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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Aiken County
The Honorable Clifton B. Newman, Circuit Court Judge
Appellate Case Number 2023-000972

STATE OF SOUTH CAROLINA,

Petitioner,

vs.

HERBERT E. PRAY, III,

Respondent.

APPENDIX

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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

STATE OF SOUTH CAROLINA,

Appellant,

vs.

HERBERT E. PRAY, III,

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

vs.

HERBERT E. PRAY, III,
DEFENDANT

IN THE COURT OF COMMON PLEAS

ORDER ON APPEAL

C/A No.: 2019-CP-02-00690
Ticket No.: 20192410601040
(Driving Under the Influence)

This matter came before the Court on June 11 and 13, 2019, in the Court of Common Pleas for Aiken County. Appellant challenges the pre-trial order of the magistrate dismissing the above-referenced charge. Appellee was present at the hearing, represented by Robert I. Sussman. Appellant was represented at the hearing by Assistant Solicitor Sam Grimes. The Court herein affirms the order of the Magistrate court dismissing the charge.

Background

The parties stipulated to the relevant facts at the hearing before the magistrate. Trooper Singletary responded to the "Incident Location" of 436 Cedar Road, Windsor, SC, according to his Aiken County Sheriff's Office Incident Report. The Trooper's dash camera recorded Mr. Pray performing various Field Sobriety Tests. Approximately 22 minutes and 50 seconds into the video, Trooper Singletary places Mr. Pray under arrest for DUI but does not read his Miranda rights at that time. Once an additional six (6) minutes and ten (10) seconds have passed from the time of arrest, the Trooper departs the incident location of 436 Windsor Road with Mr. Pray in his patrol vehicle, heading towards the Aiken County Detention Center. After almost two (2) additional minutes have passed from the time the Trooper left the incident scene, the Trooper finally reads Mr. Pray his Miranda rights, while the pair are still in the Trooper's patrol car and heading to the jail.

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SC Court of Appeals 1

The Magistrate below found that the Trooper's advisement of Miranda rights almost two (2) minutes after the Trooper departed the incident location of 436 Windsor Road and eighteen (18) minutes and four (4) seconds after Mr. Pray was placed under arrest did not comply with S.C. Code § 56-5-2953. Accordingly, the Magistrate dismissed the charge for the Trooper's failure to comply with the video statute mentioned above.

Issue on Appeal

The State appeals the Magistrate's ruling that advisement of Miranda rights at a location other than where the officer responded and other than where the arrest was made violates S.C. Code § 56-5-2953. To settle this issue, the Court must only perform a plain reading of S.C. Code § 56-5-2953 (A). Appellee contends that the Magistrate was correct by interpreting the statute to require that Miranda rights be read at the location where the arrest was made.

Standard of Review and Applicable Law

"In criminal cases, the appellate court sits to review errors of law only". *State v. Baccus*, 367 S.C. 41, 48 (2006). Statutory interpretation is subject to *de novo* review on appeal. *State v. Taylor*, 411 SC 294 (2014) quoting *City of Greer v. Humble*, 402 SC 609, 613 (Ct. App. 2013)("Moreover, [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").

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *Sloan v. Hardee*, 371 S.C. 495, 498 (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." *Id.* at 499. Thus if the words are unambiguous, we must apply their literal meaning. *Id.* at 498. However, "When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant."

State v. Blackmon, 304 S.C. 270, 273 (1991). Additionally, “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 (2009).

Conclusions of Law

Incident site refers to the location where the arrest is made and where Miranda rights must be given.

S.C. Code § 56-5-2953 mandates video recording at two separate locations, the incident site and the breath test site. The statute begins- “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.” S.C. Code §56-5-2953(A). After that first phrase, the next subsection describes what the video from each location must contain.

S.C. Code § 56-5-2953. Incident site and breath test site video recording.

- (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.**
 - (b) A refusal to take a field sobriety test does not constitute disobeying a police command.
 - (2) The video recording at the **breath test site** must...

It is unambiguous that the arresting officer must produce two separate video recordings, one from the incident site and one from the breath test site. *Id.* It is also clear that each video must capture specific actions. The video from the **incident site** must include any FST’s administered, the arrest of a person for DUI, and **the person being advised of his Miranda**

rights. *Id.* All of the actions listed under “incident site” must be recorded, and plainly must all occur at a singular location. Otherwise, there would be no reason to group these required actions under the same heading. The phrases “incident site” and “breath test site” have important purpose within the statute. These phrases direct arresting officers as to *what* must be recorded in a DUI arrest as well as *where* each task must be performed and recorded.

Appellant contends that the phrases “incident site” and “breath test site” do not refer to particular locations, but merely differentiate between two videos. However, this position overlooks the clear meaning of the word “incident” as well as the fact that the arrest and the advisement of Miranda rights are required in the same video and under the same heading. If the location of the arrest is not the same location where Miranda rights must be read, then the Legislature would not have included them under the same heading of “incident site.” Further, if the term “incident site” was not intended by the Legislature to describe the location where particular actions must be recorded, the Legislature would have chosen a number of possible ways to differentiate between the two required video recordings. Instead, the Legislature used the terms “incident site” and “breath test site” not only to differentiate between two required recordings, but more importantly to dictate where each recording must take place.

Appellant contends that if the term “incident site” is of geographical importance, the arresting officer could have driven Mr. Pray back to the same location at a different time and video recorded an advisement of Miranda rights to comply with the statute. While the State argues that this instance illustrates an absurd result that would be reached if “incident site” is given geographical importance, this hypothetical instance actually highlights the importance of giving “incident site” its only clear and plain meaning. The “incident site” is where the officer

responds, encounters the driver, performs FST's, arrests the driver, and is **where Miranda rights** must be read.

The "incident site" in this case is the same place as the "incident location" on the Trooper's own "Incident Report"- 436 Cedar Road. In all of these uses of the word, "incident" refers to a single location: where the officer responded, where the officer administered FST's, and where the officer arrested Mr. Pray- but **not** where the officer read Mr. Pray his Miranda rights. Moreover, in defeating the absurd result that Appellant contends would occur if the word incident is given geographical importance, an incident is not an indefinite event. The incident is over when the arrest is made, Miranda rights are read, and the Trooper leaves the scene.

"The purpose of the video requirement in the statute 'is to create direct evidence of a DUI arrest.'" *Taylor*, at 305 *quoting Town of Mt. Pleasant* at 347. "In addition, ...requiring video recording of the person's arrest and of the officer issuing *Miranda* warnings serves to protect important rights of the defendant." *Taylor* at 306. The reading of Miranda rights is a routine part of any officer's arrest procedure. In the unique field of DUI arrests, Defendants are secured in the officer's car after being placed under arrest, and often remain in the car for a period of time while the officer completes paperwork and then transports the driver to jail. To protect the Constitutional rights of the driver, and to prevent the driver from unknowingly incriminating himself while restrained in a car and still being video recorded, the Legislature has required that Miranda rights be read at the incident site, after arrest, and before the officer leaves that site.

The magistrate court correctly ruled that "incident site" refers to the place where field sobriety tests are administered and where a person is placed under arrest. It is true that field sobriety tests are not always performed, and in the case of traffic accidents and other limited circumstances, a person is not always arrested at the incident site. However, in these limited

circumstances, the Legislature has provided an exception to the video requirements of S.C. Code § 56-5-2953. In the case before the Court, none of these exceptions apply and none were raised by the State. Therefore, the magistrate ruled correctly that the reading of Miranda rights at a location other than the incident scene, ie. where the driver was arrested, is a violation of S.C. Code § 56-5-2953.

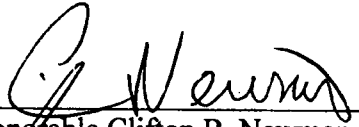
Conclusion

A plain reading of S.C. Code § 56-5-2953 illustrates that two separate recordings must be produced in a DUI arrest, as well as where each recording must occur. The phrases "incident site" and "breath test site" are clear, unambiguous, and plainly describe what must be recorded and where it must be recorded. The trooper in this case read Miranda rights after departing the incident site. Therefore, the trooper did not comply with S.C. Code § 56-5-2953 and the dismissal of the charge was proper.

THEREFORE, it is **ORDERED** that the order of the magistrate dismissing the charge is affirmed.

IT IS SO ORDERED.

Calvin, S.C.
August 9
~~July~~, 2019.


Honorable Clifton B. Newman
Chief Administrative Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)

IN THE CIRCUIT COURT

STATE)

MAGISTRATE'S RETURN
OF
CRIMINAL APPEAL

VS)

Herbert E. Pray, III)

DEFENDANT'S)
(ADDRESS))

This matter is on appeal from the Magistrate Court of Wagener-Salley,
South Carolina, the Honorable, Donna H. williamson, Presiding Judge

The defendant, Herbert E. Pray III was charged with violating
S. C. Code Ann. § 56-5-2930 which is commonly referred to as
Driving Under the Influence, on 01012019.

This matter was heard in a Bench trial on 03-12-2019 and the
Notice of Appeal was filed on 03-21-2019 The proceedings were
(check appropriate box) ☒ recorded electronically. ☐ recorded by a court reporter.
☐ recorded in writing by the judge.

The jury list was prepared pursuant to S. C. Code Ann. (Check appropriate Box)
☐ § 22-2-80. Selection of jury list for a single trial, ☐ § 22-2-90. Selection of jury list for
scheduled terms of jury trials, and the Defendant and the State was given an opportunity to
exercise peremptory challenges on _____

The State called the following witnesses:

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

A summary of their testimony is attached.

The Defendant called the following witnesses:

- | | |
|----------|-----------|
| 1. _____ | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

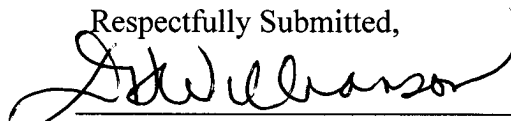
A summary of their testimony is attached.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF <u>Aiken</u>	)	
STATE	)	MAGISTRATE'S RETURN
VS	)	OF
	)	CRIMINAL APPEAL
<u>Herbert E. Pray III</u>	)	
DEFENDANT'S	)	

The Attached Papers Comprise the Court Record Which Is Transmitted to the Circuit Court Pursuant to Section 18-3-40 SC Code. Attached are copies of the items which are checked.

- | | | |
|-------------------------------------|-----|---|
| ☒ | 1. | ☐ Warrant / Or ☒ Ticket. Number: <u>20192410601040</u> |
| ☒ | 2. | Pretrial Motions and Responses: |
| | | ☐ A) Rule 5 / Brady |
| | | ☐ B) Motion to Exclude Evidence And/or Testimony |
| | | ☒ C) Other Motions. |
| ☐ | 3. | Jury List and Jury Selection Record of Strikes, Cause and /or Peremptory. |
| ☐ | 4. | Voir Dire of Jury. |
| ☒ | 5. | Trial Transcript: ☐ Judge's Trial Notes Typed, or ☒ Transcript of Recording Prepared by Appellant and Certified Correct by Magistrate. |
| ☐ | 6. | List of witnesses and summary of their testimony. |
| ☒ | 7. | List of motions, a summary of parties' positions, and court ruling. |
| ☐ | 8. | List of items offered into evidence, a summary of objections and the court's ruling. |
| ☐ | 9. | List of Exhibits Admitted and Copies. |
| ☐ | 10. | Jury Verdict. |
| ☐ | 12. | New Trial Motion Received (Date _____ Time _____). |
| ☐ | 13. | Notice of Hearing on Motion. |
| ☐ | 14. | Notice of Denial of Motion. |
| ☒ | 11. | Notice of Intent to Appeal. |
| ☐ | 12. | Other _____ |

Respectfully Submitted,


Magistrate

CITY Wagner STATE SC
3/25, 2019

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

vs.

