THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY Court of General Sessions

R. Lawton McIntosh Judge

C.A. Nos.: 2017-GS-04-0365
Appellate Case No. 2019-001502

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Oct 15 2020
SC Court of Appeals

State of South Carolina, Respondent,

v.

Dustin Lee Hooper, Appellant.

FINAL BRIEF OF APPELLANT

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THE STATE OF SOUTH CAROLINA
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STATEMENT OF ISSUES ON APPEAL

WHETHER THE TRIAL COURT ERRED IN APPLYING THE DOCTRINE LAID DOWN IN THE STATE v. LANDIS TO THE INSTANT ACTION.

STATEMENT OF THE CASE

On October 28, 2016, Appellant Dustin Hooper (hereinafter referred as Hooper) started his day at 7 a.m. He worked a double shift at the Twisted Flame and got out around 10:30 p.m. He went home to shower; and, then head to TL Hanna to help jumpstart his friend DJ's car at around 11:00 p.m. After managing to get through the post-game, Westside traffic, he and DJ went to Christopher Steven Cauley's house off Highway 24. They were there momentarily; and, then proceeded to Clemson where they had learned of Halloween festivities. They got to the Pier around 12:30 a.m.

DJ knew people at the Pier and pushed through the crowd to join other friends. Hooper and Steven sat on the front hood of the car and watched the traffic of party goers going in and out of the Pier. The crowd, which were enjoying the festivities for several hours, was not something that either Hooper or Steven wished to contend. After approximately thirty (30) minutes, they left for a bonfire of which they had become aware.

Hooper drove them to the bonfire, which was roughly ten minutes away. They got to the bonfire sometime around 1:15 a.m. As had been the case at the Pier, they were not really familiar with the attendees. They managed to hang out for another thirty to forty-five (30-45) minutes, due to the fact that it was not nearly as crowded. Around 2:00 a.m., they got a call from DJ, whose car would not start again. They got in the car and headed back to the Pier.

They returned to the Pier to find DJ at his wit's end regarding the issue of his car's inability to start. They managed to get the car started once again; and, recognized that the

evening had been a huge disappointment; and it was time to cut their respective losses. The three of them said their goodbyes and left the Pier.

Initially, Hooper was to follow Steven back to his residence off Highway 24. However, as he traveled Clemson Blvd. toward Anderson, Hooper felt the day had been long enough; and he simply wanted to go home. Therefore, rather than go to Steven's house, he stayed on Clemson Blvd. in order to have a straight path to his own home.

On October 29, 2016 at 2:32 a.m., a call was made to 911 from an unnamed citizen. The call was dispatched. The caller relayed the following:

(a) That a red sedan with a tag number JKB851 was all over the road; and,

(b) That he was following the vehicle passing the KIA dealership in Anderson.

Reserve Deputy Charlie Coon (hereinafter referred as "Coon") responded to the call and located a black car that was of a similar make-at the 28 Bypass overpass of Clemson Blvd. Coon is a reserve in the ACSO. His primary employment is at Piedmont Honda and works only when his children are not with him. Coon saw Hooper's car and recognized that may be the vehicle the caller had described. He checked the tag with dispatch; and it was a match. He immediately blue-lighted the vehicle; and, subsequently, made a traffic stop.

A few minutes later, two troopers were coming from the opposite direction and saw that Coon had engaged his blue light for what appeared to be the vehicle they were seeking. They each did a U-turn; and, upon arrival, offered assistance to Coon.

Coon's vehicle, or the one that he used once a week, was not equipped with a dash cam. He did not have a button cam on his uniform, either. Coon allowed the troopers to question Hooper.

It must be noted that when the troopers arrived, they pulled in behind Coon's

vehicle. Coon's vehicle, whose blue lights remained active, was between Hooper and the troopers' vehicles. Approximately five minutes into the stop and line of questioning, Coon moved his vehicle. Thus, for a whole five minutes, Hooper was barely seen in the video.

At that point, Hooper was subjected to the field sobriety tests. Trooper Griffin determined that Hooper failed the tests, placed him under arrest for DUI. Hooper was then transported to ACDC, where he was asked to take the breath test. Hooper refused to undergo the breath test.

In trial, Coon testified that he saw Hooper making "hard right turns" when he was attempting to make the traffic stop. On the same token, he testified that Hooper never touched the curb. There is no way that Hooper could have made such a turn without striking the curb, which Coon testified that he had not. He did not offer that Hooper had done anything while approaching the traffic light.

