THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2019-001107

Trial Court Case No. 2017CP2700440

Thomas Ford, III, Appellant,

v.

Town of Hardeeville, Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN AFFIRMING THE MUNICIPAL COURT'S DENIAL OF APPELLANT'S MOTIONS TO DISMISS THE DUI CHARGE OR SUPPRESS THE BODY CAMERA VIDEO RECORDING OF THE BREATH TEST SITE FOR FAILING TO COMPLY WITH SECTION 56-5-2953 OF THE SOUTH CAROLINA CODE OF LAWS?

II. DID THE CIRCUIT COURT ERR IN AFFIRMING THE MUNICIPAL COURT'S DENIAL OF APPELLANT'S MOTIONS TO DISMISS THE DUI CHARGE OR SUPPRESS THE INCIDENT SITE VIDEO RECORDING FOR NOT VIDEO RECORDING A NON-STANDARDIZED FIELD SOBRIETY TEST IN VIOLATION OF SECTION 56-5-2953 OF THE SOUTH CAROLINA CODE OF LAWS?

STATEMENT OF THE CASE

On June 11, 2016, the Town of Hardeeville Police Department arrested Appellant Thomas Jeffers Ford, III, for Driving Under the Influence (DUI), less than .10, first offense, and Minor in Possession of Alcohol. (R. * Ticket No. 20161170000854).

On October 30, 2017, Appellant proceeded to a bench trial before the Municipal Court Judge Nancy Gutierrez only for the DUI charge. (R. Return; Appellant's Response to the Return, Exhibit B). Defense Counsel Christopher Geier represented Appellant, and the Arresting Officer Brandon DeWeese of the Hardeeville Police Department prosecuted the case on behalf of the Town of Hardeeville. The Arresting Officer testified as the sole witness. The Municipal Court found Appellant guilty of DUI, less than .10, first offense, and Appellant subsequently pled guilty to the Minor in Possession of Alcohol charge. (R. Return; Appellant's Response to the Return, Exhibit B).

On October 30, 2017, Appellant filed a Notice of Appeal in the Fourteenth Judicial Circuit Court of Common Pleas. (R. * 2017-CP-27-00440). Appellant listed the following issues: "The videos from the scene and breath test site do not conform with the Mandatory provisions of S.C. Code Ann § 56-5-2953", and "The Affidavit for Failure to Produce a Breath Site Video Recording, signed and produced by the arresting officer is insufficient and does not meet the requirements of S.C. Code Ann § 56-5-2953." (R. Notice of Appeal from the Municipal Court).

On March 1, 2018, Municipal Court Judge Gutierrez signed the Return.[1] (R. *). Defense Counsel filed the Appellant's Response to the Municipal Court's Return on April 24, 2018, and Respondent City of Hardeeville filed its Reply Brief on August 24, 2018.

[1] S.C. Code § 18-3-40 (Papers shall be filed with the Clerk of Court): The "Return" is not

(R.*).

On December 17, 2018, Appellant appeared before the Honorable Carmen T. Mullen in the appeal from the Town of Hardeeville Municipal Court. (Tr. 1 – 14). Defense Counsel represented Appellant, and Prina C. Maines represented the Respondent. At the conclusion of the hearing, the Circuit Court took the matter under advisement. (R. Tr. 13, lines 11-13). The Circuit Court ultimately issued a Form 4 Order denying the appeal on June 14, 2019, finding "[t]his appeal is respectfully denied." (R. *). The Circuit Court did not file a subsequent written Order, so Appellant timely filed a Notice of Appeal in this Court on July 5, 2019. (R. *).

This direct appeal follows.

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listed as filed on the Jasper County Public Index for the Fourteenth Judicial Circuit.

STANDARD OF REVIEW

In a criminal appeal from the municipal court, the circuit court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception. S.C. Code Ann. § 14-25-105; S.C. Code § 18-3-70 ("The appeal [from a summary court in a criminal case] must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law."); *See Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 341, 713 S.E.2d 278, 282 (2011).

In other words, the circuit court is bound by the summary court's findings of fact if there is any evidence in the record which reasonably supports them in criminal appeals from the magistrate or municipal court. *See City of Greer v. Humble*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013). The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007). "Moreover, [q]uestions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below." *See Greer*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (citation omitted).

RELEVANT FACTS

Municipal Court's Return

On March 1, 2018, Municipal Court Judge Nancy Gutierrez issued a Return in response to the Notice of Appeal. (R. *). In the Return, the Municipal Court provided her summary of what occurred during the bench trial to support her verdict:

> 1. That [Defense Counsel] presented 2 motions to dismiss **based on the fact that [Arresting Officer] submitted the Affidavit for Failure to Produce a Breath Site Video Recording checking the first box and explaining that the video cameras in the DataMaster room were inoperable and the 20-minute observation period was recorded on his body camera. That a question was asked by another officer of 'do you know what time it is?' That it could be heard but not seen in the video.** Both motions were denied based on section code 56-05-2953(B) as said officer[s] did comply accordingly.
>
> 2. That [Arresting Officer] testified that on June 11, 2016, dispatch [was] notified [of] a reckless driver in a dark in color Dodge truck with a motorcycle in the rear on I-95 South near mm18 swerving all over the roadway. That dispatch later notified this officer of a collision that occurred on I-95 South mm5 in reference to the same vehicle.
>
> 3. That [Arresting Officer] arrived after Ptl. Watson on scene and observed tire marks in the grassy median followed by skid marks in the pavement and then back in the median were (sic) the truck collided with the guard wire. During the course of events, said vehicle struck an 18-wheeler.
>
> 4. That [Arresting Officer] observed the driver standing next to the driver side door of the vehicle identified as [Appellant].
>
> 5. That [Arresting Officer] testified that [Appellant] appeared to be unsteady on his feet, observed an open container in plain view along with several unopened bottles of beer in the vehicle. This officer began to

speak with him to investigate the collision which it was observed blood shot, glossy eyes and a heavy odor of alcohol coming from his person and the vehicle.

