

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT FOR
	)	BEAUFORT COUNTY
COUNTY OF BEAUFORT	)	
	)	
STATE OF SOUTH CAROLINA	)	TICKET NO.: 28982 FP
	)	
vs.	)	ORDER GRANTING DEFENDANT'S
	)	MOTION FOR DISMISSAL
	)	
LANCE S. LOWE	)	

On August 28, 2011, the Defendant, Lance Lowe was charged with DUI on Uniform Traffic Ticket 28982FP. The Defendant, through his attorney, Samuel C. Bauer, filed a Motion for Discovery in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure. That Motion was filed and served on the prosecuting agency on August 30, 2011. The prosecuting agency acknowledged receipt of the Rule 5 Motion on September 1, 2011 and a discovery response was provided that same day.

The matter comes before me on December 8, 2011, based on a Motion to dismiss for failure to comply with the incident site videotaping requirements set forth in §56-5-2953. Having heard the arguments of the parties and having conducted a complete review of the incident site video recording, this Court makes the following

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The relevant conduct took place in Beaufort County, South Carolina within the jurisdictional limits of this Court.
2. South Carolina Code of Laws §56-5-2953(A)(1)(a)(ii) requires that the video recording at the incident site must . . . show the person being

- advised of his Miranda rights.
3. The incident site video in this case fails to comply with the statutory requirements requiring that Miranda be shown. During the Miranda advisement by the arresting officer, another on site officer receives a cell phone call and while talking on his cell phone walks in front of the video camera. Although the Miranda advisement is partially captured on video, a substantial portion of the Miranda advisement is completely obscured from view on the video.
  4. §56-5-2953(B) contains a savings clause, whereby the State can submit an affidavit that may set forth legally sufficient grounds for failing produce a video recording which complies with law.
  5. The State chose not to submit an affidavit in this case.
  6. §56-5-2953(B) allows the Court to considering any other valid reason for the failure to produce the video recording "based on the totality of the circumstances." The State however chose not to present any evidence or testimony from which the Court could consider any other valid reason for the failure to produce a complying incident site video recording.
  7. In City of Rock Hill v. Suchenski, our Supreme Court considered the consequences of the arresting officer's failure to produce an incident site videotape that complied with the requirements of §56-5-2953(A), where no exceptions to the videotape requirement as allowed by §56-5-2953(B) existed. The Court determined that the proper remedy was dismissal.

8. I find Suchenski to be controlling. In the instant case, the State cannot produce an incident site videotape which complies with the requirements of §-56-5-2953(A) and the State has not submitted an Affidavit that complies with the requirements of §56-5-2953(B). The remedy provided by law is dismissal.
9. Although the Court recognizes that dismissal of the underlying charge is a severe sanction given the facts of this case. It is the inescapable remedy required by law. The South Carolina Court of Appeals decision in State v. Johnson, (Opinion No.: 4917) published only one week ago makes this clear. "When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). The court should look to the plain language of the statute. Binney v. State, 384 S.C. 539, 544, 683 S.E.2d 478, 480 (2009). If the language of a statute is unambiguous and conveys a clear and definite meaning, then the rules of statutory interpretation are not needed and the court has no right to impose a different meaning. State v. Gaines, 380 S.C. 23, 33, 667 S.E.2d 728, 733 (2008). [See also, State v. Driessen, SC Supreme Court Memorandum Opinion 2011-MO-037, affirming the dismissal of a DUI for failure produce a complying incident site video or affidavit or present evidence in support of some other valid reason for non-compliance.]

IT IS THEREFORE ORDERED

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A. That the charge of DUI (Ticket 28982FP) against Lance S. Lowe is dismissed with prejudice.

IT IS SO ORDERED.

  
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Judge of the Magistrate's Court  
For Beaufort County

December 21<sup>ST</sup>, 2011  
Hilton Head, South Carolina

