 and defined by SCACR 262. To date, Counsel for Respondent has never been properly served with the Notice of Appeal. Counsel for Respondent only received notice of this pending appeal as the result of being copied on a July 26, 2018 letter sent from the Clerk of Court for the South Carolina Court of Appeals to Counsel for Appellant.

8. The Proof of Service filed by Appellant contemporaneously with the Notice of Appeal indicates a staff member at the City of Columbia mailed a copy of the Notice of Appeal to Counsel for Respondent's office on July 20, 2018. Even if true, this date falls two (2) days late (as described above in paragraph 5).
9. Moreover, the address stated on the Proof of Service of the Notice of Appeal is incorrect, and Counsel for Respondent submits he never received this Notice of Appeal in the mail.
10. This Proof of Service also alleges to have served the Notice of Appeal by hand delivery to the office of Counsel for Respondent. This hand delivery never occurred, as is further detailed in the Affidavit attached hereto as "Exhibit D."
11. The Respondent was also never served with the Notice of Appeal, as indicated in the Affidavit attached hereto as "Exhibit E."
12. Therefore, Counsel moves that this matter be dismissed as the plain and ordinary language of SCACR 203(b)(1) requires that "a notice of appeal *shall* be served on all respondents within (30) days after receipt of written notice of entry of the order or judgment." [emphasis added].
13. Moreover, SCACR 263(b) makes it clear "the time for serving the notice of appeal" may not "be extended or shortened by the appellate court, or by any judge or justice thereof."
14. Counsel makes this request in good faith and not for purpose of delay.
15. Counsel for Appellant has been informed of this request.

WHEREFORE, the undersigned counsel respectfully requests this Court to dismiss this appeal based on the above circumstances.

(Signature Page to Follow)

**THE ALLEN LAW FIRM, P.A.**



---

David K. Allen, Esq.  
S.C. Bar No.: 77729  
Attorney for Respondent  
P.O. Box 3241 (29171)  
519 Meeting Street  
West Columbia, SC 29169  
o: (803) 764-2328  
f: (803) 764-2548  
[David@TheAllenLawFirm.org](mailto:David@TheAllenLawFirm.org)

West Columbia, South Carolina  
August 6, 2018

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No.: 2017-CP-40-06169

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THE CITY OF COLUMBIA,

APPELLANT,

V.

EDWARD HUFFMAN,

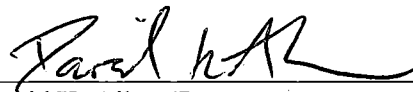
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion To Dismiss Appeal in the above referenced case has been served upon opposing counsel, Steven J. Luckie, Esquire this 6<sup>th</sup> day of August, 2018 by mailing it to his last-known address, to wit:

Steven J. Luckie, Esquire  
Office of the City Attorney  
P.O. Box 667  
Columbia, SC 29202

**THE ALLEN LAW FIRM, P.A.**



David K. Allen, Esq.  
S.C. Bar No.: 77729  
Attorney for Respondent  
P.O. Box 3241 (29171)  
519 Meeting Street  
West Columbia, SC 29169  
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West Columbia, South Carolina  
August 6, 2018

# **EXHIBIT A**



**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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Richland Common Pleas

**Case Caption:** City Of Columbia VS Edward Huffman

**Case Number:** 2017CP4006169

**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

# **EXHIBIT B**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 City of Columbia )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Edward Huffman, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

C/A: 2017-CP-40-06169

**RESPONDENT'S NOTICE OF MOTION  
 AND MOTION PURSUANT TO RULE  
 59(e), SCRCP**

**TO: DAVID ALLEN, ESQUIRE, ATTORNEY FOR RESPONDENT:**

**PLEASE TAKE NOTICE** that the City of Columbia ("the City" or "Appellant"), by and through its undersigned attorney(s), hereby moves the Court for an order which reconsiders, alters, and/or amends its decision issued in the above-referenced matter on May 29, 2018. This motion is brought pursuant to Rule 59(e), SCRCP, as well as the relevant statutory and case law.

On May 18, 2018, the parties came before the Fifth Judicial Circuit Court of Common Pleas ("the Court") pursuant to a Notice of Appeal filed by the City challenging an order by the Municipal Court of the City of Columbia which dismissed the Respondent's charge of Driving under the Influence ("DUI"). In its appeal, Appellant asserts that the trial court erred in granting Respondent's motion to dismiss based upon a failure to comply with section 56-5-2953 of the South Carolina Code (2009). The Court denied the appeal, finding no error of law.

Based upon the facts in the record, the City respectfully moves the Court to reconsider its ruling on the following grounds:

1. In a criminal appeal from the municipal court, the circuit court reviews the case for preserved errors of law raised by appropriate exception. S.C. Code Ann. § 14-25-105 (Supp.2012); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011).