6. That [Arresting Officer] began to interview [Appellant] by asking him several questions such as What happened? Where he was coming from? Where he was going? [Appellant] responded he did not know what happened and that he was coming from Daytona Beach, FL headed to Edisto Beach . . .

7. That [Arresting Officer] testified he is qualified to conduct the Standardize[d] Field Sobriety Test[s] . . . [and] That he conducted the Standardize[d] Field Sobriety test[s] on [Appellant] . . . . [.]

8. Based on the observation of the collision, the interview with [Appellant] and the performance of the field sobriety test[s], [Arresting Officer] believed that [Appellant] was under the influence of alcohol and was unable to operate his vehicle safely.

9. That [Appellant] was placed under arrest for DUI, Minor in Possession of Alcohol and was advised of his Miranda Rights which was captured all on video.

10. That [Appellant] was transported to the jail and **in the DataMaster room [Arresting Officer] discovered that both cameras were inoperable and activated his body camera to record the 20-minute observation period and his actions.** [Appellant's] implied consent rights were advised. [Appellant] did not contest. **[Appellant] debated to take the test and the 20-minutes (sic) observation period was continued. The machine was ready, and [Appellant] did not provide a sample, the machine timed out and was processed as a refusal.**

    Based on the testimony that was given, the videos presented, the motions presented by the [Defense Counsel] and according to Section 56-5-2953, I find there was proof beyond a reasonable doubt that [Appellant] was Driving under the influence. Therefore, I respectfully ask that this verdict be upheld.

(R. Return) (emphasis added).

Appellant's Response to the Return

On April 24, 2018, Appellant filed his Response to the Trial Court's Return with Exhibits A–F attached. (R. *). In Appellant's Response, Defense Counsel noted the following issues on appeal: (1) "The [Municipal] Court erred in failing to suppress the Datamaster video submitted by the [Arresting Officer] and failing to subsequently dismiss this case"; (2) "The [Municipal] Court erred in failing to dismiss this charge for failure to produce a Datamaster video which complied with S.C. Code Ann. § 56-5-2953"; and (3) "The [Municipal] Court erred in failing to dismiss this charge for failure to produce[] a field video which complies with S.C. Code Ann. § 56-5-2953." (R. *).

Appellant attached the following exhibits to his Response for the Circuit Court Judge's review: (A) DVD–video recordings from patrol cars and body camera; (B) CD-R–audio recording of bench trial; (C) Affidavit for Failure to Produce a Breath Side Video; (D) SLED Regulation 8.12.7; (E) Breath Alcohol Analysis Test Report; and (F) SLED Regulation 8.12.5. Appellant noted in his Response that the Return "**fail[ed] to address** one of Appellant's issue[s] regarding the video from the DataMaster room" and that "the audio recording of the trial, obtained by Appellant on April 16, 2018, **does not include** the pre-trial motions which occurred immediately before the bench trial began and which the Appellant renewed at his directed verdict motions." (R. Appellant's Response, page 1 and Exhibit B) (emphasis added).

To avoid any confusion, Appellant described the contents of Exhibit A (the Arresting Officer produced a DVD containing the following video recordings and documents): "[Arresting Officer's] vehicle video from scene (Titled IN-CAR FRONT)"; "[Officer Watson's] vehicle video from the scene (Titled Watson's IN-CAR)";

"[Arresting Officer's] body camera video from the scene (Titled Axon On-Scene)"; "[Arresting Officer's] body camera videos from the Datamaster room (Titled Axon Datamaster P1 and P2)"; and "a PDF file titled Datamaster paperwork, which included an Affidavit for Failure to Produce a Breath Site Video Recording, an Advisement of Implied Consent Rights, a Breath Alcohol Analysis Test Report, and a Notice of Suspension." (R. Appellant's Response, page 2 and Exhibit A). Appellant further noted that "[n]o video from SGT Brown of the Hardeeville Police Department, who was present at the scene, was produced" by the Arresting Officer/Prosecutor, and "[o]ther than the body camera videos, which are not SLED approved as required by SLED regulation 8.12.7, no video from the Datamaster room was produced." (R. Appellant's Response, page 2).

Appellant's Response to the Breath Test Site Issues

As to the issue of whether the Municipal Court erred in failing to dismiss the DUI charge or suppress the body cam video recording of the breath test site for failing to produce a video recording in compliance with Section 56-5-2953, Appellant addressed the sufficiency of the Arresting Officer's Affidavit for Failure to Produce a Breath Site Video Recording, the applicability of the video recording requirement for the 20-minute observation period, the admissibility of the body camera video recording at the breath test site, and the omitted conduct of the Arresting Officer and Appellant in the body camera video recording at the breath test site.

First, Appellant noted that the Arresting Officer submitted the SLED form Affidavit for Failure to Produce a Breath Side Video Recording in this case. (R. Appellant's Response, page 5 and Exhibit C). Appellant also noted, the Arresting Officer

only checked the first box in section one stating, "I hereby certify that I cannot produce a video recording from the breath test side because: At the time of the person's arrest or probable cause determination, the video recording equipment or breath test device at the breath test site was in an inoperable condition and reasonable efforts have been made to maintain the equipment in an operable condition; and, there was no other operable breath test facility in the county." (R. Appellant's Response, page 5 and Exhibit C). Appellant further noted, the Arresting Officer provided a handwritten note at the bottom of section one, stating, "The video equipment in the Datamaster Room was inoperable and no receiving power", and "[t]he observation period was video recorded on my department body camera." (R. Appellant's Response, page 5 and Exhibit C).

