

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 22 2022

S.C. SUPREME COURT

Appeal From Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

Petitioner,

vs.

TYLER J. EVANS,

Respondent.

APPENDIX

ALAN WILSON
Attorney General

TARA LEIGH FROST
JACK CHRISTIAN FROST

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

Frost Law Group, LLC
Post Office Box 1986
Summerville, South Carolina 29484
(843) 419-6653

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

INDEX

RECORD ON APPEAL	1
FINAL BRIEF OF APPELLANT	76
FINAL BRIEF OF RESPONDENT	96
COURT OF APPEALS OPINION (2022-UP-319).....	112
PETITION FOR REHEARING.....	117
ORDER DENYING PETITION FOR REHEARING.....	132

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

THE STATE,

Appellant,

vs.

TYLER J. EVANS,

Respondent.

RECORD ON APPEAL

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

TARA LEIGH FROST

Frost Law Group, LLC
Post Office Box 1986
Summerville, South Carolina 29484
(843) 419-6653

ATTORNEY FOR RESPONDENT

INDEX

STATE’S NOTICE OF APPEAL AND APPEAL	1
MAGISTRATE’S RETURN	7
FORM 4 DISMISSAL ORDER	34
FORM 4 DENIAL OF MOTION TO RECONSIDER.....	37
CIRCUIT COURT TRANSCRIPT (May 28, 2019).....	40
RESPONDENT’S MOTION TO DISMISS APPEAL.....	64
STATE’S MOTION TO RECONSIDER	69

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
State of South Carolina,)
)
Appellant,)
)
vs.)
)
Tyler James Evans,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

C/A # 2017-CP-18- 1241

Ticket No.: 5102P06760001

2017 JUL 21 PM 5:05
CLERK OF COURT
DORCHESTER COUNTY

**NOTICE OF APPEAL
AND APPEAL**

TO: The Honorable Tera S. Richardson, Dorchester County Magistrate Judge, and Tara Frost, Counsel for Respondent Tyler James Evans.

The State of South Carolina, by and through the undersigned counsel, hereby gives notice of its appeal and appeals from an order of the Honorable Tera S. Richardson dismissing the above-referenced case. The State received notice of said order on June 28, 2017.

On December 15, 2016, Trooper S. A. Pence charged Respondent Tyler James Evans with a violation of S.C. Code § 56-5-2930 (Driving Under the Influence). The case was subsequently called for a pre-trial hearing on June 27, 2017. At the hearing, Respondent's counsel moved to dismiss the charge based on Trooper Pence's failure to record each of the elements required by S.C. Code § 56-5-2953. In particular, Respondent complained that the walk and turn and one-legged stand field sobriety tests were not visible in their entirety on the video recording.

Judge Richardson reviewed the video and issued her ruling via e-mail the next day dismissing the charge for a failure to comply with § 56-5-2953.

A. Section 56-5-2953 Does Not Require the Recording of the Performance of Field Sobriety Tests.

Respondent's counsel argued that the video's failure to record certain field sobriety tests would prevent a jury from "see[ing] the whole person's body in understanding how that test is supposed to be performed." Section 56-5-2953 sets forth the following requirements for recording at the incident site:

(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.

(1)(a) The video recording at the incident site must:

- (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 56-5-2930 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.

S.C. Code § 56-5-2953. The recording of field sobriety testing as mandated by § 56-5-2953 has never been interpreted to require demonstration of a subject's performance on the individual tests. In State v. Gordon, the Supreme Court's most recent pronouncement on what § 56-5-2953 requires, the court's description of the video requirement focused solely on the *administration* of the test rather than the *performance*.

Here, the officer's administration of the HGN test is visible on the video recording. It is undisputed that Gordon's face is depicted in the video; it is axiomatic that the face is a part of the head. The officer's flashlight and arm are visible as he administers the test. Also, the officer's instructions were audible. Thus, the requirement that the head be visible on the video is met and the statutory requirement that the administration of the HGN field sobriety test be video recorded is satisfied.

State v. Gordon, , 414 S.C. 94, 99-100, 777 S.E.2d 376, 379 (2015).

Given Gordon's clear mandate that *administration* rather than *performance* is the benchmark, the Respondent's concern with the failure of the video to demonstrate performance did not violate § 56-5-2953.¹

B. Redaction, Not Dismissal Was the Appropriate Remedy.

Even if the failure to record portions of certain field sobriety tests amounted to a violation of § 56-5-2953, the Supreme Court has made clear that dismissal is not the appropriate sanction for such a

¹ Respondent's counsel also noted that Trooper Pence's instructions for performance of the tests was also not visible. There is no such requirement in § 56-5-2953, and the statute has never been interpreted to require such a showing.

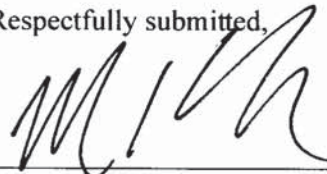
violation. In Gordon, the Supreme Court evaluated an apparent violation of § 56-5-2953 involving the failure to record the HGN field sobriety test. Rather than mandating dismissal for the failure, the Supreme Court observed that the appropriate "remedy would be to redact the field sobriety test from the video and exclude testimony about the test." Gordon, 414 S.C. at 100, 777 S.E.2d at 379. Thus, even assuming that there was some flaw in the recording here, the appropriate remedy was suppression of the portion of the video depicting the two tests, not dismissal.

C. Gordon Says Nothing About the Walk and Turn Test.

At issue in Gordon was the question of whether the head must be shown in the recording of the HGN field sobriety test." Gordon, 414 S.C. at 96, 777 S.E.2d at 377. The analysis in Gordon was limited to the HGN test – it said nothing about other standard field sobriety tests, including the walk and turn test and one-legged stand test at issue here. The Gordon opinion therefore cannot be read to say anything about what constitutes an acceptable recording of either of these tests, and any reading that implies otherwise was error.

Wherefore, the State respectfully requests that the decision of the magistrate be reversed and that the case be remanded to the lower court for trial and for such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



Marcus K. Gore
General Counsel
S.C. Department of Public Safety
P.O. Box 1993
Blythewood, South Carolina 29016
Telephone: (803) 896-7965
Fax: (803) 896-7967
Email: MarcusGore@scdps.gov
Attorney for Appellant

July 18, 2017
Blythewood, South Carolina

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER : FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA : C/A # 2017-CP-18- 1241

Appellant,

vs.

TYLER JAMES EVANS,

Respondent

CERTIFICATE OF SERVICE

Ticket No.: 5102P06760001

I HEREBY CERTIFY that on this 18th day of July, 2017, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Tera S. Richardson
Dorchester County Magistrate Judge
Troy Knight Judicial Complex
212 Deming Way, Box 10
Summerville, SC 29483-4707

Tara Frost, Esq.
136 W. Richardson Avenue
Summerville, SC 29418

2017 JUL 21 PM 5:05
RECORDED
CLERK OF COURT
DORCHESTER COUNTY



Monishia L. Davis
Paralegal
S. C. Department of Public Safety

Dated: July 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

Plaintiff(s)

vs.

TYLER JAMES EVANS

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 18-

1247
CLERK OF COURT
DORCHESTER COUNTY
JUL 21 PM 5:05
RECORDED

(Please Print)

Submitted By: Marcus K. Gore, Esq.

Address: Office of General Counsel

S.C. DEP'T OF PUBLIC SAFETY

POST OFFICE BOX 1993

BLYTHEWOOD, SC 29016

SC Bar #: 73647

Telephone #: 803. 896. 7968

Fax #: 803. 896. 7967

Other:

E-mail: MarcusGore@scdps.gov

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-__-__ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☒ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex /Other | | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Other (999) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (500) | | |

Submitting Party Signature: _____

Date: July 18, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

MAGISTRATE'S COURT

COUNTY OF DORCHESTER

CASE NO: 5102P06760001

State of South Carolina,
Plaintiff

2017-CP-18-1241

vs.

RETURN OF APPEAL

Tyler James Evans,
Defendant(s)

FILED - RECORD
2017 OCT 11 AM 8:32
CLERK OF COURT
DORCHESTER COUNTY

Introduction

This matter came before the Court on June 27, 2017 on a motion to dismiss. Upon calling the hearing to order, Tara L. Frost, Attorney for Defendant, Tyler Evans, made a motion to dismiss the case pursuant to S.C. Code 56-5-2953. The Defense's motion was based on the City of Rock Hill v. Suchenski, State v. Gordon, along with other appellate and local cases and orders, wherein the conduct of the person must be recorded to include any field sobriety tests administered. Subsequent to an accident call, Trooper Pence of the South Carolina Highway Patrol initiated an investigation of the Defendant for suspicion of Driving under the Influence. Trooper Pence offered Standardized Field Sobriety Tests in which Mr. Evans performed. The majority of the performance of the Walk-and Turn SFST and the One Legged Lift SFST, the Defendant's lower body is obscured by the trooper's car.

Trooper Pence did not cite to any statute or judicial decision which supported her point. Because of a heavy afternoon court docket, I delayed the Defendant's motion so that I could review the case. Pursuant to a Delayed Decision, I granted the Defense's motion to dismiss on June 28, 2017. On July 24, 2017, the State filed an appeal.

Law and Analysis

The State's appeal is untimely. South Carolina Code 18-3-20 indicates that "all appeals" from magistrate criminal matters "shall be taken [. . .] as prescribed in this chapter. "Further, South Carolina Code 18-3-30 indicates that a party will have only ten (10) days in which to file a criminal appeal.

S.C. Code 56-5-2953 indicates that a person, who violates Section 56-5-2930, must have his conduct at the incident site and the breath test site video recorded. 56-5-2953 (A) (1) (a), indicates the video recording at the incident site must include any field sobriety tests administered. In this matter, the court properly and in accordance with South Carolina law, dismissed the case.

Dated this 5 day of October, 2017.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tera S. Richardson', with a large, stylized flourish extending to the left.

Tera S. Richardson

Magistrate, Dorchester County

2017-CP-18-1241

2017 OCT 11 AM 8:33
CLERK OF COURT
DORCHESTER COUNTY
RECORD

Form S-438 Rev. 06/2014		UNIFORM TRAFFIC TICKET			
STATE OF SOUTH CAROLINA VERSUS					
FIRST NAME TYLER		MIDDLE NAME JAMES		LAST NAME EVANS	
STREET [REDACTED]					
CITY [REDACTED]					
DL STATE SC		DRIVERS LICENSE NO. 101999074		CLASS D	CDL ☐ YES ☒ NO
RACE W	SEX M	HAIR BRO	EYES BLU		
VEH. REG. NO. 1	STATE SC	MAKE OF VEH. ISU	YEAR 95	HAZ. MT. ☐	HAZ. MT. ☐
VEHICLE OWNER FIRST NAME SA ME		MIDDLE NAME SA ME		LAST NAME SA ME	
OWNER STREET SA ME		CITY SA ME		STATE SA ME	
ZIP CODE SA ME					
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT					
NAME OF TRIAL COURT CIC		STREET 212 DEMING WAY			
DATE OF TRIAL 11/3/17	TIME OF TRIAL 1400	CITY SUMMERVILLE	STATE SC	ZIP CODE 29586	
VIOLATION SECTION NO. 56-5-2730		VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO			
DATE OF VIOLATION 12/15/16		TIME OF VIOLATION 10	SC POINTS 1	B.A. LEVEL 19	
VIOLATION LOCATION APPIAN WAY @ SC 642		COUNTY DORCHESTER			
LAT 32 550406	LONG 8006 4837	CITY SUMMERVILLE			
NAME AND RANK OF ARRESTING OFFICER STARR SA PENCE		SCCJA OFFICER NUMBER 41117-8422			
BAIL DEPOSITED JAIL	DATE OF ARREST 12/15/16	BOND AMOUNT REQUESTED 2262			
DATE BAIL REC'D. BY					
CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐					
NAME OF THE TRIAL COURT IF DIFFERENT FROM ABOVE:					
TRIAL BY: TRIAL JUDGE ☐ JURY ☐		DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐			
DISPOSITION DATE	DISPOSITION: NOLLE PROSSED ☐ GUILTY ☐ PLED: NOLLO CONTENDERE ☐ FORFEITED BOND ☐ NOT GUILTY ☐				
CHARGE CONVICTED OF	SAME AS ORIGINAL ☐				SC POINTS
JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED	COMMITTED TO:
CERTIFIED CORRECT					DATE
TRIAL COURT COPY					TICKET# 5102P0676001

CITY/COUNTY OF:

INCIDENT NO:

16CH191796

AGENCY/TROOP: SC486



South Carolina Department of Public Safety

OFFICE OF GENERAL COUNSEL

P.O. Box 1993 • Blythewood, S.C. 29016
Tel: (803) 896-7965 • Fax: (803) 896-7967

July 18, 2017

FILED JUL 24 2017

Cheryl L. Graham, Clerk
Dorchester County Circuit Court
5200 E. Jim Bilton Blvd
St. George, SC 29477-8020

Re: State of South Carolina vs. Tyler James Evans
Ticket No. 5102P06760001
Appeal # 2017-CP-18- 1241

Dear Ms. Graham:

Please find enclosed the State's Notice of Appeal and Appeal and a Certificate of Service to be filed of record. Please provide me with a clocked-in copy of both documents. A return envelope is enclosed.

A copy of this Notice has been served upon all parties.

With kind regards, I am

Yours very truly,

Monishia L. Davis
Paralegal
Office of General Counsel

/mld

Enclosures

cc: Honorable Tera S. Richardson
Tara Frost, Esquire

FILED - RECORD
2017 OCT 11 AM 8:33
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2017-CP-18-1241

414 S.C. 94
777 S.E.2d 376

The STATE, Petitioner
v.
Cody Roy GORDON, Respondent.
Appellate Case No. 2014-001337.
No. 27554.
Supreme Court of South Carolina.

Heard June 3, 2015.
Decided Aug. 5, 2015.
Rehearing Denied Oct. 22, 2015.

FILED - RECORDED
2017 OCT 11 AM 8:33
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Summaries:

Source: Justia

In October 2011, respondent Cody Gordon was stopped at a license and registration checkpoint by a South Carolina Highway Patrol Officer. The officer administered several field sobriety tests. The test at issue in this case was the Horizontal Gaze Nystagmus (HGN) test. The dashboard camera on the officer's patrol car recorded the entire incident, including all field sobriety tests, with continuous recording. The stop occurred at night, so the lighting was not perfect, but the officer had Gordon stand in the light of his patrol car's headlights and further illuminated Gordon by shining a flashlight directly on his face. The State appealed the Court of Appeals' affirmation of the circuit court's interpretation of section 56-5-2953 of the South Carolina Code. The appellate court found that the statute required officers to record the head of the motorist when administering the HGN field sobriety test and that respondent's head was not sufficiently visible. The State contended that a plain reading of the statute made no mention of the motorist's "head." Upon review, the Supreme Court affirmed the Court of Appeals' conclusion that the statute required that the motorist's head be recorded in the video; however, the Court vacated the mandate to remand to the magistrate court for further consideration. The Court reinstated respondent's conviction as it found that the officer complied with the statute in recording Gordon's HGN test.

[777 S.E.2d 377]

Attorney General, Alan McCrory Wilson and Assistant Attorney General, John Benjamin Aplin, both of Columbia, for petitioner.

Keith G. Denny, of Keith G. Denny, P.A., of Walhalla, for respondent.

Opinion

1st

Justice BEATTY.

[414 S.C. 96]

The State appeals the Court of Appeals' affirmation of the circuit court's interpretation of section 56-5-2953 of the South Carolina Code. The Court of Appeals found that section 56-5-2953 requires officers to record the head of the motorist when administering the Horizontal Gaze Nystagmus (HGN) field sobriety test and that Cody Gordon's head was not sufficiently visible. The State posits that a plain reading of the statute makes no mention of the motorist's "head." We affirm the Court of Appeals' conclusion that the statute requires that the motorist's head be recorded in the video; however, we vacate the mandate to remand to the magistrate court for further consideration. We reinstate Gordon's conviction as we find that the officer complied with the statute in recording Gordon's HGN test.

I. Factual/Procedural History

On October 29, 2011, Gordon was stopped at a license and registration checkpoint by a South Carolina Highway Patrol Officer. The officer administered several field sobriety tests.

[414 S.C. 97]

The test at issue in this case is the HGN test. The dashboard camera on the officer's patrol car recorded the entire incident, including all field sobriety tests, with continuous recording. The stop occurred at night, so the lighting was not perfect, but the officer had Gordon stand in the light of his patrol car's headlights and further illuminated Gordon by shining a flashlight directly on his face.

Following the tests, Gordon was placed under arrest. Gordon was charged with driving under the influence (DUI) for violating section 56-5-2930. The case was presented to a magistrate judge and a jury. The jury found Gordon guilty as charged. Gordon timely appealed his conviction.

Using still-shot photos of the video, Gordon argued that the video violated section 56-5-2953(A) because he was out of sight and in the dark during the HGN test. The circuit court concluded that section 56-5-2953(A) requires the motorist's head to be visible during the administration of the HGN field sobriety test. Section 56-5-2953(A) reads in pertinent part:

(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his **conduct** at the incident site and breath test site video recorded.

(1)(a) The video recording at the incident site must:

- (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 violation of Section 56-5-2930 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.

S.C.Code Ann. § 56-5-2953(A) (Supp.2011) (emphasis added). The circuit court found Gordon's head was not "sufficiently visible through the entire administration of the [HGN] test." The circuit court reversed his conviction and dismissed the DUI charge. The State timely appealed to the Court of Appeals.

[777 S.E.2d 378]

The Court of Appeals affirmed in part, vacated in part, and remanded the case to the magistrate court. *State v. Gordon*, 408 S.C. 536, 759 S.E.2d 755 (Ct.App.2014). The court concluded

[414 S.C. 98]

that "the circuit court correctly found the head must be shown during the HGN test in order for that sobriety test to be recorded, and we affirm that finding." *Gordon*, 408 S.C. at 543, 759 S.E.2d at 758. The Court of Appeals remanded the case to the magistrate court with the instruction to "make factual findings in light of the circuit court and our determination that the test must be recorded on the camera; specifically for the HGN test, the head has to be visible on the recording." *Gordon*, 408 S.C. at 543-44, 759 S.E.2d at 759.

The Court of Appeals denied the State's petition for a rehearing.¹ This Court granted the State's petition for a writ of certiorari to review the Court of Appeals' decision.

II. Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.*

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459.

