STATE OF SOUTH CAROLINA	)	IN THE MUNICIPAL COURT
	)	FOR THE CITY OF COLUMBIA
COUNTY OF RICHLAND	)	
	)	
City of Columbia,	)	
	)	
vs.	)	**ORDER**
	)	Ticket Number 86721EV
	)	
Matthew Schneider, et al.,	)	
	)	
Defendant	)	

This matter came before the Court on October 26, 2011 pursuant to the Defendant's Motion to Dismiss. Consolidated for purposes of the Motion to Dismiss are the following cases:

City of Columbia vs. Stephanie Griffin, Ticket Number 91668DM
City of Columbia vs. Anna Kriedel, Ticket Numbers 91826EC, 91827EC, 91828EC
City of Columbia vs. Shannon Hozie, Ticket Numbers 39904FK, 39905FK
City of Columbia vs. Danny R. Lucas, Ticket Number 29873EQ
City of Columbia vs. Andrew Clark, Ticket Number 26689EQ
City of Columbia vs. Devon McCuen, Ticket Number 15022EW
City of Columbia Jonathan Walvoord, Ticket Number 15026EW
City of Columbia vs. Terry Whigham, Ticket Number 20324EQ
City of Columbia vs. Roy L. Greene, Ticket Number 69497EV
City of Columbia vs. Stephen Blackmer, Ticket Number 44458FD
City of Columbia vs. Barry Adickes, Ticket Number 45922FD
City of Columbia vs. Ivy Bibb, Ticket Number 42819FD
City of Columbia vs. Rustin Rae Cassels, Ticket Number 45407FD
City of Columbia vs. Kiki L. Brown, Ticket Number 31076FD
City of Columbia vs. Mary Michaud, Ticket Number 47163FD
City of Columbia vs. James Kines, Ticket Numbers 31897FD, 31898FD
City of Columbia vs. Cindi Muthig, Ticket Number 39669FD
City of Columbia vs. Brian Banks, Ticket Number 47634FD
City of Columbia vs. Jean Kenscoff, Ticket Numbers 82652FM, 82655FM
City of Columbia vs. Brandon McCloskey, Ticket Numbers 41616FD, 41617FD, 41618FD
City of Columbia vs. Matthew Walker, Ticket Number 81355FM
City of Columbia vs. Geoffrey Graves, Ticket Number 91123FP, 91124FP
City of Columbia vs. Damien Joyner, Ticket Number 32340FD
City of Columbia vs. Michael Lloyd Hicks, Ticket Numbers 81351FP, 81352FP
City of Columbia vs. Richard Owens, Ticket Number 37309FD, 37310FD

The City of Columbia (hereinafter "City") was represented by City of Columbia Assistant City Attorney Constance Holloway, Esq. The Defendant Matthew Schneider was represented by Joseph M. McCulloch, Esq. Other defendants above named were represented by their own legal counsel who consolidated the above referenced cases for purposes of the motion argument.

MOTION TO DISMISS

The Defendant argued that the Schneider case and those similarly situated should be dismissed because the City of Columbia Police Department (hereinafter CPD) failed to produce an on-site video pursuant to South Carolina Rules of Criminal Procedure Rule 5 or an affidavit as required by South Carolina Code Ann. §56-5-2953. Relying on the Supreme Court's ruling in the cases City of Rock Hill vs. Suchenski, 646S.E.2d 879 (S.C. 2007) and Town of Mt. Pleasant vs. Roberts, 393 S.C. 332, 7113 S.E.2d 278 (S.C. 2011), the Defendant argued that the City failed to demonstrate a concerted effort to request video cameras for installation in marked police patrol units and as such, could not establish a valid reason for failing to create a video of the incident site and therefore, the above named case and similarly situated cases referenced herein must be dismissed.

The City argued that it made a concerted effort to equip marked CPD patrol vehicles with video recording equipment and therefore, a valid reason exists for the failure to create a video of incident sites. The City argues that the concerted efforts to supply marked patrol vehicles with video equipment establishes the necessary "valid reason" and that S.C. Code Ann. §56-5-2953(B) excuses the City's noncompliance. The City argued that it has not attempted to avoid a statutorily created obligation by relying on Subsection G of S.C. Code Ann. §56-5-2953 as was discussed in the Town of Mt. Pleasant case.