Appellant also argued the Arresting Officer's decision to only check the first box in section one and not the third box proves the Officer "certified that no video recording could be produced" and "any explanation provided in that section [three, regarding exigent circumstances,] was void." (R. Appellant's Response, pages 5-6 and Exhibit C). Appellant also argued that the Arresting Officer should not have been allowed to present any additional video recordings because of the affidavit and "particularly [a video recording] that does not satisfy SLED Regulation 8.12.7 which states that '[t]he only approved video recording system is the IRSA Video Recording System, IRSA Video and the W.H. Platts Company.'" (R. Appellant's Response, page 6 and Exhibit D).

Appellant remarked, "This affidavit did not include which efforts were taken to maintain the camera in an operable condition" and cited *City of Greer v. Humble*, 402 S.C. 609, 742 S.E.2d 15 (Ct. App. 2013) in support of his motion to dismiss. (R. Appellant's Response, pages 3, 6, and Exhibit D). Appellant further argued that the

charge should have been dismissed because "an affidavit which merely states that reasonable efforts were made to maintain the equipment without stating 'which reasonable efforts' were made is deficient and does not comply with the requirements of S.C. Code Ann. § 56-5-2953." (R. Appellant's Response, page 6). Appellant also pointed out that "this affidavit was not offered or submitted into evidence by the [Arresting Officer/Prosecutor]" during the bench trial. (R. Appellant's Response, page 3 and Exhibit A). Notably, the Arresting Officer presented the body camera video recordings of the DataMaster room to the jury over Appellant's objection at trial. (R. Appellant's Response, page 3; Exhibits A and B).

Second, Appellant argued "the non-approved body camera footage from the Datamaster room [failed to comply with the video recording statute because it] does not show the entire breath test procedure, the actions of the breath test operator (other than that of his hands) or much of Appellant's conduct during the 20 minute observation period as the video was taken by a body camera which was attached to the brim of the [Arresting Officer's] cap." (R. Appellant's Response, page 7, and Exhibits A and B). Appellant also noted the Municipal Court omitted his motion to "suppress the "non-SLED approved body camera videos" in the Return despite being argued by Appellant pre-trial. (R. Appellant's Response, pages 4 and 6; Exhibit B). Notably, Appellant distinguished this case from *State v. Taylor*, 411 S.C. 294, 768 S.E.2d 71 (2014), by providing that "the [body] camera [video recording] failed to capture [Appellant] over 20 times during the observation period, totaling over 4 minutes." (R. Appellant's Response, page 8 and Exhibit A).

As for Appellant's failure to submit a breath sample, Appellant distinguished *State v. Elwell*, 403 S.C. 606, 743 S.E.2d 802 (2013) from the facts in this case. Specifically, Appellant noted "*Elwell* dealt with a clear refusal and an officer's decision [to] stop recording after the refusal"; whereas here, "[t]he video does show that, during the time Appellant had to provide a sample, he asked numerous follow up questions regarding the test . . . put[] the mouth piece up to his mouth and prepare[d] to blow" when the DataMaster timed out. (R. Appellant's Response, pages 4, 7, and Exhibit A). Appellant argued, "unlike [in] *Elwell*, because there was not an actual refusal until time ran out to submit a sample, the evidence gathering portion was still ongoing . . . [, so the breath test site] must be videotaped in a manner which complies with the statute." (R. Appellant's Response, page 8). Notably, Appellant argued the Arresting Officer "chose to play the entirety of the [breath test video recording] at trial . . . because he believed that the observation period was evidence that supported the DUI charge." (R. Appellant's Response, page 8, and Exhibit A and B).

Appellant also pointed out "*Elwell* dealt with the previous version of § 56-5-2953" that omitted critical language from the current statute and questioned "whether the holding in *Elwell* would apply to the current version of the video tape statute. (R. Appellant's Response, page 7). Appellant also noted, "SLED Regulation 8.12.5(C) lists the breath test sequence as: 1. Video recording; 2. Advisement process; 3. Mouth check; 4. Data entry; 5. Observation period; 6. Operational protocol; and 7. Print out of the test report." (R. Appellant's Response, page 9). Appellant further noted this SLED Regulation provides, in relevant part: "To ensure a proper test is administered, a test is considered complete only after the operation protocol has finished and the signature lines are printed

on the Breath Alcohol Analysis Test Report/Evidence Ticket." (R. Appellant's Response, page 9 and Exhibit F).

Appellant's Response to the Incident Site Issue.

Finally, as to the issue of whether the Municipal Court erred in failing to dismiss the DUI charge or suppress the incident site video recording for failing to produce a video recording in compliance with Section 56-5-2953, Appellant argued that "a recognized field sobriety test, albeit a non-standard one, was performed off camera" in violation of the statute. (R. Appellant's Response, page 9 and Exhibit A). Specifically, Appellant noted, "we can hear SGT Brown administering one non-Standardized Field Sobriety Test by asking [Appellant] if he knows the time without looking at his watch", and "[w]hen this question is asked, we cannot see either [Appellant] or his vehicle." (R. Appellant's Response, page 10 and Exhibit A and B). Appellant further explained, "As Officer Watson moves out of the area, and as the arresting officer did not produce any video from Officer Brown or his vehicle, we cannot hear whether or not SGT Brown conducted any subsequent Field Sobriety Tests." (R. Appellant's Response, page 10 and Exhibit A).

Appellant also argued that a video recording of all field sobriety tests is required because the statute is silent on standardized versus non-standardized tests. (R. Appellant's Response, page 10 and Exhibit A). Appellant further argued that the exception for accident cases does not apply because the patrol car video recordings were activated by blue lights. (R. Appellant's Response, page 10 and Exhibit A). Notably, Appellant submitted, "[e]ven if this court were to rule that [the accident exception] does apply, the statute requires a compliant video as soon as practicable" and the existence of

the other videos prove the officers could have visually recorded this field sobriety test. (R. Appellant's Response, page 10 and Exhibit A).