III. Discussion

Whether the Court of Appeals erred in affirming the circuit court's decision to reverse Gordon's magistrate court conviction for driving under the influence?

[414 S.C. 99]

A. Argument

The State argues the Court of Appeals misconstrued the decision of the magistrate as lacking sufficient findings of fact. Specifically, the State contends that the Court of Appeals “misapprehended or overlooked the clear and unambiguous language of the statute, which does not include any requirement that ‘the head must be visible on the recording’ of an HGN field sobriety test.”

B. Analysis

The State would have us review this case using the analytical framework of *Murphy v. State*, 392 S.C. 626, 709 S.E.2d 685 (Ct.App.2011). The court in *Murphy* held that section 56–5–2953 only requires that the conduct of the motorist be recorded. *Murphy*, 392 S.C. at 631, 709 S.E.2d at 688. The Court of Appeals and the circuit court correctly distinguished *Murphy* from Gordon's case. In *Murphy*, the prior version of the statute at issue in this case was in effect. The prior version of the statute did not include the explicit requirement that the videotape include “any field sobriety tests administered.” S.C.Code Ann. § 56–5–2953(A)(1)(a)(ii) (Supp.2011). The current version of the statute, which applies to Gordon, specifically requires that the officer record “any field sobriety tests administered.” Based on this distinction, the magistrate erred as a matter of law in finding that the officer's recording was only required to show Gordon's conduct generally.

The statute at issue in this case is clear and unambiguous and, therefore, this Court must give its words their ordinary meaning. The statute states that the video recording “must include any field sobriety test administered,” which necessarily includes the HGN test. Considering the fact that the HGN test focuses on eye movement, common sense dictates that the head must be visible on the video. Accordingly, the circuit court's finding that the head must be visible does not amount to a hyper-technicality, but merely states the obvious. The Court of

[777 S.E.2d 379]

Appeals did not err in affirming this requirement.

Here, the officer's administration of the HGN test is visible on the video recording. It is undisputed that Gordon's

[414 S.C. 100]

face is depicted in the video; it is axiomatic that the face is a part of the head. The officer's flashlight and arm are visible as he administers the test. Also, the officer's instructions were audible. Thus, the requirement that the head be visible on the video is met and the statutory requirement that the administration of the HGN field sobriety test be video recorded is satisfied. Therefore, the per se dismissal of the charge as discussed in *Town of Mount*

Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011), and *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007) is not appropriate.

Even if we assume that the video of a field sobriety test is of such poor quality that its admission is more prejudicial than probative, the remedy would not be to dismiss the DUI charge. Instead, the remedy would be to redact the field sobriety test from the video and exclude testimony about the test.² If that remedy is applied here, there is still sufficient evidence to present this case to a jury for resolution. The evidence included the breath alcohol analysis report, video of other field sobriety tests, and Gordon's statement that he had consumed four beers.

Neither Gordon nor the State would have been prejudiced by the exclusion of the HGN test video or testimony because of the alleged poor quality of the video. Since the focus of the HGN test is the movement of the eyes, the jury would not have been able to determine if Gordon passed or failed by simply looking at this video. Moreover, the viewing of a video of an HGN field sobriety test has very little probative value to a jury because the eyes of the motorist are rarely, if ever, seen.³

The remaining issues raised by Gordon concerning discrepancies with the breath test site video's date and time stamp are without merit.

IV. Conclusion

The Court of Appeals' decision is affirmed as to the requirements for video recording the HGN field sobriety test. The mandate to remand to the magistrate court for further consideration is vacated. Gordon's conviction is reinstated.

[414 S.C. 101]

TOAL, C.J., HEARN, J., and Acting Justice ALISON RENEE LEE, concur. PLEICONES, J., concurring in result only.

Notes:

¹ Additionally, the Court of Appeals withdrew its original opinion and substituted a new published one. *Gordon*, 408 S.C. at 536, 759 S.E.2d at 755.

² It appears the solicitor unintentionally led the circuit court to believe that the HGN test was the only evidence against Gordon.

³ Of course, this would not be the case if actual eye movement is recorded.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Cody Roy Gordon, Respondent.

Appellate Case No. 2013-000515

FILED - RECORDED
2017 OCT 11 AM 8:34
CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 5226
Heard March 6, 2014 – Filed April 23, 2014
Withdrawn, Substituted, and Refiled June 11, 2014

**AFFIRMED IN PART, VACATED IN PART, AND
REMANDED**

Attorney General Alan McCrory Wilson and Assistant
Attorney General John Benjamin Aplin, both of
Columbia, for Appellant.

Keith G. Denny, of Keith G. Denny, P.A., of Walhalla,
for Respondent.

KONDUROS, J.: The State appeals the circuit court's reversal of the magistrate court's conviction of Cody Roy Gordon for driving under the influence (DUI). It contends the circuit court erred in finding the State did not comply with section 56-5-2953(A) of the South Carolina Code (Supp. 2013) because Gordon's head was

not visible on the required recording during one of the field sobriety tests administered. We affirm in part, vacate in part, and remand.

FACTS

On October 29, 2011, the South Carolina Highway Patrol stopped Gordon at a license and registration checkpoint. Officers administered three tests to determine if Gordon was under the influence: the Horizontal-Gaze Nystagmus (HGN) test¹, the walk and turn test, and the one-leg stand test. Following the tests, the officers charged Gordon with DUI. The dashboard camera in the arresting officer's car recorded the events leading to the arrest.

Prior to a trial before the magistrate court, Gordon moved to dismiss the charge on several grounds, including the State's failure to sufficiently record the HGN test because Gordon's head was not visible on the recording during the test. The magistrate denied the motion to dismiss, finding the State properly captured Gordon's conduct on the recording as required by section 56-5-2953 of the South Carolina Code (Supp. 2013) and *Murphy v. State*, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2011). Following a trial, a jury convicted Gordon of DUI.

Gordon appealed his conviction to the circuit court. At the hearing before the circuit court, Gordon argued the HGN test could not be seen on the recording. Gordon provided black and white photographs ("stills") of the recording to the circuit court without objection by the State. Following the conclusion of arguments, the circuit court granted Gordon's motion to dismiss. The court found section 56-5-2953(A) requires the defendant's head be visible during the administration of the HGN test, unless an exception in section 56-5-2953(B) applies. The court noted Gordon was "so far out of view in front of the arresting officer's patrol car for the administration of the test and into the dark[,] which

¹ "Nystagmus is described as an involuntary jerking of the eyeball, a condition that may be aggravated by the effect of chemical depressants on the central nervous system." *State v. Sullivan*, 310 S.C. 311, 315 n.2, 426 S.E.2d 766, 769 n.2 (1993). "The HGN test consists of the driver being asked to cover one eye and focus the other on an object held at the driver's eye level by the officer. As the officer moves the object gradually out of the driver's field of vision toward his ear, he watches the driver's eyeballs to detect involuntary jerking." *Id.*

prevented [Gordon's] head from being sufficiently visible through the entire administration of the [HGN] test." This appeal followed.

STANDARD OF REVIEW

"In criminal appeals from magistrate . . . court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception." *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001); S.C. Code Ann. § 18-3-70 (2014) ("The appeal [from the magistrate court in a criminal case] must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law."). This court will review the decision of the circuit court for errors of law only. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007); *Henderson*, 347 S.C. at 457, 556 S.E.2d at 692. "[Q]uestions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below." *City of Greer v. Humble*, 402 S.C. 609, 613, 742 S.E.2d 15, 17 (Ct. App. 2013) (internal quotation marks omitted). The circuit court is bound by the magistrate court's findings of fact if any evidence in the record reasonably supports them. *Id.*

LAW/ANALYSIS

The State argues the circuit court erred in reversing the magistrate court's conviction of Gordon for DUI. It contends the circuit court erred in finding the State did not comply with section 56-5-2953(A)(1)(a)(ii) of the South Carolina Code (Supp. 2013) because Gordon's head was not visible during the HGN test.² It

² The State also contends the circuit court did not review the recording. However, the record does not indicate whether the circuit court reviewed the recording or not. Gordon indicated at the hearing that all of the evidence had been submitted to the circuit court. The record provides the circuit court conferred with its law clerk off the record after receiving the stills. Gordon asserts that at this time, the circuit court appeared to review the recording on its laptop on the bench with the assistance of its law clerk. The transcript of the hearing states no exhibits were introduced. The State did not put on the record the fact that the circuit court allegedly did not view the recording or raise any objection to the court allegedly

asserts the statute requires the recording include the field sobriety tests but not that the defendant's head must be visible. It further maintains that even if it is a requirement of the statute, the circuit court's factual finding that Gordon's head was not sufficiently visible during the HGN test lacked evidentiary support.

Section 56-5-2953(A) provides:

A person who [commits the offense of DUI] must have
his conduct at the incident site . . . video recorded.

(1)(a) The video recording at the incident site must . . .

(ii) include any field sobriety tests administered

"As amended in 2009, the current version of section 56-5-2953 expressly requires the recording of field sobriety tests." *Murphy v. State*, 392 S.C. 626, 632 n.4, 709 S.E.2d 685, 688 n.4 (Ct. App. 2011) (citing S.C. Code Ann. § 56-5-2953(A)(1)(a)(ii) (Supp. 2010) ("The video recording at the incident site must: . . . include any field sobriety tests administered." (alteration by court))).

In *Murphy*, the defendant contended "the videotape of the incident [s]ite d[id] not comply with the statute because it fail[ed] to 'record most of the field sobriety tests.'" *Id.* at 631, 709 S.E.2d at 688. The court applied the prior version of section 56-5-2953, which was in effect at the time of the defendant's arrest, and found "the plain language of the statute does not require that the recording capture a continuous full view of the accused, or capture *all* field sobriety tests. Rather, provided all other requirements are met, the video need only record the accused's conduct." *Id.* at 632, 709 S.E.2d at 688. The version of the statute applied in *Murphy* did not include the explicit requirement that it "include any field sobriety tests administered" as the current version does. § 56-5-2953(A)(1)(a)(ii).

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." *State v. Elwell*, 403 S.C. 606, 612, 743 S.E.2d 802, 806 (2013) (internal quotation marks omitted). "What a legislature says in the text

not reviewing the recording. The appellant has the burden of providing a sufficient record. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005). Generally, "the appellate court will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR. Accordingly, we cannot consider the State's assertion the circuit court did not review the recording.

of a statute is considered the best evidence of the legislative intent or will." *Id.* (internal quotation marks omitted). "Therefore, [i]f a statute's language is plain, unambiguous, and conveys a clear meaning[,] the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* (first alteration by court) (internal quotation marks omitted); *see also State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used."). "However, penal statutes will be strictly construed against the state." *Elwell*, 403 S.C. at 612, 743 S.E.2d at 806.

"If the statute is ambiguous, however, courts must construe the terms of the statute." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). "In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Town of Mt. Pleasant*, 393 S.C. at 342, 713 S.E.2d at 283. "Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." *Id.* (internal quotation marks omitted). "Courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." *Id.* at 342-43, 713 S.E.2d at 283.

The purpose of section 56-5-2953 is to create direct evidence of a DUI arrest. *Town of Mt. Pleasant*, 393 S.C. at 347, 713 S.E.2d at 285. Dismissal of a DUI charge is an appropriate remedy provided by section 56-5-2953 when a violation of subsection (A) is not mitigated by subsection (B) exceptions. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007). "[T]he Legislature clearly intended for a *per se* dismissal in the event a law enforcement agency violates the mandatory provisions of section 56-5-2953." *Town of Mt. Pleasant*, 393 S.C. at 348, 713 S.E.2d at 286. "By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance." *Id.* at 349, 713 S.E.2d at 286.

The circuit court properly found the magistrate erred in finding the recording was only required to show the conduct of the defendant. The magistrate relied on *Murphy* in making that determination. Although *Murphy* holds that only the conduct of the defendant must be recorded, *Murphy* was based on a prior version of the statute, which did not include the specific language regarding the tests being recorded. The current version of the statute states: "The video recording at the incident site must . . . include any field sobriety tests administered" § 56-5-2953(A)(1)(a)(ii). Because of the purpose of the videotaping to create direct evidence of the arrest, if the actual tests cannot be seen on the recording, the requirement is pointless. Accordingly, the circuit court correctly found the head must be shown during the HGN test in order for that sobriety test to be recorded, and we affirm that finding.

However, because the magistrate court found the recording only needed to capture the conduct, it did not make any findings as to whether the entire test, including the head, was on camera. The circuit court found Gordon's head was not "sufficiently visible through the entire administration of the [HGN] test." But "the circuit court, sitting in its appellate capacity, may not engage in fact finding." *City of Greer v. Humble*, 402 S.C. 609, 618, 742 S.E.2d 15, 20 (Ct. App. 2013) (quoting *Rogers v. State*, 358 S.C. 266, 270, 594 S.E.2d 278, 280 (Ct. App. 2004)). Because the circuit court engaged in fact finding and the magistrate never made such findings due to its misconstruction of the statute, we vacate the circuit court's finding Gordon's head was not visible and remand the case to the magistrate court.³ The magistrate court is to make factual findings in light of the circuit court and our determination that the test must be recorded on camera; specifically for the HGN test, the head has to be visible on the recording.⁴

³ The dashcam recording that was available to the circuit court and the magistrate court was part of the record on appeal. This court viewed the recording, but our standard of review, just like the circuit court's standard of review in this matter, does not allow us to make findings of fact. That duty is left solely to the magistrate court. Accordingly, we will not make findings as to what the recording shows.

⁴ Because we find the circuit court erred in making findings of fact, we need not address the State's argument the circuit court erred in reviewing the stills. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

WILLIAMS and LOCKEMY, JJ., concur.

**FROST LAW GROUP, LLC**

136 W. RICHARDSON AVE.
SUMMERVILLE, SC 29483

TARA FROST (ATTORNEY):
TARA@FROSTLAWGROUPSC.COM

P: (843) 419-6653
F: (843) 419-6674
WWW.FROSTLAWGROUPSC.COM

JACK FROST (INVESTIGATOR/ LAW CLERK):
JACK@FROSTLAWGROUPSC.COM

2017-CP-18-1241

January 3, 2017

Facsimile 843-832-0371

Attn: Darlene

Summerville Municipal Court

Attn: Jury Trial Division

200 S. Main Street

Summerville, South Carolina 29483

Re: State of South Carolina vs. Tyler James Evans
Ticket Number(s): 5102P0676001 and 5102P0676002
Charge(s): Driving Under the Influence and Operating Uninsured

2017 OCT 11 AM 8:34
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

Notice of Representation and Jury Trial Request

Dear Sir or Madam:

Please be advised that our firm has been retained to represent the Defendant, Tyler James Evans, in regard to the above-referenced matter. Mr. Evans has been summoned to appear for court on January 3, 2017, at 2:00 p.m.; however, we are respectfully requesting a jury trial on his behalf.

Kindly forward all future correspondence and hearing notices directly to our office. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Jordan F. Guthrie

Jordan F. Guthrie
Law Clerk

Enclosure(s): as stated

DORCHESTER COUNTY

Summary Court

PR Bond (Bond Form I)

COUNTY/MUNICIPALITY: COUNTY		TODAY'S DATE December 16, 2016	
TRIAL COURT: MAGISTRATE COURT OF COURT: SUMMERVILLE			
<u>DEFENDANT'S NAME AND ADDRESS</u> Name: Tyler James Evans Address: City, State Zip:		<u>SSN:</u> <u>DATE OF BIRTH:</u> <u>DRIVER'S LICENSE NO:</u> <u>TELEPHONE:</u>	
<u>DEFENDANT ATTY:</u> None of Record		<u>JUDGE:</u> Katrina L. Patton	
<u>FIRST APPEARANCE DATE:</u> Tuesday, January 03, 2017	<u>FIRST APPEARANCE TIME:</u> 2:00 PM	<u>FIRST APPEARANCE PLACE:</u> 212 Deming Way, Summerville, SC	<u>BOND AMOUNT</u> \$2,702.00
<u>CRIMINAL CHARGING DOCUMENT NUMBER(S):</u> 5102P0676001 5102P0676002	<u>CHARGE(S):</u> Driving under Influence (BA -.19) - \$2, 262.00 Operating Uninsured - \$440.00	<u>CONDITIONS:</u> Must appear for court.	

CONSENT TO VIDEOCONFERENCING

Tyler James Evans
Name of Defendant

5102P0676001 5102P0676002
Criminal Charging Document No.

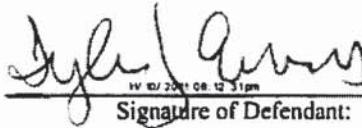
Type of Proceeding:**COUNTY OF DORCHESTER**

- ☐ Initial Appearance
☒ Bond Hearing
☐ Preliminary Hearing
☐ Contested Motion
☐ Guilty Plea and Sentencing
(Magistrate's / Municipal Court Offense)
☐ Bench Warrant Hearing
☐ Fugitive Warrant Hearing

Trial Court: MAGISTRATE COURT OF SUMMERVILLE

By my signature below, I, the defendant, consent to the use of videoconference equipment in this criminal proceeding. The court will maintain the audiotape of this proceeding for a period of sixty (60) days from today's date in all proceedings, except preliminary hearings, which must be maintained for three (3) years, after which the audiotape may be destroyed. I have been fully informed of my right to be personally present before the court for this criminal proceeding and, with that knowledge, I voluntarily waive that right.

None of Record
Attorney for Defendant


Signature of Defendant: Tyler James Evans

December 16, 2016
Date

2017 OCT 11 AM 8:34
RECORDED
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2017-CP-18-1241

Tyler James Evans
Name of Defendant

FILED - RECORD

5102P0676001 5102P0676002

Warrant/Ticket No.

2017 OCT 11 AM 8:34

County of

Charges: Driving under Influence (BA -.19) - \$2,262.00 Operating Uninsured - \$440.00	Trial Court:	Magistrate
---	--------------	------------

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must be provided a completed copy of this form.**

BAIL PROCEEDING

1. Form used at bail proceeding ☒ Bond Form I (personal recognizance) ☐ Bond Form II (surety, cash, percentage) ☐ None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed:
 - ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - ☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - ☒ c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of fine not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence was at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

☐ Orally ☐ In writing {NOTE: Defendant must be informed of right both orally and in writing.}
- ☒ 4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - ☒ a. Charges against defendant and nature of the charges.
 - ☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
 - ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before the Office of Public Defender located at 107 W 6th N St., Summerville, SC, on M-F between 10:00 AM and 4:00 PM, Phone # 821-9800 for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening.
- ☐ 6. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
- ☒ 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

Appearance or
Hearing Date:

December 16, 2016

12/16/2016 10:24:52 am



Judge checked

Judge's Signature

2017-C P-18-1241

5102P0676001

5102P0676002

CRIMINAL CHARGING DOCUMENT NO.