Coon also stated that the car assigned to him by ACSO did not have a dash cam for purposes of videotaping statute (SC Code Ann. § 56-5-2953).

On March 6, 2019, a jury convicted Hooper of DUI. He moved to remain on bond during the appellate process, which the trial court granted. Hooper moved for reconsideration, which the trial court denied on July 25, 2019. On August 5, 2019, Hooper filed a Motion for Relief from Judgment praying the trial court would vacate the judgment based on inadvertence. Hooper moved to amend the above-said motion into Motion to Vacate Judgment on August 9, 2019. On August 27, 2019, the trial court issued an Order denying the motion without the necessity of a formal hearing. Despite said Order, the trial court heard the parties' arguments on August 29, 2019. On August 30, 2019, the trial court denied Hooper's Motion to Vacate the verdict. Thus, this appeal.

STANDARD OF REVIEW

In criminal cases, an appellate court sits to review errors of law only. State v. Bacchus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

ARGUMENT

THE TRIAL COURT ERRED IN APPLYING THE RULING IN STATE v. LANDIS IN THE INSTANT ACTION.

The circumstances of this case are different than those found in *State v. Landis*.

Respondent contends that since Trooper Griffin was the arresting officer and he produced a video, then his acts complied with S.C. Code Ann. §56-5-2953. Respondent cited the case of State v. Landis, 326 S.C. 97, 606 S.E. 2d 503 (S.C. Ct. Appl. 2004) as a precedent.

Hooper insists that reliance on *Landis* is misplaced. It is improper to apply the ruling in *Landis* because the circumstances are different. The pertinent facts of that case are as follows:

> On November 27, 2000, South Carolina Highway Patrol Trooper David Davis (Trooper Davis) observed a vehicle driven by Landis headed northbound on Interstate 85. Landis was weaving and straddling the center lane. A State Transport Police Officer had taken a position immediately behind Landis' vehicle. The State Transport Police Officer initiated blue lights and pulled Landis over to the side of the interstate. Trooper Davis then pulled behind the Transport Police Officer. After the Transport Officer removed Landis from his car, Trooper Davis performed the field sobriety test, determined Landis was impaired, and placed him under arrest for DUI. There was no videotape of the incident site because Trooper Davis' videotape machine was inoperable at the time of Landis' arrest.

Landis, supra.

Landis argued that the State Transport Police Officer was the arresting officer, to which the requirements of Section 56-5-2953 must be met. The circuit court ruled that Trooper Davis was the arresting officer, which was affirmed by the Court of Appeals. It ruled that "*Trooper*

Davis was the "arresting officer" as that phrase is ordinarily understood. Trooper Davis personally observed Landis driving prior to the traffic stop. He arrived at the scene simultaneously with the State Transport Officer. Trooper Davis pulled in directly behind the Transport Officer and approached just after Landis had been removed from his vehicle. Moreover, Trooper Davis conducted the field sobriety test, determined Landis was impaired, and placed him under arrest for DUI." Id.

In the instant case, Trooper Griffin did not observe Hooper's driving and was not present during the stop. Unlike the *Landis* case where Trooper Davis personally observed *Landis*' driving and arrived simultaneously with the State Transport Police Officer at the traffic stop, in the instant case, there was no opportunity for Trooper Griffin nor his companion to have personally observed Hooper's alleged violation. Trooper Griffin, with his companion, came from the opposite direction and saw Deputy Officer Coon (hereinafter referred as Coon), engaging his blue lights. The troopers made a U-turn and upon arrival at the traffic stop, they offered their assistance to Coon. Coon, aware that he did not have the requisite camera to videotape the stop and Hooper's conduct, allowed the troopers to perform the field sobriety tests (FSTS) and place the latter under arrest. Coon moved his car out of the way for Griffin. In his testimony, Coon admitted to parking behind Hooper. (R. p. 54, 14.18).

The circumstances that led the Court to decide that Trooper Griffin was the arresting officer in *Landis*, differ largely from that of the instant case. *Landis* ruling does not apply to this case.

Coon is the arresting officer.

Landis also cited the case of State v. Garvin in determining the arresting officer.