Respondent's Reply Brief

On August 24, 2018, Respondent City of Hardeeville filed its Reply Brief. (R. *). Respondent relied on the holding in *Elwell*, 403 S.C. 606, 743 S.E.2d 802 and noted "[t]he State is not required to comply with the breath site video requirements of S.C. Code Ann. § 56-6-2953 where the person refuses the test." (R. Respondent's Reply). Respondent also claimed, "[w]hile a body camera may not be a SLED approved recording device for recording a breath test site, the trial court correct[ly] reference[d] the plain language of [Section] 56-5-2953(B) which states that the trial court can consider 'any other valid reason for failure to produce the video recording based upon the totality of the circumstances.'" (R. Respondent's Reply). Respondent further stated, "[e]ven assuming there is non-compliance of the breath test statute requirements of [Section] 56-5-2953(A)(2), the remedy would be suppression of a refusal as there was no breath test." (Respondent's Reply). Respondent maintained that Appellant failed to move to suppress this evidence and waived that issue on appeal. (R. Respondent's Reply).

Additionally, Respondent claimed "[a]ssuming Appellant has alleged non-compliance with these specific provisions of the breath test video taping statute, any portion of the video [that] briefly omits [Appellant] and still captures the audio portions, which is the purpose of those specific provisions of [Section] 56-5-2953(A)[.]" (R. Respondent's Reply). Respondent also stated that any "omission [in the video recordings] did not occur during any events that either created direct evidence of a DUI or served [Appellant's] important rights." (R. Respondent's Reply).

Respondent also maintained that "the [Municipal] court correctly applied the provisions of [Section] 56-5-2953(B) which states that dismissal is not appropriate whereas here there is a valid reason for the failure to produce the portion "based on totality of the circumstances." (R. Respondent's Reply). Specifically, Respondent argued, "There is no evidence in the record that any visual aspect to this [field sobriety] test would be pertinent" and "nothing in the record establishing that Sgt. Brown's inquiry about the time is a 'field sobriety test[.]'" (R. Respondent's Reply).

Circuit Court Appeal

On December 17, 2018, Appellant appeared before the Honorable Carmen T. Mullen in the appeal from the Town of Hardeeville Municipal Court. (Tr. 1 – 14). Defense Counsel explained that he "made a motion to suppress the [body cam] video [recording] because the officer submitted an affidavit saying that there was no video available, that it wasn't working, and basically did nothing else other than sign that affidavit." (Tr. 3, lines 13-17). Defense Counsel also noted the Arresting Officer "video[recorded] the DataMaster room with his body cam attached to his hat." (Tr. 3, lines 17-18).

Defense Counsel explained, "my initial argument was if you're going to submit an affidavit saying . . . it's impossible to videotape the DataMaster room, then basically you shouldn't be allowed to bring in that body cam because, one, the body cam is not an authorized SLED video recording device, which the SLED regs require" and "two, . . . you can't on one hand say there's no video but on the other hand play the video for the trier of fact." (Tr. 4, lines 6-13). Defense Counsel further noted, "the problem also with the body cam [video recording] . . . I think it was twenty separate times where there was a significant period of time where [Appellant] wasn't on camera", and "[y]ou can't see the

officer's actions during any of the twenty-minute observation period other than writing down various things and looking here and there." (Tr. 4, line 25 – 5, line 13).

Defense Counsel argued, "[t]his case is a little bit different than some of the cases that are out there like *Elwell*[, 403 S.C. 606, 743 S.E.2d 802] and *Hercheck*, [403 S.C. 597, 743 S.E.2d 798 (2013)] which dealt with a refusal" because "there has been some portion of the DataMaster administered." (Tr. 5, lines 14-15; Tr. 12, lines 6-8). Defense Counsel noted "this was a refusal based on the fact that [Appellant] ran out of time as the DataMaster was beeping at him", and the General Assembly amended Section 56-5-2953 in 2009 omitting language of mandatory recording. (Tr. 5, line 23 – 7, line 3).

Defense Counsel also addressed the final issue of only having an audio recording of a field sobriety test: "[W]e can hear the third officer, Sergeant Brown, do what is a non-standardized field sobriety test, which is specifically spoken about and listed in the NHTSA manual, . . . it's without looking at your watch, what time do you think it is right now." (Tr. 7, line 20-25). In response, the Circuit Court asked if the officer testified as to that evidence at trial. (Tr. 8, lines 11-12). Defense Counsel replied, "That portion of the . . . audio was played [for the jury]", and "[Appellant's] not anywhere to be seen." (Tr. 8, lines 13-14 and 21-22). Defense Counsel further argued, "[Section] 56-5-2953 requires the videotaping of all field sobriety tests" and "doesn't specify standardized field sobriety tests." (Tr. 9, lines 1-3).

Notably, Defense Counsel also pointed out that both the audio of the non-standardized field sobriety test and the body cam video recordings of the breath test site were presented to the jury over his objection during the trial. (Tr. 9, lines 9-19). Trial Counsel argued, "[t]he remedy is dismissal", and "I did move for suppression both prior

to trial and prior to the playing of those videos [during the trial]." (Tr. 9, lines 15-17). Trial Counsel indicated that all of his arguments "were denied by the court." (Tr. 9, line 19).

In rebuttal, Respondent argued that "there was no breath test to be presented, thus negating the necessity for that twenty-minute recording." (Tr. 11, lines 9-10). Respondent also maintained, "as far as asking the question of what time is it without looking at your watch, it was [audio] recorded" and "were simply questions that are not relevant to the finding of whether or not this defendant was guilty of the DUI." (Tr. 11, lines 11-18).

For clarification, the Circuit Court asked about the affidavit for failure to produce a breath test site video recording. Defense Counsel replied, "if you're going to accept the affidavit in lieu of the video, then it goes to *City of Greer v. Humble*, [402 S.C. 609, 742 S.E.2d 15] which says that you have to say on your affidavit which reasonable efforts you took to maintain the video recording equipment in workable order." (Tr. 12, lines 12-22). Defense Counsel reiterated, "if you're going to submit that affidavit, . . . you, one, shouldn't be able to play that video . . . [and] [t]wo, if you're going to have the affidavit, you have to comply with *City of Greer vs. Humble*, which says . . . what reasonable efforts did you make to maintain the video recording, and that was left blank." (Tr. 13, lines 3-10).