FILED - RECORDED

2017 OCT 11 AM 8:34

BAIL PROCEEDING
FORM ISTATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
DORCHESTER COUNTY
STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT OF SUMMERVILLE

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

TYLER JAMES EVANS
NAME OF DEFENDANTOffense Charged: Driving under Influence (BA -.19) - \$2,262.00
Operating Uninsured - \$440.00

IT IS HEREBY ORDERED

I

That the above named defendant be released from custody on his own recognizance without surety on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court, and not depart the State without permission of the court and be of good behavior.

II

That the above named defendant be released from custody upon a recognizance without surety executed by him.

Appearance Recognizance Without Surety

On the 16th day of December, 2016, personally appeared before the undersigned judge the defendant named above who acknowledged himself indebted to the State of South Carolina, in the sum of \$2,702.00 dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of the Order.

III

That the defendant will notify the court promptly if he changes his address from the one contained in this Order and will comply with the following other conditions of release: Must appear for court.

IV

That the defendant shall appear at (check one):

- ☐ the term of COURT OF GENERAL SESSIONS beginning on _____ at _____ o'clock, _____, at _____ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☒ the session of MAGISTRATE COURT OF SUMMERVILLE beginning on Tuesday, January 03, 2017 at 2:00 o'clock, PM, at 212 Deming Way, Summerville, SC
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

None of Record

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)
12/16/2016 12:24:02 PM

SIGNATURE OF JUDGE: Katrina L. Patton

December 16, 2016

DATE

SIGNATURE OF DEFENDANT: Tyler James Evans

7901 Elderberry Circle
ADDRESSNorth Charleston, SC 29418
CITY/STATE/ZIP

490-92-2388

SOCIAL SECURITY NUMBER

(816) 617-6932
TELEPHONE

SC 101999074

DRIVER'S LICENSE OR ID NUMBER

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
Original Copy For The Trial Court - Copy For The Defendant

Form Approved by SC Attorney General
Section 17-15-40
March 21, 2012

SCCA-510A (Revised 3/2012)

ORDER OF RELEASE

FILED - RECORDED
2017 OCT 11 AM 8:34
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: Director, Dorchester County Detention Center/SCDC

DATE: December 16, 2016

2017-CP-18-1241

You are hereby commanded by this court to immediately release from custody the following individual.

NAME:	Tyler James Evans		
ADDRESS:	7901 Elderberry Circle North Charleston, SC 29418		
CHARGED WITH THE OFFENSE OF:	Driving under Influence (BA -.19) - \$2, 262.00 Operating Uninsured - \$440.00		
CRIMINAL CHARGING DOCUMENT NO.:	5102P0676001	5102P0676002	
AMOUNT OF BOND:	\$2,702.00		
TYPE OF BOND:	☒ Personal Recognizance ☐ Cash ☐ Surety		
AMOUNT OF FINE AND/OR TIME SERVED:			
DATE OF RELEASE:	December 16, 2016	TIME OF RELEASE:	8:45 AM

Provided, however, that you may after notice of this court continue custody of the above named person if there are other criminal charges outstanding against this person that by law require custody.



Judge-release order

12/16/2016 10:24:43 am

Judge's Signature

DORCHESTER COUNTY SHERIFF'S OFFICE

SUMMERVILLE
212 Deming Way, Box #9
Summerville S.C. 29483
Office (843) 832-0300
Fax (843) 832-0308



2017-CP-18-1241
ST. GEORGE
100 Sears Street
St. George, S.C. 29477
Office (843) 563-0259
Fax (843) 563-0263

SHERIFF L.C. KNIGHT

BOND REQUEST

FILED - RECORDED
2017 OCT 11 AM 8:34
CHERYL GRANICH
CLERK OF COURT
DORCHESTER COUNTY

~~DCSO CASE NUMBER(S):~~ 5102P0676001 16CH191796

DEFENDANT'S NAME: TYLER JAMES EVANS

DATE OF BIRTH: [REDACTED]

SSN: [REDACTED]

PRIOR ARREST: YES / NO SID #: _____ FBI #: _____

ARREST CHARGE # 1: DUI 1ST ^{UTC} WARRANT #: 5102P0676001

BOND RECOMMENDATION: PR

ARREST CHARGE #2: OPERATING UNINSURED WARRANT #: 5102P0676002

BOND RECOMMENDATION: PR

ARREST CHARGE #3: _____ WARRANT #: _____

BOND RECOMMENDATION: _____

ARREST CHARGE # 4: _____ WARRANT #: _____

BOND RECOMMENDATION: _____

ADDITIONAL INFORMATION:

ARRESTING OFFICER: SHERI A PENCE
Print Name

SERVED WARRANTS: Sheri A Pence
Signature and Date
12-15-16

2017-CP-18-1241

DORCHESTER COUNTY
SHERIFF'S OFFICE
SC0180000

DATE/TIME OF ARREST
12-15-16 2035

BOOKING REPORT

CASE NUMBER
16C.H19.1796

DEFENDANT NAME (LAST, FIRST, MIDDLE) EVANS, TYLER JAMES										RACE WM		SEX M		DATE OF BIRTH [REDACTED]		DOCKET NUMBER									
AGE 45		ETH N		HEIGHT 511		WEIGHT 185		HAIR BRO		EYES BLU		VISIBLE SCARS AND MARKS [REDACTED]				NCIC [REDACTED]		I.D. NUMBER [REDACTED]							
ADDRESS (NUMBER AND STREET) [REDACTED]										CITY NORTH CHARLESTON		STATE SC		ZIP CODE 29418		RESIDENT J S O U		PHONE NUMBER [REDACTED]							
ALIAS [REDACTED]										PLACE OF BIRTH ST JOSEPH MO				DRIVERS LICENSE NUMBER [REDACTED]				STATE SC							
EMPLOYER OR OCCUPATION BARTENDER										NEXT OF KIN LINDA PETITT				ADDRESS (CITY AND STATE) SAVANNAH MO											
BOOKING OFFICER'S NAME [REDACTED]										NUMBER [REDACTED]		ARRESTING OFFICER S A PENCE				AGENCY SCHP		NUMBER [REDACTED]							
ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE:										☐ SEMI-AUTO ☐ FULL-AUTO		☐ ON VIEW ARREST				☐ SUMMONED		☒ CUSTODY							
JUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFERRED TO OTHER AUTHORITY										* J - This Jurisdiction. S - State. O - Out of State. U - Unknown															
ADDITIONAL CASE NUMBERS										MORE IN REMARKS ☐															
IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C																									
CHARGE I.D.		5102P0676091								5102P0676092								C							
CHARGE		DUI 1ST								OPERATING UNINSURED															
STATUTE		56-5-2930								56-10-520															
BOND AMOUNT																									
BOND TYPE																									
RET. DATE																									
DISPOSITION																									
		DAYS				AMOUNT				DAYS				AMOUNT				DAYS				AMOUNT			
SENTENCE																									
TIME SERVED																									
GOOD TIME																									
BALANCE																									
PAID																									
RECEIPT NUMBER																									
RELEASE DATE		TIME		RELEASING OFFICER						NUMBER		AGENCY RELEASED TO													
SIGNATURE OF RECEIVING OFFICIAL X Saunders 414																		2017 DEC 11 AM 8:34							
REMARKS:																		CHEYL GAVAN CLERK OF COURT DORCHESTER COUNTY							
DEFENDANTS PERSONAL PROPERTY RECEIPT																		TOTAL CASH AT TIME OF ARREST -> \$ 0.00							
QUANTITY		ITEM								QUANTITY		ITEM													
I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.																									
x Tyler Evans DEFENDANT'S SIGNATURE AT TIME OF ARREST										Saunders OFFICER															
I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.																									

2017-CP-18-1241

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Frost Law Group, LLC
136 W. Richardson Ave.
Summerville, SC 29483

FILED - RECORD
2017 OCT 11 AM 8:34
CHERYL GRANOFF
CLERK OF COURT
DORCHESTER COUNTY

SUMMARY COURT SUMMONS

STATE VS. Tyler James Evans
TICKET #(S) 5102P0676001
CHARGE DUI / Driving under the Influence, .16 or higher, 1st Offense

A Jury Trial has been requested in the above listed case. Please be advised that this case is now scheduled for a Pre-Trial Hearing. You are required to be present to answer roll as instructed.

You are hereby summoned to appear in the

Summerville Magistrate
212 Deming Way, Box 10
Summerville, SC

on **June 22, 2017 @ 10:00 a.m.**

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASES MADE AND PROVIDED.


JUDGE

Summerville Magistrate
212 Deming Way, Box 10
Summerville, SC 29483
Phone: (843) 832-0370
Fax: (843) 832-0371

May 16, 2017

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

2017-CP-18-1241

Frost Law Group, LLC
136 W. Richardson Ave.
Summerville, SC 29483

2017 OCT 11 AM 8:34
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

SUMMARY COURT SUMMONS

STATE VS. Tyler James Evans
TICKET #(S) 5102P0676002
CHARGE Traffic / Uninsured motor vehicle fee violation, 1st offense

A Jury Trial has been requested in the above listed case. Please be advised that this case is now scheduled for a Pre-Trial Hearing. You are required to be present to answer roll as instructed.

You are hereby summoned to appear in the

**Summerville Magistrate
212 Deming Way, Box 10
Summerville, SC**

on **June 22, 2017 @ 10:00 a.m.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASES MADE AND PROVIDED.**


JUDGE

**Summerville Magistrate
212 Deming Way, Box 10
Summerville, SC 29483
Phone: (843) 832-0370
Fax: (843) 832-0371**

May 16, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

VS

Tyler James Evans

DEFENDANT

5102P0676001
CASE NUMBER

IN THE SUMMARY COURT

TRANSMITTAL OF
CRIMINAL APPEAL

2017-CP-18-1241

As required by Sec. 18-3-40, SC Code of Laws, this information is transmitted to the Court of Common Pleas as the result of an appeal.

Date of Transmittal: October 9, 2017

Transmitted to: Dorchester County Clerk of Court

Transmitted by: Summerville Magistrate

Case Caption: State of South Carolina vs. Tyler James Evans

Case Number: 5102P0676001

Received and verified by  on 10-11-17

Summerville Magistrate
212 Deming Way, Box 10
Summerville, SC 29483
Phone: (843) 832-0370
Fax: (843) 832-0371

FILED - RECORD
2017 OCT 11 AM 8:32
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1801241

State of South Carolina et al
PLAINTIFF(S)

Tyler James Evans et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☒ Other **Appeal is hereby Denied. Not timely filed.**

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/28/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Dorchester Common Pleas

Case Caption: State of South Carolina , plaintiff, et al VS Tyler James Evans ,
defendant, et al

Case Number: 2017CP1801241

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-05-28 16:24:10 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1801241

State of South Carolina et al
PLAINTIFF(S)

Tyler James Evans et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The State of South Carolina's Motion to Reconsider is hereby Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/18/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Dorchester Common Pleas

Case Caption: State of South Carolina , plaintiff, et al VS Tyler James Evans ,
defendant, et al

Case Number: 2017CP1801241

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-06-18 07:03:27 page 3 of 3

State of South Carolina) In the Court of Common Pleas
County of Dorchester) First Judicial Circuit
2017-CP-18-00888
2017-CP-18-01241

State of South Carolina)
Plaintiff,)
vs.)
Christopher Huggins,)
Defendant.)
and)
Tyler James Evans,)
Defendant.)
_____)

May 28, 2019

St. George, South Carolina

B e f o r e:

The Honorable Brian M. Gibbons, Judge

A p p e a r a n c e s:

Mark Moore, Esquire
Attorney for the Plaintiff

Adam Russo, Esquire
Tara Frost, Esquire
Attorneys for the Defendants

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Case Called/The Court	4
Motion/Mr. Moore	5
Response/Mr. Russo	11
Response/Ms. Frost	13
Reply/Mr. Moore	14
Response/Mr. Russo	19
Decision by the Court	20
Certificate Page	24

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
------------	--------------------	-------------	------------

-- NO EXHIBITS ENTERED --

1 (On the record 10:55 a.m.)

2 THE COURT: All right. That takes it to the next
3 case. And that's -- I don't need the files on that one. I
4 know what this one's about.

5 MS. FROST: Yes, sir.

6 THE COURT: *State of South Carolina v Christopher*
7 *Huggins* and the *State of South Carolina v Tyler James*
8 *Evans*. And it's also No. 1 and 2 on the motion docket.
9 They'll all be heard at the same time 'cause they all
10 involving the same matter. So we'll not write your stuff
11 off, and -- did you give that to the court reporter?

12 (Brief pause.)

13 THE COURT: So this is going to be Item 6 and 7 on the
14 appeal roster, as well as Item No. 1 and 2 on the motions
15 roster. And so why don't -- why don't we, to kinda set the
16 stage for what we're doing -- well, let's do it in order.
17 Then it'll be easier for the -- for the purpose of a
18 record. So Mr. Moore?

19 MR. MOORE: Yes, Your Honor?

20 THE COURT: You represent the State of South Carolina,
21 who has appealed a decision made by the Summary Court on
22 both Item 6 and 7 on the appeal roster. State your
23 position.

24 I'm going to let you come back -- I'm going to let all
25 of the lawyers make a full record, but we'll just kinda go

1 in that way.

2 MR. MOORE: You want me to start with the appeal?

3 THE COURT: If you could identify yourself -- yeah.
4 Let's go ahead and deal with the appeal first --

5 MR. MOORE: Okay.

6 THE COURT: -- and then we'll deal with the motion to
7 -- they'll make their motion to dismiss, and then we'll
8 come back and I'll hear from you on your motion to -- their
9 motion -- your position on their motion to dismiss, and
10 then we'll go that way.

11 MR. MOORE: Okay.

12 THE COURT: Just for -- for the purpose of the court
13 reporter, identify yourselves, please.

14 MR. MOORE: Your Honor, my name is Mark Moore. I
15 represent yhe Department of Public Safety and the State of
16 South Carolina.

17 THE COURT: All right.

18 MR. MOORE: Your Honor, this was a case -- or two
19 cases that were down in Magistrate's Court. They were
20 both dismissed because in both cases, the video did not
21 show feet during the walk and turn. I believe in the
22 Evans case, there's also -- the video did not show the
23 feet and the one-legged stand, if I'm not mistaken.

24 The Magistrate in both those cases determined that
25 the remedy in -- in that situation was dismissal, and the

1 State has filed this appeal.

2 THE COURT: All right.

3 MR. MOORE: Your Honor, the State's position is, is
4 that the 56-5-2953 does not require the report of -- I'm
5 sorry. Let me go back. I apologize. The State's
6 position is, is that neither of these cases should've been
7 dismissed.

8 THE COURT: All right.

9 MR. MOORE: I was dealing with that other appeal
10 first. I apologize.

11 Basically, 29 -- or 56-5-2953 does not require the
12 recording of the performance of field sobriety tests,
13 rather the administration of the field sobriety test.
14 Under Section A-1/A-2, it says that (as read): "The video
15 recording at the incident site must include any field
16 sobriety tests administered."

17 THE COURT REPORTER: Sir, you need to read a little
18 bit slower. Just read a little bit slower if you're going
19 to read.

20 MR. MOORE: Okay. That again, repeating 56-5-2953
21 A1/A2 (as read): "The video recording at the incident
22 site must include any field sobriety tests administered."

23 The reading of field sobriety tests can -- as
24 mandated by 20 -- 56-5-2953, has never been interpreted to
25 require demonstration of a subject's performance on the

1 individual test. Most recently in *State v Gordon*, the
2 Supreme Court description of the video requirement focused
3 solely on the administration of the test rather than the
4 performance.

5 If you look at that case, there's a passage where
6 they indicate (as read): "The officer's administration of
7 the HGN is visible in the video recording. It's
8 undisputed that Gordon's face is depicted in the video.
9 It's axiomatic that the face is part of the head, the
10 officer's flashlight and arm are visible as he administers
11 the test, and the officer's instructions were audible.

12 "Thus the requirements that the head be visible on
13 the video are met in the statutory requirement that the
14 administration of the HGN field sobriety test must -- test
15 must be video recorded as satisfied."

16 The Respondent's concern in this case is -- and
17 specifically with Evans, I believe, is that the failure of
18 the video to demonstrate performance did not violate 56-5-
19 2953.

20 Furthermore, *Gordon* says nothing about the walk and
21 turn test. It addressed whether the head must be shown in
22 the recording of the HGN field sobriety test analysis, was
23 limited to HGN, and it doesn't address what constitutes an
24 acceptable reporting of other field sobriety tests,
25 including the one-legged turn -- or the walk-and-turn or

1 the one-legged stand test at issue here.

2 Omission of a portion of the walk-and-turn test is
3 not a violation of 56-5-2953. The plain language of the
4 statute demonstrates the legislature intended the video
5 recording of the majority of an officer's encounter with a
6 potential DUI suspect. The video reporting does not
7 report -- or the video reporting, under 56-5-2953, does
8 not require visible display of the Defendant speaking in a
9 manner that would show whether he walked heel-to-toe
10 during the walk-and-turn test, unlike the *Gordon* analysis
11 of the HGN test where the head is only -- the only
12 relevant body part.

13 Omission of a portion of the walk-and-turn test is
14 acceptable because the person's feet are just one of many
15 considerations of the walk-and-turn test. I believe in
16 the brief that -- or the Appellate's motion they did
17 indicate there was a case, it's an unpublished opinion or
18 just went up with the Court of Appeals, and that was the
19 rationale in that situation. But obviously that's not the
20 -- that doesn't establish any precedent.

21 In so far as a video captures portions of the
22 Defendant's walk-and-turn test, it satisfies the
23 requirements of 56-5-2953.

24 Your Honor, turning to the remedy in these
25 situations, if the -- if the video is not adequate, I

1 would -- again would say that the Supreme Court's made it
2 clear that dismissal's not the appropriate sanction for a
3 violation of 56-5-2953. In *Gordon*, the Supreme Court
4 evaluated an apparent violation of 56-5-2953 involving the
5 failure to report the HGN field sobriety test. And rather
6 than mandating dismissal for the failure, the Supreme
7 Court observed that the appropriate remedy would be the --
8 to redact the field sobriety test from the video and
9 exclude the testimony about the test.

