



# The South Carolina Court of Appeals

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February 22, 2023

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Re: The State v. Herbert A. Pray  
Appellate Case No. 2019-001400

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in blue ink, appearing to read "V. Claire Allen".

CLERK

cc: Alan McCrory Wilson, Esquire  
The Honorable Clifton Newman

**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**

State of South Carolina, Appellant,

v.

Herbert E. Pray, III, Respondent.

Appellate Case No. 2019-001400

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Appeal From Aiken County  
Clifton Newman, Circuit Court Judge

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Unpublished Opinion No. 2023-UP-067  
Submitted January 31, 2023 – Filed February 22, 2023

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**AFFIRMED**

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Attorney General Alan M. Wilson, Senior Assistant  
Deputy Attorney General William M. Blich, Jr., both of  
Columbia, and Solicitor J. Strom Thurmond, Jr., of  
Aiken, for Appellant.

Robert Irvin Sussman, of Augusta, Georgia, for  
Respondent.

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**PER CURIAM:** The State appeals an order of the circuit court affirming the magistrate's dismissal of the charge of driving under the influence (DUI) – first offense against Herbert E. Pray, III. On appeal, the State argues the circuit court

erred in finding the officer's reading of *Miranda*<sup>1</sup> warnings to Pray as the officer drove away from the location of Pray's arrest violated the requirements of section 56-5-2953(A)(1)(a) of the South Carolina Code (2018) which states that "[t]he video recording at the incident site must . . . include the arrest of a person . . . and show the person being advised of his *Miranda* rights."

We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022), *reh'g denied* (Apr. 5, 2022) ("A question of statutory interpretation is a question of law, which is subject to de novo review and which [appellate courts] are free to decide without deference to the courts below."); *State v. Elwell*, 403 S.C. 606, 612, 743 S.E.2d 802, 806 (2013) ("The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." (quoting *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002))); *Scott*, 351 S.C. at 588, 571 S.E.2d at 702 ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."); *Elwell*, 403 S.C. at 612, 743 S.E.2d at 806 ("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.'" (alteration in original) (quoting *Scott*, 351 S.C. at 588, 571 S.E.2d at 700)); *id.* ("[P]enal statutes will be strictly construed against the [S]tate."); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 346, 713 S.E.2d 278, 285 (2011) ("Our appellate courts have strictly construed section 56-5-2953 and found that a law enforcement agency's failure to comply with these provisions is fatal to the prosecution of a DUI case.").

**AFFIRMED.**<sup>2</sup>

**WILLIAMS, C.J., THOMAS, J., and LOCKEMY, A.J., concur.**

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.