Form 4 Order Denying Appeal

On June 14, 2019, the Circuit Court issued a Form 4 Order denying the appeal. Specifically, the Circuit Court held, "This appeal is respectfully denied" without providing any basis for her ruling. (R. *). The Circuit Court did not file a subsequent written Order,

so Appellant timely filed a Notice of Appeal in this Court on July 5, 2019. (R. *).

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ARGUMENT

I. THE CIRCUIT COURT ERRED IN AFFIRMING THE MUNICIPAL COURT'S DENIAL OF APPELLANT'S MOTIONS TO DISMISS THE DUI CHARGE OR SUPPRESS THE BODY CAMERA VIDEO RECORDING OF THE BREATH TEST SITE FOR FAILING TO COMPLY WITH SECTION 56-5-2953 OF THE SOUTH CAROLINA CODE OF LAWS.

Subsection 56-5-2953(A) of the South Carolina Code of Laws provides, in relevant part: "A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at . . . the breath test site video recorded. . . .

(2) The video recording at the breath test site must:

(a) include the **entire breath test procedure**, the person being informed that he is being video recorded, and that he has the right to refuse the test;

(b) include the person taking or refusing the breath test and **the actions of the breath test operator while conducting the test**; and

(c) also include **the person's conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period.**"

S.C. Code § 56-5-2953(A) (emphasis added).

Subsection 56-5-2953(B) provides exceptions that excuse non-compliance with the mandatory video recording requirement:

> Nothing in this section may be construed as prohibiting the introduction of other relevant 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 video recording required by this section is not alone a 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.

. . .

Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording 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 video recording.

S.C. Code § 56-5-2953(B) (emphasis added).

Subsection 56-5-2953(D) provides, in relevant part: "SLED is **responsible for purchasing, maintaining, and supplying all necessary video recording equipment** for use at the breath test sites. SLED also is **responsible for monitoring all breath test sites to ensure the proper maintenance** of video recording equipment." S.C. Code § 56-5-2953(D) (emphasis added). Subsection also 56-5-2953(G) provides, in relevant part: "The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for a breath test site **once the breath test site is equipped** with a video recording device." S.C. Code § 56-5-2953(G) (emphasis added).

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *State v. Elwell*, 403 S.C. 606, 612, 743 S.E.2d 802, 806 (2013) (internal quotation marks omitted). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Id.* "Therefore, [i]f a statute's language is plain, unambiguous, and conveys a clear meaning[,] the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* (internal quotation marks omitted). "However, penal statutes will be strictly construed against the [S]tate." *Elwell*, 403 S.C. at 612, 743 S.E.2d at 806 (citation omitted).

"If the statute is ambiguous, however, courts must construe the terms of the statute." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688

S.E.2d 569 (2010). "In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Roberts*, 393 S.C. at 342, 713 S.E.2d at 283. "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." *Id.* (internal quotation marks omitted). "Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." *Id.* at 342-43, 713 S.E.2d at 283.

Our courts examined the legislative intent of section 56-5-2953 and determined "the primary intention behind section 56-5-2953 was to reduce the number of DUI trials heard as swearing contests by mandating the State videotape important events in the process of collecting DUI evidence." *Elwell*, 396 S.C. at 336, 721 S.E.2d at 454, *aff'd*, 403 S.C. 606, 743 S.E.2d 802. Our Supreme Court has found section 56-5-2953 serves two primary purposes. *State v. Taylor*, 411 S.C. 294, 768 S.E.2d 71 (Ct. App. 2014). The first purpose is to create direct evidence of a DUI arrest by requiring the video include any field sobriety tests administered, and the second purpose is to protect the rights of the defendant by "requiring video recording of the person's arrest and of the officer issuing *Miranda* warnings." *Id.* at 306, 768 S.E.2d at 77.

In *Roberts*, our Supreme Court found that the legislature intended for a dismissal of a DUI case unless law enforcement could justify its failure to produce a video recording of a DUI arrest. *Id.* at 348, 713 S.E.2d at 286. The Court further found that the Town's prolonged failure to request additional video cameras from the DPS for installation in its patrol cars was not a valid reason for a failure to produce a video recording of the defendant's conduct during the underlying traffic stop. *Id.* at 349, 713

S.E.2d at 287. The Court held that an unexcused noncompliance with section 56-5-2953 mandates dismissal of a DUI charge. *Id.* at 349-50, 713 S.E.2d at 287.

Furthermore, as discussed in *Roberts*, it is instructive that the legislature has not mandated videotaping in other criminal contexts:

> Despite the potential significance of videotaping oral confessions, the Legislature has not required the State to do so. 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.

Humble, 402 S.C. at 617, 742 S.E.2d at 12-13 (quoting *Roberts*, 393 S.C. at 349, 713 S.E.2d at 286). Our Supreme Court further clarified section 56-5-2953, "based on this [c]ourt's interpretation of the statute in *Roberts*, an affidavit is not needed to qualify for the third and fourth exceptions." *Teamer v. State*, 416 S.C. 171, 177, 786 S.E.2d 109, 112 (2016).