10 And that's the State's position in this case is even
11 if you found the video was inadequate of the walk-and-turn
12 or the one-legged stand, those tests be redacted and the
13 State should be able to proceed on the prosecution. And -
14 -

15 THE COURT: Which, I guess, in this case were
16 consistent with whatever other evidence was gathered. I
17 mean, I don't know. I hadn't got to the -- what was
18 actually gathered in it, whether there was any DataMaster
19 test or results, whether or not there were refusals, or
20 other stuff at the scene.

21 MR. MOORE: Correct, Your Honor.

22 THE COURT: Okay. Go ahead. I'm listening

23 MR. MOORE: And then also the trooper was not
24 required to provide an affidavit, which I believe is one
25 of the arguments that Defendant Huggins has made. The

1 Respondent suggests that the suppression was impossible --
2 or it's suppression was impossible because the trooper
3 failed to provide an affidavit in compliance with 56-5-
4 2953, and the trial court appears to have adopt -- to have
5 adopted that reasoning in its decision to dismiss.

6 The trooper could've produced an affidavit -- or
7 couldn't have produced an affidavit in this case because
8 none of the enumerated exceptions apply and her failure to
9 do so was irrelevant. Instead, the Court should've
10 considered any other valid reasons for the failure based
11 on the totality of the circumstances under Section B of
12 56-5-2953.

13 So the State respectfully requests the decision of
14 the Magistrate be reversed and that the case be remanded
15 to lower court for trial and any other relief the Court
16 deems appropriate.

17 THE COURT: All right. Thank you.

18 MR. MOORE: Thank you, Your Honor.

19 THE COURT: And Mr. Russo, why don't you go first?

20 MR. RUSSO: Sure. Your Honor, would you like me to
21 hit the motion first?

22 THE COURT: Yeah. Hit your -- hit your motion 'cause
23 it ties into --

24 MR. RUSSO: Sure.

25 THE COURT: -- you know, he -- I wanted him to give

1 me the substantive grounds of the State's appeal --

2 MR. RUSSO: Sure.

3 THE COURT: -- before I hear the procedural grounds
4 of your motion to dismiss so I have an idea of the full
5 scope of things.

6 MR. RUSSO: Your Honor, the -- we'd ask that you
7 dismiss this appeal because we believe that the State has
8 filed its appeal outside of the jurisdictional time limits
9 for such an appeal of -- of this nature.

10 Your Honor, our belief on that -- on that comes from
11 SC Code 18-320 and 18-330. 18-3 -- 320 states in
12 pertinent part that (as read): "All appeals from
13 magistrate's court in criminal cases shall be taken and
14 prosecuted as prescribed in this chapter."

15 And then 18-330 indicates in pertinent part that (as
16 read): "The appellate, within 10 days after sentence,
17 shall file a notice of appeal."

18 Your Honor, in my case the -- the State did not file
19 a notice of appeal unto -- until day 30. I believe in Ms.
20 Frost's case, it was day 23?

21 MS. FROST: That is correct.

22 MR. RUSSO: Right. So Your Honor, in both of our
23 cases, the State is somewhere between 13 and 20 days over
24 the jurisdictional time limit.

25 Your Honor, I think that the statutes are clear and

1 unambiguous and speak for themselves. The State, I
2 believe, in a prior case called "*State v Norman Dudley*,"
3 attempted to argue what it will probably argue here which
4 is that the State has 30 days to appeal a criminal case
5 from magistrate court.

6 Your Honor, in that case, Judge Nicholson, sitting in
7 an appellate jurisdiction -- in -- in an appellate
8 jurisdiction, indicated that no, no the State's is not,
9 that it only has 10 days; further, that to grant otherwise
10 would violate the equal protection clause and essentially
11 burden the Defendant with a quicker action than the State
12 would have.

13 And further, Your Honor, when that went up to the
14 Court of Appeals, the Court of Appeals determined the
15 State had filed late in that case anyway. They'd filed on
16 day 31. So it came to no -- it -- it -- it didn't find a
17 relative conclusion that would've -- that would've
18 terminated our motion in this case.

19 But Your Honor, I think again the facts are just --
20 sorry, the statute's really clearly speak for themselves.
21 And we all learn in the very first year of law school that
22 the word "shall" means must.

23 I just don't think the State can provide any kind of
24 justification to get around 18-3-20 which is clear and
25 states that this chapter is the one that describes how

1 magistrates court's appeals from criminal actions are to
2 be proceeded on.

3 THE COURT: Not to steal his thunder, but what about
4 Rule 74 which says 30 days appeals to Circuit Court?

5 MR. RUSSO: Sure. Well, that would only be if you
6 found that, one, 18-330 did not apply. So you'd have to
7 get to that first, and even then you have to weave through
8 an extremely narrow passageway to get there.

9 What the State says -- what it -- what at least said
10 in -- in the *Dudley* case was that they first went to, I
11 believe, Rule of Criminal Procedure, I think it was 29,
12 which describes other rules of procedure which could be
13 applicable, and only from there does it get to Rule 74.
14 You have to go through an extremely winding passageway to
15 get to Rule 74.

16 And while I agree that we are in Common Pleas now, we
17 are in Civil Court, it's -- it's clear to -- that to get
18 to here, you have to file the -- the notice of appeal
19 within 10 days, from 18-320 or 18-330, I apologize.

20 THE COURT: Okay. Understood. Ms. Frost, you want
21 to add anything?.

22 MS. FROST: No, Your -- only the -- just the idea
23 that the State is asking this Court to require a higher
24 burden for criminal defendants that -- versus what the
25 State would -- would be required to, and -- and Judge

1 Nicholson said that that could be an issue of equal
2 protection clause and we just want to make sure that's
3 considered as well.

4 THE COURT: Thank you. Mr. Moore?

5 MR. MOORE: Thank you, Your Honor. Going back to the
6 first issue, the State's position is, is that 18-3 -- or
7 18-3-30 doesn't govern appeals by the State. It applies
8 only to a defendant appealing his sentence in magistrate
9 court upon conviction.

10 If you look at the statute again, Section A says (as
11 read): "The Appellant, within 10 days after sentence,
12 shall file a notice of an appeal with the Circuit Court."
13 And then secondly, in Section B, it says (as read): "A
14 person convicted ... " and in both these cases it's also
15 applying to a post-conviction situation, not an
16 interlocutory appeal which is what we have here.

17 The underlying statute authorizing criminal appeals
18 for magistrate's court, 18-3-10, also is facially inactive
19 -- in -- inapplicable to the State. It says (as read):
20 "Every person convicted before magistrate's court of any
21 offense, and whatever -- offense whatever and sentenced
22 may appeal from the sentence of the Court of Common Pleas
23 for the county." And again, you're dealing with a post-
24 conviction situation.

25 By their own terms, neither of these statutes applies

1 to the State. The Court can employ rule -- rules of
2 statutory construction to impose another meaning on them
3 when the terms of the statute are plain, unambiguous, and
4 convey a clear and definite meaning.

5 The State's right to appeal in South Carolina is
6 generally controlled by case law rather than statute, and
7 the State's right to appeal is a judicially created right.

8 In *State v Belviso*, the Court of Appeals reversed the
9 Circuit Court's determination that it did not have
10 jurisdiction to hear the State's interlocutory appeal when
11 it incorrectly relied on 18-3-10, holding that because the
12 State's right to appeal was judicially created, the Court
13 would look into judicial opinions instead. Because no
14 statute or cases set forth the time frame for appeals from
15 magistrate's court by the State, the procedural rules
16 would then apply.

17 The South Carolina Rule of Criminal Procedures apply
18 to magistrate court under Rule 37, the applicability
19 statute; and then if you look at the last line in Rule 37,
20 it says (as read): "In any case where no provision is
21 made by statute or -- or are --

22 THE COURT: Are you in Rule of Civil Procedure 37?

23 MR. MOORE: This is the Rules of Criminal Procedure

24 --

25 THE COURT: All right.

1 MR. MOORE: -- I'm looking at right now, the Rule 37.

2 THE COURT: Hang on. Let me -- let me find it.

3 Number 37?

4 MR. MOORE: Correct, Your Honor.

5 THE COURT: All right. I'm listening.

6 MR. MOORE: (As read): "And any case where no
7 provision is made by statute or these rules, the procedure
8 shall be according to the practices that heretofore
9 existed in the Courts of the State."

10 South Carolina Rules of Civil Procedure 74 predates
11 37, so that would've been in existence prior to. And
12 under South Carolina Rule of Civil Procedure 74, which we
13 -- was -- it's just been discussed, provides for a 30-day
14 period for service and appeal when the cases are coming
15 into the Court -- or to the common pleas.

16 The Appellant's appeal in this case, our appeal,
17 filed within 30 days of the magistrate ruling, was,
18 therefore, timely under Rule 74 of the South Carolina
19 Rules of Civil Procedure, which should apply in this
20 situation where we're dealing with an interlocutory appeal
21 by the State and not an appeal by the Defendant of a
22 criminal conviction.

23 THE COURT: All right.

24 MR. RUSSO: Let ---

25 MR. MOORE: As for the equal protection argument,

1 first argument is, is that because we're dealing with an
2 interlocutory appeal, those sections, 18-3-30, wouldn't
3 apply anyway and so it really would be an inter -- or
4 there wouldn't be -- there would be an argument for a
5 criminal defendant in the same position, that they could
6 go forward in a 30-day window.

7 But regardless of that, let's say that you do look at
8 the equal protection issue. There must be a showing that
9 -- where similarly situated persons receiving desperate
10 treatment -- in this case neither the South -- the State
11 of South Carolina nor the Department of Public Safety is a
12 person within the context of the clause. There's no basis
13 to apply the equal protection clause to find a government
14 agency is a person against whom a defendant's equal
15 protection rights are measured.

16 And the State is not, and never -- can never be
17 similarly situated to a criminal defendant and such an
18 analysis is unsupported by law.

19 Even if it were possible to find that the parties are
20 similarly situated such that an equal protection clause
21 applies, there would be no constitutional violations.

22 In this case, neither the parties ability to appeal
23 -- neither -- because neither parties ability to appeal
24 from magistrate court involves a suspect class or any
25 fundamental right, the existence of separate rules

1 prescribing different time strain -- time frames for
2 appeal would be evaluated under the rational basis
3 standard. Under this test, the requirements of equal
4 protection are satisfied when the classification by the
5 Government bears a reasonable relation to the legislative
6 purpose sought to be affected, the members of the class
7 are treated alike under similar circumstances and
8 conditions, and the classification rests on some
9 reasonable basis.

10 If the Court can discern any rational basis to
11 support a classification, regardless of whether that basis
12 was the original motivation for it, the classification
13 will withstand constitutional scrutiny.

14 18-3-30 is viewed as creating a class of criminal
15 defendants that must appeal their magistrate convictions
16 within 10 days. The classification bears a reasonable
17 relation to the legislative purpose of aiding the orderly
18 administration of justice, all members of the class are
19 treated the same, and the alleged classification rests on
20 a reasonable basis that 10 days is sufficient for a
21 criminal defendant to decide upon and file notice of
22 appeal. And in that case, the statute passes
23 constitutional muster.

24 If the legislatively approved court rule granting the
25 State 30 days to perfect and file an appeal for magistrate

1 court is seen as creating a class of prosecutors subject
2 to a different time for appeal, it too survives
3 constitutional muster like 18-3-30. It would be
4 reasonably related to aiding the administration of
5 justice, all members are treated alike, and a reasonable
6 basis exists for the creation of such a class.

7 Criminal cases in magistrate court are generally
8 prosecuted by law enforcement officers, and not lawyers.
9 Only attorneys can handle the appeals.

10 When an appellate attorney is not present during a
11 magistrate court proceedings, it takes additional time to
12 be notified by the officer that an appeal might need to be
13 taken, establish what transpired, secure a recording of
14 the -- or transcript of the proceedings, determine whether
15 an app -- an appealable issue exists, evaluate pub --
16 policy considerations in taking the appeal, and prepare
17 and file an appeal, often in the area of the state where
18 the attorney doesn't work.

19 So for those reasons, even if you did the equal
20 protection analysis, we don't feel like there would be a
21 violation under these circumstances, Your Honor.

22 THE COURT: All right. Mr. Russo?

23 MR. RUSSO: Your Honor, as you saw, what they expect
24 you to do is ignore 18-3-20, ignore 18-3-30, jump to rule
25 37 of the Rules of Criminal Procedure; then from there,

1 leapfrog to rule 74 of the Rules of Civil Procedure.

2 Your Honor, I -- I just -- for whatever reason, I
3 seem to doubt that when the legislature enacted 18-2 --
4 18-3-20 and 18-3-30, that they expected that to be the
5 rationale for how the State had a right to an appeal.

6 If anything, Your Honor, another questions arises,
7 why not jump to rule 29 of the South Carolina Rules of
8 Criminal Procedure which indicates that all post-trial
9 motions shall be made within 10 days? The State provides
10 no reason for that.

11 So Your Honor, I think that the clear, concise, and
12 quite frankly obvious -- as there's been no argument to
13 the contrary -- way to perceive these matters is to look
14 at 18-3-20, all appeals shall, apply to 18-3-30 and see
15 that the State filed 20 to 31 days late.

16 THE COURT: Anything you want to add, Ms. Frost?

17 MS. FROST: No, Your Honor.

18 THE COURT: See, the -- the problem I'm having for
19 whoever reads this transcript down the road is, you know,
20 I -- I've -- I've read the magistrate's court rule -- or
21 the -- the -- statute 18-3-20. You know, the first
22 section, A, talks about the Appellant; and then B,
23 subsection B, or maybe it's under 30, says (as read): "A
24 person convicted in magistrate's court..."

25 Well, to me that signals two different things: The

1 Appellant versus a person convicted. You know, does --
2 did the legislature intend to mean the Appellant being the
3 prosecuting agency as well or did they just mean that to
4 be a person convicted in magistrate court?

5 If they just meant it to be a person convicted in --
6 convicted in magistrate's court, why didn't they say it
7 that way in -- in section A? And of course, I -- I'm --
8 I'm well aware how this Court's supposed to interpret
9 statutes, and I'm well aware when it -- how statutory
10 interpretation should be strictly construed in favor of a
11 criminal defendant. I understand that as well.

12 All right. What I want to do, and like I indicated
13 to y'all back in chambers when y'all were giving me kind
14 of the rundown of what we were going to put on the record
15 here for the purposes of -- of any future appellate
16 remedies for either side, I -- I do want to sit on this
17 for awhile and digest everything y'all have argued to me.
18 And I'll issue a ruling hopefully if not by the end of
19 this week, certainly by the end of next week.

20 Yes, sir?

21 MR. RUSSO: Your Honor, just -- just for purpose of
22 housekeeping.

23 THE COURT: Yes?

24 MR. RUSSO: When -- when the *Dudley* case was heard in
25 front of Judge Nicholson, what had happened was the --

1 Judge Nicholson emailed both parties and indicated that he
2 was going to reach the issue on motion and not reach the
3 substantive issue. Your Honor, we haven't argued about
4 the substantive issue on our side yet --

5 THE COURT: Yeah. That's right.

6 MR. RUSSO: Do you want us --

7 THE COURT: That's right.

8 MR. RUSSO: -- do you want us to go ahead and argue
9 that, or do you want to send us an email and then we can
10 come back if you have to -- if we have to argue --

11 THE COURT: That's what I'm going to do.

12 MR. RUSSO: Okay.

13 THE COURT: And the purpose -- in -- in the interest
14 of time. In -- in -- in the event I deny the Defense's
15 motion to dismiss on procedural grounds, we will -- I will
16 revisit -- I'll retain jurisdiction and y'all can come see
17 me instead of me coming to see y'all. Maybe we can meet
18 in the middle somewhere.

19 MR. RUSSO: Fair --

20 THE COURT: Maybe we can meet in Columbia, who knows?
21 But I will -- I will listen to -- I will deal with the
22 substantive issues in the event I deny the Defense request
23 for dismissal, okay?

24 MR. RUSSO: Thank you, Your Honor.

25 MR. MOORE: Thank you, Your Honor.

1 THE COURT: Thank you very much, sir.

2 MS. FROST: Thank you, Your Honor.

3 THE COURT: That concludes the hearing of this case.

4 (Off the record at 11:15 a.m.)

5 -- END OF TRANSCRIPT OF RECORD --

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned, Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 28th day of May, 2019.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Court Reporter

Columbia, South Carolina

December 15, 2019

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
)

THE STATE OF SOUTH CAROLINA
Appellant,
VS.

CP Docket No.: 2017-CP-18-01241

Original Ticket No.: 5102P0676001

✓ TYLER JAMES EVANS

Respondent.

) MOTION TO DISMISS APPEAL
)
)

FILED-RECORDED
2017 DEC 21 PM 2:19
CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

TO: The Honorable Tera S. Richardson, Dorchester County Magistrate Judge, Marcus K. Gore, General Counsel for the S.C. Department of Public Safety, Attorney for the Appellant, and SCHP Trooper S.A. Pence.

INTRODUCTION

1. The Defense moves to dismiss this appeal pursuant to S.C Code Ann 18-3-20 and 18-3-30.

FACTS

2. On June 28, 2017, subsequent to a pre-trial motion hearing, The Honorable Tera S.

Richardson dismissed Uniform Traffic Ticket ("UTT") Number 5102P0676001. The State, through either Trooper S.A. Pence or through its Office of General Counsel, failed to file a motion to reconsider.

3. Subsequently, twenty (20) days later, on July 18, 2017, the State authored an appeal, which it caused to be filed in Dorchester County on July 21, 2017, twenty-three (23) days subsequent to the dismissal of UTT 5102P0676001. I received service on July 21, 2017, and upon information and belief, The Honorable Tera S. Richardson received service of the appeal on the same date.