HERBERT E. PRAY, III,
DEFENDANT

IN THE COURT OF COMMON PLEAS

**NOTICE OF APPEAL AND APPEAL FROM
MAGISTRATE COURT**

C/A No.:
Ticket No.: 20192410601040
(Driving Under the Influence)

To The Honorable Donna Williamson, and Robert Sussman, Counsel for Defense:

Please take notice of the State's appeal from the Magistrate Court's ruling on the Defense Motion to Dismiss on March 12, 2019. This appeal is filed in the circuit court pursuant to State v. Belviso 360 SC 112 (Ct. App.).

The States avers that Magistrate Court's decision to dismiss the above-referenced DUI charge was based upon an error of law and provides the following as exceptions to the Magistrate Court's ruling:

1. On January 18, 2018, law enforcement responded to a residence in the early morning due to a suspected break-in in progress. Upon arriving at the residence, law enforcement encountered the Respondent who indicated he was trying to wish the occupant a happy new year. He indicated that he had consumed alcohol and that he had driven to the residence in the vehicle parked in the front yard.
2. As a result of that information, Trooper Singletary conducted field sobriety tests with the Respondent at that location. Following those tests, the Respondent was placed under arrest for DUI and placed in the front seat of the Singletary's patrol vehicle.

3. Following the arrest, Singletary contacted a towing company and searched Respondent's vehicle.
4. Singletary then begins transporting Respondent to the detention center.
5. It is at this time that Singletary advises Respondent of his Miranda rights – approximately 1 minute and 54 seconds after beginning to drive.
6. Singletary's dashcam video captures the Respondent's conduct, field sobriety tests, arrest, and ultimately the Trooper advising him of his Miranda rights.
7. Respondent moved before the Magistrate for dismissal of the above-referenced DUI charge for a violation of S.C. Code §56-5-2953 due to Miranda rights not being advised to the Respondent 'at the incident site'.
8. As a result of that motion, the Magistrate held that 'at the incident site' meant at the location where field sobriety tests were administered. As a result of that interpretation, the Magistrate dismissed the above-referenced charge for non-compliance with S.C. Code §56-5-2953.
9. The Magistrate dismissed the DUI charge pre-trial.
10. The singular issue in contest at the hearing was whether the advisement of Miranda complied with the requirements of S.C. Code §56-5-2953(A)(1).
11. The Magistrate Court's ruling is based upon an error of law in that the Court misinterpreted the term 'incident site' and therefore incorrectly applied the remedy of dismissal.
12. Based upon this argument, the record, and any motions, arguments, memorandums, letters, and decisions of the Magistrate Court in the case, the State believes that the

ruling of the Magistrate Court dismissing the DUI charge should be overturned and that the case should be remanded for trial.

s/Samuel Grimes

Samuel B. Grimes, Jr.
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March 21, 2019
Aiken, SC



STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

WAGENER-SALLEY SUMMARY
COURT

THE STATE OF SOUTH CAROLINA)

Case No. 20192410601040

vs.)

HERBERT E. PRAY III,)
Defendant.)

NOW COMES the Defendant, through his undersigned attorney, Robert I. Sussman, and moves this court to dismiss the above ticket with prejudice.

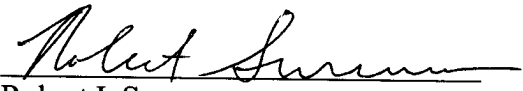
SC Code Section 56-5-2953(A)(1)(a)(iii) states that the video recording at the incident site must "include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and show the person being advised of his Miranda rights."

In this case, the Defendant was placed under arrest for Driving Under the Influence 22 minutes and 50 seconds into the dash cam video. 39 minutes into the same video, the Trooper leaves the incident scene in his patrol car, with the Defendant handcuffed in the front seat. Finally, once they have departed the incident scene, at 40 minutes and 54 seconds into the video, the Trooper reads the Defendant his Miranda rights.

In City of Rock Hill v. Suchenski, 646 S.E.2d 879, 374 S.C. 12 (S.C., 2007), our Supreme Court ruled that "under § 56-5-2953, a violation of the statute, with no mention of prejudice, may result in dismissal of the charges." Further, in Mt. Pleasant v. Roberts, 393 S.C. 332, 346 (2011), the South Carolina Supreme Court stated "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."

THEREFORE, the Defendant respectfully requests that this Court dismiss the above case for failure to comply with S.C. Code Section 56-5-2953.

March 8, 2019


Robert I. Sussman
Attorney for Defendant
SC Bar No. 101394

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

WAGENER-SALLEY SUMMARY COURT

THE STATE)

Case No. 20192410601040

vs.)

State's Response to Defendant's
Motion To Dismiss

HERBERT E. PRAY III)
Defendant)

The State, by and through their undersigned attorney, Assistant Solicitor Paige E. Tiffany, responds to the Defendant's Motion to Dismiss as follows:

The Defendant argues to the Court that it should find the incident site video failed to comply with section 56-5-2953(A) necessitating a dismissal of the underlying DUI charge. Section 56-5-2953(A) states, 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. Section 56-5-2953(A) (1)(a) states, 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 ... and show the person being advised of his Miranda rights. *State v. Gordon*, 414 S.C. 94, 98, 777 S.E2d 376, 378 (2015).

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). *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011) states the purpose of section 56-5-2953 . . . is to create direct evidence of a DUI arrest. The plain language of section 56-5-2953 does not require the video to encompass every

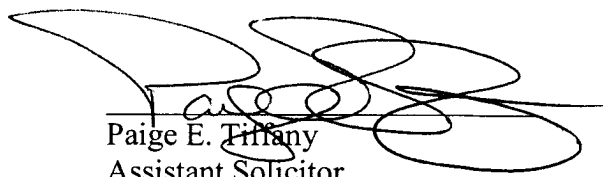
action of the defendant, but requires video of each event listed in the statute. *State v. Taylor*, 411 S.C. 294, 305, 768 S.E2d 71,77 (Ct. App. 2014).

The South Carolina legislature did not intend the term incident site to be comprised of one geographical location. Section 56-5-2953(A)(1)(a) states that video recording of the incident site must begin upon the activation of blue lights. Clearly, miles can be traversed between the activation of blue lights and the ultimate location of field sobriety tests. Therefore, incident site must be interpreted to include all locations in which the incident occurred and have all requirements on video. Under this scenario, it is entirely reasonable that reading Miranda rights within two minutes of leaving the location of the field sobriety tests is still the incident location as intended by the legislature.

Further, the statute does not indicate that Miranda must be given at the incident site, it states, the video recording at the incident site must: include the field sobriety tests, include the arrest of a person for the violation, and show the person being advised of his Miranda rights. In this context, "incident site" describes the recording more than it denotes the necessity of the Miranda rights being given at a particular place. As such, the video of the incident site also includes Miranda rights.

THEREFORE, the State respectfully requests that this Court deny the Defendant's Motion to Dismiss as the requirements of S.C. Code Section 56-05-2953 have been met.

March 12, 2019


 Paige E. Tiffany
 Assistant Solicitor
 2nd Judicial Circuit
 S.C. Bar No.: 5916

1 STATE OF SOUTH CAROLINA) IN THE COURT OF THE MAGISTRATE
2)
3 COUNTY OF AIKEN)
4)
5 THE STATE OF SOUTH CAROLINA)
6 PLAINTIFF(S))
7)
8 VS) MOTION HEARING TRANSCRIPT
9) TICKET NO.: 20192410601040
10)
11 HERBERT E. PRAY, III)
12 DEFENDANT(S))
13)
14)
15)
16 THE COURT All right. Going on record today
17)
18 March 12, 2019, -- ticket on here.
19)
20 Going into the case of the
21)
22 *State versus Herbert E. Pray, III*, under ticket number
23)
24 20192410601040 charged with driving under the influence. He's
25)
26 represented by Robert Sussman. Representing the State is Paige
27)
28 Tiffany, and also Trooper Singletary. Okay, I have a motion from the
29)
30 Defense, Mr. Sussman?
31)
32 COUNSEL FOR DEFENSE Yes, ma'am, Your Honor.
33)
34 THE COURT You have a copy of that motion?
35)
36 COUNSEL FOR DEFENSE I got the original right here for the Court.
37)
38 THE COURT Okay. Thank you. All right, and I have a
39)
40 response to the motion from the State.
41)
42 Did she give you one?
43)
44 COUNSEL FOR DEFENSE She has, Your Honor.
45)
46)

1 THE COURT

All right. Mr. Sussman.

2
3 COUNSEL FOR DEFENSE

Do we want to stipulate to any of these
4 facts, so we don't have a hearing?

5
6
7 THE STATE

Oh, absolutely, Your Honor. We had
8 previously agreed to stipulate I think
9 something that was in the email. If
10
11
12

13 you'd go ahead and enumerate the ---

14
15 COUNSEL FOR DEFENSE

Yes, Your Honor. So the times in the
16 video that I laid out in the motion I think
17
18 we can go ahead and stipulate to those.
19
20

21 What we have here is not a factual question, but more an issue of the
22 law under our video statute, um, §56-05-2953, relating to when
23 Miranda is read, where it is read, and then if the reading in this case
24 complies with our video statute. So what we established is that this
25 was January 01, 2019. Trooper Singletary responded to the incident
26 location, um, and I don't have -- these aren't times in the morning.
27 They are time stamps on the actual video. So from when the video
28 starts we have at 22 minutes and 50 seconds into that video, um,
29 Mr. Pray here is placed under arrest by Trooper Singletary for DUI.
30 Trooper Singletary does tell him he's under arrest for DUI. Does that
31 in front of the camera in compliance with the statute. Then that's
32
33 22 minutes 50 seconds into the video. Um, some time passes. They're
34 looking through Mr. Pray's car, doing an inventory before they tow it.
35
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1 Then at 39 minutes into the video, so about six minutes ten seconds
 2 after they put Mr. Pray under arrest, Trooper Singletary actually
 3 departs the location where they responded, and put Mr. Pray under
 4 arrest, heading presumably towards the jail. Again, six minutes ten
 5 seconds after the arrest. Then at 40 minutes and 54 seconds into the
 6 video, once they have departed the incident scene, and they had been
 7 on the road for about almost two minutes, a minute and 54 seconds,
 8 then in the car at that time Trooper Singletary reads Mr. Pray his
 9 Miranda rights. So those specs are we good with those?

10
11
12
13
14
15
16
17
18
19 THE STATE

I stipulate to those, Your Honor.

20
21 THE COURT

Okay. All right.

22
23 COUNSEL FOR DEFENSE

So then our motion would be a motion to
 dismiss the ticket. Again, we would
 argue under §56-05-2953, sub-

24
25
26
27
28 section (A)(1)(a). Our statute states that the video recording
 29 at the incident site must include a number of things beginning when
 30 the officer activates the blue lights, including a field sobriety test,
 31 and then subsection (3) is where we're looking. It must include the
 32 arrest of a person for a violation of §56-05-2930 or 2933 or probable
 33 cause determination. That the person violated §56-05-2945, but what
 34 we're looking at right here is that the video must show the person
 35 being advised of his Miranda rights and again, we look up at that
 36 sub-heading (1)(a), the video recording at the incident site.
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1 Um, the arrest everything took place at the address listed on the
2 ticket. Um, that was our incident site. The trooper departed the
3 incident site, so the incident site portion of the video is over. When
4 they depart and then after that time the Miranda rights are read.
5 So, we're arguing that the video is not in compliance with the
6 statute and of course we have case law under the *Town of*
7 *Mount Pleasant v. Roberts* that non-compliance with the video
8 statute must result in a dismissal and in that decision they echoed
9 the decision of *City of Rock Hill versus Suchenski*.

