

"South Carolina Court of Appeals further clarifies video recording requirements in DUI cases"

**CASE NAME: City of Greer versus Shawn Humble (Appellate Case No. 2012-207550, filed March 27, 2013)**

**RESULT:**

The trial court erred in reversing the lower court's dismissal of a DUI charge; and the trial court opinion is reversed and the dismissal of the DUI charge is reinstated.

**FACTS:**

On February 25, 2011, the defendant, Shawn Humble, was pulled over by City of Greer police officer Jim Williams. Officer Williams subsequently submitted an affidavit certifying that the video recording equipment in his car at the time of the arrest was "inoperable and stating that reasonable efforts had been made to maintain the equipment in an operable condition." The affidavit was a form affidavit.

**PROCEDURAL HISTORY:**

Humble moved to dismiss the DUI charge at the initial trial court level citing that Officer Williams affidavit had failed to comply with the statutory requirements of South Carolina Code 56-5-2953. A hearing on the defendant's motion to dismiss was held before the municipal court in Greer, South Carolina. Recognizing that the affidavit did not state which reasonable efforts had been undertaken to keep the video recording equipment in good condition, the city enlisted oral testimony from Officer Williams in an attempt to supplement the affidavit. Humble object to the receipt by the court of any oral testimony. The court received the testimony from Officer Williams which was a detailed account of steps that the City of Greer normally takes when a dash cam is inoperable. Ultimately, Officer Williams testified that the company that originally installed the dash cams for the City of Greer would bill the city for any extra maintenance services provided and that the city had declined to pay for and establish these services from the company.

The municipal court granted Humble's motion to dismiss, finding that Officer Williams affidavit was "deficient on its face, and that the supplemental testimony received by the court did not cure the deficiency." Specifically, the municipal court judge also determined that Officer Williams testimony demonstrated clearly that the City only reacts to video recording equipment problems and does not check them in an ongoing manner to make sure that they are working correctly in order to record field sobriety tests in DUI cases.

The City of Greer then appealed to the South Carolina Circuit Court. A hearing was held before the Circuit Court, and the Circuit Court found that as a matter of law the municipal court to narrowly construed the statute and erred in dismissing the case and remanded the case for trial to the initial trial court.

The defendant Humble then appealed to this court the trial court's overturning of the municipal court's decision to dismiss the DUI charge.

**ISSUE:**

Did the Circuit Court err in reversing the municipal court's dismissal of Humble's DUI charge because the affidavit required by South Carolina Code Section 56-5-2953(b) was deficient on its face?

**HOLDING:**

Yes, the Circuit Court erred in overturning the original dismissal of the DUI charge.

Effective February 10, 2009, the South Carolina Legislature amended the affidavit requirement of Section 56-5-2953(b). Prior to the amendment, the statute only required that an officer state "reasonable efforts" had been made to maintain the dash cam equipment in an operable condition. The amended statute, however, now requires an officer to state which reasonable efforts had been made to maintain the equipment in an operable condition.

Here, the Circuit Court erred in reversing the municipal court's dismissal because the affidavit is clearly deficient on its face. The affidavit Officer Williams provided to the municipal court does not state which reasonable efforts were made to maintain the video recording equipment in an operable condition; thus, the City of Greer failed to comply with the plain statutory requirements of Section 56-5-2953. A supplemental affidavit was never filed and the oral testimony presented at trial to supplement the affidavit was insufficient to meet the affidavit requirements of the statute. In State v Johnson, 396 S.C.182, 720 S.E.2d (Ct. App. 2011), this court has previously noted that the South Carolina legislature intended strict compliance with the provisions of section 56-5-2953. Furthermore, in Town of Mt. Pleasant v Roberts, 393 S.C. 332, 713 S.E.2d (2011), our Supreme Court held that an unexcused non-compliance with Code Section 56-5-2953 mandates dismissal of a DUI charge.

Based upon the file in this case provided to this court, we find that the record supports the decision of the municipal court judge in that the City of Greer did not establish that reasonable efforts were made to maintain the video recording equipment in an operable condition. The City of Greer's decision to merely report the malfunction of the video equipment to the installation company, while refusing to pay for the repairs and continuing to use the defective equipment is not a valid reason for failing to produce a video recording of the defendant Humble's conduct.

**ACCORDINGLY**, the Circuit Court ruling overturning the municipal court's dismissal of the DUI charge is reversed.