

## "South Carolina Court of Appeals Issues Opinion Addressing DUI Videotaping Requirements in State v Manning"

In an opinion filed on October 10, 2012, the South Carolina Court of Appeals addressed South Carolina Code Section 56-5-2953; and its mandate of dash cam video recording at the arrest site in DUI cases.

### **FACTS:**

On July 31, 2009, the defendant (Christopher Manning) was working at a private club in Lexington, South Carolina. His friend Jacob Hill also worked at a nearby restaurant. On the night in question, Hill needed a ride home from work so he walked over to where Manning was working at the end of his shift. When he arrived, Hill began consuming alcoholic beverages with friends. Soon thereafter, both Manning and Hill consumed alcoholic beverages with friends until around 4:00 a.m. When the restaurant closed, a witness testified that she heard Manning and Hill talk about going swimming in Lake Murray. She also heard Manning say that he had his car and that he was going to drive. Manning and Hill were subsequently involved in a single car accident, severely injuring Manning and killing Hill. Manning was arrested and indicted for felony DUI, among several other charges. During the jury trial, the State argued Manning was the driver. Manning's defense at trial was that Hill was actually the driver of the vehicle.

Corporal Quest Hallman, of the South Carolina Highway Patrol, was the first police officer to arrive at the scene of the wreck. Critically, Manning had already been transported to the hospital when Hallman arrived at the scene. Hallman conducted an investigation of the scene to determine the identity of the driver. Corporal Hallman ultimately concluded that Manning was the driver of the vehicle and directed Trooper Jeffrey Baker to retrieve a blood sample from Manning at the hospital. In later explaining his request for the blood sample, Corporal Hallman testified, "In my experience and my determination, I determined that Manning was the driver of the vehicle. Since there was a death involved, a legal blood sample was drawn."

Manning argued before the Circuit Court for the felony DUI charge to be dismissed because the arresting officer had not provided an affidavit in compliance with South Carolina Code Section 56-5-29-53. Section 56-5-2953(A) provides that a person who operates a vehicle while under the influence of alcohol "must have their conduct at the incident site and the breath test site video recorded." However, subsection B of 56-5-2953 outlines four exceptions that excuse non-compliance with subsection A. Specifically, failure to comply with the video recording requirement is excused: (1) if the arresting officer submits a sworn affidavit certifying that the video recording equipment was inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it was impossible to produce the video recording because either (a) the defendant needed emergency medical treatment or (b) exigent circumstances existed; (3) road blocks, traffic accident investigations and citizen arrest; or (4) for any other valid reason for the failure to produce the video recording based upon the totality of the circumstances.

### **HOLDING:**

The Circuit Court properly refused to dismiss Manning's felony DUI charges under the requirements of South Carolina Code 56-5-2953. Here, the Circuit Court found that there was no conduct to record under subsection A of the statute because the police had arrived after Manning had been taken from the scene in order to be provided medical treatment. The Circuit Court correctly held that subsection A of 56-5-2953 was inapplicable because Corporal Hallman and the defendant Manning were never simultaneously present at the incident site; therefore, there was nothing to record. The Circuit Court correctly held that even if Corporal Hallman had a duty to record or sign a sworn affidavit certifying that it was physically

impossible to produce the video recording due to Manning's need for emergency medical treatment, the statute allows the court to look at the "totality of the circumstances" in order to make a determination of whether or not the charges should be dismissed. The Circuit Court properly refused to dismiss Manning's charges under subsection B. In this case, it was clearly established that it was physically impossible for Corporal Hallman to produce a video recording of the defendant Manning at the incident site because Manning had already been transported from the scene for emergency medical treatment prior to Corporal Hallman's arrival. Despite the failure of Corporal Hallman to provide an affidavit under subsection B, the video recording was not required because Corporal Hallman was conducting an investigation of a traffic accident and Manning was arrested the hospital. Moreover, even if the traffic accident investigation exception was inapplicable, the circuit court properly concluded that the video recording was not required due to the totality of the circumstances present in the case.

Accordingly, we find the Circuit Court properly held Section 56-5-2953 did not require the dismissal of Manning's charge of felony DUI.

The Circuit Court judgment is affirmed.