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19 THE COURT

Okay. Ms. Tiffany?

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21 THE STATE

Thank you, Your Honor, may it please
the Court. The important thing here is
to understand what the definition of

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27 'incident site' is. Um, and for that we look to our case law, um,
28 about interpreting statutory construction and it says the cardinal
29 rule of statutory interpretation is to ascertain and effectuate the
30 intention of the legislature and that's by *Sloan v. Hardy*, and in
31 the *Town of Mount Pleasant v. Roberts*, which has already been
32 mentioned, uh, the Court states that the purpose of §56-05-2953 is
33 to create direct evidence of the DUI arrest. The plain language of
34 §56-05-2953 does not require the video to encompass every action
35 of the Defendant. It requires the video of each event listed in the
36 statute and that's from *State v. Taylor*. Now, Mr. Sussman is correct
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1 that §56-05-2953 (A)(1)(a) does say that the video recording at the
2 incident site must include the reading of Miranda. However, if you
3 go back to §56-05-2950, um, uh, 29 – the original DUI statute, it
4 states that a Defendant, who is in violation of any one of these
5 statutes, must have his conduct at the incident site, and the breath
6 test site, video recorded and states that it must indicate, include,
7 begin no later than the activation of the officer's blue lights, include
8 field sobriety tests, include the arrest, and be advised of Miranda.
9 It is clear that if the incident site only includes the location of the
10 field sobriety test then the activation of the blue lights would not
11 be the incident site; however, the statute includes that the video
12 tape of the incident site include start at the beginning of blue lights.
13 It could be many miles traversed between blue lights and the time
14 they're actually stopped and a given field sobriety test. So by that
15 logic reading Miranda rights within two miles or within two
16 minutes of leaving where field sobriety tests were given it's still
17 actually a video tape of the incident site and also you have to further
18 you have to look that the incident site is more of a description of the
19 video than it is a geographical location. A person – therefore an
20 incident site describes the recording or that necessary Miranda rights
21 being given in a particular place. As such, the video does of the
22 incident site, which can begin miles away from field sobriety tests and
23 miles away from field sobriety tests, so it's all described as the
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1 incident site video does include Miranda. We'd ask you to deny the
2 motion.
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5 THE COURT

Okay. Mr. Sussman?

6
7 COUNSEL FOR DEFENSE

Yes, ma'am. Your Honor, if I could go

8
9 back to the *Town of Mount Pleasant*

10
11 *v. Roberts*, they do say in that case the

12
13 primary rule of statutory construction is to ascertain and give effect to
14 the intent of the legislature. It goes on to quote *State v. Blackmon*,
15 Supreme Court decision from our State. When a statute is penal in
16 nature, which our DUI statute certainly is, it must be strictly construed
17 against the State and in favor of the Defendant. Um, so again I argue
18 that we need a strict interpretation of the statute. The language is
19 clear. Incident site refers to a single location. That's where the
20 officer responded. That's where the arrest was made. That's our
21 incident site and when Miranda was read they were no longer at the
22 incident site. Um, to talk further about *Town of Mount Pleasant*
23 *v. Roberts*, they go on to say that our appellate courts have strictly
24 construed our video statute, §56-05-2953 and these appellate courts
25 have found that a law enforcement agency's failure to comply with
26 the provisions is fatal to the prosecution of a DUI case and that is
27 echoing the decision in *Suchenski*, which we mentioned previously.
28 So the courts have already, you know, looked into the technicalities
29 of this video statute. It may seem like we're splitting hairs here, but
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1 the appellate courts have interpreted these very specific decisions
2 relating, or the specific issues, relating to the video statute and
3 although the remedy of dismissal is a serious remedy the courts
4 have upheld that in a number of decisions, so we're asking that
5 in your court today that you apply those same standards and
6 factual analysis and dismiss this case. Thank you.
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12 THE COURT Were field sobriety tests done?

13 THE STATE Pardon? Yes.

14 THE COURT They were done? And they were on
15 the video?

16 THE STATE Yes, ma'am.

17 COUNSEL FOR DEFENSE Yes, ma'am, at the incident ---

18 THE COURT And no Miranda was given before
19 those actually were done?

20 THE STATE No. Miranda's generally not given
21 before the field sobriety test. They
22 are given, um, after the Defendant is

23 found to be driving under the influence and placed under arrest for
24 that charge.

25 THE COURT Okay, but they were not given at any
26 time before, other than in the car, is that
27 right?

28 THE STATE Other than in the car.

1	COUNSEL FOR DEFENSE	And they're usually done immediately
2		
3		after the arrest. We see that in all our
4		
5		videos.
6		
7	THE COURT	Okay.
8		
9	THE STATE	Not all of them.
10		
11	COUNSEL FOR DEFENSE	Well, that's right.
12		
13	THE COURT	Okay, would you like to respond?
14		
15	THE STATE	Well, just to say that no decision has
16		
17		ever been made on this particular issue
18		
19		about what the definition of 'incident
20		
21		site' is and I'd refer to the intent of the legislature that they didn't
22		
23		intend for, you know, somebody who was actually given Miranda
24		
25		rights, on video, in compliance with the statute, to be dismissed for
26		
27		a DUI because it wasn't given immediately after he was placed
28		
29		under arrest where the field sobriety tests were given. I'd would
30		
31		impress upon the Court that the video statute has been complied
32		
33		with.
34		
35	COUNSEL FOR DEFENSE	The video statute, sorry to keep
36		
37		standing up, but I mean this will be my
38		
39		last point.
40		
41	THE STATE	They can do this all day long.
42		
43	COUNSEL FOR DEFENSE	This will be my last point. Um, we have
44		
45		had decisions where Miranda was read.
46		

You can hear it on the tape, but if it's not on video, if it's not actually recorded video recorded, then in those cases the ticket's been dismissed also. So my point in making that argument is that strict compliance is necessary. We have again we've had courts look at these small technicalities and, you know, even hearing the Miranda done at the proper time, but without it being without the Defendant and the arresting officer being in focus of the actual camera lens, even in that scenario we've had the appellate courts uphold the dismissal of a ticket.

THE STATE

And again, Your Honor, this court has never been decided, and it would be creating the law.

THE COURT

Okay. All right. Well, it goes to the interpretation of 'incident site' and I believe in regard to this statute that the

incident site would be the site where the, um, incident took place.

Where the field sobriety tests were done. So – and activation of the blue lights and so Miranda should be given at that point in time upon arrest, not once the person's been handcuffed, put in the car, and taken to the jail or wherever he was taken. Therefore, the Court is granting the motion of the Defense to, um, dismiss the ticket with prejudice.

THE STATE

Thank you, Your Honor. The State
intends to appeal.

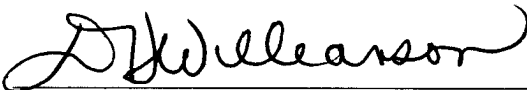
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THE COURT

Okay. Thank you.

COUNSEL FOR DEFENSE

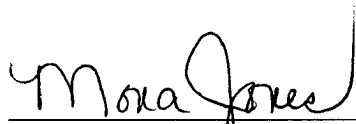
Thank you, Judge.


DONNA WILLIAMSON, MAGISTRATE

TRANSCRIBER'S CERTIFICATE

I, Mona Jones, hereby certify that the foregoing pages are a true, accurate, and complete transcript of proceedings in Case No. 20192410601040, *State of South Carolina versus Herbert E. Pray, III*, transcribed by me from a copy of the electronic audio recording to the best of my knowledge and ability.

Date: March 12, 2019



Mona Jones, Transcriber
North Augusta, South Carolina

CERTIFICATE OF TRANSMITTAL

** Rule 3 of the South Carolina Rules of Criminal Procedure requires the transmittal of a warrant to the clerk within fifteen(15) days of defendant's arrest.

Page of

The following papers pertaining to criminal proceedings were transmitted to the Clerk of Court on this date.

County: Aiken

** Date Transmitted: 3/25/2019

By: Code - 5937 Name/Title – Donna H. Williamson

	State vs. Defendant (Last name, First M.)	Date of Arrest	Warrant/Ticket Number (One per line)	Dismissed at Prelim.		Warrant or Ticket	Papers Being Transmitted on This Date (check only which apply)		
				Yes	No		Checklist	Bond	Other (describe)*
1	Pray, Herbert,	1/1/2019	20192410601040	☐	☐	Ticket	☐	☐	☒ Appeal, Transcript, Motion x 2, PC Form
2	, ,			☐	☐	Warrant	☐	☐	☐
3	, ,			☐	☐	Warrant	☐	☐	☐
4	, ,			☐	☐	Warrant	☐	☐	☐
5	, ,			☐	☐	Warrant	☐	☐	☐
6	, ,			☐	☐	Warrant	☐	☐	☐
7	, ,			☐	☐	Warrant	☐	☐	☐
8	, ,			☐	☐	Warrant	☐	☐	☐
9	, ,			☐	☐	Warrant	☐	☐	☐
10	, ,			☐	☐	Warrant	☐	☐	☐

For use by Clerks only

For use by Solicitors only

The above listed documents were received on:		OPTIONAL:	
Copies transmitted to the Solicitor on:		Date Received by Solicitor	
	Clerk of Court	Received by (Initials/Date)	/

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

State of South Carolina

Plaintiff(s)

vs.

Herbert E. Pray, III

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-CP - 02- 00690

Submitted By: Donna H. WilliamsonAddress: Post Office Box 99Wagener, SC

SC Bar #:

Telephone #:

803-564-5989

Fax #:

Other:

E-mail:

NOTE: The coversheet 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 cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

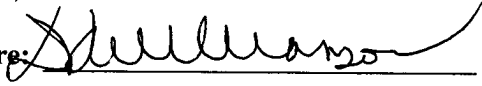
DOCKETING INFORMATION (Check all that apply)

**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
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstatement Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☒ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | | | |

Submitting Party Signature: Date: 3-25-19

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
STATE OF SOUTH CAROLINA
vs.
HERBERT E. PRAY, III,
DEFENDANT

IN THE COURT OF COMMON PLEAS

**NOTICE OF APPEAL AND APPEAL FROM
MAGISTRATE COURT**

C/A No.:
Ticket No.: 20192410601040
(Driving Under the Influence)

To The Honorable Donna Williamson, and Robert Sussman, Counsel for Defense:

Please take notice of the State's appeal from the Magistrate Court's ruling on the Defense Motion to Dismiss on March 12, 2019. This appeal is filed in the circuit court pursuant to State v. Belviso 360 SC 112 (Ct. App.).

The States avers that Magistrate Court's decision to dismiss the above-referenced DUI charge was based upon an error of law and provides the following as exceptions to the Magistrate Court's ruling:

1. On January 18, 2018, law enforcement responded to a residence in the early morning due to a suspected break-in in progress. Upon arriving at the residence, law enforcement encountered the Respondent who indicated he was trying to wish the occupant a happy new year. He indicated that he had consumed alcohol and that he had driven to the residence in the vehicle parked in the front yard.
2. As a result of that information, Trooper Singletary conducted field sobriety tests with the Respondent at that location. Following those tests, the Respondent was placed under arrest for DUI and placed in the front seat of the Singletary's patrol vehicle.