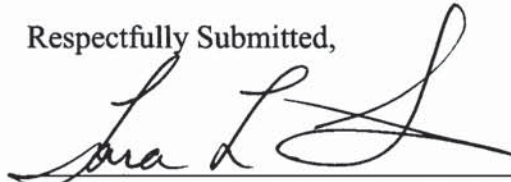
LAW AND ANALYSIS

4. S.C. Code 18-3-20 states, in pertinent part, as follows: “**All appeals from magistrates’ courts in criminal causes** shall be taken and prosecuted by as prescribed in this chapter.” (emphasis added.)
5. S.C. Code 18-3-30 states, in pertinent part, as follows: “**The appellant, within ten days after sentence, shall file notice of appeal** with the clerk of circuit court and shall serve notice upon the magistrate who tried the case [...]” (emphasis added.)
6. Based on the foregoing, the State was between ten (10) and thirteen (13) days too late beyond the timing requirements for the appeal of this nature.
7. Further, South Carolina courts have determined- and written orders to the effect- that it would be a violation of the Equal Protection Clause to not hold a prosecuting agency to the same standard as an accused in the criminal courts of this state. (See Exhibit A.)

WHEREFORE, the Defense would request the following:

- A. An order dismissing the case; and,
- B. Such other relief as the court may decide to award.

Respectfully Submitted,



Tara L. Frost, Attorney for Respondent
FROST LAW GROUP, LLC
126 E. 2nd North St.
Summerville, SC 29483
Telephone: 843-419-6653
Fax: 843-419-6674
tara@frostlawgroupsc.com

This 19th day of December 2017
Summerville, SC

FILED-RECORDED
2017 DEC 21 PM 2:19

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

The State of South Carolina,

v.

Norman B. Dudley

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) C/A #2014-CP-08-00010
) Ticket No.: F594836

) ORDER DISMISSING APPEAL

2017 DEC 21 PM 2:19
CLERK OF COURT
DORCHESTER COUNTY
15 AUG 14 PM 12:26
CLERK OF COURT
BERKELEY COUNTY, S.C.

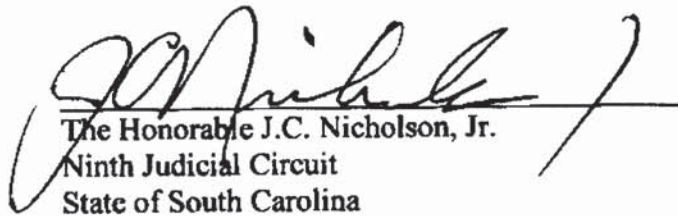
THIS MATTER came before the Court upon the State's Appeal of the Dismissal of Driving Under the Influence (First Offense) handed down by Honorable Edward L. Sessions, Berkeley County Magistrate Judge, on December 3, 2013. The Court issued its Order of Dismissal on that date and the State received notice at that time.

FINDINGS OF FACT

The Court finds upon a review of the record that the State failed to file a timely appeal in this matter having done so January 3, 2014. Section 18-3-30 of the South Carolina Code of Laws governs appeals from criminal matters in Magistrate Court. The statute provides that the notice of appeals from criminal matters in Magistrate Court shall be filed within ten days. It would be a violation of the Equal Protection Clause to not hold the prosecuting agency to the same standard as an accused in the courts of this state.

THEREFORE, IT IS HEREBY ordered that the State's Appeal is hereby dismissed.

AND IT IS ORDERED.


The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit
State of South Carolina

32:07M Aug 3, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

TYLER JAMES EVANS

Defendant.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASE NO.: 2017-CP-18-1241

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

2017 DEC 21 PM 2:19
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff's Attorney:

Marcus K. Gore, Bar No. 73647

Address:

SC DPS Office of Gen. Counsel PO Box 1993

Blythewood, SC 29016

Phone: 803-896-7965 Fax 803-896-7967

E-mail: marcusgore@scdps.gov Other: _____

Defendant's Attorney:

Tara L. Frost, Bar No. 100610

Address:

Phone: 843-419-6653 Fax 843-419-6674

E-mail: tara@frostlawgroupsc.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 15 mins

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date Submitted 1/19/17

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	MOTION FOR RECONSIDERATION
	)	PURSUANT TO SCRPC 59(e)
	)	
Appellant,	)	Civil Action No.: 2017-CP-18-01241
	)	Ticket No.: 5102P0676002
vs.	)	
	)	
Tyler James Evans,	)	
	)	
Respondent.	)	

TO: THE HONORABLE BRIAN M. GIBBONS, CIRCUIT COURT JUDGE, AND
TARA LEIGH FROST, ATTORNEY FOR RESPONDENT

On June 28, 2017, Dorchester County Magistrate Tera S. Richardson issued an order granting a defense motion to dismiss the State's charge of Driving Under the Influence against Tyler James Evans ("Respondent"). Judge Richardson found dismissal appropriate because the prosecution's roadside video failed to capture portions of certain field sobriety tests in violation of section 56-5-2953 of the South Carolina Code, *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007), *State v. Gordon*, 414 S.C. 94, 777 S.E.2d 376 (2015), and other appellate and local cases and orders. In response, the State filed an appeal in the Dorchester County Court of Common Pleas arguing that the magistrate erroneously concluded as follows:

- (1) section 56-5-2953 requires the recording of a suspect's performance of field sobriety tests;
- (2) the *Gordon* analysis applies to the Walk and Turn and One-Legged Stand tests; and
- (3) failure to record portions of certain field sobriety test results in dismissal of an entire case, as opposed to redaction/suppression of such tests and any related testimony. *See Gordon*, 414 S.C. at 100, 777 S.E.2d at 379.

The State's appeal was filed on July 21, 2017. On October 11, 2017, Judge Richardson filed her Return.

On December 21, 2017, Respondent filed a motion requesting that this Court dismiss the State's appeal based upon the State's failure to timely file the appeal pursuant to sections 18-3-20 and 18-3-30 of the South Carolina Code. Included in the motion was a reference to the Equal Protection Clause. Specifically, Respondent contended that the State was required to file its appeal within ten (10) days of Judge Richardson's dismissal on June 28, 2017, and that the State's appeal filed on July 21, 2017 was untimely.

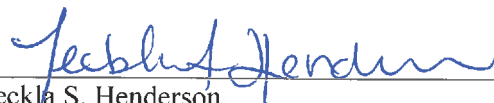
A hearing to consider the appeal and Respondent's Motion to Dismiss took place on May 28, 2019. During the hearing, the State was heard on its arguments regarding the underlying appeal of the DUI case. Additionally, Respondent argued in favor of dismissal as described above. In response, the State argued:

- (1) sections 18-3-10, 18-3-20, and 18-3-30, including the time limits, are applicable to criminal defendants only, not to appeals brought by the State;
- (2) because no statutory or case law sets forth the timeframe for appeals by the State from magistrate's court, the rules of Civil Procedure are implicated; and
- (3) any discrepancy between the time limits for appeal by either party is lawful and neither implicates nor violates the Equal Protection Clause.

On May 29, 2019, this Court issued a Form 4 Order stating that the "Appeal is denied. Not timely filed," and further, that "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed." Based upon the arguments made above, the State respectfully requests that the Court reconsider, alter, or amend its ruling to dismiss this appeal as untimely and proceed on the merits of the State's appeal.

In the alternative, the State moves the Court for a formal written order which sets forth the grounds upon which the Court has relied in dismissing this appeal.

Respectfully Submitted,



Teckla S. Henderson,
Assistant General Counsel
South Carolina Department of Public Safety
Office of General Counsel
Post Office Box 1993
Blythewood, South Carolina 29016
Email: TecklaHenderson@scdps.gov
Telephone: (803) 896-7950

Blythewood, South Carolina
June 4, 2019

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

State of South Carolina,

Appellant,

vs.

Tyler James Evans,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-18-01241
Ticket No.: 5102P0676002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of June, 2019, I mailed, via first class Unites States mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Reconsideration to the presiding Circuit Court judge. Respondent's counsel of record was automatically served with the same via e-filing.

The Honorable Brian M. Gibbons
Post Office Drawer 580
Chester, South Carolina 29706

Tara L. Frost, Esquire
Frost Law Group, LLC
Post Office Box 1986
Summerville, South Carolina 29483

Paula Davis, Paralegal
SCDPS Office of General Counsel

Blythewood, South Carolina
June 4, 2019

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

WILLIAM M. BLITCH, JR.

Senior Assistant Deputy Attorney General

S.C. Bar Number 15608

Office of Attorney General

Post Office Box 11549

Columbia, South Carolina 29211

(803) 734-3727

ATTORNEYS FOR APPELLANT

July 17, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State,

Appellant,

v.

Tyler J. Evans,

Respondent.

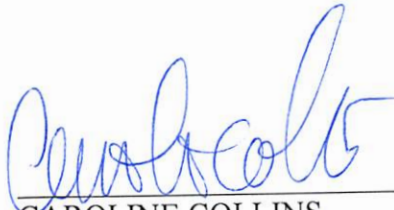
PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Record on Appeal on Respondent by electronic mail at the address listed in AIS and will send a hard copy at a later date in the United States mail, postage prepaid, addressed to:

Tara Leigh Frost, Esquire
Frost Law Group, LLC
Post Office Box 1986
Summerville, South Carolina 29484

I further certify that all parties required by Rule to be served have been served.

This 17th day of July, 2020.



CAROLINE COLLINS
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State,

Appellant,

v.

Tyler J. Evans,

Respondent.

FINAL BRIEF OF APPELLANT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
ARGUMENT	4
I. The Circuit Court committed an error of law in dismissing the appeal of the magistrate’s ruling filed by State as untimely when it was clearly filed within thirty days and section 18-3-30 of the South Carolina Code, which requires an appeal after a sentence to be filed within ten days, does not apply to an appeal filed by the State. Further, the Circuit Court committed an error of law to the extent it relied on Equal Protection to find the State had to file its appeal within ten days.....	4
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

<u>Bodman v. State</u> , 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013).....	9, 10, 11
<u>Brown v. S.C. Dep’t of Health & Envtl. Control</u> , 348 S.C. 507, 560 S.E.2d 410 (2002)	6
<u>Browning v. Hartvigsen</u> , 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).....	5
<u>Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n</u> , 424 S.C. 542, 819 S.E.2d 124 (2018).....	7
<u>Bullock v. Carter</u> , 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972)	11
<u>Curtis v. State</u> , 345 S.C. 557, 574, 549 S.E.2d 591, 599-600 (2001)	10
<u>Davis v. County of Greenville</u> , 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994).....	10
<u>Denene, Inc. v. City of Charleston</u> , 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004)	10
<u>Grant v. S.C. Coastal Council</u> , 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).....	9
<u>Hibernian Soc’y v. Thomas</u> , 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984)	10
<u>Shapiro v. Thompson</u> , 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969)	11
<u>Skinner v. Oklahoma ex rel. Williamson</u> , 316 U.S. 535 (1942).....	11
<u>State v. Belviso</u> , 360 S.C. 112, 600 S.E.2d 68 (2004)	4
<u>State v. Gaines</u> , 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008)	5
<u>State v. Harrison</u> , 402 S.C. 288, 292-293, 741 S.E.2d 727, 729 (2013).....	9
<u>State v. McKnight</u> , 287 S.C. 167, 337 S.E.2d 208 (1985).....	4, 12
<u>State v. Oxner</u> , 391 S.C. 132, 134, 705 S.E.2d 51, 51 (2011)	8
<u>State v. Pittman</u> , 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007).....	5
<u>State v. Sweat</u> , 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010)	5
<u>Sunset Cay, LLC v. City of Folly Beach</u> , 357 S.C. 414, 429, 593 S.E.2d 462, 469 (2004).....	11
<u>Whaley v. Dorchester County Zoning Bd. of Appeals</u> , 337 S.C. 568, 524 S.E.2d 404 (1999)....	10

<u>Williams v. Rhodes</u> , 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968)	11
---	----

Statutes

S.C. Code Ann. § 14-3-330 (Supp. 2019).....	4, 12
S.C. Code Ann. § 18-3-10 (Supp. 2019).....	5
S.C. Code Ann. § 18-3-10 thru -70 (Supp. 2019).....	5
S.C. Code Ann. § 18-3-20 (Supp. 2019).....	6
S.C. Code Ann. § 18-3-30 (Supp. 2019).....	passim
S.C. Code Ann. § 18-7-20 (Supp. 2019).....	7, 8, 9

Other Authorities

Rule 74, SCRCF.....	passim
S.C. Const. art. I, § 3	9
U.S. Const. amend. XIV, § 1	9

STATEMENT OF ISSUES ON APPEAL

- I. The Circuit Court committed an error of law in dismissing the appeal of the magistrate's ruling filed by State as untimely when it was clearly filed within thirty days and section 18-3-30 of the South Carolina Code, which requires an appeal after a sentence to be filed within ten days, does not apply to an appeal filed by the State. Further, the Circuit Court committed an error of law to the extent it relied on Equal Protection to find the State had to file its appeal within ten days.

STATEMENT OF THE CASE

In December 2016, Respondent was ticketed for DUI. (UTT 5102P0676001; R.9). At a pretrial hearing on June 27, 2017, before the Honorable Tera S. Richardson, Respondent moved to dismiss the case on the basis that the State failed to comply with the video recording statute, section 56-5-2953 of the South Carolina Code. (5/28T.6-10; Magistrate's Return of Appeal; R.7). On June 28, 2017, Magistrate Richardson dismissed the case. (Magistrate's Return of Appeal; Respondent's 12/19/17 Motion to Dismiss Appeal; R.64).

On July 18, 2017, the State served Respondent's counsel with a Notice of Appeal to the Circuit Court. The Notice of Appeal was filed on July 21, 2017, which was the day both Respondent's counsel and Magistrate Richardson received the appeal. (State's Notice of Appeal and Appeal; Respondent's 12/19/17 Motion to Dismiss Appeal; R.64). The State's Notice of Appeal was served twenty days from the magistrate's order and filed 23 days after the order. Judge Richardson filed her Return on October 11, 2017. (Magistrate's Return of Appeal; R.7). Respondent filed a Motion to Dismiss Appeal on December 21, 2017. (Respondent's 12/19/17 Motion to Dismiss Appeal; R.64).

On May 28, 2019, a hearing on the State's appeal and Respondent's Motion to Dismiss took place before the Honorable Brian M. Gibbons. (5/28T.1; R.40). At the hearing, the State maintained the dismissal by the magistrate was improper. Respondent asserted the appeal should be dismissed based on the failure to file the Notice of Appeal within 10 days pursuant to section 18-3-30 of the South Carolina Code. The State countered that the statute did not apply and the Notice of Appeal needed to be served and filed within 30 days pursuant to Rule 74, SCRPC. The Court issued a Form 4 Order in which he found: "Appeal is hereby Denied. Not timely filed." He further found: "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not

timely filed.” (Form 4 Dismissal Order; R.34). The State served and filed a Motion for Reconsideration maintaining the appeal was timely, or in the alternative, seeking a formal written order setting forth the grounds for the Court’s dismissal of the appeal. (State’s Motion to Reconsider; R.69). Judge Gibbons denied the motion on June 18, 2019, by Form 4 Order. (Form 4 Denial of Motion to Reconsider; R.37).

The State served and filed its Notice of Appeal to the Court of Appeals on June 28, 2019. This brief follows.

ARGUMENT

- I. The Circuit Court committed an error of law in dismissing the appeal of the magistrate's ruling filed by State as untimely when it was clearly filed within thirty days and section 18-3-30 of the South Carolina Code, which requires an appeal after a sentence to be filed within ten days, does not apply to an appeal filed by the State. Further, the Circuit Court committed an error of law to the extent it relied on Equal Protection to find the State had to file its appeal within ten days.**

The circuit court erred in finding the State had to serve and file its Notice of Appeal to the circuit court within ten days pursuant to section 18-3-30 of the South Carolina Code. By its express terms, the statute does not apply to the State's appeal. The circuit court should have considered the appeal timely filed pursuant to section 14-3-330 of the South Carolina Code, section 18-7-20 of the South Carolina Code, and Rule 74, SCRPC. Finally, to the extent the circuit court relied on Respondent's argument that equal protection required application of section 18-3-30 to the State's Notice of Appeal, the Court committed an error of law. This Court should find the Notice of Appeal was timely filed and remand to the circuit court to consider the State's appeal from the magistrate's decision dismissing the case.

Initially, it should be noted that the State's right to appeal is not controlled by section 18-3-10 et seq., but instead is controlled by case law. The State's right to appeal has been found in instances where a judge's pre-trial ruling significantly impacts the State's ability to prosecute the appeal or when it finally decides the action. See e.g., State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985); S.C. Code Ann. § 14-3-330 (Supp. 2019). This Court addressed the right of the State to appeal in State v. Belviso, 360 S.C. 112, 600 S.E.2d 68 (2004), and found that it was not tied to the statutory scheme found in Chapter 3 of Title 18. As a result, this Court should not be looking to 18-3-30 for the right of the State to appeal or the timing of the State's appeal.

I. Application of Section 18-3-30

The circuit court erred in its interpretation and application of section 18-3-30 as the section, based on its own express language, does not apply to a notice of appeal filed by the State. The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. Id. at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

“Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Pittman, 373 S.C. at 561, 647 S.E.2d at 161. However, the statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). Accordingly, “[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

Chapter 3 of Title 18 is entitled “Appeals from Magistrates in Criminal Cases”. See S.C. Code Ann. § 18-3-10 thru -70 (Supp. 2019). Section 18-3-10 states: “Every person convicted before a magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county.” S.C. Code Ann. § 18-3-10 (Supp. 2019). The initial section of this Chapter makes indicates that the provisions apply to a person convicted in magistrate court. Section 18-3-20 then states: “All appeals from magistrates' courts in criminal causes shall be taken and prosecuted as prescribed in this chapter.” S.C. Code Ann. § 18-3-20

(Supp. 2019). It is followed then by section 18-3-30, which appears to be the primary section relied upon by the circuit court to determine the State's appeal was untimely:

(A) The appellant, **within ten days after sentence**, shall file notice of appeal with the clerk of circuit court and **shall serve notice** of appeal upon the magistrate who tried the case and **upon the designated agent for the prosecuting agency or attorney who prosecuted the charge**, stating the grounds upon which the appeal is founded.

(B) A person convicted in magistrates court who pays a fine assessed by the court does not waive his right of appeal and, upon proper notice, may appeal his conviction within the time allotted in this section.

S.C. Code Ann. § 18-3-30 (Supp. 2019). The language used in the statute makes it clear the provision applies only after a person is sentenced. The fact it applies to a defendant convicted and sentenced in magistrate's court is further highlighted by the fact that it explicitly requires service upon the prosecuting agency or prosecuting attorney. If the legislature intended the statute to apply in every criminal case no matter whether the defendant, a city, a county, or the State is the appealing party, it would have worded the statute significantly different. It could have provided that all appeals from a criminal case be made within ten days of sentence or judgment, and it could have simply provided for service on the opposing party. Instead, it specifically determined only one party had a ten day requirement, a defendant who has been sentenced, and expressed a requirement that the defendant serve the prosecuting agency.