> The term "arrest" has a technical meaning, applicable in legal proceedings. It implies that a person is thereby restrained of his

> liberty by some officer or agent of the law, armed with lawful process, authorizing and requiring the arrest to be made. It is intended to serve, and does serve, the end of bringing the person arrested personally within the custody and control of the law, for the purpose specified in, or contemplated by the process.

State v. Garvin, 341 S.C. 122, 55 S.E.2d 591 (Ct. App. 2000) as cited in *Landis*.

Hooper maintains that Coon was the arresting officer. He was the one who responded to the anonymous tip/call and located, followed, and observed, Hooper while the latter was driving. It was Coon who determined that there was probable cause for stopping, and himself performed the traffic stop. Coon restrained Hooper's liberty, because the whole time that they were waiting for the two troopers, Hooper could not leave the site voluntarily. Coon pulled in behind Hooper so he could not leave. Coon was the one who brought Hooper within the custody and control of the law, when he handed Hooper over to the troopers. Coon was present the entire time Hooper was performing the sobriety test, until the latter was transported to the ACDC. Coon was the arresting officer responsible for meeting the statutory requirements of Section 56-5-2953.

The State contends that Trooper Griffin was the arresting officer, by reason of him conducting the FSTS and the subsequent arrest, despite not having personal knowledge of the reason for the traffic stop. For the Court to accept this logic is to allow the State to circumvent the law and allow different officers to conduct the different phases of the DUI arrest, thereby negating accountability.

The arresting officer did not comply with § 56-5-2953.

Hooper posits that his arrest and conviction should be reversed for failure by the State to comply with the Mandatory DUI Videotape Law. S.C. Code Ann. §56-5-2953 provides:

> (A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the 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.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(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.

(3) The video recordings of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) 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.
>
> xxx xxx xxx

S.C. Code Ann. § 56-5-2953 (A)&(B)

A. Coon did not have a video camera in his patrol car, which violates the statute demanding the same.

In his testimony, Coon admitted that he was unable to record the stop or conduct of Hooper and the FSTS, as required by §56-5-2953, because the car issued to him was not equipped with a dash cam. The Statute requiring law enforcement agencies to provide its patrol vehicles with video camera equipment, has been in effect since June 1994. (Act No. 434, Section 18). On October 29, 2016, Anderson County Sheriff's Office had not complied with this mandate.

In the case of *Town of Mt. Pleasant*, the Appellate Court found that the protracted failure to equip its patrol vehicles with video camera defeated the intent of the Legislature. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011).

In the above-mentioned case, Officer Burbage of the Town of Mt. Pleasant Police Department, effected a traffic stop of Treva Roberts. *Id.* Officer Burbage performed three (3)

field sobriety tests on Roberts, which she failed. Officer Burbage arrested Roberts for DUI, transported him to the police department and was offered a breathalyzer test. Roberts refused.

Officer Burbage failed to record the initial stop, the conduct of the defendant in the incident site and the FSTS. Officer presented an Affidavit showing that at the time he was operating the vehicle, that it was not equipped with videotaping device. The State argued that the statute requiring videotaping of the DUI did not apply to Town since the law only takes effect "once the law enforcement vehicle is equipped with a videotaping device". *Id*. The State opined that since its vehicles were not equipped with video cameras, then the above-mentioned law did not apply to it. *Id.*

The Court of Appeals noted that there were municipalities whose law enforcement agencies had not placed cameras in patrol cars long after the law was enacted. The Court of Appeals ruled that the Town should not be rewarded for continually evading their duty under the statute. *Id*. The Court of Appeals found that their behavior and lack of compliance within reasonable amount of time was sanctionable. The Court ruled that the remedy for the Town's failure to equip its patrol cars with cameras is dismissal of the charges, just as dismissal is the appropriate remedy for other violations of the mandatory provisions of § 56-5-2953:

> As evidenced by this Court's decision in Suchenski, the Legislature clearly intended for a per se dismissal in the event a law enforcement agency violates the mandatory provisions of section 56-5-2953. Notably, the Legislature specifically provided for the dismissal of a DUI charge unless the law enforcement agency can justify its failure to produce a videotape of a DUI arrest. Id. § 56-5-2953(B) ("Failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930 . . . if [certain exceptions are met]."). The term "dismissal" is significant as it explicitly designates a sanction for an agency's failure to adhere to the requirements of section 56-5-2953.

Mt. Pleasant, supra.