3. Following the arrest, Singletary contacted a towing company and searched Respondent's vehicle.
4. Singletary then begins transporting Respondent to the detention center.
5. It is at this time that Singletary advises Respondent of his Miranda rights – approximately 1 minute and 54 seconds after beginning to drive.
6. Singletary's dashcam video captures the Respondent's conduct, field sobriety tests, arrest, and ultimately the Trooper advising him of his Miranda rights.
7. Respondent moved before the Magistrate for dismissal of the above-referenced DUI charge for a violation of S.C. Code §56-5-2953 due to Miranda rights not being advised to the Respondent 'at the incident site'.
8. As a result of that motion, the Magistrate held that 'at the incident site' meant at the location where field sobriety tests were administered. As a result of that interpretation, the Magistrate dismissed the above-referenced charge for non-compliance with S.C. Code §56-5-2953.
9. The Magistrate dismissed the DUI charge pre-trial.
10. The singular issue in contest at the hearing was whether the advisement of Miranda complied with the requirements of S.C. Code §56-5-2953(A)(1).
11. The Magistrate Court's ruling is based upon an error of law in that the Court misinterpreted the term 'incident site' and therefore incorrectly applied the remedy of dismissal.
12. Based upon this argument, the record, and any motions, arguments, memorandums, letters, and decisions of the Magistrate Court in the case, the State believes that the

ruling of the Magistrate Court dismissing the DUI charge should be overturned and that the case should be remanded for trial.

March 21, 2019
Aiken, SC

s/Samuel Grimes
Samuel B. Grimes, Jr.
Assistant Solicitor

Office of the Solicitor
Second Judicial Circuit
109 Park Avenue
P.O. Drawer 3368
Aiken, SC 29802
(803) 642-1557
sgrimes@aikencountysc.gov

**In the Court
Of Common Pleas**

Of Common Pleas

Docket Number: 2019CP0200690

Transcript of Record

Transcript of Record

Transcript of Record

June 11, 2019
Aiken, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

A P P E A R A N C E S :

Samuel B. Grimes, Assistant Solicitor
Attorney for the Plaintiff

Robert I. Sussman, Esquire
Attorney for the Defendant

Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Courtney Clyburn Pope
P.O. Box 206, Jackson, South Carolina 29831

I N D E X

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E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Page</u>
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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: The next one is Herbert D. Pray.

2 All right. Yes?

3 MR. GRIMES: This one's a little different, this is
4 a State's appeal.

5 THE COURT: State's appeal. All right.

6 MR. GRIMES: I filed a memorandum in support of the
7 appeal. I don't know if Your Honor has a copy of it or
8 not. I have one for you.

9 THE COURT: Okay. If I could have your copy, it
10 will take a while to pull this up on this thing. This
11 computer is kind of slow today.

12 All right. Yes, sir?

13 MR. GRIMES: Your Honor, this is -- this case was
14 dismissed by the magistrate, pretrial. It's a DUI trial
15 and what happened at the magistrate court is there was a
16 stipulation as to what the facts were really as it pertains
17 to the defendant's motion to dismiss the case and all of it
18 was under 56-5-2953, and this is the first section that,
19 Your Honor, I've included a citation of that in the
20 memorandum of appeal. Actually, I just included a quote
21 from the relevant portions of that statute on the bottom of
22 the first page and the top of the second page. And
23 essentially what the -- what happened is the defendant --
24 this was not a traffic stop DUI.

25 The defendant, the police were called because the

1 defendant was at somebody's house.

2 MR. SUSSMAN: Objection, I don't think this is in
3 the record and it's not relevant to the issue that we're
4 here on today.

5 MR. GRIMES: The facts were stipulated, Your Honor.

6 MR. SUSSMAN: The facts we stipulated to in the
7 record and by time stamps.

8 THE COURT: Sir, I know Mr. Grimes. He's a public
9 -- a solicitor. I don't know who you are so --

10 MR. SUSSMAN: I'm Robert Sussman, Your Honor.

11 THE COURT: Just a moment. I'm asking you to tell
12 me who you are and you're interrupting me to tell me. Your
13 name again is what?

14 MR. SUSSMAN: Robert Sussman.

15 THE COURT: Sussman.

16 MR. SUSSMAN: Yes, sir.

17 THE COURT: So you must -- it must be your father
18 who talks about you when he's here. Good to meet you.

19 MR. SUSSMAN: Yes, sir, you too. I hope he said
20 nice things about me.

21 THE COURT: Well, I don't know, but he and I had a
22 lot of commonalities from law school days and all that.

23 All right. So you're objecting. But I need to
24 know what the case is about. I need some background
25 information. Of course, as Mr. Sussman says, I'm not here

1 to hear testimony and relitigate the case, whatever it is.
2 But I need to know why you all -- you all are familiar with
3 it. I have no clue as to what this is all about.

4 MR. GRIMES: We won't be asking tow make any
5 findings of fact, Your Honor. Of course, that's not in
6 your purview. I just -- the point is this interaction with
7 law enforcement occurred at a house. He was not on the
8 side of the road. In any event, the defendant was arrested
9 for driving under the influence and --

10 THE COURT: And you said something about on the
11 side of the road. What did you say?

12 MR. GRIMES: It was not at the side of the road.
13 This was actually in a driveway --

14 THE COURT: All right.

15 MR. GRIMES: At a regular, local house. The reason
16 I mention that is, the defendant was in his car when the
17 police first interacted with him.

18 THE COURT: All right.

19 MR. GRIMES: Mr. Sussman's right, there was a
20 stipulation of the facts. And as they are relevant, the
21 defendant was placed under arrest for driving under the
22 influence. I don't think there's any argument that he
23 wasn't at the magistrate court. That -- the obligation,
24 violation of the statute at magistrate court was that his
25 Miranda rights advisement was video recorded, wasn't

1 recorded at the place where he was placed in handcuffs, I
2 guess.

3 This defendant's arrested, they place him under
4 arrest for driving under the influence and I think they
5 searched his car and then they begin to transport him from
6 that area to the jail. So a minute and 54 seconds into
7 this vehicle ride, they gave him Miranda Rights advisement.
8 It's all video recorded. And the motion from the defense
9 was, essentially that that was a violation of 56-5-2953 and
10 provided the statute, a quotation from it. And it talks
11 about the video recording required in driving under the
12 influence charge cases and it's divided into different
13 sections, but we're talking about 2953 section A where it
14 talks about the conduct being recorded, and then
15 specifically as it pertains of the this case A1(a), which
16 is talking about, that's labeled video recording at
17 incident site.

18 And then it lists things that are, things that are
19 required to be recorded at the incident site. And then A2,
20 which is the video recording at the breath test site.

21 And the transcript from this motion in the
22 magistrate court is 10 pages and at the bottom of page 9,
23 the Court makes his ruling and the ruling essentially is
24 that the Court feels it's necessary to interpret it's a
25 phrase or -- interpret what incident site is. And the

1 Court makes a legal finding as to what incident site means.

2 That is --

3 THE COURT: I have the return. You said it's on
4 page 9?

5 MR. GRIMES: It's page 9 of the transcript in the
6 return. I'm not sure what page of the actual return it is
7 or...

8 THE COURT: We'll find the transcript.

9 (There was a pause in the proceedings.)

10 THE COURT: All right.

11 MR. GRIMES: The State's contention is -- well,
12 initially this was made pretrial, so it's appealable and
13 the State's contention is that that was an error of law,
14 that interpretation of the two words incident site was an
15 error of law. That's what we're prepared to argue today,
16 Your Honor.

17 THE COURT: All right. Mr. Sussman.

18 MR. SUSSMAN: Yes, Your Honor, well we are
19 operating on a video statute as the solicitor said. Again,
20 what we're doing here is we're just trying to come to some
21 kind of understanding of what the word incident means in
22 general and within the statute. So as far as what we have
23 here, the statute in front of us dealing with the video
24 recordings that must be presented in a DUI case from the
25 incident site and the breath test site.

1 So looking at subsection A1(a), what's important
2 here, the video recording at the incident site must. Now,
3 we have Roman Numeral I, not begin later than the
4 activation of the blue lights. Roman Numeral II, include
5 any field sobriety tests. Roman Numeral III, include the
6 arrest of a person for violation of DUI or DUAC or probable
7 cause determination that they violated another statute.
8 And this is the important part of here under subsection --
9 Roman Numeral III, the video recording at the incident site
10 must show the person being advised of his Miranda Rights.

11 So we agree with the fact that Miranda was read at
12 some point in this, this arrest and this stop. The issue
13 that we have and the reason why the video produced by the
14 State does not comply with this video statute is because
15 the Miranda Rights were not read at the incident scene. As
16 far as what the word incident means, we know that Town of
17 Mount Pleasant versus Robert, citing State v. Blackman,
18 when a statute is penal in nature, which our DUI statute
19 most certainly is, then that statute must be strictly
20 construed against the State and construed in favor of the
21 defendant.

22 Now, as far as the remedy of dismissal for a video
23 that does not comply with our statute, I would think that
24 that's an issue before the Court today. That is not what
25 has been appealed. What's been appealed is whether Miranda

1 read on the way to the jail is at the incident site.

2 THE COURT: So whether -- when you're arriving to
3 the jail, whether that's the incident site versus where he
4 is arrested in his driveway?

5 MR. SUSSMAN: That is exactly the issue we have.
6 What is the incident site.

7 THE COURT: So for time's sake, let's focus on
8 that. Not all the ancillary facts about this case. All
9 right.

10 MR. SUSSMAN: All right. Should I go on?

11 THE COURT: Yes, sir.

12 MR. SUSSMAN: All right. Thank you, Judge. Well,
13 we know the remedy is dismissal. Here we're talking about
14 what does incident site mean, well, let's start with our
15 statute. The incident site, that is where the field
16 sobriety tests are performed. That's Roman Numeral II.
17 The incident site, Roman Numeral III, it's where the arrest
18 of the person is made. And that is where the Miranda
19 Rights must be read.

20 Now, incident site by definition is a single
21 location, incident site, it's singular. And if we look at
22 the statute, we see this incident site is where these
23 things occur: The field sobriety tests, the arrest, and
24 where Miranda might be read.

25 Now, in our case where the officer, where the

1 trooper responded, where the field sobriety tests were
2 administered, and where the arrest was made, is the
3 location at 436 Cedar Road in Windsor, South Carolina.
4 Again, that's where the officer responded, the field
5 sobriety tests were performed and the arrest was made, but
6 in noncompliance with the statute, that is not where
7 Miranda was read.

8 Now --

9 THE COURT: Yeah, that's where I say I need to
10 understand what this case is about. So where were Miranda
11 read?

12 MR. SUSSMAN: Miranda was read in the --

13 THE COURT: Where was Miranda read, yes, sir.

14 MR. SUSSMAN: Yes, sir, the Miranda Rights were
15 advised the defendant in the trooper's car when they
16 departed 436 Cedar Road, the incident scene, and had been
17 traveling to the jail for one minute and 54 seconds.
18 That's the time the trooper advised Mr. Pray of his Miranda
19 Rights. That was done on camera, but again, that was not
20 at our incident site.

21 Now, if the statute is not enough to help us
22 understand what incident site means, then I would also ask
23 Your Honor to refer -- well, I'm not sure it's in the
24 record, but in the troopers's own arrest report, the Aiken
25 County Sheriff's Office incident report, you see incident

1 location is listed several times in that report. The
2 incident location is 436 Cedar Road. So again, we have the
3 statute directing us, we have the officer's own report
4 directing us to what that incident location is. And there
5 is no dispute that Miranda was not read at the incident
6 location, that incident site.

7 THE COURT: All right. Yes, sir.

8 Mr. Grimes.

9 MR. GRIMES: Your Honor, I would say a couple of
10 things. One, it's not necessary to interpret what incident
11 site means because it's not that important in the statute.
12 So the DUI statute is divided up, particularly in this
13 video section, and the reason it's divided up is because
14 the State is funding two sets of cameras. A set of cameras
15 for the dash cam of the cars and the set of cameras for the
16 data master site that are around the State. So they're
17 listing what they want on video with those cameras that
18 they're funding. That's what's going on with this statute.