In *State v. Kinard*, 427 S.C. 367, 831 S.E.2d 138 (Ct. App. 2019), this Court noted that "the legislature intended for section 56-5-2953 to require the State to video important events in the process of collecting DUI evidence." "Reading the statute as a whole, we note section 56-5-2953(B) states: "Failure by the arresting officer to produce the video recording *required by this section* . . . ." *Id.* at 376, 831 S.E.2d at 143 (emphasis in original); *See Roberts*, 393 S.C. at 346, 713 S.E.2d at 285 (stating "[s]ubsection (B) of section 56-5-2953 outlines several statutory exceptions that excuse noncompliance with the mandatory videotaping requirements" of subsection (A)). This Court further noted that "[a] reading to the contrary would incentivize law enforcement not to produce videos in questionable cases, which is contrary to the purpose of this statute." *Kinard*, 427 S.C. at 375-76, 831 S.E.2d at 142-43

In *City of Rock Hill v. Suchenski*, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007), our Supreme Court affirmed the reversal of the defendant's DUI conviction when the video stopped recording before the officer administered a third field sobriety test and before the defendant was arrested. 374 S.C. at 14, 646 S.E.2d at 879. The City conceded the officer did not comply with the video recording requirement but asserted it was excused under section 56-5-2953(B). *Id.* at 14-15, 646 S.E.2d at 879-880. In applying the prior version of the statute, the Court held the City's failure to comply with the statute required dismissal of the charges because the statute required video recording to begin upon activation of blue lights and conclude after the defendant's arrest but did not specifically require video recording of field sobriety tests. *Id.* at 14, 17, 646 S.E.2d at 879, 881 (holding dismissal of DUI charge is an appropriate remedy if the officer fails to produce a satisfactory video recording unless an exception applies); *see also* S.C. Code Ann. § 56-5-2953(A)(1) (2006).

Therefore, "dismissal of a DUI 'charge is an appropriate remedy provided by section 56-5-2953 where a violation of subsection (A) is not mitigated by subsection (B) exceptions.'" *Taylor*, 411 S.C. at 304, 768 S.E.2d at 12 (quoting *Suchenski*, 374 S.C. at 17, 646 S.E.2d at 881). "[T]he Legislature clearly intended for a *per se* dismissal in the event a law enforcement agency violates the mandatory provisions of section 56-5-2953." *Id.* (quoting *Roberts*, 393 S.C. at 348, 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." *Id.* (quoting *Roberts*, 393 S.C. at 349, 713 S.E.2d at 286).

A. The Circuit Court erred in affirming the Municipal Court's denial of Appellant's motions to dismiss or suppress because the required affidavit for failure to produce a breath test site video recording is deficient on its face by not providing which reasonable efforts were made to maintain the video recording equipment in an operable condition.

In *Humble*, 402 S.C. at 617-18, 742 S.E.2d at 20, this Court held that "[a] plain reading of subsection 56-5-2953(B) requires the arresting officer to submit a sworn affidavit certifying that the video recording equipment at the time of the arrest was in an inoperable condition and stating *which reasonable efforts* had been made to maintain the equipment in an operable condition." *See* § 56-5-2953(B). "A court reviewing the affidavit must determine whether the efforts listed in the affidavit were or were not reasonable." *Id.* "Thus, what is considered to be reasonable efforts varies by the facts and circumstances of each case." *Id.* (citing *Roberts*, 393 S.C. at 347, 713 S.E.2d at 285 (holding under the specific facts of the case that the town failed to satisfy any of the statutory exceptions that excuse noncompliance with the mandatory videotaping requirements of section 56-5-2953).

"Moreover, the legislature's decision to amend the statute from only requiring the affidavit to state reasonable efforts were made, to requiring *which* reasonable efforts were made, evidences a legislative intent to require specific facts in the affidavit to allow a reviewing court to make a determination of whether the law enforcement agency provided a valid reason for failing to produce a videotape." *Id.* Notably, this Court found, "Quite simply, the statute requires reasonable efforts", and [t]he 'reasonable efforts' language of the statute requires some 'doing,' and refusing to pay for repair visits evades the intent of the statute and is not 'doing' enough to constitute reasonable efforts to maintain the video equipment in an operable condition." *Id.*, 402 S.C. at 620, 742

S.E.2d at 21.

Discussion

In this case, the required affidavit for failure to produce a breath test site video recording is deficient on its face by not providing which reasonable efforts were made to maintain the video recording equipment in an operable condition. (R. Appellant's Response to the Return, pages, 1–6, and Exhibits A–D; Tr. 3, lines 13-18; Tr. 12, line 12 – 13, line 10). *See Humble*, 402 S.C. at 620, 742 S.E.2d at 21 (finding "[q]uite simply, the statute requires reasonable efforts", and [t]he reasonable efforts language of the statute requires some doing") (internal quotation marks omitted); *Roberts*, 393 S.C. at 346, 713 S.E.2d at 285 (stating a law enforcement agency's failure to comply with the provisions of section 56-5-2953 is fatal to the prosecution of a DUI case); *State v. Johnson*, 396 S.C. 182, 191-92, 720 S.E.2d 516, 521-22 (Ct. App. 2011) (noting the legislature intended strict compliance with section 56-5-2953).

The Arresting Officer simply failed to comply with the plain wording of the statute, as the affidavit did not provide *which* reasonable efforts were made to maintain the video recording equipment in an operable condition. (R. Appellant's Response to the Return, Exhibit C). Specifically, the Arresting Officer only checked the first box in section one stating, "I hereby certify that I cannot produce a video recording from the breath test side because: At the time of the person's arrest or probable cause determination, the video recording equipment or breath test device at the breath test site was in an inoperable condition and reasonable efforts have been made to maintain the equipment in an operable condition; and, there was no other operable breath test facility in the county." (R. Appellant's Response, page 5 and Exhibit C). The Arresting Officer

also provided a handwritten note at the bottom of section one, stating, "The video equipment in the Datamaster Room was inoperable and no receiving power", and "[t]he observation period was video recorded on my department body camera." (R. Appellant's Response, page 5 and Exhibit C). Therefore, the Circuit Court erred in affirming the Municipal Court's denial of Appellant's motion to dismiss the DUI charge. *See Humble*, 402 S.C. at 620, 742 S.E.2d at 21; *Roberts*, 393 S.C. at 349-50, 713 S.E.2d at 287 (holding an unexcused noncompliance with section 56-5-2953 mandates dismissal of a DUI charge).