2. Here, the trial court committed an error of law in construing the terms of § 56-5-2953 to find an audio recording of the defendant's conduct insufficient to comply with the DUI videotaping requirements.
3. The Supreme Court of South Carolina addressed similar facts in the *Henkel* case. *State v. Henkel*, 413 S.C. 9, 16, 774 S.E.2d 458, 462 (2015). In *Henkel*, the officer was investigating a vehicle collision, and performed several field sobriety tests out of view of the camera, however, the audio alone sufficiently captured the defendant's conduct. *Id.*
4. The trial court committed an error of law in construing the terms of § 56-5-2953 to find an audio recording of Miranda insufficient to comply with the DUI videotaping requirements, as the requirement is auditory in nature. *See State v. Sawyer*, 409 S.C. 475, 480, 763 S.E.2d 183, 185 (2014) (dismissing a case for the failure to *audio* record Miranda.)
5. The trial court committed an error of law in finding that neither the traffic accident investigation exception nor the totality of the circumstances exception within § 56-5-2953(B) apply. Respondent was involved in a collision and transported to the hospital. In such circumstances, a video is typically not required at all. *E.g. Teamer v. State*, 416 S.C. 171, 786 S.E.2d 109, (2016).
6. The trial court committed an error of law in finding that an affidavit would be required under the traffic accident investigation exception and the totality of the circumstances exception within § 56-5-2953(B). *Teamer v. State*, 416 S.C. 171, 177, 786 S.E.2d 109, 112 (2016).
7. The trial court committed an error of law in finding that the traffic accident investigation exception within § 56-5-2953(B) cannot apply if an officer proactively activates his blue lights before arriving at the incident location.
8. The trial court committed an error of law by construing the terms of § 56-5-2953 to require an officer to move the defendant in order to comply with the videotaping requirements.
9. The trial court also committed an error of law in finding that dismissal was required. Unlike *Suchenski, City of Rock Hill v. Suchenski*, 374 S.C. 12, 646

S.E.2d 879 (2007), and *Roberts, Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (2011), in the present case, a video recording was activated before the officer arrived at the scene, and continued throughout the entirety of the encounter. *See also State v. Taylor*, 411 S.C. 294, 306, 768 S.E.2d 71, 77 (Ct. App. 2014) (stating that the failure to visually display the defendant does not as strongly support dismissal when the missing footage does not occur during any events that create direct evidence of DUI.)

10. Public policy considerations dictate that serious criminal charges should not be dismissed for failure to comply with a statutory requirement due to circumstances beyond an officer's control.

Therefore, the City of Columbia respectfully urges the Court to reconsider its Order to deny Appellant's appeal, and to reverse the order of the Municipal Court.

s/ Steven J. Luckie, Esq.  
SC Bar No. 102306  
Attorney for Appellant  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
Phone: (803)737-4242  
Fax: (803) 737-4250  
Email: [sjluckie@columbiasc.net](mailto:sjluckie@columbiasc.net)

June 8, 2018  
Columbia, South Carolina

# **EXHIBIT C**



**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

**Case Caption:** City Of Columbia VS Edward Huffman

**Case Number:** 2017CP4006169

**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2018-06-27 10:15:24 page 3 of 3

# **EXHIBIT D**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No.: 2017-CP-40-06169

THE CITY OF COLUMBIA,

V.

EDWARD HUFFMAN,

ORIGINAL  
RECEIVED  
AUG 08 2018  
SC Court of Appeals  
APPELLANT,

RESPONDENT

AFFIDAVIT OF DAVID K. ALLEN

I am the attorney for Respondent Edward Huffman. I have never been served with the Notice of Appeal in this matter. I was not served by hand-delivery July 20, 2018, as indicated in the Proof of Service filed by the City of Columbia. I was the only employee in the office that day, so no other employee could have received it.

I have also never received service by mail. This is most likely because the address stated as the mailing address in the City of Columbia's Proof of Service is incorrect. My P.O. Box is in "West Columbia," not "Columbia."

  
David K. Allen

SWORN to before me this 9th day  
of August, 2018  
Stacey Williams  
Notary Public for South Carolina Signature  
Stacey Williams  
Notary Printed Name  
My commission expires: 9/12/26

# **EXHIBIT E**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No.: 2017-CP-40-06169

ORIGINAL

RECEIVED

AUG 08 2018

SC Court of Appeals

THE CITY OF COLUMBIA,

APPELLANT,

V.

EDWARD HUFFMAN,

RESPONDENT

AFFIDAVIT OF EDWARD HUFFMAN

I am the Respondent herein. I have never received service of the Notice of Appeal in this matter, nor does it appear the City of Columbia is claiming to have served me directly.

*Edward Eric Huffman*  
Edward Huffman

SWORN to before me this 7<sup>th</sup> day  
of August, 2018  
Stacey Williams  
Notary Public for South Carolina Signature  
Stacey Williams  
Notary Printed Name  
My commission expires: 9/17/26

Kellum W. Allen, Esq.\*  
Kellum@TheAllenLawFirm.org

David K. Allen, Esq.  
David@TheAllenLawFirm.org



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August 8, 2018

V. Claire Allen  
Deputy Clerk of Court  
S.C. COURT OF APEALS  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**  
AUG 08 2018  
SC Court of Appeals

Re: The City of Columbia v. Edward Huffman  
Appellate Case No. 2018-001347

Dear Deputy Clerk:

Enclosed please find an original and six (6) copies of a Motion to Dismiss Appeal in the above-referenced matter. I respectfully ask that you file this Motion and return the remaining clocked-copies to me in the pre-paid, pre-addressed envelope provided for your convenience.

**I would further respectfully ask that you issue an Order of Dismissal of this appeal pursuant to Rule 260(a) of the South Carolina Appellate Court Rules (SCACR) for the reasons laid out in the Motion to Dismiss Appeal enclosed herewith.**

By copy of this letter, I am serving the Counsel for Appellant with same. A certificate of service is attached, as well.

Please do not hesitate to contact me should you have any questions or concerns. Thank you very much for your assistance in this matter.

Sincerely,

David K. Allen

DKA/idi  
Enclosures

cc: Steven J. Luckie, Esquire (w/ encl.)  
Mr. Edward Eric Huffman (w/ encl.)