



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 18, 1999

Chief Willie L. Smith
Marion Police Department
P.O. Box 1190
Marion, South Carolina 29571

Dear Chief Smith,

Thank you for your letter to this Office, dated July 26, 1999, which has been referred to me for a response. You ask whether South Carolina Code of Laws Section 56-5-2953 requires the videotaping of an individual's arrest at the incident site for Driving Under the Influence (D.U.I.).

By way of background you write the following:

[O]n or about the 17th day of March of this year one of my officers made a D.U.I. arrest. There was not a video camera installed in his patrol car. In addition, no camera is available in this same patrol car to date. After the violator was stopped, other officers arrived to assist as one of the occupants of the violator's vehicle fled on foot. At least one of the back-up officers had a working video camera in his patrol car. When the case went to court, the defense made a motion to dismiss because no video tape was produced. ... Ultimately, a new trial was ordered.

Specifically, you ask whether the arresting officer was required to produce a video tape although his patrol car was not equipped with a camera and whether the back-up officers have a duty to video tape the incident at the point of arrival to assist the arresting officer.

Approved by the Governor in June of 1998, South Carolina Code Section 56-5-2953 says, in part:

(A) A person who violates Section 56-5-2930 or 56-5-2945 shall have his conduct at the incident site and the breath test site videotaped.

(1) The videotaping at the incident site must:

(a) begin not later than the activation of the officer's blue lights and conclude after the arrest of the person for a violation of Section 56-5-2930 or a probable cause

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determination that the person violated Section 56-5-2945

Thus, under Section 56-5-2953 an officer effecting an arrest for D.U.I. must videotape the incident once he has turned on his blue lights and continue until after the violator's arrest. However, this provision of Section 56-5-2953 does not immediately apply to all law enforcement vehicles. Act No 434 of the 1998 Statutes at Large, which created Section 56-5-2953, also includes Section 18, titled "Time effective." Act No. 434, Section 18 says, in part:

The provisions in Section 56-5-2953 (A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement *as soon as the law enforcement vehicle used for traffic enforcement is equipped with a videotaping device.* (emphasis added)

Therefore, to answer your first question, an officer is not required to produce a video tape of a D.U.I. arrest if his vehicle is not yet equipped with a camera. I have also included, for your information, an opinion of this Office, dated June 2, 1999, which addresses another aspect of Section 56-5-2953.

The answer to your second question, whether under the circumstances the back-up officers are required to produce a video tape, is more complicated. A logical reading of Section 56-5-2953 (A) (1) (a) and Section 18 of Act No. 432, discussed above, suggests that when officers equipped with video cameras arrive on the scene to assist the arresting officer, the recording should begin. But once the law enforcement vehicles are equipped with cameras, other applicable provisions of Section 56-5-2953 take effect, as well. Part (B), which governs the introduction of evidence at trial, allows for circumstances in which the failure by the officers to produce a video, though under an obligation to do so, will not result in an automatic dismissal of the D.U.I. charge:

Failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930 or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that ... exigent circumstances existed. Further, in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure to by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping should begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based on the totality of the circumstances, nor do the provisions of this section prohibit the person from offering evidence relating to the law enforcement officer's failure to produce the videotape.

Part (B) makes clear the General Assembly's intent that the failure alone to produce the tape will not result in a dismissal of the charge. The court may consider any exigencies at the incident site, the totality of the circumstances, and any other information relevant to the failure to produce the tape

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in ruling on the dismissal.

Therefore, in response to your second question, although the officers equipped with cameras, including back-up, do have a duty to videotape the arrest upon their arrival on the scene, the failure to produce a tape under certain circumstances will not preclude a successful D.U.I. charge. The facts you describe, in which one of the occupants fled the scene as the officers arrived, would be only one of several factors the court may consider.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General