

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
City of Rock Hill,)
)
)
Plaintiff,)
)
v.)
)
[Defendant Name],)
)
)
Defendant.)
_____)

IN THE MUNICIPAL COURT FOR
THE CITY OF ROCK HILL

Ticket No.: XXXXXX
DUI 1ST

MOTION TO DISMISS

The Defendant, [Defendant Name], through her undersigned attorney, Kevin M. Hope, hereby moves the Court to dismiss the charge of Driving Under the Influence. The grounds for this Motion are as follows:

1. On November 2, 2012, at approximately 12:55 AM, [Officer Name] of the Rock Hill Police Department initiated a traffic stop of the Defendant for suspicion of Driving Under the Influence.
2. [Officer Name] administered a field sobriety test and placed the Defendant under arrest for Driving Under the Influence in violation of S.C. Code Section 56-5-2930.
3. S.C. Code Section 56-5-2953(A) requires that a person charged with Driving Under the Influence have his conduct at the incident site video recorded.
4. S.C. Code Section 56-5-2953(A)(1)(a) mandates that the incident site:
 - (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 56-5-2030 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.

5. [Officer Name] has not produced a video recording of the incident site pursuant to S.C. Code Section 56-5-2953.

6. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.¹

7. When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.²

8. Our appellate courts have held that the videotaping requirements of Section 56-5-2953 are mandatory, and that dismissal is an appropriate remedy provided by Section 56-5-2953 where a violation of subsection (A) is not mitigated by subsection (B) exceptions.

9. In support of this Motion, the Defendant relies on City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007), Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (S.C. 2011), and Murphy v. State, 392 S.C. 626, 709 S.E.2d 685 (S.C.App. 2011) (footnote 4).

FOR ALL THE ABOVE REASONS the Defendant moves the Court to dismiss the charge of Driving Under The Influence for noncompliance with S.C. Code Section 56-5-2953.

¹ Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009).

² State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Respectfully submitted,

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Date: _____