This Court should not rewrite the statute as the circuit court did in an attempt to apply it to an appeal by the State of a pretrial procedural dismissal. See Brown v. S.C. Dep't of Health & Env'tl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute."). As three justices frankly

reiterated in a recent case: “If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.**” Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added). The circuit court erred in interpreting section 18-3-30 in a way not intended by the express language chosen by the legislature and in rewriting the statute to make it apply to the State’s Notice of Appeal. This Court should construe section 18-3-30 consistent with the clear unambiguous language chosen by the legislature and find it is intended to only apply to a criminal defendant who is appealing, an interpretation consistent with the entirety of the Chapter.

II. Appropriate Time for Service and Filing of Notice of Appeal

As discussed, section 18-3-30 does not apply to the State’s Notice of Appeal. As a result, this Court should look to other statutes or rules for a determination of the State’s deadline for service and filing of its Notice of Appeal. The two main provisions which would be applicable to the State’s Notice of Appeal are section 18-7-20 of the South Carolina Code and Rule 74 of the South Carolina Rules of Civil Procedure.

Because there is no specific statute setting forth the time frame in which the State as the prosecuting agency must file and serve its Notice of Appeal, one should look to the general statutes and rules addressing appeals from magistrate court to circuit court. First, Chapter 7 of Title 18 addresses all appeals not otherwise covered in the Title. Specifically, section 18-7-20 states:

The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or

judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.

S.C. Code Ann. § 18-7-20 (Supp. 2019). This general provision would apply to any appeal not otherwise covered, which would mean it would apply to any appeal filed by someone other than a criminal defendant who has been convicted and sentenced.

Additionally, Rule 74 of the Rules of Civil Procedure states:

Except for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals. Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court or administrative agency or tribunal within the time provided by the statute, or by this rule when no time is fixed by statute, for service of the notice of intention to appeal.

Rule 74, SCRCPP. Significantly, the Editor's Notes to Rules 74 and 75, SCRCPP, provide:

These Rules 74 and 75 are added to make uniform the procedure on appeals to the Circuit Court where there is no provision by statute. They do not replace any provisions as to such appeals in Title 18 of the Code, or other statutes providing for appeals from administrative decisions; but are added to supply omissions in these statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted.

The South Carolina Supreme Court has also found Rule 74 to be applicable to appeals from magistrate court. See State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 51 (2011). Clearly, Rule 74 and the allowance of thirty days is intended to apply to the prosecuting agency—the State—because there is no statute in Title 18 providing for the time to file and Rule 74 is specifically intended to fill that void. Accordingly, the circuit court erred in applying section 18-

3-30 when it does not apply to the prosecuting agency, and should have applied either section 18-7-20 or Rule 74, SCRCF, to allow 30 days for service and filing of the Notice of Appeal.

III. Equal Protection is Not Applicable

Finally, equal protection does not require the State to be held to the same ten day service and filing requirements after a pre-trial ruling as a defendant who has been convicted and sentenced. Application of section 18-3-30 as it is written to apply only to a criminal defendant who has been convicted and sentenced does not violate the Equal Protection Clause.

The South Carolina Supreme Court has stated:

This Court has a very limited scope of review in cases involving a constitutional challenge to a statute. All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt.

State v. Harrison, 402 S.C. 288, 292-293, 741 S.E.2d 727, 729 (2013) (internal citations omitted). The Equal Protection Clause of the United States Constitution provides: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The South Carolina Constitution provides no “person shall be denied the equal protection of the laws.” S.C. Const. art. I, § 3. “The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

Not all classifications are unconstitutional, however, for “[t]he equal protection clause only forbids irrational and unjustified classifications.” Bodman v. State, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). Further, “[t]he equal protection clause is not an independent limit on the action of the state. It only forbids legislative enactments which transgress the equal protection

rights of persons.” Hibernian Soc’y v. Thomas, 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984) (internal citations omitted). Notably, the equal protection clause does not operate to remedy situations that are merely unfair. See Davis v. County of Greenville, 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994) (“The fact that [a government] classification may result in some inequity does not render it unconstitutional.”). Instead, any perceived unfairness in filing deadlines should be remedied by legislative measures.

As long as the statute “does not implicate a suspect class or abridge a fundamental right, the rational basis test is used” to determine whether the classification falls into the prohibited group. Id. (citing Denene, Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004)). “A classification does not violate the Equal Protection Clause if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis.” Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 599-600 (2001) (citing Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999)). “A classification will survive rational basis review when it bears a reasonable relation to the legislative purpose sought to be achieved, members of the class are treated alike under similar circumstances, and the classification rests on a rational basis.” Bodman, 403 S.C. at 69, 742 S.E.2d at 367. The classification will be upheld if there is “any reasonably conceivable state of facts” that would provide a rational basis for it. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 313 (1993).

As the Supreme Court explained in Bodman:

We give great deference to the General Assembly's decision to create a classification. Consequently, those who challenge the validity of one under rational basis review must “negate every conceivable basis which might support it.” Furthermore, “it is

entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny. Moreover, “[t]he fact that the classification may result in some inequity does not render it unconstitutional.”

Id. at 69-70, 742 S.E.2d at 367-368 (internal citations omitted). “Accordingly, [this Court’s] entire equal protection inquiry revolves around interplay between the specific classification created and the purported basis for it, with a challenger coming under rational basis review facing a steep hill to climb.” Id. at 70, 742 S.E.2d at 368.

In the instant case, the classification of a criminal defendant filing an appeal versus the prosecuting agency such as the State filing an appeal does not involve a suspect class. Inherently suspect classifications include those based on factors “such as race, religion, or alienage.” Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 429, 593 S.E.2d 462, 469 (2004). The classification in the instant case does not involve any of the suspect classifications.

Further, the classification setting forth a specific time for service and filing of the notice of appeal does not impact a fundamental right. Fundamental rights are those guaranteed by the United States Constitution, and are not implicated by the classification in this case. See e.g., Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972) (right to vote); Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (right of interstate travel); Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (rights guaranteed by the First Amendment); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942) (right to procreate). Because the defendant still has the right to an appeal, the timing required for exercising that right does not implicate a fundamental right.

In addition, members of the same class are treated similarly. All those similarly situated to Respondent, meaning all criminal defendants convicted and sentenced in magistrate court,

have the same requirement of a ten day time for filing and serving the Notice of Appeal. As a result, there is not disparate treatment between like individuals. There are no arbitrary rules treating one convicted and sentenced appellant different from another. The statute sets forth one time frame for all convicted and sentenced individuals seeking to appeal to the circuit court. The Legislature chose to treat differently situated entities, the prosecuting agencies, differently because of having different requirements and considerations prior to filing a Notice of Appeal.

The classification in the case *sub judice*, therefore, must only satisfy the rational basis test. The classification of allocating a different time for filing of a Notice of Appeal between a criminal defendant and the prosecuting agency meets the rational basis test. The defendant has an interest in having his appeal begun quickly because he has been convicted and sentenced. Further, the prosecuting agency's determination of whether to appeal may be a more complicated question. The agency will need to determine whether it can even appeal under the Mcknight standard or pursuant to section 14-3-330. The agency will have to determine whether it is best to not appeal in certain situations—the saying bad facts make bad law is a prime example of the type of consideration that must be made.

Significantly, there may be communication issues between the actual person prosecuting the case and the persons in the agency who will ultimately make the determination on whether to file the appeal. The South Carolina Supreme Court has approved law enforcement officers prosecuting cases in magistrate court. In these circumstances, it will need to be an attorney and not the law enforcement officer who must make the decision whether to appeal from magistrate court to circuit court where the solicitor or other attorney on behalf of the State will appear. This is vastly different than for a criminal defendant who knows the outcome and is the one to make the decision on whether to appeal. There is clearly a rational basis why the Legislature would

believe ten days is sufficient for a criminal defendant who has been convicted and sentenced to determine whether to appeal, while giving a broader time frame for the prosecuting agency which must communicate at multiple levels and take into account much more than just the specific case and its ruling.

Accordingly, because the distinction between a ten-day filing requirement for a convicted and sentenced criminal defendant and the thirty-day requirement for the prosecuting agency has a rational basis, the circuit court—to the extent it relied on an equal protection argument to reach its conclusion—erred as a matter of law in finding the State was required to meet a ten-day service and filing requirement.¹

¹ It should be noted that even if Equal Protection required the prosecuting agency and the convicted defendant to have the same filing and service requirements, the remedy would not be to arbitrarily subject the State to the ten day requirement of section 18-3-30, but instead would have been to declare the ten-day restriction in 18-3-30 unconstitutional and then the default of 30 days would apply to all. However, as the State asserts there is no Equal Protection violation, there is no need for any remedy and the case should be remanded for consideration of the timely appeal in circuit court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court finding the State's appeal was untimely should be reversed and this case remanded to the circuit court to consider the merits of the State's appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

BY: 

William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

August 5, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State,

Appellant,

v.

Tyler J. Evans,

Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellant filed August 5, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407 S.C. 607, 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, home addresses, and date of birth).

This 5th day of August, 2020.



WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State,

Appellant,

v.

Tyler J. Evans,

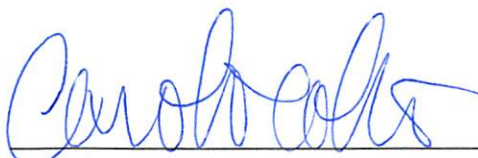
Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Final Brief of Appellant on Respondent by email at the address listed in AIS and by having a copy delivered to:

**Tara Leigh Frost, Esquire
Frost Law Group, LLC
Post Office Box 1986
Summerville, South Carolina 29484**

I further certify that all parties required by Rule to be served have been served.
This 5th day of August, 2020.



CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State,

Appellant,

v.

Tyler James Evans,

Respondent.

FINAL BRIEF OF RESPONDENT

Tara L. Frost
Jack Frost

P.O. Box 1986
Summerville, SC 29484
(843) 419-6653 (phone)
(843) 419-6674 (fax)
tara@frostlawgroupsc.com
jack@frostlawgroupsc.com

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii, iii
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT.....	4
I. The Circuit Court did not err as a matter of law when it dismissed the appeal of the magistrate's ruling filed by the State as untimely, as the State clearly filed its appeal beyond the time limit of ten (10) days from the magistrate's ruling, as required by §18-3-20 and §18-3-30 of the South Carolina Code. Further, while the Circuit Court did not rely on Equal Protection to find that the State had to file its appeal within ten (10) days, had it so relied, this would have been proper.....	4
CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases

<i>Denman v. City of Columbia</i> , 387 S.C. 131, 691 S.E.2d 465, 468 (S.C. 2010).....	8
<i>Eagles v. South Carolina Nat'l Bank</i> , 301 S.C. 402, 392 S.E.2d 187 (Ct.App.1990)	8
<i>Griffin v. Illinois</i> , 76 S.Ct. 585, 590 (1956).....	10
<i>South Carolina Coastal Council v. South Carolina State Ethics Comm'n</i> , 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).....	5
<i>Stardancer Casino, Inc. v. Stewart</i> , 347 S.C. 377, 556 S.E.2d 357 (2001).....	5
<i>State v. Alls</i> , 330 S.C. 528, 500 S.E.2d 781 (1998).....	5
<i>State v. Belviso</i> , 360 S.C. 112, 600 S.E.2d 68 (2004).....	6,7
<i>State v. Brown</i> , 344 S.C. 302, 543 S.E.2d 568 (S.C. App. 2001).....	8
<i>State v. Gaines</i> , 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008).....	4
<i>State v. Dudley</i> , No. 2015-001785, 2018 WL 2979768, at*1 (Ct. App. June 13, 2018).....	2
<i>State v. Pittman</i> , 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007).....	4
<i>State v. Oxner</i> , 391 S.C. 132, 134, 705 S.E.2d 51, 51 (2011).....	9

Statutes

S.C. Code Ann. § 18-3-20 (Supp. 2019).....	<i>Passim</i>
--	---------------

S.C. Code Ann. § 18-3-30 (Supp. 2019).....	<i>Passim</i>
--	---------------

Other Authorities

Rule 74, SCRCR.....	7, 8
Rule 29(a), SCRCrimP.....	7
Rule 203(b)(2), SCACR.....	7
S.C. Code Ann §14-25-95 (2013).....	7

STATEMENT OF ISSUES ON APPEAL

- I. The Circuit Court did not err as a matter of law when it dismissed the appeal of the magistrate's ruling filed by the State as untimely, as the State clearly filed its appeal beyond the time limit of ten (10) days from the magistrate's ruling, as required by §18-3-20 and §18-3-30 of the South Carolina Code. Further, while the Circuit Court did not rely on Equal Protection to find that the State had to file its appeal within ten (10) days, had it so relied, this would have been proper

STATEMENT OF THE CASE

On December 15, 2016, Tyler James Evans, the Respondent, was arrested and charged with DUI 1st Offense. During the course of this arrest, Respondent was issued Uniform Traffic Ticket (hereinafter “UTT”) 5102P0676001 (Uniform Traffic Ticket, R.9). At a pretrial hearing on June 27, 2017, before the Honorable Tera S. Richardson, Respondent moved to dismiss the case on the basis that the State failed to comply with §56-5-2953 of the South Carolina Code. (Magistrate’s Return; R. 7). On June 28, 2017, Magistrate Richardson granted Respondent’s motion and dismissed UTT 5102P0676001. (Respondent’s Motion to Dismiss Appeal; R. 64).

Subsequently, the State authored an appeal on July 18, 2017, which it caused to be filed in Dorchester County on July 21, 2017, twenty (20) days subsequent to Magistrate Richardson’s dismissal of UTT 5102P0676001. (Respondent’s Motion to Dismiss Appeal; R. 64). Magistrate Richardson issued her return on October 11., 2017. (Magistrate’s Return of Appeal; R.7). Respondent filed a Motion to Dismiss Appeal on December 21, 2017. (Respondent’s Motion to Dismiss Appeal; R. 64).

The hearing on the Appeal was continued numerous times by the State, without objection by the Respondent, in reference to *State v. Dudley*, No. 2015-001785, 2018 WL 2979768, at*1 (Ct. App. June 13, 2018). The state was unsuccessful in this appeal. Subsequently, on May 28, 2019, a hearing on the State’s appeal and Respondent’s Motion to Dismiss took place before the Honorable Brian M. Gibbons. (5/28T.1; R.40). The State, in its statement of the case, incorrectly asserts that Respondent asserted that the appeal should be dismissed based on a failure to file the Notice of Appeal within 10 days pursuant to §18-3-30 of the South Carolina Code. Rather, the Respondent relied on both §18-3-20 and §18-3-30 in conjunction with the rest of Title 18. The

State countered that the statute did not apply, and the Notice of Appeal needed to be served and filed within 30 days pursuant to Rule 74, SCRCR. The Court granted Respondent's motion and issued a Form 4 Order, wherein he found "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed." (Form 4 Dismissal Order; R.34). The State served and filed a Motion for Reconsideration. This motion was denied on June 18, 2019, by Form 4 Order. (Form 4 Denial of Motion to Reconsider; R.37).

The State served its Notice of Appeal to the Court of Appeals on June 26, 2019. On August 13, 2019, Respondent made a motion to dismiss the appeal with the Court of Appeals, citing Rule 260, SCACR which was denied on November 7, 2019. The State exchanged the file from the Department of Public Safety to the Attorney General's Office in December 2019. This appeal followed and was filed on April 21, 2020.

ARGUMENT

- I. The Circuit Court did not commit an error of law in dismissing the appeal of the magistrate's ruling filed by the State as untimely, as the State clearly filed its appeal beyond the time limit of ten (10) days from the magistrate's ruling, as required by §18-3-20 and §18-3-30 of the South Carolina Code. Further, while the Circuit Court did not rely on Equal Protection to find that the State had to file its appeal within ten (10) days, had it so relied, this would have been proper.**

The circuit court was correct in finding the State had to serve and file its Notice of Appeal to the circuit court within ten days pursuant to §18-3-20 and §18-3-30 of the South Carolina Code. The South Carolina Code of Laws Title 18, Chapter 3 is specifically titled "Appeals from Magistrates in Criminal Cases" which provides instructions on how to appeal a decision from a magistrate court as it relates to a criminal charge. By its express terms, §18-3-20 requires that "[a]ll" appeals from "criminal causes" in Magistrate court "shall" be taken and prosecuted according to that "chapter". Likewise, the language of §18-3-30 refers to an "appellant" having 10 days to file and serve the notice of appeal. The court was correct in not applying §18-7-20 and Rule 74, SCRCP, as they are either more general statutes than §18-3-20 and §18-3-30, or they do not apply in the manner that the state suggests. Finally, there is no evidence that the court relied on equal protection in its analysis and decision at the circuit court level; however, if it did, then it did so properly.

1. The Application of §18-3-20 and §18-3-30

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. *State v. Gaines*, 380 S.C. 23, 32, 667 S.E. 2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. *Id.* at 33. Statutes which are part of the same

legislative scheme should be construed together. *Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 556 S.E.2d 357 (2001). In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. *State v. Alls*, 330 S.C. 528, 500 S.E.2d 781 (1998). Furthermore, the court should not consider the particular clause being construed in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law. *South Carolina Coastal Council v. South Carolina State Ethics Comm'n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

Title 18 of the Code of Laws of South Carolina is entitled “Appeals” and it contains only four (4) chapters. Chapter 1 is entitled “General Provisions”, Chapter 3 is entitled “Appeals from Magistrates in Criminal Cases”, Chapter 7 is entitled “Appeals to Circuit and County Courts in Other Cases”, and Chapter 9 is entitled “Appeals to Supreme Court and Court of Appeals”. From the titles of the Chapters alone, it becomes clear that the legislature had a specific and clear intent for Title 18 as it relates to Appeals. In fact, the legislature was clear in §18-1-10 of the South Carolina Code by stating “[t]he only mode of review a judgement or order in civil or criminal action, . . . , shall be prescribed by this title” and then further defines the parties under §18-1-120 “the party appealing shall be known as the appellant and adverse party as the respondent.” The legislature again had a specific and clear intent for Title 18, Chapter 3: to govern magistrate’s criminal appeals. The language of various statutes within the Title makes it even clearer. Section 18-1-30 indicates that any “party aggrieved” may appeal “in the cases prescribed in this title”. §18-3-20 reads:

“**All** appeals from magistrates’ courts in criminal causes **shall** be taken and prosecuted as prescribed in **this chapter**.”