19 THE COURT: Right.

20 MR. GRIMES: In this section, they're talking about
21 what needs to be on those videos. The purpose of having
22 the cameras, the purpose of having the videos, and the only
23 way they're differentiated in this statute is by where it
24 would occur. It's not anything important enough --

25 THE COURT: But you all agree that the video, the

1 recording started on the way to jail or on the way to
2 wherever they were going.

3 MR. GRIMES: Well, Your Honor, the recording
4 complies with the statute because it doesn't begin any
5 longer than the officers initiation of blue lights, which
6 could be anywhere. So -- and that's a point I was planning
7 to get to, but it's all video recorded and it --

8 THE COURT: Well, let me just tell you, it's eleven
9 o'clock. I have to leave no later than twelve o'clock and
10 so some of these cases we're not going to get to today and
11 unfortunately we have 13 things scheduled and every lawyer
12 that gets up wants to give me a full, long recitation of
13 everything inform the legal books, but go ahead.

14 MR. GRIMES: Yes, Your Honor --

15 THE COURT: We're going to take a break in a few
16 minutes as well.

17 MR. GRIMES: I'll be brief, but it's a legal
18 argument and it's probably going to take 10 minutes, but
19 I'm --

20 So the statute is divided up by a description --

21 THE COURT: I may have to come back here on
22 Thursday to finish these cases. Maybe we need to do this
23 one on Thursday, depending on how long it's going to take
24 to clarify what's an incident site, when the video camera
25 is supposed to start. I see what the judge says in the

1 transcript that I referred to, and he says, Okay. All
2 right, sir. Well this goes to interpretation of incident
3 site and I believe in regard to this statute that this
4 incident site would be the site where an incident took
5 place, where the field sobriety tests were done. So an
6 activation of the blue lights, the Miranda should be given
7 at that point in time upon arrest, not once the person's
8 been handcuffed, put in a car, and taken to the jail or
9 wherever he was taken. Therefore, I'm granting the motion
10 of defense to dismiss the case.

11 You're saying the judge got it wrong because the
12 incident site as the judge concluded is where the field
13 sobriety tests were given and where Miranda should have
14 been given, should be given at that point and not once the
15 person is handcuffed et cetera.

16 So that's my question, well when -- what is the
17 point in time that y'all are arguing about?

18 MR. GRIMES: They're argument is point in time.

19 THE COURT: Okay.

20 MR. GRIMES: First of all, there's no need to
21 interpret incident site. And even if you do interpret it
22 you can't get to the interpretation that the magistrate
23 did. I have to work on Thursday anyway, I don't know what
24 Mr. Sussman has to do. I don't want to keep everybody
25 waiting, but it is an important argument and --

1 THE COURT: Yeah, I know because all these -- you
2 know they keep changing the statute and one judge
3 interprets it another way. I see you all cited a case
4 from, is it Rock hill or some place up there?

5 MR. SUSSMAN: Yes, sir, it's the City of Rock Hill
6 versus Suchenski.

7 THE COURT: Yeah, I had one in Fairfield some years
8 ago that I -- that went up on appeal, so some of the main
9 things you think will never make it to an appellate court:

10 So I understand it's important because it is, but I
11 think that I'm not going to be able to get through all of
12 these cases if I listen to this for about 10 or 15 minutes
13 and I don't want to short circuit anyone. Let's just see
14 what is going on with all these people behind you all.

15 And I know you'll be here. We usually get
16 Mr. Sussman's dad here. And he's made an appearance here
17 today, so I'm sure you have a busy schedule for later in
18 the week.

19 MR. SUSSMAN: I'll make myself available if I need
20 to Your Honor.

21 THE COURT: All right. Let's just see, let's just
22 move to someone else and see how we can get through this
23 morning. I'm supposed to be in Columbia at the Supreme
24 Court Institute, which starts at 1:10.

25 (There was more talk about scheduling.)

1 (It was determined that this case would be heard
2 again on Thursday, June 13th, 2019.)

3
4 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
 2 County of Aiken) **Certificate of Reporter**

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I, Brenda J. Sigwald, Official Court Reporter for
 the Second Judicial Circuit of the State of South Carolina,
 do hereby certify that the foregoing is a true, accurate,
 and complete Transcript of Record of the proceedings had
 and evidence introduced in the trial of the captioned case,
 relative to appeal, in the Court of Common Pleas in and for
 the State of South Carolina on the 11th day of June 2019

I FURTHER CERTIFY that I am neither kin, counsel,
 nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and
 seal at Aiken County, this 22nd day of November 2019.

Brenda J. Sigwald

Brenda J. Sigwald,
 Court Reporter and Notary Public
 For the State of South Carolina
 My commission expires
 January 4, 2020

1	State of South Carolina	)	In the Court
		)	Of Common Pleas
2	County of Aiken	)	
3			
4	Docket Number: 2019CP0200690		
5			
6	State of South Carolina,	)	
	Plaintiff,	)	
7		)	
8	vs.	)	Transcript of Record
9		)	
10	Herbert E. Pray III,	)	
	Defendant.	)	
11			
12			
13	June 13, 2019		
14	Aiken, South Carolina		
15			
16	<u>B E F O R E:</u>		
17	The Honorable Clifton Newman, Judge.		
18			
19	<u>A P P E A R A N C E S :</u>		
20	Samuel B. Grimes, Assistant Solicitor		
	Attorney for the Plaintiff		
21	Robert I. Sussman, Esquire		
22	Attorney for the Defendant		
23			
24	Brenda J. Sigwald, Circuit Court Reporter		
25	To The Honorable Courtney Clyburn Pope		
	P.O. Box 206, Jackson, South Carolina 29831		

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: All right. Ready to resume?

2 MR. GRIMES: Yes, Your Honor.

3 THE COURT: All right. Let's see, let me find
4 these papers. Tell me which case this is again.

5 MR. GRIMES: It's South Carolina v. Herbert Pray.

6 THE COURT: Pray. Okay. That's what I have right
7 here. Okay. All right.

8 MR. GRIMES: Your Honor, I'm -- I don't think I got
9 quite as far on Tuesday, that's State v. Taylor and I
10 wanted to pass up, I'm going to get to it in just a moment,
11 but if you recall this case was essentially a stipulation
12 of facts and a motion by the defense at magistrate court
13 regarding 56-5-2953 and specifically the A 1(a) section.
14 It also includes, I included in the memorandum the A 2
15 section because it's important to see both sections when
16 you're reading the statute.

17 So I wanted to start out and say this is, this is a
18 ruling of law on the magistrate court, so you review this
19 de novo, not obligated to give anybody the magistrate's
20 court's decision on the rule of law and we would ask the
21 Court not to. I know I pointed out on Tuesday the section
22 of the transcript where the magistrate made a ruling on
23 this statute, and I think regardless of how the Court
24 decides this case, the magistrate court's ruling is just
25 not an appropriate interpretation of the statute for

1 probably a couple of reasons. But in any event, the
2 defense's possession was that 56-29-53 A 1(a), The video
3 recording at incident site must, and then it lists in small
4 numerals, not begin later than the activation of the
5 officer's blue lights, include field about sobriety tests,
6 and include the arrest of a person and also shows the
7 person being advised of his Miranda Rights.

8 And you'll recall in this case those things
9 occurred. They're all video recorded; however the Miranda
10 Rights were given to the defendant on video, he was a
11 minute and 54 seconds driving distance away from where he
12 was actually placed under arrest.

13 THE COURT: The video recording had started but
14 Miranda Rights was given later?

15 MR. GRIMES: The video recording started just like
16 it's required in the statute.

17 THE COURT: Right.

18 MR. GRIMES: And the defendant was placed under
19 arrest on video recording just like it's required. The
20 field sobriety tests were on the video. He puts him in the
21 patrol car and I believe, I'm not sure if this is
22 stipulated to or not, he searches the car. I think that's
23 in the record of the magistrate court. He searches the car
24 and then he gets in the patrol car and begins to drive to
25 the jail, at which point he advises the defendant of his

1 Miranda Rights on the video recording.

2 The defense's possession was that the A 1(a)
3 section where it says the video recording at the incident
4 site must, and then it has a colon, that that somehow
5 requires that all of these things must occur in a
6 particular location and that this particular location would
7 be called the incident site.

8 Our contention is that that's not at all what the
9 statute means and the incident site is merely a descriptor
10 that differentiates the two different types of video
11 recordings that are going to happen when somebody gets
12 arrested for driving under the influence and so that's the
13 reason why I included the A 2 subsection because it talks
14 about the video recording at the breath test site. And so
15 when this statute came into effect, there were two types of
16 cameras that were being funded by the State. One of them
17 is the data master camera at the Data Master site and one
18 of them was the dash cam recorder that was being put in
19 patrol cars. And there was kind of a system for how those
20 were going to be funded.

21 This, I think most of it came into effect before I
22 was even practicing law, but some of it kind of dragged on.
23 I know there was a case where, where they had some of the
24 cameras weren't funded or some of the agencies didn't
25 request the funding to get the cameras in the car and that

1 wasn't excusable. But in any instance, now, it pretty
2 much, whenever these come up, there's at least two videos
3 and now there's actually usually more videos than just two
4 because we have body cameras.

5 But the State's possession is the video recording
6 at the incident site must and it's just a description that
7 differentiates the two different video recordings that the
8 statute is anticipating. One is going to come from the car
9 and include what all happens out in the field, and the
10 other, the video recording at the breath test site, which
11 is going to be at any of the data master sites, I think we
12 have three of them in this county.

13 And the reason why it can't mean what the defense
14 is telling the Court that it does mean is that there is no
15 one incident site. And if driving under the influence
16 occurs over distance, it has to by nature, they have to be
17 operating the car. So it's at the very least going to be a
18 crime that occurred over some distance. It could be the
19 entire county, it could just be, you know, just a few
20 hundred yards. But it's going to occur over some distance.
21 So it's -- there is naturally going to be more than one
22 incident location or incident spot where the crime's
23 occurred.

24 THE COURT: You mean the driving.

25 MR. GRIMES: The driving, yes.

1 THE COURT: Okay.

2 MR. GRIMES: Two, the first numeral, the little (a)
3 indicates that video recording has to come on when the
4 officer's blue lights initiate. In a traditional traffic
5 stop, the defendant's driving, the officer's driving, they
6 initiate the blue lights and then at some point after that,
7 generally, the suspect will pull over. So this video
8 recording is covering a distance. It's not one location.
9 It's going to be a half mile, a quarter mile, two miles.
10 If they don't stop at all, it could be a long distance, you
11 know. But in any event, it's more than one location and
12 this is already in the statute where it's talking about
13 this video.

14 So the field sobriety tests are not going to occur
15 where the blue lights come on, and yet they're both in the
16 same subsection. The other reason why it can't mean what
17 the defense is proposing, and this is kind of why it's more
18 important than just this one DUI case, is because many of
19 these cases are wrecks, felony DUI's. They involve hit and
20 run. There would be more than one incident location; there
21 could be more than one wreck location; there could be more
22 than one place where law enforcement encounters the
23 defendant. You just can't have a test that says any one
24 spot is where the defense is proposing that these -- all
25 this stuff would occur.

1 THE COURT: All right. To make sure that I'm
2 totally focused here, tell me what it is that you believe
3 the defense the proposing, or --

4 MR. GRIMES: The defense is proposing that
5 essentially along with what magistrate court ruled is that
6 the Miranda Rights have to be given to the defendant at a
7 particular location and if they're not given in that
8 particular location, the case is dismissed.

9 THE COURT: And that particular location is what?

10 MR. GRIMES: Well, their proposal in this case is
11 that it was where the defendant was placed under arrest.
12 And in this instance, it's a little different because they
13 never saw this, they never saw this --

14 THE COURT: And that because --

15 MR. GRIMES: -- they never saw that person driving.

16 THE COURT: Yeah. Remember that since I saw you
17 all last, I did about ten civil cases and about thirty
18 guilty pleas, so I'm still coming back to whatever this
19 case is about.

