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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
The Honorable Clifton B. Newman, Circuit Court Judge

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Appellate Case Number 2019-001400

The State of South Carolina,  
Herbert E. Pray, III,

vs.

Appellant,  
Respondent.

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**RETURN TO PETITION FOR REHEARING**

As directed by the Court's Order dated April 5, 2023, Respondent submits this Return in response to arguments contained within the Petition for Rehearing by Appellant. This Court properly analyzed relevant case law, the clear legislative intent behind the video recording statute of Section 56-5-2953 of the South Carolina Code, and the underlying facts and circumstances of this case in rendering an opinion that leads to the only logical result. Accordingly, pursuant to Rule 221(a), SCACR, this Court should deny the petition for rehearing.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009); Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in the statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan, 371 S.C. at 499. Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). "When a statute is penal in nature, it

must be strictly construed against the State and in favor of the defendant.” Town of Mt. Pleasant v. Roberts, 393 S.C. at 342. Criminal statutes must be strictly construed against the State and in favor of the defendant. State v. Castineria, 341 S.C. 619, 625-26 (Ct. App. 2000).

First, this Court properly ascertained the legislative intent behind the video recording statute. This Court has determined that section 56-5-2953 serves two primary purposes. One of those two primary purposes, which is relevant to the case at hand, is to protect the rights of the defendant by “requiring video recording of the person’s arrest and of the officer issuing Miranda warnings.” State v. Taylor, 411 S.C. 294, 306, 768 S.E.2d 71, 77 (Ct. App. 2014). Since this case involves when and where Miranda rights were administered to Respondent, this purpose of protecting the defendant’s rights is clearly the one that should be focused on.

Instead, Appellant argues that this Court should concentrate on the other legislative purpose behind section 56-5-2953, which is “...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.” State v. Elwell, 396 S.C. 330, 336, 721 S.E.2d 451, 454 (Ct. App. 2011). It was never alleged in this case that any of the field sobriety tests were not adequately recorded, so the legislative purpose of preserving DUI evidence and preventing “swearing contests” is not directly implicated.

Appellant next argues that an absurd result arises by this Court’s interpretation of the term “incident site.” Appellant gives a hypothetical example involving a driver wandering down the street three or four houses away while being pursued by the arresting officer, after field sobriety tests were administered. However, the Legislature has addressed the possibility of a driver or a particular circumstance making it impossible for the State to comply with the video statute by including the exceptions described in subsection 56-5-2953(B). The Legislature

drafted section 56-5-2953 of the South Carolina Code with the realities of DUI stops and investigations in mind. Sometimes, drivers are injured and need immediate medical treatment. Other times, the driver may purposefully obstruct the officer's investigation or make it impossible to comply with the video statute. There are broad exceptions included in 56-5-2953(B) that cover these hypothetical situations, but none of these exceptions apply to the case at hand and none were raised by Appellant.

Accordingly, this Court properly interpreted the term “incident site” in light of the legislative intent of section 56-5-2953. Respondent’s rights were not adequately protected in this case as the Legislature intended for them to be when drafting section 56-5-2953. Respondent was already in custody and was then induced into potentially incriminating himself by being questioned not only specifically about an open container, but also generally about prior DUI charges and towing preference by the trooper, all without a prior Miranda warning and all after departing the incident site.

This Court appropriately applied the unambiguous, plain and clear meaning of “incident site” in affirming the trial court’s dismissal of the charge due to the State’s unexcused violation of section 56-5-2953.

#### CONCLUSION

For the reasons set forth above, Respondent respectfully asks this Court to deny Appellant’s Petition for Rehearing.

Respectfully submitted,



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**PROOF OF SERVICE**

I, Robert I. Sussman, certify that I have served the within **RETURN TO PETITION FOR REHEARING** on Appellant by emailing a copy to counsel of record, William M. Blicht, Jr., at his primary email address as provided by the Attorney Information System (AIS).

This 8<sup>th</sup> day of May, 2023.



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**The State v. Herbert E. Pray, III (2019-001400)**

1 message

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**Robert Sussman** <robert@sussman-law.com>

Mon, May 8, 2023 at 3:16 PM

To: William Blich &lt;wblich@scag.gov&gt;, Caroline Collins &lt;CCollins@scag.gov&gt;, Suzanne Abbott &lt;suzanneabbott@mindspring.com&gt;

Mr. Blich,

Attached, for service upon you as counsel of record, please find the Return to Petition for Rehearing in The State v. Herbert E. Pray, III (2019-001400).

This Return will be submitted to the South Carolina Court of Appeals today via email filing at [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org).

Please reply to confirm receipt of this email.

Thank you.

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