(Emphasis added.) Section 18-3-30(A) reads, in pertinent part:

“The **appellant, within ten days** after sentence, shall file notice of appeal with the clerk of court and shall serve notice of appeal on the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge[...].” S.C. Code Ann. § 18-3-20 (Supp. 2019).

(Emphasis added.) Based upon the language of §18-3-20 and §18-3-30, when read in conjunction with one another and §18-1-30, along with the structure of the Chapters within the title, it is clear that the intent of the legislature with regards to Chapter 3 was to have it govern the structure of all criminal appeals from magistrate’s court, including those originating with the state. This is clarified further in *State v. Belviso*, 360 S.C. 112, 600 S.E.2d 68 (2004). The *Belviso* court recognized that affirming the State’s right to appeal adverse outcomes from magistrate court was “consistent with the intent of the Legislature, especially when our statutory law is considered in its entirety [. . .] [i]n construing the statutory scheme as a whole, we ‘escape the absurdity’ and give efficacy to the manifest intention of the General assembly. [. . .] In doing so, our judicial decisions addressing the ‘right of appeal’ are in accord with legislative intent.” *Id.* at 116-117. Therefore, the court in *Belviso* didn’t bar the State’s ability to appeal it’s issue merely because §18-3-10 say’s “[e]very person convicted before a magistrate . . .”(where the appeal was based on a pre-trial ruling and not a conviction), it considered other sections of Title 18, to recognize that the intent of the legislature is to govern the way that all appeals from criminal cases in magistrate court are prosecuted via Title 18.

In this case, the magistrate issued a pre-trial ruling and therefore the State had the ‘right of appeal’ under Title 18 in that “[a]ny party aggrieved may appeal the cases prescribed in this

title” pursuant to SC Code §18-1-30 which also required it to comply with §18-3-30 in that, the State, as an appellant pursuant to definition under §18-1-120, had ten days to file the notice of appeal. The State, however, is requesting that this Court to issue an order indicating that the intention of the Legislature, in enacting Title 18, Chapter 3, is to ignore other pertinent statutes under Title 18, apply it only to criminal defendants thereby allowing the State move about and selectively pick a from specific and unavoidable statutes to either general or clearly non-applicable ones that fit within their notice timeline.¹

Since the court in *Belviso* determined that the legislative intent was for all parties to receive the benefits under Title 18 then the State should also be subject to the requirements under Title 18, including notice under section 18-3-30, and not to ensure that the court doesn’t allow a “nonsensical view of legislative intent” that the State is arguing. Quoting *Belviso*, 360 at 117.

Further, language specific to 18-3-30 should not be used to disqualify it from controlling the timing of the state’s appeal, as this language is specific guidance set up to aid a rather peculiar type of litigant common to magistrate court: the pro se litigant. Summary courts in South Carolina handle the vast majority of all criminal cases created within its borders, and upon information and belief, the majority of those individuals who appear in magistrates court on criminal matters (including traffic tickets) are pro se. Thus, statistically speaking, it is likely that a defendant who would be interested in appealing his case would be pro se. While it is not difficult for an experienced prosecutor to quickly ascertain the method to perfect his appeal, a pro se defendant, attempting to perfect service on one of the many various departments, organs, and permutations of the State may have trouble, even in a less populous county. Thus, the

¹ The State’s role is typically that of a prosecuting agency and therefore is fully aware that the notice timeline for any post criminal adjudication is ten (10) days. See, SCRCrIMP 29(a), SCACR 203(b)(2), SC Code §14-25-95(2013)

language about serving prosecuting agencies and prosecutors is meant to ensure that a pro se defendant is clearly and adequately guided so as to know what and whom needs to be given notice that they are appealing. See generally, *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (S.C. App. 2001), (where S.C. Code Ann §18-3-30 (1985) failed to mention service of notice of appeal on State therefore pro se litigant only served notice upon the magistrate who tried the case).

2. The Court was correct in not applying §18-7-20 or Rule 74, SCRCP.

It is a fundamental canon of statutory construction that “where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given effect. *Denman v. City of Columbia*, 691 S.E.2d 465, 468 (S.C. 2010). In this case, while urging the Court to apply section 18-7-20 to Respondent’s appeal, the initial brief of the Appellant literally calls that code section a “general provision”. (Initial Brief of Appellant, at 8). As such, given the specificity of §18-3-20 and §18-3-30, those statutes would control in the event that the court held there was a conflict.

Further, the State misstates the application of Rule 74, SCRCP to criminal cases originating in magistrate’s courts. SCRCP Rule 74 specifically states “[e]xcept for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals . . . [i]n all such appeals the notice of intention to appeal shall be filed with the clerk of court to which the appeal is taken and with the inferior court or administrative agency or tribunal within in the time provided by **the statute**, or by this rule when no time is fixed by statute” (emphasis added) Furthermore, the main purpose of Rule 74, SCRCP as it relates to an appeal in criminal cases from magistrate’s court is to supply omissions in Title

18 where there is not a provision as it relates to the appeal process. *See Eagles v. South Carolina Nat'l Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct.App.1990); quoting S.C.R.CIV.P. 74 and 75 notes ("These Rules 74 and 75 are added to make uniform the procedure on appeals to the [c]ircuit [c]ourt where there is no provision by statute. They do not replace any provisions as to appeals in Title 18 of the Code, ... or other statutes providing for appeals from administrative decisions...."). In this case, S.C. Code Ann. §18-3-30 provides the specific time in which the appellant is to file their notice of intent to appeal, ten (10) days.

The State misstates the *Oxner* court as it relates to the specific time for filing a notice of intent to appeal. While the *Oxner* court found that the Rules of Civil Procedure applies to appellate proceedings because §18-3-10 give the Court of Common Pleas the jurisdiction for criminal appeals from magistrate courts, Rule 74 specifically states that "the procedure on appeal . . . shall be in accordance with the statutes providing such appeal." 391 S.C. 132, 134, 705 S.E.2d 51, 51. Therefore, the *Oxner* court recognizes two very specific notions which are damaging to the state's case: first, that appeals from magistrate's court proceedings are based on the statutes located in Title 18, and that the SCRCP only applies to the circuit court sitting in appellate jurisdiction – not to the origination of the appeal from magistrate's court itself.

Since §18-7-20 is a general provision that applies to appeals to circuit courts in other cases it would only apply in a case where there wasn't a more specific provision. In this matter, since §18-3-30 is specific to appeals from magistrates in criminal cases, §18-7-20 has no application in this matter.

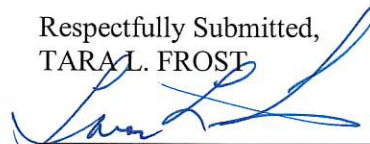
3. The Circuit Court did not rely on Equal Protection Principles, in Granting Respondent's motion to Dismiss, or in the alternative, if it did, Doing so was Proper.

While there is no indication in any of the Form 4 orders that the Circuit court relied on equal protection principles in granting Respondent's motion to dismiss, in the event that it did, it did so properly. The State argues that there is no application for the equal protection clause in this analysis unless there is some implication of a suspect class or an abridgment of a fundamental right. However, in *Griffin v. Illinois*, the US Supreme Court has held that "due process and equal protection both call for procedures in criminal trials which allow no invidious discrimination [. . .] Appellate review has now become an integral part of the [. . .] trial system for finally adjudicating the guilt or innocence of a defendant. Consequently, at all stages of the proceedings, the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations." 76 S.Ct. 585, 590 (1956). Therefore, failing to equate the defendant and the state does abridge the fundamental right to be treated equally in a court of law, and thus, in the event that the circuit court did mean to implicate the equal protection clause in its granting of Respondent's motion to dismiss, it did so properly.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the decision from the Circuit Court, finding that the State's appeal was not filed in a timely manner pursuant to the South Carolina Code.

Respectfully Submitted,
TARA L. FROST



P.O. Box 1986
Summerville, SC 29484
843-419-6653
tara@frostlawgroupsc.com
ATTORNEY FOR RESPONDENT

August 7, 2020

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

Tyler Evans. Respondent,

v.

The State of South Carolina Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed August 7, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, 407, S.C. 607, 757 S.E.2d 421 (2014) (requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses and date of birth).

This 7th day of August, 2020


TARA L. FROST
Attorney for Respondent
SC Bar No. 100610

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Dorchester County
Honorable Brian M Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

Tyler Evans. Respondent,

v.

The State of South Carolina Appellant.

PROOF OF SERVICE

I, Diana Fielding, do hereby certify that I have served the Respondent's *Final Brief of Respondent* on Appellant in the above -captioned action, by email at the address listing in the AIS and by depositing it in the United States Mail, postage prepaid, on this 7th day of August 2020, addressed to:

William M. Blitch, Jr., Esq.
Office of the Attorney General
Post Office Box 11549
Columbia South Carolina 29211


Diana Fielding, Paralegal
Frost Law Group, LLC
PO Box 1986
Summerville, SC 29484
O: (843) 419-6653
F: (843) 419-6675

August 7, 2020
Summerville, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Tyler J. Evans, Respondent.

Appellate Case No. 2019-001068

Appeal From Dorchester County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2022-UP-319
Submitted May 23, 2022 – Filed August 3, 2022

AFFIRMED

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich,
Jr., both of Columbia, for Appellant.

Tara L. Frost and Jack Frost, both of Frost Law Group,
LLC, of Summerville, for Respondent.

PER CURIAM: In an appeal from the circuit court acting in its appellate capacity, the State argues that the circuit court erred in finding the State's Notice of Appeal from the magistrate court was untimely. We affirm.

FACTS/PROCEDURAL HISTORY

Respondent Tyler J. Evans (Evans) was ticketed for driving under the influence (DUI) in December 2016. At a pretrial hearing in front of a magistrate judge on June 27, 2017, Evans moved to dismiss the case based on the State's failure to comply with the video recording statute.¹ The magistrate judge dismissed the case on June 28, 2017. The Notice of Appeal was filed on July 21, 2017,² the same day both Evans's counsel and the magistrate court received the appeal. The magistrate court issued a Return on October 11, 2017, and Evans filed a Motion to Dismiss Appeal on December 21, 2017.

On May 28, 2019, the circuit court held a hearing on the State's appeal and Evans's Motion to Dismiss. At that hearing, the State maintained the dismissal by the magistrate was improper. Evans argued that the appeal should be dismissed based on the State's failure to file the Notice of Appeal within 10 days, pursuant to section 18-3-30 of the South Carolina Code (2014). However, the State argued that Title 18 was inapplicable and the Notice of Appeal only needed to be served and filed within 30 days pursuant to Rule 74, SCRPC. The circuit court granted Evans's Motion to Dismiss Appeal and issued a Form 4 Order, in which the court stated that the State's appeal was not timely filed and therefore denied.

The State then served and filed a Motion for Reconsideration, maintaining that the appeal was timely or, in the alternative, seeking a formal written order setting forth the grounds for the court's dismissal of the appeal. The Motion for Reconsideration was denied by the circuit court; this appeal followed.

STANDARD OF REVIEW

Our appellate review in criminal cases is limited to correcting errors of law. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007), *abrogated on other grounds by State v. Taylor*, 436 S.C. 28, 38, 870 S.E.2d 168, 173 (2022).

LAW/ANALYSIS

¹ S.C. Code Ann. § 56-5-2953 (2012).

² The State's Notice of Appeal was served twenty days after the magistrate's order was issued and filed twenty-three days after the order.

The State argues that Rule 74, SCRPC, rather than Title 18, should govern the time requirements for filing appeals from the magistrate court and that the circuit court erred in dismissing the appeal. We disagree.

"While a limited right of appeal in criminal cases has been conferred upon the State by statute in a number of jurisdictions, the extent of the right of the prosecution to appeal in this jurisdiction has been defined by our judicial decisions." *State v. Tillinghast*, 375 S.C. 201, 202–03, 652 S.E.2d 400, 401 (2007) (quoting *State v. Holliday*, 255 S.C. 142, 144, 177 S.E.2d 541, 542 (1970)). "Based primarily upon the double jeopardy provisions of the Constitution, we have long recognized that the State has no right of appeal from a judgment of [a]cquittal in a criminal case, unless the verdict of acquittal was procured by the accused through fraud or collusion." *Holliday*, 255 S.C. at 145, 177 S.E.2d at 542. However, the State may appeal in limited situations, including those involving a dismissal prior to the jury being sworn. *Tillinghast*, 375 S.C. at 203, 652 S.E.2d at 401. In the current case, the State sought to appeal the magistrate court's dismissal of a DUI case against Evans. No jury had been sworn; thus, the State had the right to appeal.

Our precedents hold that the State's right to appeal "is defined by our *judicial decisions, not statutory law*." *State v. Belviso*, 360 S.C. 112, 115, 600 S.E.2d 68, 70 (Ct. App. 2004) (emphasis added) (citing *State v. McKnight*, 353 S.C. 238, 238, 577 S.E.2d 456, 457 (2003)). However, we must ensure that "our judicial decisions addressing the 'right of appeal' are in accord with legislative intent." *Id.* at 117, 600 S.E.2d at 71. Further, in defining the State's right to appeal, we must construe applicable statutes in their entirety so as to avoid "a result so plainly absurd that it could not possibly have been intended by the Legislature." *Id.* at 116–17, 600 S.E.2d at 70–71 (quoting *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)). "In construing the statutory scheme as a whole, we 'escape the absurdity' and give efficacy to the manifest intention of the General Assembly." *Id.* at 117, 600 S.E.2d at 71 (quoting *Kiriakides*, 312 S.C. at 275, 440 S.E.2d at 366). "While it is true that the *purpose* of an enactment will prevail over the literal import of the statute, this does not mean that this [c]ourt can completely rewrite a plain statute." *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (emphasis added). Our supreme court "has interpreted statutes in accord with legislative intent *despite contrary literal meaning* in cases where there has been an oversight by the legislature that is *clearly in conflict* with the overall intent of the statute." *Id.* (emphases added). "The [c]ourt's primary function in interpreting a statute is to ascertain the intent of the legislature." *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 318 S.C. 516, 518, 458 S.E.2d 550, 551 (1995) (citing *Browning*

v. Hartvigsen, 307 S.C. 122, 414 S.E.2d 115 (1992)). "The real purpose of the legislature will prevail over the literal import of the words." *Id.*

Chapter 3 of Title 18 of the South Carolina Code applies to "Appeals From Magistrates in Criminal Cases." Section 18-3-30(A) provides: "The appellant, within ten days after sentence, shall file [the] notice of appeal with the clerk of circuit court and shall serve notice of appeal upon the magistrate . . . and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge" The next subsection states "[a] person convicted in magistrate[']s court . . . may appeal his conviction within the time allotted" § 18-3-30(B).

Subsection (A) of the statute refers to "the appellant," provides the time frame to appeal as being "within ten days after *sentence*," and directs the appellant to "serve [the] notice of appeal upon . . . the designated agent for the prosecuting agency or attorney who prosecuted the charge." § 18-3-30(A). Associating the filing deadline with sentencing does not take into account circumstances in which no sentence exists, i.e., the State's appeal of either the dismissal of an indictment or other charging document before a jury is sworn or the granting of a new trial after conviction. *See Tillinghast*, 375 S.C. at 203, 652 S.E.2d at 401 ("[T]he State may appeal an order quashing an indictment or the grant of a new trial after conviction if based on an error of law."). Additionally, as the State itself is the prosecuting agency to be served pursuant to subsection (A) and there is no alternative reference to service on the defendant, the State argues that its appeals from the magistrate's court cannot be subject to this provision's time frame and that its time requirements are provided instead by Rule 74, SCRPC.

The State's argument that Rule 74, SCRPC, applies is incorrect. Rule 74, SCRPC, provides guidance only when no time limits are prescribed by statute. In this instance, however, a ten-day time limit is provided in Title 18 that applies to both the defendant and the State with regard to filing appeals from the magistrate's court. Subsection (B) states "[a] person convicted in magistrate's court . . . may appeal his conviction within the time allotted in this section." § 18-3-30(B). While Title 18 indicates that the appellant implicitly contemplated is the defendant, we cannot imagine that the general assembly would not intend for the same ten-day period to apply to both parties. Any other reading of the time requirements set forth in Title 18, including one that would trigger the application of Rule 74 to provide time limits, would be inconsistent with the legislature's intent, as it would be plainly absurd to allow two similarly situated parties to be subject to two wholly inconsistent time requirements. *Belviso*, 360 S.C. at 116–117, 600 S.E.2d at 70–71 (holding that courts must construe statutes in a way that avoids "result[s] so plainly absurd that [they] could not possibly have been intended by the Legislature." (quoting

Kiriakides, 312 S.C. at 275, 440 S.E.2d at 366)); *see also Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("[T]his [c]ourt has interpreted statutes in accord with legislative intent despite contrary literal meaning in cases where there has been an oversight by the legislature that is clearly in conflict with the overall intent of the statute."). Thus, Rule 74 does not apply in the instant case.

Therefore, we affirm the holding of the circuit court, because the State was properly subjected to the same ten-day requirement as a defendant appealing an order of the magistrate's court.

CONCLUSION

We find the circuit court did not err in finding that the State's Notice of Appeal from the magistrate's court was untimely. Therefore, the ruling of the circuit court is

AFFIRMED.

GEATHERS and HILL, JJ., and LOCKEMY, A.J., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State,

Appellant,

v.

Tyler J. Evans,

Respondent.

PETITION FOR REHEARING

On August 3, 2022, this Court affirmed the circuit court’s decision dismissing the State’s appeal from magistrate’s court as untimely served and filed. This Court misapprehended or overlooked clear reasons the Legislature may have chosen to establish different time requirements for the State and a criminal defendant, as well as relevant and long-standing case law and statutory construction principals. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the circuit court erred in dismissing the State’s appeal as untimely, and find, based on 1) the clear language of section 18-3-30; 2) the Legislature’s presumed understanding of the existing statutes and rules when it last amended the section; as well as 3) the clear rationale for the legislative intent behind disparate treatment, the State is entitled to thirty days to serve and file its appeal.

As the South Carolina Supreme Court has made abundantly clear, the appellate courts “do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.” Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996). “If a statute is

clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning.” Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970).

Under the plain meaning rule, it is **not the court’s place** to change the meaning of a clear and unambiguous statute. Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (emphasis added).