The City argued further that the Supreme Court's holding in Town of Mt. Pleasant should not apply where there exists a valid S.C. Code Ann. 56-5-2953(B) exception. In cases where emergency medical treatment was required due to a motor vehicle accident, the City argues that the circumstances rendered it impossible to provide an on-site video and therefore, S.C. Code Ann. 56-5-2953(B) would provide an exception to the videotaping requirement.

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Furthermore, the City argued that the Supreme Court's analysis should not apply to cases where the arresting officer's in-car camera was inoperable or when the roadside video has already been provided to the defendant.

FACTUAL BASIS

In support of its position, the City presented witnesses from the South Carolina Department of Public Safety (hereinafter DPS), CPD and the City's Fleet Services Division. The testimony of these witnesses reveals that the City ranked within the top ten agencies, exclusive of the South Carolina Highway Patrol, in the category of arrests for

driving under the influence and as such would have enjoyed priority with DPS for issuance of video recording equipment.

In response to the original DPS survey in 1999, the City requested 84 video cameras and received 2 cameras. In 2001 and 2002, respectively, 2 additional cameras were awarded and received, bringing the total number of cameras in marked patrol units at the City to 4 as of 2002.

In 2002, pursuant to instructions from the Senate Judiciary Committee, DPS issued another survey asking law enforcement agencies to make requests for cameras based on the number of units used for traffic enforcement. Initially, the City responded to DPS on a 1999 version of the form with a request for 8 cameras. When DPS requested that the response be made on the proper 2002 form, the City revised its request to 4 cameras and received 4 cameras, bringing the total number of cameras awarded to the City by the end of 2002 to 8 cameras.

No additional video cameras for installation in marked CPD patrol units were purchased by the City until 2006. In that year, 2 in-car video systems were purchased.

The City offered testimony that it began its efforts to equip all marked CPD patrol vehicles with cameras in 2007 with the purchase of 21 new vehicles. These 21 new vehicles were equipped with in-car camera systems along with other essential equipment. In 2008, the City received a grant to fund 1 new police officer position. As part of that grant, the City received funds for the purchase of equipment for that officer, including 1 in-car video system. Also, in 2008 the City purchased 18 new patrol vehicles and equipped them with video recording equipment along with other necessary equipment.

Additional grant funds were received by the City in 2009 to fund two new police officer positions. As part of the grant funds, the City purchased 2 in-car cameras along with other equipment to outfit the 2 new police officers.

In 2009, testimony revealed that DPS completed the original award of cameras and re-surveyed agencies about their needs. At this time, the City requested 75 VHS cameras and 146 digital cameras. In November 2010, the City was awarded 28 VHS cameras by DPS. Also in 2010, DPS offered an additional 57 VHS cameras to the City. The testimony revealed that the City refused the offer of the additional VHS cameras, indicating that the City preferred to wait until digital cameras became available.

Testimony revealed that 35 vehicles were purchased by the City in 2010 using General Obligation bond funding. All 35 of these vehicles were equipped with in-car camera systems. These vehicles were placed in service in November 2010.

As of the date of the motion hearing, testimony revealed that the City had 157 marked patrol vehicles. 128 of the marked units were equipped with in-car camera systems.

Testimony revealed that the City made little to no effort to equip existing marked patrol vehicles with cameras, but sought to come into compliance only by equipping new marked patrol vehicles with camera equipment. No grant funds solely for the purchase of in-car cameras have ever been sought by the City and the City has never had a policy directed at equipping existing vehicles in the fleet. Prior to 2011, the City made no attempt to analyze how many marked patrol units were equipped with in-car camera systems. The City's Fleet Manager was not aware prior to the motion hearing of the requirements contained in S.C. Code Ann. §56-5-2953 concerning videotaping at alleged DUI incident locations.

Although additional funds were spent by the City at various times after 2007, the purpose of those funds was to fully equip officers using the same vehicle in a shift rotation scenario. The need to expend those funds to fully equip officers indicates that even though some newer marked patrol cars were equipped with video cameras, the cameras were not in full use at all times because not all officers who used the vehicles were equipped with microphones and other necessary equipment for complete operation of the in car camera.