Hooper submits that the ruling in *Town of Mt Pleasant* should be applied in this case. ACSO had not equipped Coon's patrol car with a dash cam, despite the fact that his only purpose on the one day a week that he worked was to monitor traffic. It should be noted that the above-mentioned statute has been active for nearly eighteen (18) years, and the ruling on *Town of Mt. Pleasant*, was issued five (5) years prior to the stop herein. The county and ACSO had more than enough time to comply with the statute by equipping their patrol cars with camera/dashcams.

In denying Hooper's Motion to Vacate Judgment, the trial court judge stated:

> 07. THE COURT: Well you know, again, there's no
> 08. evidence in the record to suggest this car had been out
> 09. in use for a long period of time. It should have been
> 10. equipped and it wasn't. There's no evidence to suggest
> 11. the other way, or that it was brand new and hadn't had
> 12. it done.

(R. p. 123, 7.12).

This concern was addressed in Town of Mt. Pleasant when the Court recognized that while the statute was "silent with respect to a time requirement for when vehicles must be equipped with video cameras. However, applying the rules of statutory construction, we find the Town's interpretation would defeat the legislative intent of section 56-5-2953 and the overall DUI reform enacted in 1988." *Town of Mt. Pleasant, supra.*

Clearly, the law did not distinguish between used or newly acquired vehicles. Moreover, there was no distinction as to how long the vehicles had been absent video equipment. This Court should not condone the county and ACSO's willful and wanton disregard for legislative reform that took place over a quarter century prior to the stop; and, an appellate decision that eliminated any gray area that may have existed regarding legislative intent. The plain meaning of the language of the statutory reform put into effect over three (3) decades ago dictates that this

action be dismissed. Only then will there be compliance with the legislature's directive.

B. Arresting Officer failed to submit the mandatory affidavit.

This law must be read in two parts. The first was the mandate for arresting officer to produce the required videotape of the DUI arrest. Failure to produce the videotape would justify the dismissal of the DUI charges.

The second part of the statute, subsection (B), provides for the exception to the mandatory requirements of subsection (A). In short, failure to produce the required videotape is not alone a ground for dismissal, provided the arresting officer submits a sworn affidavit either (1) certifying that the video recording at the time of the arrest was in an inoperable condition and stating the reasonable efforts taken to maintain the equipment operable, or (2) that it was impossible to produce the videotape because the defendant either (a) needed emergency medical treatment or (b) exigent circumstances existed.

There are numerous cases holding strict compliance with §56-5-2953 is best effectuated by way of dismissal of a DUI or DUAC charge where a violation of subsection (A) is not mitigated by subsection (B) exception (or the affidavit requirement). Murphy v. State, 392 S.C. 626, 630, 709 S.E. 2d 685, 687 (Ct. App. 2011), City of Rock Hill v. Suchenski, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007), and Town of Mt. Pleasant , supra 393 S.C. 332, 346, 713 S.E.2d 278, 285.

Hooper argues that the arresting officer's inability to produce the required video; AND, failure to provide an affidavit justifying its nonexistence as required by subsection (B) of the statute, operate to the dismiss the DUI case against him.

C. The video recording did not comply with the contents required by the law.

Section 56-5-2953 requires that a person who drives under the influence must have his conduct at the incident site videotaped. The law requires that videotaping must begin not later than the activation of the officer's blue lights. The video must include: (1) the defendant's conduct at the incident site; (2) field sobriety tests (FSTS); (3) defendant's arrest; and (4) reading/advising defendant of his Miranda rights.

In the case of *Town of Mt. Pleasant*, this Court stated that the purpose of §56-5-2953… "is to create direct evidence of a DUI arrest." *Town of Mt. Pleasant, supra.* Hooper believes that this evidence should include the stop itself. This is even more pronounced when the statute dictates that the recording begins not later than the activation of the officer's blue lights. Normally, blue lights are activated when a member of law enforcement has observed a sign and/or warning from the actions of an individual which give rise to probable cause that there has been a violation of a law or ordinance; and, as such, said driver should yield to the law enforcer's investigation. This signals the start of the DUI investigation.

Hooper argues the law intended for the stop to be recorded as well because it is the only way for defendant to be protected from embellishment of his actions by law enforcement agents attempting to ferret out drunk drivers and safeguard the public from baseless, invalid or unlawful stops. Hooper believes that this is the rationale for requiring that the recording begins not later than the activation of the officer's blue lights.