20 MR. GRIMES: Yes, Your Honor.

21 THE COURT: So you have to not assume that I
22 remember anything.

23 MR. GRIMES: Yes, sir.

24 THE COURT: But go ahead.

25 MR. GRIMES: They never saw this defendant driving.

1 THE COURT: Okay.

2 MR. GRIMES: They put this case together after they
3 encountered him, but this statute has to mean the same
4 thing no matter who's arrested for DUI. This has to apply
5 equally to everyone. And so the definition that they're
6 proposing would mean that the Miranda Rights can only be
7 given to the defendant in one location regardless of
8 whether they're video recorded, that they can only ever be
9 given at one location, and if they're not given in that
10 singular location then the case has to be dismissed.

11 THE COURT: And the magistrate agreed with the
12 defense.

13 MR. GRIMES: The magistrate, the magistrate gave a
14 ruling, it's not entirely clear because the magistrate
15 indicated that it would be where the incident took place
16 and then she said where the field sobriety tests were done
17 and then at the point in time after the arrest.

18 THE COURT: These are the Miranda warnings.

19 MR. GRIMES: The Miranda warnings, yes, Your Honor.
20 So none of that really logically relates to the statute
21 itself. And the reason I say that is because the defense
22 argument is that the Miranda Rights are relative to a
23 particular location. This incident site that they're
24 proposing is so important. All of those other things
25 relate to that location except they can't possibly all

1 happen at the same -- well, I guess they could --

2 THE COURT: Yeah, and you're --

3 MR. GRIMES: They could happen at the same
4 location, but more often than not, they're not going to
5 happen at the same location.

6 THE COURT: And your argument is that the video
7 must cover these locations, but not necessarily Miranda
8 Rights?

9 MR. GRIMES: Not necessarily in one -- there is an
10 important aspect about a particular place and I have a
11 reason for that, but I just want to -- our argument is that
12 the word incident site, the term incident site in this
13 statute is merely a way to differentiate the two videos.
14 They have to differentiate them some way. You're going to
15 have this video that's made out in the field and the one
16 that's made back at the police station. You could say --
17 you could say that, or you could say video number one or
18 video number two. You could say any different way to
19 differentiate the two, they chose this way. There's not
20 anything else important about this term incident site.

21 And the reason we know that is because, one, they
22 didn't define it. Two, it can't and generally won't be one
23 particular location. And even in the statute, in most
24 instances, it's going to cover a distance. In some
25 instances, it's going to cover two or three different

1 places, possibly.

2 They could have called it video one and then video
3 two, but then we'd be here with the defendant saying, Well,
4 one video started before the next so it wasn't the first
5 video. It has to be the first video. But the important
6 part is that all three things were video recorded out in
7 the field just like they're required and the statute was
8 complied with.

9 The reason I gave you State v. Taylor is for --
10 there's enough DUI cases that we could read on DUI
11 appellate law from now on probably. But this one talks
12 about the important things we need to look at for this, for
13 this case. On page, let's see. On the top of the fourth
14 page where it talks about the standard of review, it tells
15 you that this is a de novo review, so you're not obligated
16 at all to give any weight at all to the magistrate court
17 opinion --

18 THE COURT: All right. So in order to -- since we
19 have a little time here and -- let's start with what this
20 case is all about. I see the judge was my good friend
21 Alexander S. McCarley, former state senator and judge from
22 Ocone.

23 The magistrate, defendant dismissed, the magistrate
24 -- the State appealed -- McCarley affirmed and Judge
25 Konduros reversed. Okay. So this is a case --

1 MR. GRIMES: This is a case about the first section
2 of that statute, the big letter A where it talks about the
3 conduct, the defendant's conduct being recorded.

4 THE COURT: All right.

5 MR. GRIMES: And what the -- what Court of Appeals
6 said was it's not that exacting requirement that the
7 defense was alleging that every single action of the
8 defendant be on video, just that the important parts of the
9 interaction be on video and that when the defendant stepped
10 off of the camera for just a short period of time, that
11 didn't require dismissal of the case.

12 THE COURT: So --

13 MR. GRIMES: It's instructive for us because it
14 tells us first of all that the cardinal rule of statutory
15 construction is to ascertain and give the effect of the
16 intent of the legislature. The good news is, for us, we
17 don't have to ascertain the intent of the legislature
18 because on, I believe, page 7 of this opinion, it's in the
19 paragraph at the bottom of the page, it indicates --

20 THE COURT: You're on page 7 now?

21 MR. GRIMES: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. GRIMES: It says, this is page 7 at the bottom
24 on the handout that I gave you. It tells us what the
25 purpose of the statute is so we don't have to decide what

1 the intent of the legislature was, it's already a matter of
2 law. The purpose of the video requirement is to create
3 direct evidence of a DUI arrest and just under where it
4 says, 306, kind of in the middle of that paragraph, it
5 talks about, in addition, you know, like requiring the
6 video to encompass every action of the defendant requiring
7 the video recording of the person's arrest and of the
8 officer issuing Miranda warnings serves to protect the
9 important rights of the defendant.

10 So we have two things: One, the purpose of the
11 statute is to create direct evidence of a DUI arrest, and
12 two, that it serves to protect important rights of the
13 defendant. And that's really the only purpose of this
14 statute. So there isn't any allegation from the defendant
15 that the, that either of those two things were violated.
16 One, we have all the video evidence of the arrest and the
17 Miranda Rights. So all of that was collected and
18 preserved, evidence of the DUI.

19 THE COURT: And so what's missing in this case?
20 Our case today?

21 MR. GRIMES: Your Honor, for those two purposes,
22 nothing is missing. The defendant's rights were protected,
23 it's video recorded that they were protected, he was given
24 his Miranda Rights and they're isn't any violation of that
25 and there is direct evidence of the DUI which was collected

1 and video recorded. So the purpose of the statute --

2 THE COURT: And how did the magistrate disagree?

3 MR. GRIMES: She didn't disagree with that.

4 THE COURT: What did she disagree with?

5 MR. GRIMES: Well, her ruling was it appears to be
6 solely based on the fact that the Miranda Rights and the
7 arrest -- or the Miranda Rights and the field sobriety
8 tests, or the Miranda Rights and the location of the
9 incident didn't occur at the same place. It's kind of an
10 odd --

11 THE COURT: So her position is that when a trooper
12 pulls somebody over and they're suspecting that they're
13 guilty of DUI, they must give the Miranda Rights at the
14 time of the stop?

15 MR. GRIMES: Her ruling would indicate that the
16 Miranda Rights must occur at that location, I guess. It's
17 a little strange, the way --

18 THE COURT: At the time or before they get in the
19 car and go any place.

20 MR. GRIMES: Before they begin to move towards
21 somewhere else.

22 THE COURT: Okay.

23 MR. GRIMES: The reason I say this is so important
24 is because -- and I've prosecuted cases WHERE somebody was
25 hit at one location, the suspect left that location and one

1 instant went home, but they could go somewhere else, you
2 know, or they end up at the hospital by ambulance and all
3 of the sudden you have the police interacting with the
4 location of the wreck, the location of the defendant, who
5 may or may not be arrested there; any field sobriety tests
6 don't occur. But you can have all of these different
7 places and the defense's position is that incident site
8 means there's some magical, very special location that
9 these Miranda Rights have to be given and can't be given
10 anywhere else. And our position is just that incident site
11 doesn't particularly need a definition because if you read
12 the statute as a whole, the only thing the word incident
13 site is doing is describing which of the two videos you're
14 talking about.

15 Everybody in this case knows which of the two
16 videos we're talking about. They knew at the magistrate
17 court which of the two videos we're talking about. We know
18 today which of the videos we're talking about because that
19 descriptor exists. So it's not surplus language. It has a
20 purpose. It's just describing which of the two videos
21 we're talking about.

22 THE COURT: And which -- just so everybody knows,
23 which of the two are we talking about? In this case.

24 MR. GRIMES: The video where the defendant was
25 actually given the Miranda Rights.

1 THE COURT: Which is video number one or video
2 number two, or three, or...

3 MR. GRIMES: Well, chronologically it would be the
4 first video that occurred.

5 THE COURT: Okay.

6 MR. GRIMES: I don't think there's any -- I'm not
7 sure that there's any actual record on appeal as to data
8 master site video. I don't know if it was discussed in
9 magistrate court. I don't recall from the record, but it
10 certainly wasn't the basis of the appeal or the motion to
11 dismiss.

12 THE COURT: All right.

13 MR. GRIMES: The other thing I wanted to mention --
14 let me turn to it. The defense is talking about incident
15 site. The -- it's an important location that these Miranda
16 Rights have to be given, but as I stated the purpose of the
17 statute is to collect evidence of the DUI and to protect
18 the rights of the defendant. There is no requirement at
19 all that any of the incident site or places that the crime
20 happened are video recorded in any respect. There is no
21 obligation that the defendant, or the officer video record
22 where the wreck happened or where the driving happened, or
23 the ground where the field sobriety tests occurred or
24 anything like that.

25 So this term incident site can't be important other

1 than to describe the video because there isn't any
2 requirement at all that any incident sites be recorded on
3 video. Just the defendant, his interaction with the
4 officer.

5 So to say that Miranda Rights given at a particular
6 location controls whether or not you can prosecute somebody
7 doesn't logically relate back to the purpose of the statute
8 because there isn't any important, in the statute about the
9 place where the crime is committed, or the place where the
10 defendant's arrested.

11 THE COURT: All right. Well, a lot of times when
12 they come up with these new statutes, and of course,
13 someone convinces a legislator that we need this new law,
14 new statute, and then they prepare a bill and submit it and
15 then it goes through the various channels and passes,
16 becomes law, the governor doesn't veto it or they don't
17 override the veto if he does, she does, he or she does.
18 Well, in many instances they defined words that may be
19 ambiguously interpreted, such as they may define, well, the
20 meaning of various terms. They might define the meaning of
21 what's a child and might define various things and that's
22 generally at the beginning of the section of the statute
23 where they define certain terms. So -- in this case,
24 incident site is thrown in there or put in there, but not
25 defined?

1 MR. GRIMES: That's my understanding, Your Honor.
2 I think it that it wasn't important to define because it's
3 not an important enough piece of this language. It's not
4 important to define it. If you were going to define it --
5 in fact, if you rule with the defense and say that Miranda
6 Rights have to be given at a particular location, you're
7 obligated to define it. And how would that even happen?
8 As I stated before, all of the different places that could
9 be involved in a DUI arrest or in a DUI investigation, it
10 could be one location, it could be many locations.

11 THE COURT: So your position, sort of, if you look
12 at the statute, they could basically have deleted the word
13 at the incident site in both instances and the statute
14 would read, A person who violates section such and such
15 must have his conduct and the breath test video recorded,
16 not to begin later than the activation, includes field
17 sobriety, includes arrest of a person.

18 MR. GRIMES: Well, I don't think I could
19 technically have that position because when we interpret
20 the statutes, none of the language can be surplusage, so it
21 all has to have purpose, but it doesn't have to have an end
22 all be all meaning either. It can just be a reason for
23 that language to be in the statute. What I'm telling the
24 Court is that there is a reason for it to be there. It's
25 just not the reason that the defense is arguing that it's

1 there.

2 THE COURT: Well, what is the reason for it being
3 in there.

4 MR. GRIMES: To differentiate between the two types
5 of recordings. You're going to have one that's out in the
6 field and you're going to have one that's back at the
7 police station where the data master is and this is what
8 needs to be on the video recordings. This is why we have
9 this statute.