“If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it dehors the statute.” Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992). “While it is true that the purpose of an enactment will prevail over the literal import of the statute, **this does not mean that this Court can completely rewrite a plain statute.**” Hodges, 341 S.C. at 87, 533 S.E.2d at 582 (emphasis added). As three Justices noted in a concurring opinion:

If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.** . . . There is no principle of statutory interpretation that allows a court to simply do what it thinks is just and right.

Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added).

The language of the section 18-3-30 is very clear and unambiguous. The Court’s opinion even details exactly what the statute requires and then explains how it cannot apply to the State.

While this Court ultimately concludes “the appellant implicitly contemplated is the defendant,” the opinion recognizes section 18-3-30 is not written in a way to make it applicable to the State.

This Court notes its ability to interpret the language of a statute, even against its literal meaning in cases where it is “absurd” or “clearly in conflict with the overall intent of the statute.” However, this Court misapprehends the cases that allow contrary interpretation. The ability to alter the plain language only occurs when it is **impossible** to fulfill the intention behind the statute itself. The South Carolina Supreme Court articulated the rule many years ago and provided excellent examples that sit in clearly different posture than how this Court is currently attempting to re-interpret section 18-3-30. In Stackhouse v. Rowland, 86 S.C. 419, 68 S.E. 561 (1910), the Court explained:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect. The cardinal rule, that the courts should in all cases give effect to the obvious intent of the Legislature, and that every technical rule of construction should yield to the clear meaning of the statute, is stated in Endlich on Stat. Inter. § 295. Numerous cases in which clerical errors have been corrected by the courts pursuant to this principle are given in section 319 of the same work.

This rule has been followed in many cases in this and other jurisdictions. In Waring v. Cheraw, etc., Ry. Co., 16 S. C. 416, the word “hereinafter” was read “hereinbefore,” when the use of the former would have destroyed the manifest purpose of the statute. In Kitchen v. Southern Ry. Co., 68 S. C. 554, 48 S. E. 4, the word “of” was construed to mean “or,” in order to give full effect to the meaning of Lord Campbell's act. In Baldwin v. Travis County, 40 Tex. Civ. App. 149, 88 S. W. 480, the word “taxed” was substituted for “attached,” the court holding that the use of the latter word “appears to be improper and inapt, in that it does not appear to definitely express or convey the meaning evidently intended by the Legislature.” In California Loan Co. v. Weis, 118 Cal. 489, 50 Pac. 697, it was held that the word “July” which was

evidently intended, should be read instead of “June,” which had been used in the act under consideration. In Re Frey, 128 Pa. 593, 18 Atl. 479, the word “city” was inserted instead of “county,” when the court was of opinion that “the section is senseless and absurd as it is written, while the purpose of the Legislature is perfectly obvious and certain.”

Id. at 562. Significantly, the Court provided a very clear warning regarding the use of the rule: “While this rule is generally recognized, the courts in applying it should **exercise circumspection to avoid any effort to amend statutes.** The principle depends upon the absurdity being manifest and the legislative intent obvious.” Id. (emphasis added). In the instant case, this Court did not alter the language of the statute to address a manifest absurdity.¹ Instead, it rewrote the statute to apply to a party which was never intended to be covered by the statute. This is the function of the Legislature and not the appellate courts.

Further, Chapter 3 of Title 18 explicitly does not apply to the State or a State’s appeal. In Section 18-3-10 the Legislature specifically granted a right to appeal only to a “person convicted before a magistrate of any offense whatever and sentenced.” S.C. Code Ann. § 18-3-10 (Supp. 2019). The initial section of this Chapter indicates that the provisions of the Chapter apply to a person convicted in magistrate court. Because the following statutes must be read in light of the initial section, the procedures and rules the statutes provide related to an appeal must apply only to a criminal defendant who has been convicted and sentenced. See State v. Prince, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999) (“Statutes must be read as a whole and sections that are part of the same general statutory scheme must be construed together and each given effect, if reasonable.”). They cannot, by the very language of the initial section, apply to the State.

¹ This Court’s own language in its opinion indicates the absurdity is not manifest. This Court held: “**we cannot imagine** that the general assembly would not intend for the same ten-day period to apply to both parties.” This Court’s imagination is insufficient to warrant amendment/re-writing of the statute to apply to the State when the language chosen by the Legislature evinces a different intention.

Additionally, if this Court intends to look beyond the very clear and unambiguous language of the statute, then a look at the original version shows the legislature never intended the statute to apply to the State as appellant. The original version as passed in 1880 reads in relevant part:

The appellant shall, within five days after sentence, serve a notice of appeal upon the Trial Justice who tries the case, stating the grounds upon which the appeal is founded.

....

That the said appeal shall be heard by the Court of General Sessions upon the grounds of exception made, and upon the papers hereinbefore required, and without the examination of witnesses in said Court. And the said Court may either confirm the sentence appealed from, reverse or modify the same, or grant a new trial as to the said Court may seem meet and conformable to law.

Act No. 403, 1880 S.C. Acts 493. The original statute, especially the latter portion, makes it clear it applied only to a defendant and not the State. Since that time, the statute has been amended 3 times: 1) 1968, which retained the provision requiring the appellant to file within five days of sentence as subsection A, did not include any provision to provide for a time for a State's appeal, and amended the statute to include only a subsection B which was similar to the current subsection B; 2) 1973, which only amended the time to allow for ten days instead of five, but again made no changes to set a time limit for a State's appeal; and 3) 2010, which again did not add any language setting a time limit for a State's appeal, but instead added language which further identified the intent of the statute as applying only to an appealing defendant by requiring the notice of appeal be served "upon the designated agent for the prosecuting agency or attorney who prosecuted the charge".

Undoubtedly, by 2010 the Legislature knew the State had a right to appeal from magistrate's court to the circuit court, notwithstanding the language of Section 18-3-10 which

only provides a statutory right to appeal to a “person convicted before a magistrate of any offense whatever and sentenced.” See State v. Belviso, 360 S.C. 112, 116, 600 S.E.2d 68, 70 (Ct. App. 2004) (“This authority provides ample support for the circuit court’s ability to hear the State’s appeal from the magistrate court’s pre-trial rulings dismissing the open container charge and suppressing critical evidence in connection with the charge of driving with an unlawful alcohol concentration.”) (citing State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 (1991); State v. Whetstone, 333 S.C. 376, 510 S.E.2d 225 (Ct. App. 1998); State v. Rowlands, 343 S.C. 454, 456, 539 S.E.2d 717, 718 (Ct. App. 2000)); State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985) (“A pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable under S.C. Code Ann. § 14-3-330(2)(a) (1976).”). The Legislature not only declined to set a time requirement for a State’s appeal in 2010, but only amended to the statute to make it even more obviously applicable only to a criminal defendant by requiring service upon the designated agent of the prosecuting agency or the attorney who prosecuted the charge.²

Additionally, at the time of the 2010 amendment to section 18-3-30, the Legislature was well aware of other provisions which would apply to State’s appeals from magistrate court to circuit court absent a specific statute and instead of section 18-3-30. See State v. Corey D., 339 S.C. 107, 112, 529 S.E.2d 20, 23 (2000) (Finding “there is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.”). The Legislature had

² The addition of this language demonstrates the Legislatures tacit understanding that many of the prosecutions in magistrate court occur without an attorney representing the State—in some counties nearly all prosecutions for DUI occur without an attorney representing the State. Otherwise, there would be little need for the language allowing service on the “designated agent” as opposed to the “prosecuting attorney.”

two alternatives for consideration of a time requirement for a State’s appeal from magistrate’s court—Section 18-7-20 of the South Carolina Code or Rule 74 of the South Carolina Rules of Civil Procedure. As a result, consideration of the 2010 amendment, even if the clear language of the statute alone was insufficient, established the Legislature intended section 18-3-30 to **only** apply to a criminal defendant and not the State.

Section 18-7-20, which applies to appeals to circuit court not otherwise covered in Title 18, indicates when and how appeals should be taken. The provision appears in a Chapter entitled Appeals to Circuit and County Courts in Other Cases. The term “Other Cases” would apply when Title 18 does not already contain a statutory provision providing for an appeal. As Chapter 3 specifically applies only to a criminal defendant’s ability to appeal, a State’s appeal would qualify as an “Other Case” triggering the provisions of Chapter 7. Accordingly, under section 18-7-20:

The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.

S.C. Code Ann. § 18-7-20 (Supp. 2019). As a result, applying section 18-7-20 would allow for 30 days for the State to serve its Notice of Appeal. The Legislature, in 2010 when it last amended section 18-3-30, would have been well aware of section 18-7-20 because it has read the same since 1989. See Act No. 20, 1989 S.C. Acts; see also, Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 570, 743 S.E.2d 778, 783 (2013) (“[T]his Court must presume the legislature knew of and contemplated the [prior existing statutes] in enacting [an act]”).

Additionally, Rule 74, SCRCP, was put in place effective May 1, 1986, and provided a means and time requirement for a State’s appeal absent any other applicable provision. The

provision is applicable, even to appeals from criminal cases in magistrate court, because the appeals are taken to the Court of Common Pleas. See State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (finding the Rules of Civil Procedure applicable under Rule 74, SCRPC). This Court clearly overlooked Rule 74 and, in particular, the Editor's Notes to Rules 74 and 75, SCRPC. Rule 74 of the Rules of Civil Procedure states:

Except for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals. Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court or administrative agency or tribunal within the time provided by the statute, or by this rule when no time is fixed by statute, for service of the notice of intention to appeal.

Rule 74, SCRPC. Significantly, the Editor's Notes to Rules 74 and 75, SCRPC, provide:

These Rules 74 and 75 are added to make uniform the procedure on appeals to the Circuit Court where there is no provision by statute. They do not replace any provisions as to such appeals in Title 18 of the Code, or other statutes providing for appeals from administrative decisions; but are added to supply omissions in these statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted.

Clearly, Rule 74 and the allowance of thirty days is intended to apply to the prosecuting agency—the State—because, unless this Court finds section 18-7-20 applies, there is no statute in Title 18 expressly providing for the time in which the State must serve its notice of appeal. Rule 74 is specifically intended to fill that void.

The Legislature would have been aware of both section 18-7-20 and Rule 74, SCRPC, when it chose in 2010 to again not provide for any explicit time requirement for the service of a

State's appeal under section 18-3-30. Berkebile v. Outen, 311 S.C. 50, 53, 426 S.E.2d 760, 762 (1993) ("A basic presumption exists that the legislature has knowledge of previous legislation when later statutes are passed on a related subject."). Accordingly, this Court overlooked both Rule 74, SCRCR, and section 18-7-20 and their applicability to a State's appeal, especially in light of the legislative history surrounding section 18-3-30 which clearly indicates the Legislature has always intended it to only apply to criminal defendants.

Also, this Court overlooked the fact the Legislature clearly knows how to apply a time requirement to both a criminal defendant and the State. S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control, 390 S.C. 418, 426, 702 S.E.2d 246, 251 (2010) (Acknowledging: "Had the legislature intended for the time period to begin running from the date a party receives notice of the decision, the statute would have been drafted accordingly." Further, the Court looked to other statutes and explained: "The use of the phrase 'receipt of the decision' in [a separate statute] indicates that had the legislature intended for the fifteen day time period to begin after receipt of notice, the legislature knew how to draft the statute to accomplish this result."). The Court need not look beyond Rule 203 of the South Carolina Appellate Court Rules to determine that the Legislature knew how to draft a time requirement applicable to both a criminal defendant and the State. The Rule includes language similar to section 18-3-30 which clearly relates solely to the criminal defendant: "After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents **within ten (10) days after the sentence is imposed.**" Rule 203(b)(2), SCACR (emphasis added). However, the Rule also provides: "In those cases in which the **State is allowed to appeal** a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal

must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.” Id. (emphasis added). In Rule 203, it was necessary to explicitly indicate the State’s time for service of the appeal because otherwise, the Rule would, by its very language, not apply to the State. Additionally, section 18-7-20, which is written very broadly and could apply to any party seeking to appeal, is an example the Legislature could have followed had they intended section 18-3-30 to be broadly construed to cover all possible appealing parties in the criminal case from magistrate’s court. Clearly, had the Legislature intended section 18-3-30 to apply to the State, they certainly knew how and could have easily amended the language when they last amended the statute in 2010.

Significantly, this Court clearly overlooks relevant considerations which demonstrate a criminal defendant and the State are not “similarly situated parties” when it comes to a determination on whether or not to appeal from a magistrate court decision. As a result, there are very logical and rational reasons why the Legislature would allow additional time for a State’s appeal.

Initially, the calculus regarding a decision to appeal is very different between a criminal defendant and the State. The defendant only has to determine whether it is in his best interest to appeal his conviction and sentence. He does so with full knowledge of the actual facts regarding his guilt or innocence of the charges, the ramification of not appealing, and the possible remedies if he were to succeed on appeal. He does not have to consider any other case or how a ruling in his case may impact anyone else’s future trial. As mentioned previously, the Legislature originally believed a defendant needed only five days to make his decision because it was recognized that it should not be a hard decision requiring extended contemplation.

On the other hand, the State, as the Sovereign, has significant considerations to make prior to appealing a ruling. Initially, the State must review the underlying ruling and determine if it meets the standard set forth in McKnight that would even allow the State to pursue the appeal. Considerations regarding the benefit or efficacy of taking the underlying appeal also are much more complicated. While appealing may be best for the individual case, an appeal may or may not be best for all future prosecutions. The State is required to consider the broad ramifications of an appeal prior to bringing the appeal. If the State is successful, that may be beneficial in this particular case, but is it the best outcome for all future prosecutions or will the rule set forth by the Court alter those prosecutions in unintended ways. Additionally, the downside to an appeal may be too great to warrant the appeal in the individual case. The State must be concerned about whether a case has particularly bad facts and the old adage that bad facts make for bad law. See Doggett v. United States, 505 U.S. 647, 659 (1992) (Thomas, J. dissenting) (acknowledging the old adage and commenting: “Just as ‘bad facts make bad law,’ so too odd facts make odd law.”). The State necessarily must consider ramifications far beyond the case before it and do what is in the best interest for the people of South Carolina, including the defendant, and not just one individual. As a result, it is logical and rational that the Legislature would allow additional time for the State to make its determinations.

Additionally, prosecutions in magistrate court frequently have another very significant consideration—the cases are frequently not prosecuted by an attorney for the State who will take part in the ultimate determination on whether or not to seek the appeal. Prosecutions, in particular DUI prosecutions, are frequently handled by the officers making the arrest. A report, written by Clemson University and commissioned by the South Carolina Department of Transportation notes that South Carolina is one of two states in the nation that allow officers to

prosecute their DUI cases. See Applying Successfully Proven Measures in Roadway Safety to Reduce Harmful Collisions in SC, available at <https://www.scdot.scltap.com/wp-content/uploads/2017/06/SPR-711-FHWA-SC-17-08-Final-Report.pdf>. Further, in their 2020 report, Mothers Against Drunk Drivers indicated that their monitoring of several counties DUI prosecutions revealed numerous cases being prosecuted by officers. The report, which looked at seven counties, found multiple counties primarily had officers prosecute the cases that were monitored. See Mothers Against Drunk Driving South Carolina, COURT MONITORING REPORT, REFUSAL TO CHANGE, available at <https://online.flippingbook.com/view/533447/>.

When an officer prosecutes a DUI, new difficulties arise for the State in seeking an appeal. First, there may be communication issues between the actual person prosecuting the case and the persons in the agency who will ultimately make the determination on whether to file the appeal. The trooper or other office may not bring the appeal from magistrate's court. Instead, the appeal would need to be initiated and handled by the solicitor's office or the Department of Public Safety. As a result, communication of the nature of the offense, the evidence and arguments presented to the magistrate, and the magistrate's ruling all must take place prior to the State even beginning its analysis on whether to pursue an appeal. Therefore, it is clear that a criminal defendant and the State of South Carolina are not similarly situated parties.³

This Court should grant the rehearing; find section 18-3-30 by its clear and unambiguous language does not provide the State a time restriction for its service of a notice of appeal from

³ I also note that this Court did not specifically rely on an Equal Protection for its ruling, even though it referenced the concept of similarly situated parties. It is clear Equal Protection would not apply. Additionally, even if Equal Protection required the prosecuting agency and the convicted defendant to have the same filing and service requirements, the remedy would not be to arbitrarily subject the State to the ten day requirement of section 18-3-30, but instead would have been to declare the ten-day restriction in 18-3-30 unconstitutional and then the default of 30 days would apply to all.

the magistrate court; conclude either Rule 74, SCRCP, or section 18-7-20 is the appropriate time requirement for the service of the notice of appeal allowing the State thirty days to serve its notice; hold the criminal defendant and the State of South Carolina are not similarly situated parties; and reverse the circuit court's ruling that the appeal was untimely and allow the appeal by the State to go forward.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the circuit court erred in dismissing the appeal because it was timely served and filed under either section 18-7-20 or Rule 74, SCRCP, because section 18-3-30 does not apply to an appeal by the State based on its explicit and unambiguous language. The State asks this Court to publish its opinion, whether rehearing is granted or denied, because the issue is one that is ongoing in appeals from magistrate's court and a binding opinion is necessary to end any confusion.⁴

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

BY:



William M. Blitch, Jr.
S.C. Bar No. 15608
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 18, 2022

⁴ See, e.g., Shenoa L. Payne, *The Ethical Conundrums of Unpublished Opinions*, 44 Willamette L. Rev. 723, 728 (2008) (“With such widespread national availability of ‘unpublished’ opinions, the term ‘unpublished’ has a new and ironic meaning. . . . Even though a court may wish to prevent a particular opinion from having precedential effect, the court is at least aware that, whether designated ‘published’ or ‘unpublished,’ its opinion is ‘going to be read, collected, and analyzed.’ ” (footnotes omitted)).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001068

The State,

Appellant,

v.

Tyler J. Evans,

Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing by emailing a copy to Respondent's counsel of record, Tara L. Frost, Esquire and Jack C. Frost, Esquire, at their primary email addresses as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 18th day of August, 2022.



CAROLINE COLLINS
Administrative Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Appellant,

v.

Tyler James Evans, Respondent.

Appellate Case No. 2019-001068

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Tara Leigh Frost, Esquire
William M. Blich, Jr., Esquire
Alan McCrory Wilson, Esquire
Jack Christian Frost, Esquire

FILED
Aug 23 2022