Furthermore, the law provided that the videotaping must include the defendant's "conduct at the incident site", which should include the violation.

Coon testified that he was responding to a call about a reckless driver in a sedan with tag JKB851. There was no description of the driver. Coon opined that Hooper was making "hard right turns", prior to turning onto Walker Drive, where Coon effected the stop. (Trial Transcript,

p. 15, 21.25 & p. 16, 1.11). Since a hard-right tum is a 90-degree tum, common sense indicates that this could not be the case. Hooper could not have made such a tum without striking the curb. There was no physical evidence showing damage on the right side of Hooper's vehicle, indicating an inability to safely navigate from the point of blue-light initiation until he stopped in the well-lit front of a business.

Hooper believes that without the video showing the stop, the reason for the stop could not be ascertained.

On the BOLO issue:

During the hearing for Hooper's Motion to Vacate, Respondent raised the defense that the video requirement does not apply in this case since this is not an ordinary DUI case, but a BOLO stop.

> 23. MR. OVERBY. That's quite alright. The issue is
> 24. who has to produce the video. This case I would
> 25. actually put more akin. And Mr. Smith, I'm just gonna
> 01. amend one thing that he says or make a correction. The
> 02. legislature's not saying that these officers have to
> 03. have cameras for all traffic offenses. This does not
> 04. apply.
> 05. THE COURT. Just the DUI case. And the statute
> 06. does say that.
> 07. MR. OVERBY. Correct. But it's only for DUI
> 08. cases.
> 09. THE COURT. Right.
> 10. MR. OVERBY. So when an officer is conducting a
> 11. traffic stop, and in this case, the officer had a BOLO,
> 12. okay, I mean, and he conducts the traffic stop. He
> 13. believes that it's possible impairment. But I mean,
> 14. the question becomes ultimately this, what is the
> 15. officer to do? Is he supposed to allow the drunk driver
> 16. to continue on the roadway without---

(R., p. 122-123).

First, there is no case law nor statute that justifies Respondent's position. The

videotaping law did not make any distinction between DUI and BOLO call.

Furthermore, no officer knows if someone is DUI until the offender is in his presence. Hooper got pulled over for erratic driving. This is the same as a normal DUI.

Second, Respondent himself applied the DUI video requirement as the standard in his arguments against Hooper. Respondent should not be allowed to cherry pick which part of the law to apply to its cause, and discard those that do not work in its favor.

Third, even assuming there was a BOLO for herein Hooper, the anonymous tip standing alone, does not constitute probable cause. The conclusory statement of the caller had no corroboration. This was especially significant as Coon admitted himself that Hooper's vehicle did not exactly matched the description in the BOLO call:

01. Q. Okay. And what -- what was the vehicle
02. description under the BOLO?
03. A. The vehicle description came out as a red in
04. color Honda Civic stating a South Carolina tag,
05. JKB-851.
06. Q. And what was it called in by?
07. A. It was called in by a following citizen.
08. Q. Okay. And what drew your suspicions to the
09. vehicle that night?
10. A. What drew my suspicions to the vehicle was, I
11. approached 76 off of 28 Bypass on the down ramp in
12. Anderson County. Took a left onto 76 to try to cut
13. off the vehicle, and noticed the vehicle underneath
14. the bypass at a stop -- at a stoplight.
15. So I turned around on the vehicle. With the
16. vehicle description, it was of a different color.
17. So I called dispatch and asked them to make sure
18. that this was the accurate tag that they had been
19. given, and it was.

(R., p. 46, 1.19).

It should be noted that prior to turning his blue lights, Coon did not mention any action that could have been described as "erratic driving". It was after Coon turned his blue lights that

he allegedly observed Hooper making hard right turn, without signal. However, Coon also testified that Hooper's vehicle did not hit any curb, which would have been the logical consequence of Hooper making hard right turns. Hooper avers that Coon's testimony was replete with inconsistencies.

11. Q. Can you describe this attempt to turn in more
12. detail for the jury?
13. A. The attempt to turn, to me where the vehicle
14. was trying to exit the roadway using no turn signal,
15. but there's several turnoffs right there. There's a
16. couple into the dealership itself, and then a BB&T
17. Bank is beside it, and then Walker Drive is the next
18. road to the right after that.

(R., p. 47, 11.18).