10 THE COURT: Okay. I see --

11 MR. GRIMES: It's just a descriptor, they could
12 have used a different word, so I'm not saying it's
13 surplusage sometimes where it needs to be there, they just
14 chose these --

15 THE COURT: Yeah, because there are two different
16 sites.

17 MR. GRIMES: Right.

18 THE COURT: Two different locations.

19 MR. GRIMES: There's just not -- we don't have to
20 read into it that it's, you know, so important a particular
21 location and so -- I know that -- it seems like a strange
22 argument. I think you, the way you just responded to me
23 makes me think that you understand my argument on that
24 part, but if the Court were ready the rule for the defense,
25 it would be ruling that a particular location is important

1 and then it would be required to define incident location.
2 And I'm saying there's just not a practical way to define
3 incident site --

4 THE COURT: Well, what's the meaning of -- the B
5 part of the section says, Nothing in this section may be
6 construed as prohibiting the introduction of other relevant
7 evidence.

8 MR. SUSSMAN: Subsection B in this statute, if I
9 may?

10 THE COURT: Yes, sir.

11 MR. SUSSMAN: Robert Sussman on behalf of Herbert
12 Pray --

13 THE COURT: Yeah, I'm going to give you a full
14 chance, I just want to work on him for a moment. We're
15 going to go through all of this with you as well.

16 MR. SUSSMAN: Yes, sir.

17 THE COURT: All right.

18 MR. GRIMES: Subsection B section is for what
19 happens out of the ordinary. In other words, if you have
20 some, something crazy happen and you can't video record
21 initially, like there's no way to get to the defendant,
22 maybe he's in an ambulance of something.

23 THE COURT: All right.

24 MR. GRIMES: But the reason why this doesn't really
25 play into the B section is because the caveat to the B

1 section is that as soon as practicable, you have to comply
2 with the A section. And so there isn't anything that would
3 keep them from complying with A section in this case and
4 really in any other case, so say there was a wreck and he
5 couldn't get up to him immediately to have to blue lights
6 come on, and if video recording starts at this time, as
7 soon, as soon as he could get him on video recording, then
8 he can continue to comply with the statute. It may be at
9 the hospital. It may be at his house if he ran home. It
10 could be, you know, if they capture him in the woods after
11 he ran off from the wreck. It could be any other place.

12 When it becomes practicable to get him back in
13 front of a camera then they're obligated to continue with
14 the A section. And so I don't really think that plays a
15 role in the determination of defining incident site. But
16 the --

17 THE COURT: Well, this puts me in a mind of a case
18 that I had, oh goodness, well, around maybe 1980, how long
19 ago would that be -- 1983 I would say, something like that,
20 that's a long time ago -- where the guy was involved in a
21 one car wreck, ran off the road into a ditch and he got out
22 of the car and his home was about a half mile away and he
23 made it home. The police were called. He wasn't in the
24 ditch with the car. When the police got there he was on
25 his front porch and he was wasted. I mean he was just

1 totally out of it. And so we're prosecuting the case to
2 prove DUI and the, the defendant was represented by Lawyer
3 Wendell Brown. His son worked here for a long time. I
4 think he's still in Aiken, Brown -- what's his first name
5 again?

6 MR. GRIMES: I'm trying to recall, his son was a
7 prosecutor for a while.

8 THE COURT: Yeah, a prosecutor, a nice guy.

9 MR. SUSSMAN: Lawrence.

10 THE COURT: Lawrence, okay. So his daddy was the
11 defense attorney. And I just knew I had him and the jury
12 came back -- well, his defense was, when he got on the
13 witness stand that when he pulled into that ditch, he was
14 so cold and freezing and when he got home, he turned up a
15 half a pint of liquor right there on the, his front porch,
16 and convinced the jury that all the drinking had happened
17 after he got home on his front porch. And the jury let --
18 he was found not guilty.

19 So in that instance -- and that was before the
20 video statute that we're talking about. In that instance,
21 what was the incident location?

22 MR. GRIMES: As I stated, I don't think it's a
23 singular place or even important to define it, but if
24 you're going to define it, it's an obvious question. I
25 don't think it can easily be answered.

1 THE COURT: Well, they couldn't record it, the car
2 in the ditch, there wasn't nothing to record, just a car in
3 the ditch. And I guess, when they got to his house and
4 he's sprawled out on the front porch with a pint of liquor
5 right next to him...

6 MR. GRIMES: Well, they certainly found the suspect
7 there, but they didn't see any -- no crime occurred on the
8 front porch.

9 THE COURT: Yeah.

10 MR. GRIMES: I don't think if you get up to do the
11 sobriety tests, he was -- so that part wouldn't be
12 relevant.

13 But I got your point, I just -- whatever pops in my
14 mind these days, I like to say it, so.

15 MR. SUSSMAN: Well, if I could, if I could respond
16 to that, Judge, in our particular instance, subsection B
17 would apply. Because not only does it require the video
18 recording as soon as practicable, but it also excuses if
19 there's not a video if a number of things may occur, one of
20 those things within the subsection B, is investigation of
21 the traffic accident. So they have put this subsection B
22 in here to cover situations where a recording is not able
23 to be done. So there is, there are exceptions here,
24 enumerated, that prevent an absurd result as far as what
25 they may be putting forward.

1 MR. GRIMES: Well, our position would be if you
2 read the statute that way, as soon as practicable, the
3 officer is obligated to comply with subsection A, so once
4 they've arrested this guy in the defense's position, they
5 would be obligated to drive him back to the place where the
6 wreck occurred and his car's in the ditch and that's where
7 they would continue with the video recording, giving him
8 his Miranda rights and --

9 THE COURT: Well, let me get you to wrap up your
10 part. Mr. Sussman's very anxious. I want to move onto him
11 as soon as you can wrap up your part.

12 MR. GRIMES: Well, one of the, one other point I'll
13 -- and it's kind of, when you have, try to make a logical
14 argument, you try to see, I guess, what the answers would
15 be if you take it to it's end result. And the result would
16 be if their officer had driven a minute and 54 seconds from
17 back the direction he came from and gave this guy his
18 Miranda Rights on the video recording, they wouldn't have
19 an argument. And that makes this nonsense.

20 If he'd have picked him up at the jail, there's no
21 time requirement in the statute at all. If he'd gone to
22 the jail the next morning at 7 a.m. and said, you know
23 what, I should have gave him Miranda rights in that
24 driveway instead of a minute and 54 seconds from that
25 driveway. He could have picked him up at the jail before

1 his bond hearing, drove him back to that driveway, gave him
2 his Miranda Rights at that location, took him back to the
3 jail and let him bond out, and they wouldn't have an
4 argument. And that's --

5 MR. SUSSMAN: I could have still made the motion,
6 Your Honor.

7 MR. GRIMES: Maybe they would have made the motion,
8 but it wouldn't make much sense. If, if the recording,
9 one, most of the time, as I stated, all of these things are
10 not going to happen at the same place. So the idea, even
11 in this statute, that incident site is never going to be so
12 important that it has to be one place, it wouldn't be on a
13 list like this. It would be on a list of things that have
14 to occur at one place.

15 And then two, we know the purpose of the statute,
16 we have to read the statute with the purpose that's already
17 been determined by law as to what it is. And so to, to
18 construe the statute in a different way than what the court
19 of appeals has already told us that the statute means, or
20 the purpose of the statute doesn't go along with statutory
21 interpretation, we're obligated to read the statute in the
22 manner that coincides with what the statute means. And
23 what it means has already been told to us.

24 So if we're trying to figure out what the statute
25 means, we already know what -- if we're trying to figure

1 out what the word means, we already know what the statute
2 means or the purpose of it, so we have to read the statute
3 in a way that achieves that purpose. And there just isn't
4 anything, the way the defense is proposing, that achieves
5 the purpose of the statute.

6 THE COURT: All right. Okay.

7 (There was discussion on other cases from the
8 docket.)

9 THE COURT: Mr. Sussman, yes, sir.

10 MR. SUSSMAN: Thank you, Judge. I would like to
11 point out that if the legislature meant for us to only need
12 two videos, regardless of where they occurred, that's what
13 they would have written. The plain language in the statute
14 is that the video recording at the incident site must,
15 incident site, sure, it's a descriptor, whatever that
16 means. A descriptor, but what it's doing is it's
17 describing where this stuff has to happen.

18 Now this contention that Roman Numeral I, under
19 subsection A one, that the video at the incident site must
20 not begin later than the activation of the blue lights.
21 That does not extend the meaning of incident site. That
22 does not stretch a singular noun incident site into some
23 nebulous term that can cover any swatch of territory. All
24 that the Roman Numeral 1 means is that the video recording
25 that might be done at the incident site, that video

1 recording must not begin later than the activation of the
2 blue lights. That's easy these days because now when they
3 turn on the blue lights, their dash cam comes on.

4 So as far as the legislature really meant this or
5 they really meant that, there should just be two videos and
6 they can be with whatever camera's and occur wherever,
7 well, if that was the case, then they would have written in
8 the statute, there must be two videos, one must show Roman
9 Numeral I, II, and III and the other video must show what's
10 under subsection B or, I'm sorry, under section A 1(b)
11 which is the breath test site. Instead they used a word
12 with a clear meaning, incident site, which by definition,
13 as we all understand it, is a singular place.

14 The incident site, what is the incident site?
15 Where -- well, it's where the officer stops the individual.
16 Let's look at the statute itself, Roman Numeral II it's
17 where any field sobriety tests are administered. They're
18 not going to go back to the area that the person was
19 allegedly driving under the influence on and have them
20 walk through their field sobriety tests on some stretch of
21 road. They're going to have them do the field sobriety
22 tests at this incident site, where the person is pulled
23 over, right where they do the field sobriety tests and
24 where, if that officer determines there's probable cause to
25 arrest for DUI, where they will make that arrest and with

1 all those things happening in this statute at the incident
2 site, that leaves us to the thing at issue today, the other
3 thing that must happen at that incident site. The Miranda
4 Rights must be read. Now, if you --

5 THE COURT: How does that all integrate into the
6 facts of this case? Because once again, I see a person
7 sitting there, but I still don't have a clear picture of
8 what happened.

9 MR. SUSSMAN: Yes, sir. The facts of this case,
10 the year is 2019. Mr. Pray, Herbert, right here, he is
11 encountered by law enforcement at a particular address,
12 that address 436 Cedar Road, that's in Windsor, South
13 Carolina, here in Aiken County -- I'm sorry 436 Cedar Road
14 in Windsor, South Carolina. That's where officers first
15 encounter him. That is our incident scene. As I pointed
16 out on Tuesday, if we look at the officers own Aiken County
17 Sheriff's Office report, the incident location within that
18 report is also 436 Cedar Road, not more than one place. In
19 the report it's listed as the incident location 436 Cedar
20 Road. That's where the officers encountered Mr. Pray.
21 That's where the officer, the trooper, I'm sorry,
22 administered field sobriety tests. That's where the
23 trooper arrested Mr. Pray. But unfortunately for the State
24 and for the prosecution, that is not where field, it's not
25 where Miranda Rights were read.

1 Now, the reason -- well, let me go back to some
2 rules of construction, State v. Blackman, which is stated
3 in one of our DUI video tape cases, Town of Mount Pleasant
4 v. Roberts, but State v. Blackman, when a statute is penal
5 in nature, which we know our DUI statute is, it must be
6 strictly construed against the State and construed in favor
7 of the defendant.

8 So when we look at this statute, it's clear to us
9 to see at the incident site these things must happen, not
10 on one video this must happen, on another video wherever it
11 may be this must happen. That is not a strict construction
12 in favor of the defendant.