B. The Circuit Court erred in affirming the Municipal Court's denial of Appellant's motions to dismiss or suppress because the Arresting Officer used a non-approved body camera video recording for the required breath test video and failed to record the entire breath test procedure, the actions of the breath test operator, and a significant portion of Appellant's conduct during the twenty minute observation period.

This Court recently held, "Under a plain reading of the statute, a person's conduct cannot be captured from a video in which he cannot be seen." *Kinard*, 427 S.C. at 373, 831 S.E.2d at 141. In *State v. Johnson*, 396 S.C. 182, 720 S.E.2d 516 (Ct. App. 2011), an officer moved the defendant off camera during the administration of the breath test where the viewer of the video recording could still hear the breath test but not see the defendant on the recording. This Court held that "the officer violated section 56-5-2953(A)(2)(c) when he failed to capture the administration of the breath test on the videotape." *Id.* at 189, 720 S.E.2d at 520. However, in *State v. Taylor*, 411 S.C. 294, 768 S.E.2d 71, this Court found no violation of section 56-5-2953 when the video recording of the incident briefly omitted the suspect because the "omission does not occur during any of those events that either create direct evidence of a DUI or serve important rights of the defendant." *Id.* at 306, 768 S.E.2d at 77.

Discussion

In this case, the Arresting Officer used a non-approved body camera video recording for the required breath test video and failed to record the entire breath test procedure, the actions of the breath test operator, and a significant portion of Appellant's conduct during the twenty minute observation period. (R. Appellant's Response to the Return, pages, 4–9; and Exhibits A–F; Tr. 4, line 6 – 7, line 3); *See Johnson*, 396 S.C. 182, 720 S.E.2d 516. The Arresting Officer's decision to only check the first box in section one and not the third box proves the Officer "certified that no video recording could be produced" and "any explanation provided in that section [three, regarding exigent circumstances,] was void." (R. Appellant's Response, pages 5-6 and Exhibit C).

In his Response to the Return, Appellant argued "the non-approved body camera footage from the Datamaster room [failed to comply with the video recording statute because it] does not show the entire breath test procedure, the actions of the breath test operator (other than that of his hands) or much of Appellant's conduct during the 20 minute observation period as the video was taken by a body camera which was attached to the brim of the [Arresting Officer's] cap." (R. Appellant's Response, page 7, and Exhibits A and B).

Appellant also noted in his Response that the Municipal Court omitted his motion to "suppress the "non-SLED approved body camera videos" in the Return despite being argued by Appellant pre-trial. (R. Appellant's Response, pages 4 and 6; Exhibit B). Appellant distinguished this case from *State v. Taylor*, 411 S.C. 294, 768 S.E.2d 71 (2014), by providing that "the [body] camera [video recording] failed to capture [Appellant] over 20 times during the observation period, totaling over 4 minutes." (R.

Appellant's Response, page 8 and Exhibit A and B).

The holding in *State v. Elwell*, 403 S.C. 606, 743 S.E.2d 802 (2013) is distinct from the facts in this case. Specifically, "*Elwell* dealt with a clear refusal and an officer's decision [to] stop recording after the refusal"; whereas here, "[t]he video does show that, during the time Appellant had to provide a sample, he asked numerous follow up questions regarding the test . . . put[] the mouth piece up to his mouth and prepare[d] to blow" when the DataMaster timed out. (R. Appellant's Response, pages 4, 7, and Exhibit A). "[U]nlike [in] *Elwell*, because there was not an actual refusal until time ran out to submit a sample, the evidence gathering portion was still ongoing . . . [, so the breath test site] must be videotaped in a manner which complies with the statute." (R. Appellant's Response, page 8). Notably, the Arresting Officer "chose to play the entirety of the [breath test video recording] at trial . . . because he believed that the observation period was evidence that supported the DUI charge." (R. Appellant's Response, page 8, and Exhibit A and B).

Furthermore, SLED Regulation provides, in relevant part: "To ensure a proper test is administered, a test is considered complete only after the operation protocol has finished and the signature lines are printed on the Breath Alcohol Analysis Test Report/Evidence Ticket." (R. Appellant's Response, page 9 and Exhibit F). "SLED Regulation 8.12.5(C) lists the breath test sequence as: 1. Video recording; 2. Advisement process; 3. Mouth check; 4. Data entry; 5. Observation period; 6. Operational protocol; and 7. Print out of the test report." (R. Appellant's Response, page 9). Therefore, the Circuit Court erred in affirming the Municipal Court's denial of Appellant's motions to dismiss the DUI charge or suppress the breath test site video recording. *See Roberts*, 393

S.C. at 346, 349-50, 713 S.E.2d at 285, 287 (holding an unexcused noncompliance with section 56-5-2953 mandates dismissal of a DUI charge; therefore, a law enforcement agency's failure to comply with the provisions of section 56-5-2953 is fatal to the prosecution of a DUI case); *Johnson*, 396 S.C. 182, 191-92, 720 S.E.2d 516, 521-22 (Ct. App. 2011) (noting the legislature intended strict compliance with section 56-5-2953).

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II. THE CIRCUIT COURT ERRED IN AFFIRMING THE MUNICIPAL COURT'S DENIAL OF APPELLANT'S MOTIONS TO DISMISS THE DUI CHARGE OR SUPPRESS THE INCIDENT SITE VIDEO RECORDING FOR NOT VIDEO RECORDING A NON-STANDARDIZED FIELD SOBRIETY TEST IN VIOLATION OF SECTION 56-5-2953 OF THE SOUTH CAROLINA CODE OF LAWS.

Subsection 56-5-2953(A) of the South Carolina Code of Laws provides, in relevant part: "A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site . . . 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.

S.C. Code § 56-5-2953(A) (emphasis added).

Subsection 56-5-2953(B) provides exceptions that excuse non-compliance with the mandatory video recording requirement:

> Nothing in this section may be construed as prohibiting the introduction of other relevant 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 video recording required by this section is not alone a 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 a ground for dismissal. However, **as soon as video recording is 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 video recording 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 video recording.