01. Q. So you didn't see him drive?
02. A. Up to the traffic light, no, sir. Once he left
03. the traffic light, yes, sir.
04. Q. So you got blue lights on him which means what?
05. A. That means he's getting pulled over, sir.
06. Q. So that means he's got to try to get over,
07. right?
08. A. That's correct, sir.
09. Q. So he was having difficulty finding the
10. appropriate spot to pull over?
11. A. If that's what he did, sir. I mean, it was
12. well lit and very wide. Several areas he could've
13. pulled off in clear sight.
14. Q. Like what?
15. A. Like a driveway.
16. Q. Driveway of what?
17. A. A dealership.
18. Q. Where did he end up turning right at?
19. A. On Walter Drive.
20. Q. So he turned down a road?
21. A. That's correct, sir.
22. Q. And where he stopped was in a very open parking
23. lot; is that right?
24. A. It was the edge of the road, sir. There's
25. several vehicles. That's an automotive repair shop
01. that keep vehicles there.
02. Q. Is it the same place that testing's done here
03. on the video?

04.	A.	Yes, sir.
05.	Q.	And you're saying that there was cars somewhere
06.		there?
07.	A.	I said it's an automotive service area. They
08.		repair cars there.
09.	Q.	Yes, sir. Could you see any of those cars in
10.		the video?
11.	A.	I don't recall, sir. I know where my car was
12.		placed at.
13.	Q.	Was it near a car?
14.	A.	My car was parked behind his vehicle. It was
15.		angled to the front door of the business.
16.	Q.	Other than your cars, was there any other cars
17.		near your vehicles?
18.	A.	I didn't pay attention to those cars, sir.
19.	Q.	He safely went to where he ended up, right?
20.	A.	There was no altercation or anything like that.
21.		Yes, sir. I mean, he safely went there.
22.	Q.	And when I -- when I ask that question, I'm
23.		asking about the vehicles. He didn't run into
24.		anything or hit a curb or anything like that, right?
25.	A.	No, sir.

(R., pp. 53 & 54).

There was traffic on a Friday night with the Halloween parties. The officer said Hooper was making hard right turns which was impossible without hitting a curb. Coon stated Hooper did not hit a curb. (R., p. 54, 22.25). Coon also testified that Hooper stopped at the edge of the road and there were several vehicles, and in the same breadth, stated that he did not recall seeing any car in the video. (R., p. 53, 24.25 & p. 54, 1-12). The officer embellished.

The very reason the statute says the arresting officer must have the video from the initiation of the blue lights is to lessen the State's subjective analysis with video proof of the existence of the drunk driving –or not. There was not here.

Law enforcement is bound to obey laws concerning Driving Under the Influence, just as Hooper was.

> " [A] court must abide by the plain meaning of the words of a

> statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation."

State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011).

"By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of §56-5-2953 and, in turn, promulgated a severe sanction for noncompliance." *Town of Mt. Pleasant* at 349.

In *Town of Mount Pleasant,* Justice Beatty found that "the Town failed to establish any statutory exception to excuse its noncompliance"; and, affirmed Judge Nicholson's reversal of Roberts' conviction, and subsequent dismissal. *Id.* at 350.

Hooper reiterates that his arrest and conviction should be reversed for failure of the State to comply with the statute on videotaping requirement. Coon, who was the arresting officer, was unable to videotape the DUI arrest; and he failed to comply with the Affidavit requirement which has the ability to negate the lack of video.

Hooper maintains that the video submitted by Trooper Griffin is inadmissible for the following reasons: (1) it was not done by the arresting officer; (2) it did not capture the traffic stop; and, thus, it did not establish probable cause.

CONCLUSION

For the foregoing reasons, Hooper respectfully prays this Court reverse the decision of the lower court which disregarded the triad of statutory violations to affirm the jury's decision. The affirmation is not simply an error of law. It constitutes errors of law. The Court abandoned its obligation to make findings which promote the statute's legislative intent. Hooper's conviction should be vacated.

(SIGNATURE PAGE TO FOLLOW)

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October 15, 2020.

FORM 16
CERTIFICATE OF COUNSEL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

C.A. Nos.: 2017-GS-04-0365
Appellate Case No. 2019-001502

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Oct 15 2020
SC Court of Appeals

State of South Carolina, Respondent,

v.

Dustin Lee Hooper, Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certify that this Final Brief of Appellant complies with Rule 211(b), SCACR

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