During the same time span, testimony revealed that CPD employees were aware of the City's funding of a consultant to develop and recommend a plan to place cameras in various neighborhoods around the City.

DISCUSSION AND ANALYSIS

This Court is bound by the holdings of both Suchenski and Town of Mt. Pleasant. The Supreme Court in Suchenski held that the videotaping provisions of S.C. Code Ann. §56-5-2953 are mandatory and are not optional. It further held that the failure to produce videotapes as required by S.C. Code Ann. §56-5-2953 is grounds for dismissal if no statutory exceptions apply. In Town of Mt. Pleasant, the Supreme Court considered novel question of whether the failure to comply with §56-5-2953 could be excusable if a law enforcement agency never equipped its vehicles with video cameras. As stated in Town of Mt. Pleasant:

> "Our appellate courts have strictly construed §56-5-2953 and found that a law enforcement agency's failure to comply with these provisions is fatal to the prosecution of a DUI case."

The Court stated in Town of Mt. Pleasant that the purpose of §56-5-2953 was to create direct evidence of a DUI arrest and that the Town's failure to equip it vehicles with video cameras, despite its high ranking with regard to DUI arrests defeated the intent of the Legislature and violated the obligation created by statute to videotape arrests. In affirming the lower court's ruling in Town of Mt. Pleasant, the Supreme Court determined that the Town's "protracted failure" to equip its vehicles with video cameras required the dismissal of the case.

The situation in this case is similar. The City made an initial request for 84 cameras in 1999 and after receiving only 4 cameras, inexplicably reduced the number of cameras requested to 4. Between 2002 and 2006, the City made no attempt to purchase additional cameras even though it had only been awarded 8 cameras. Although the City presented testimony to allege that the City began its efforts to install cameras in all marked patrol vehicles in 2007, it was clear that the effort related to new marked patrol vehicles only. No efforts were made by the City to obtain funds for cameras for existing vehicles in the fleet. In 2010, the City refused the award of an additional 57 VHS cameras based on costs to maintain and operate the VHS cameras.

Although grant funds were sought and obtained, the funds were sought for new officer positions, not for cameras. The cameras that were acquired with grant funds were acquired as part of the equipping of new officers for positions in the field.

Therefore, I find under the holdings of Suchenski and Town of Mt. Pleasant that the failure of the City to equip its patrol vehicles with video cameras requires the dismissal of those cases where cameras were never installed in the patrol vehicles of the arresting officers.

The City argued that the holding in Town of Mt. Pleasant should not apply to cases where there exists a valid §56-5-2953 (B) exception such as emergency medical treatment. In those cases, the City argues that even if the arresting officer's vehicle had been equipped with video recording equipment, the video would have been of little probative value since due to the emergency medical treatment, the defendant's conduct would not have been recorded.

The Supreme Court's holding in Town of Mt. Pleasant provides that it does not eradicate subsection (G) of §56-5-2953. The Court emphasized that subsection G is still viable, stating that it could conceive of a situation where an agency could establish a valid reason for failing to create a video of the incident site. However, the Court clearly contemplates that the situation would be one where an agency had made concerted efforts to request video cameras.

The evidence presented to this Court does not convince me that the City made "concerted efforts" to equip its patrol vehicles with video recording equipment. Without the required "concerted efforts", I am bound by the holding in Town of Mt. Pleasant and find that those cases where the defendant required emergency medical treatment and where the arresting officer's vehicle was not equipped with video recording equipment at the time of the arrest must also be dismissed.

The City further argued that the holding in Town of Mt. Pleasant should not apply in those cases where the arresting officer's camera was inoperable or where a roadside video has already been provided to the defendant.

Consistent with the holdings in Suchenski and Town of Mt. Pleasant, those cases where the facts reveal that the arresting officer's in car video camera was inoperable or where a

roadside video has already been provided to the defendant are not dismissed pursuant to this order.

IT IS SO ORDERED.

Dana D. Turner
Chief Administrative Judge
City of Columbia Municipal Court

February 7, 2012
Columbia, South Carolina