13 THE COURT: So at this site, what must happen?

14 MR. SUSSMAN: What was happening at --

15 THE COURT: What must happen?

16 MR. SUSSMAN: What must happen at 436 Cedar Road?

17 THE COURT: Yes.

18 MR. SUSSMAN: Field sobriety tests, if any, must be
19 administered. In this case they were. The person must be
20 placed under arrest on video tape at 436 Cedar Road, which
21 he was. He was placed under arrest 22 minutes and 50
22 seconds into the officer's video. And then as Mr. Grimes
23 said, the officer then proceeds to do an inventory on
24 Mr. Pray's car, standard procedure; however, in most DUI
25 cases in the video they read Miranda as they're arresting

1 the person. It's a natural time to do it. It's what
2 everybody sees in the movies, it's what everybody sees in
3 our DUI videos. Why do they do that? Well, the troopers,
4 they do have to comply with the statute, it's important
5 they do because if they don't, it's an extreme remedy,
6 which is dismissal. So the troopers, it's just logical,
7 you read the Miranda as you're placing somebody under
8 arrest.

9 Now, there's not an explicit requirement in here
10 that Miranda be read contemporaneously or immediately after
11 the person's placed under arrest. All that's required in
12 the statute is that Miranda is read on video at the
13 incident scene. So we know that we have to strictly
14 construe --

15 THE COURT: Where is that? The Miranda being given
16 at the incident scene. Where is that indicated in the
17 statute?

18 MR. SUSSMAN: Under subsection 1A. The video
19 recording at the incident site must, Roman Numeral III,
20 show the person being advised of his Miranda Rights.

21 THE COURT: Okay. III. Include the arrest of the
22 person for violation of probable cause determination that
23 the person violated and show the person being advised of
24 his Miranda Rights. Okay. I got you.

25 MR. SUSSMAN: Yes, Your Honor.

1 Now, in this case, that's not where Miranda was
2 read. Now, the issue of what the remedy is for
3 noncompliance with the video statute, I don't think that's
4 been raised on appeal, but that is settled case law. The
5 Supreme Court and the City of Rock Hill versus Suchenski, a
6 2007 case dismissal is the appropriate remedy when the
7 video is not in compliance with the statute we're looking
8 at. And that's subsection big A. If those things are not
9 complied with, then the remedy is dismissal if one of the
10 subsection B exceptions do not apply or mitigate the
11 noncompliance with the video statute.

12 Now, as far as the contention that we can't do all
13 this stuff at one site because we could possibly have a hit
14 and run; we could possibly have a wreck; we could possibly
15 have an injured driver, well all of that stuff is
16 contemplated in subsection B. If any of the things apply
17 in subsection B then that obviates or gets rid of the
18 trooper or the responding officer's duty to provide a video
19 in compliance with the first part of the statute.

20 So this argument that, Hey, if we have to read
21 everything at the incident site and do everything on video,
22 well, what happens if there's a wreck? What happens if
23 this and that happens? Well, we just see at subsection B
24 that we're not even making this argument. We've had cases
25 where someone wrecks. Obviously the main concern is

1 getting the driver to the hospital. Making sure that they
2 don't die on the side of the road. Well, we're not going
3 to sit there and read the Miranda Rights in a ditch as
4 they're gasping their last breath. All of that's
5 contemplated in subsection B.

6 Now, as far as State v. Taylor case --

7 THE COURT: Well, just, before you get to State v.
8 Taylor, once again -- so therefore we've got to -- made our
9 way to Cedar Road in Windsor.

10 MR. SUSSMAN: Yes, sir.

11 THE COURT: And I think we left the facts and got
12 into the law at that point.

13 MR. SUSSMAN: Yes, sir, I'll go back to facts.

14 THE COURT: All right.

15 MR. SUSSMAN: I'm comfortable with the facts.

16 THE COURT: All right. Yeah, we made it to Cedar
17 Road in Windsor.

18 MR. SUSSMAN: Yes, sir. Officers -- the trooper
19 encounters Mr. Pray at 436 Cedar Road in Windsor. Six --
20 16 minutes into the video, the officer starts performing
21 the field sobriety tests at 436 Cedar Road, your incident
22 scene.

23 THE COURT: All right.

24 MR. SUSSMAN: 16 minutes in. 22 minutes and 50
25 seconds into the video, at the incident scene, 436 Cedar

1 Road, Mr. Pray is placed under arrested. The officer, the
2 trooper then proceeds to inventory the car. We get into 39
3 minutes into the video. So 6 minutes and 10 seconds after
4 Mr. Pray's placed under arrest, the trooper's got him in
5 the front seat. They drive off from the incident scene,
6 436 Cedar Road. That's at 39 minutes into the video. 40
7 minutes and 54 seconds into the video, so a minute and 54
8 minutes after they departed the incident scene at 436 Cedar
9 Road, then Miranda is read to Mr. Pray.

10 THE COURT: Not at Cedar Road, but some place else.

11 MR. SUSSMAN: Yes, sir. A car ride -- a car ride
12 that is one minute and 54 seconds away from Cedar Road.

13 THE COURT: Where were they going with him?

14 MR. SUSSMAN: To the jail presumably.

15 THE COURT: And the jail is where?

16 MR. SUSSMAN: That is --

17 THE COURT: That's the Wire Road jail?

18 MR. SUSSMAN: Yes, sir, 435 Wire Road.

19 THE COURT: And Windsor is -- I'm still learning
20 Aiken County. Windsor is in which direction? Toward Wire
21 Road or toward Sally or toward North Augusta or --

22 MR. PRAY: It's towards Williston. 78.

23 THE COURT: Oh, Williston, yeah, heading toward
24 Barnwell.

25 MR. PRAY: Yes, sir.

1 THE COURT: Because we had some people in court
2 yesterday, toward Barnwell, across the county line. Okay.
3 I've got you. Thank you.

4 MR. SUSSMAN: Thank you, Mr. Pray.

5 THE COURT: That's way you out in the country from
6 here.

7 MR. SUSSMAN: Yes, sir. Our incident scene is in
8 the country.

9 Now, if, if, I think we've gone through the facts.
10 A minute and 54 minutes they read Miranda. So if you look
11 at State v. Taylor, the case that they have put forward,
12 true on page 7, they go over the reason for the video
13 statute, you create direct evidence for DUI arrests, we
14 also, what I find very important, it's part of the holding
15 that Mr. Grimes did mention. In addition, you know, like
16 requiring the video to encompass every action of the
17 defendant, requiring the video of the person's arrest and
18 the officer issuing Miranda warnings serve to protect
19 important rights of the defendant.

20 I'd like to focus on this part of the decision
21 briefly, Your Honor, page 7, that bottom paragraph.

22 THE COURT: All right.

23 MR. SUSSMAN: Requiring video recording of the
24 arrest and especially of the Miranda warnings, certainly
25 does serve to protect very important rights of the

1 defendant. Miranda warnings are very important because
2 someone has to be advised that they do not incriminate
3 themselves and that anything they do say can and will be
4 used against them. Well, in our standard DUI case most of
5 the time that car ride after the arrest and on the way to
6 the jail, that presents a perfect opportunity for the
7 defendant to incriminate themselves. They're in the car
8 with the trooper; they've just been arrested; they have a
9 million questions. Depending on the person's, you know,
10 their condition, them continuing talking to the trooper,
11 even if they make no admissions, they're still creating
12 evidence for a possible DUI.

13 So when he's intoxicated, they show evidence by
14 interacting with people. So we need to protect the, the
15 very important rights of these defendants, read the Miranda
16 after you arrest them and not once you've got them in the
17 car and driven some distance of, you know, time with them,
18 because if we wait to read the Miranda, then that gives
19 them a perfect opportunity, Mr. Pray, not necessarily in
20 his case, but in all the cases that this could apply to,
21 that time in the car, you know, the officer, a lot of times
22 they engage in conversation with the defendant. The
23 defendant may say something out of nervousness that can be
24 used against them later. The defendant may be slurring
25 their words and be creating constant evidence against them.

1 So if --

2 THE COURT: Well, they can't, if they do all of
3 that before being given Miranda, can the -- can it come
4 into evidence?

5 MR. SUSSMAN: Yes, sir, you know, as far as
6 Miranda, that begins at the custodial interrogation --
7 well, we're not stretching this to, you know, someone in
8 custody on the side of the road, where there's a traffic
9 stop and they're investigating a DUI. I'm not here to
10 argue that today. What I'm here to argue is that it's
11 certainly in custody once they've been arrested. That
12 arrest must happen at the incident site, so Miranda must be
13 given at the incident site so that they are not in custody
14 of the trooper, handcuffed, in the trooper's car, being
15 interrogated or at least being conversed with by the
16 trooper because they need to have the Miranda warnings at
17 the time they're arrested or at the very least at the
18 incident site; not right before the trooper pulls into the
19 jail and deposits them, when they've collected all their
20 evidence, they've videoed everything, they've had the
21 arrested drive for however long. They arrest him out in
22 the country, he's babbling being asked questions --

23 THE COURT: So your view of the State's position is
24 that the officer has discretion as to when to give Miranda.

25 MR. SUSSMAN: I think that there may be a little

1 wiggle room in that all we know is the statute requires it
2 at the incident site.

3 THE COURT: But Mr. Grimes's argument saying, Well
4 there can be multiple incident sites, it can be a variety
5 of places. So in effect the trooper can give it at any
6 time as long as it's still part of the procedure of getting
7 the person from the place of their stop to the jail.

8 MR. SUSSMAN: What I believe is --

9 THE COURT: I mean, he's not going that far, or you
10 think he does?

11 MR. SUSSMAN: I believe that Mr. Grimes is say that
12 the nature of an alleged DUI offense, you know, someone
13 who's driving under the influence, they're going to
14 necessarily cover more than one spot on the ground.

15 THE COURT: All right.

16 MR. SUSSMAN: So maybe if the trooper had
17 ascertained the exact route that our driver had driven, and
18 taken him back along that route to wherever Mr. Pray had
19 come from, maybe he could have read Miranda then and I'd
20 still be here making the same motion.

21 THE COURT: Well, you're saying at the very least
22 it has to take place when he says you're under arrest.

23 MR. SUSSMAN: At the incident site where he says
24 you're under arrest. I'm not arguing --

25 THE COURT: Well, when he was put under arrest?

1 When was he arrested here?

2 MR. SUSSMAN: He was arrested --

3 THE COURT: Was he arrested on Cedar Road, before
4 Cedar Road?

5 MR. SUSSMAN: He was arrested at the incident
6 scene, 436 Cedar Road, Your Honor.

7 THE COURT: All right. So what's the big deal
8 here?

9 MR. SUSSMAN: The big deal is that Miranda, which
10 must be done at the incident scene, which is 436 Cedar
11 Road --

12 THE COURT: Right.

13 MR. SUSSMAN: Miranda was not done at 436 Cedar
14 Road.

15 THE COURT: Well, so you believe it's pretty clear
16 cut.

17 MR. SUSSMAN: I do, Your Honor, based on the rules
18 of construction we have and the lack of ambiguity in the
19 terms used by the legislature in our video statute --

20 THE COURT: And the fact that important rights of
21 the defendant would not be protected if the officer could
22 give it, could give Miranda later on after the defendant is
23 arrested.

24 MR. SUSSMAN: Yes, sir. And by that same, you
25 know, to also go down that line of reasoning, at the

1 incident site, it's some expansive term covering miles and
2 miles, the officer wouldn't even have to read Miranda
3 before depositing the driver at the jail. You know, maybe
4 the incident continues all the way through the booking
5 process, maybe the incident continues to bond court the
6 next morning.

7 THE COURT: Well, that's why I said, you're saying
8 his base argument is the officers discretion.

9 MR. SUSSMAN: Yes, sir, and I'm --

10 THE COURT: In effect.

11 MR. SUSSMAN: The definition of incident site that
12 they're proposing is forced, it is not within the ordinary
13 meaning of the clear language the legislature has used and,
14 you know, there's just no end to it. Incident site, where
15 is that? