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Mar 14 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Aiken County
The Honorable Clifton B. Newman, Circuit Court Judge
Appellate Case Number 2019-001400

The State of South Carolina,

Appellant,

vs.

Herbert E. Pray, III,

Respondent.

PETITION FOR REHEARING

On February 22, 2023, this Court affirmed the circuit court's decision affirming the magistrate court's dismissal of the above case because the State failed to comply with the video recording statute of section 56-5-2953 of the South Carolina Code. This Court misapprehended or overlooked relevant case law, the clear legislative intent behind the statute, and the underlying facts and circumstances of this case in rendering an opinion which leads to an absurd result. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the video of the defendant being read his Miranda rights does not have to occur at the exact location in which he is found so long as the video originates at the incident scene, and reverse the dismissal by the magistrate and subsequent affirmance of that dismissal by the circuit court.

Initially, this Court improperly interprets the text of section 56-5-2953 in a way that leads to clearly absurd results. 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.¹

First, this Court overlooked the legislative intent behind the video recording statute. As this Court has explained: “The statute must be interpreted with realistic circumstances and rationales in mind.” State v. Elwell, 396 S.C. 330, 336, 721 S.E.2d 451, 454 (Ct. App. 2011). Further, both this Court and the Supreme Court have articulated the reasoning and legislative intent behind the video recording statute: “[T]he primary intention behind section 56-5-2953 was to reduce the number of DUI trials heard as swearing contests by mandating the State videotape important events in the process of collecting DUI evidence.” Elwell, 396 S.C. at 336, 721 S.E.2d at 454. The South Carolina Supreme Court has explained: “the purpose of section 56-5-2953 . . . is to create direct evidence of a DUI arrest.” Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011).

This Court needs to determine, in light of the legislative intent as found by the South Carolina Supreme Court, that the term “incident site” is not one that attempts to limit the specific location where everything happens, but instead is a broad term used to define the video recording being referenced and specify it as opposed to the one that generally happens at the breath test location. Limiting the relevancy of the video to a single location could have a detrimental effect on what conduct is recorded or how a case is presented which is not in line with the determination that the video “is to create direct evidence of a DUI arrest.” Roberts, 393 S.C. at

¹ This Court included language regarding penal statutes being construed strictly against the State. While this language or similar language has appeared in other cases, section 56-5-2953 is clearly not a penal statute but merely a procedural requirement. The State submits there is nothing that should require the statute to be strictly construed against the State.

347, 713 S.E.2d at 285. Further, limiting a video requirement only to the specific scene where an individual is provided field sobriety tests or is officially arrested would not achieve the result of “reduc[ing] the number of DUI trials heard as swearing contests by mandating the State videotape important events in the process of collecting DUI evidence.” Elwell, 396 S.C. at 336, 721 S.E.2d at 454.

Additionally, this Court overlooked the absurd results that can arise from its restrictive interpretation of the term “incident site.” See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) (“However plain the ordinary meaning of the words used in the 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. . .”).

Interpreting the term “incident site” to be a narrow location signifying where the defendant is first located, or where first interaction occurs, is unnecessarily restrictive and will certainly lead to absurd results. In this particular case, the incident site as argued by Respondent was a house and yard where Respondent was located. If, for example, field sobriety tests were conducted at that location and then Respondent wandered down the street three or four houses away while being pursued by the officer with the video running, are there now two incident sites? Does the officer have to redo the field sobriety test at the new location or bring Respondent back to the house and yard before he can validly arrest him and read Miranda warnings to obtain a DUI conviction? The end result in this case is a prime example of the absurd result that occurs by limiting the definition of “incident site” too greatly because we have a clear video, one that began before the officer arrived where Respondent was found and recorded continuously until the officer and Respondent arrived at the breath test location,

showing Respondent being advised of his Miranda rights. No further direct evidence or reduction in a swearing contest would have occurred if the reading was one minute and 54 seconds earlier while still in the front yard of the home as opposed to in the vehicle on the way to the breath test site—especially when it all occurs on the same continuously running video. Certainly, the term incident site should not be so narrowly read as to render such absurd results. Accordingly, this Court should apply the legislative intent and determine that “incident site” is a broader term than recognized by the magistrate and circuit courts, and the reading of Miranda on the way from the house and yard in this case while being recorded on the “incident site” video recording is sufficient to comply with section 56-5-2953.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the magistrate and circuit court erred in imposing such a restrictive definition of the term “incident site” as it relates to the video recording requirements of section 56-5-2953, and remand for a trial.

Respectfully submitted,

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BY: _____

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ATTORNEYS FOR APPELLANT

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing on Respondent by emailing a copy to his counsel of record, Robert I. Sussman, at his primary email address as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 14th day of March, 2023.



CAROLINE COLLINS
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Caroline Collins

From: Caroline Collins
Sent: Tuesday, March 14, 2023 11:47 AM
To: robert@sussman-law.com
Cc: William Blitch
Subject: RE: The State v. Herbert E. Pray, III (2019-001400)
Attachments: PRAY Herbert - Petition for Rehearing - 2019-001400 (03241174xD2C78).PDF

Good Morning Mr. Sussman,

Attached please find a corrected version of the Petition for Rehearing in The State v. Herbert E. Pray, III (2019-001400). This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

From: Caroline Collins
Sent: Tuesday, March 14, 2023 11:43 AM
To: robert@sussman-law.com
Cc: William Blitch <wblitch@scag.gov>
Subject: The State v. Herbert E. Pray, III (2019-001400)

Good Morning Mr. Sussman,

Attached please find the Petition for Rehearing in The State v. Herbert E. Pray, III (2019-001400). This petition will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

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Thank you!

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