S.C. Code § 56-5-2953(B) (emphasis added). Subsection 56-5-2953(G) also provides, in relevant part: "The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement **once the law enforcement vehicle is equipped** with a video recording device." S.C. Code § 56-5-2953(G) (emphasis added).

This Court recently held, "Under a plain reading of the statute, a person's conduct cannot be captured from a video in which he cannot be seen." *Kinard*, 427 S.C. at 373, 831 S.E.2d at 141. In *Taylor*, 411 S.C. 305-06, 768 S.E.2d at 77, this Court held:

> In enacting the provision, the legislature indicated this purpose and intent by specifically requiring the video to "include any field sobriety tests administered," as they determine whether a driver is impaired and therefore create direct evidence of the DUI arrest. § 56-5-2953(A)(1)(a)(ii).
> . . .
> Nonetheless, interpreting the statute to require dismissal of the charges when the defendant is off camera for a short period of time and the gap does not occur during any of those events that either create direct evidence of a DUI or serve important rights of the defendant would result in an absurdity that could not possibly have been intended by the legislature.

Id. (finding "section 56-5-2953 does not require dismissal of a DUI charge when the video recording of the incident briefly omits the suspect but that omission does not occur during any of those events that either create direct evidence of a DUI or serve important

rights of the defendant.").

In *State v. Sawyer*, 409 S.C. 475, 763 S.E.2d 183 (2014), our Supreme Court addressed whether a silent video meets the requirements of section 56-5-2953(A). The Court found "the statute required a videotape not merely of the individual's conduct while being read his *Miranda* and informed consent rights, but also that it 'must include' 'the reading of *Miranda* rights' and 'the person being informed that he is being videotaped, and that he has the right to refuse the test.'" *Id.* at 480, 763 S.E.2d at 185-86 (quoting S.C. Code Ann. § 56-5-2953(A)(2)(b)). Thus, the court held the silent video did not meet the requirements of section 56-5-2953(A). *Id.*

Discussion

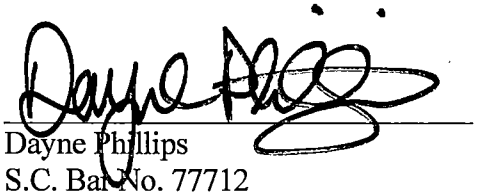
The Circuit Court erred in affirming the Municipal Court's denial of Appellant's motions to dismiss the DUI charge or suppress the incident site video recording for not video recording a non-standardized field sobriety test in violation of section 56-5-2953. In his Response to the Return, Appellant argued that "a recognized field sobriety test, albeit a non-standard one, was performed off camera" in violation of the statute. (R. Appellant's Response, page 9 and Exhibit A). Specifically, Appellant noted, "we can hear SGT Brown administering one non-Standardized Field Sobriety Test by asking [Appellant] if he knows the time without looking at his watch", and "[w]hen this question is asked, we cannot see either [Appellant] or his vehicle." (R. Appellant's Response, page 10 and Exhibit A and B). Appellant further explained, "As Officer Watson moves out of the area, and as the arresting officer did not produce any video from Officer Brown or his vehicle, we cannot hear whether or not SGT Brown conducted any subsequent Field Sobriety Tests." (R. Appellant's Response, page 10 and Exhibit A).

Notably, the exception for accident cases does not apply because the patrol car video recordings were activated by blue lights. (R. Appellant's Response, page 10 and Exhibit A). However, "[e]ven if this court were to rule that [the accident exception] does apply, the statute requires a compliant video as soon as practicable" and the existence of the other videos prove the officers could have visually recorded this field sobriety test. (R. Appellant's Response, page 10 and Exhibit A). Therefore, The Circuit Court erred in affirming the Municipal Court's denial of Appellant's motions to dismiss the DUI charge or suppress the incident site video recording for not video recording a non-standardized field sobriety test in violation of section 56-5-2953. *See Roberts*, 393 S.C. at 346, 349-50, 713 S.E.2d at 285, 287 (holding an unexcused noncompliance with section 56-5-2953 mandates dismissal of a DUI charge; therefore, a law enforcement agency's failure to comply with the provisions of section 56-5-2953 is fatal to the prosecution of a DUI case); *Johnson*, 396 S.C. 182, 191-92, 720 S.E.2d 516, 521-22 (Ct. App. 2011) (noting the legislature intended strict compliance with section 56-5-2953).

CONCLUSION

Based on the foregoing reasons, Appellant Thomas Ford respectfully requests that this Court reverse the circuit court's denial of his appeal from the municipal court seeking dismissal of the DUI charge or suppression of the incident and breath test site video recordings. However, if this court finds the record insufficient to rule on this appeal, Appellant respectfully requests that this Court remand to the circuit court for specific findings of fact and conclusions of law.

Respectfully submitted,



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January 9, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2019-001107

Trial Court Case No. 2017CP2700440

Thomas Ford, III, Appellant,

v.

Town of Hardeeville, Respondent.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal has been served upon **Ms. Prina C. Maines** and **Justin D. Maines**, Esquire, at **2008 Whitaker Street, Savannah, GA 31401**, and upon Thomas Ford, III, at 1613 Baldwin Road, Lugoff, SC 29078, on **January 9, 2020**.

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SUBSCRIBED AND SWORN TO before me
this 9th day of January, 2020.

(L.S.)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

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January 9, 2020

Via Hand Delivery
The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: **Thomas Ford, III v. Town of Hardeeville**
INITIAL BRIEF OF APPELLANT
Appellate Case No.: **2019-001107**

Dear Ms. Kitchings:

I have enclosed an original and one copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case, along with a Certificate of Service for filing.

I would greatly appreciate you filing the original and returning the clocked-in copy to the person filing the same. Thank you for your assistance with filing these documents.

[Signature Page to Follow]

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Dayne C. Phillips, Esq.

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Enclosures (noted)

cc: **Thomas Ford, III**
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Justin D. Maines, Esq.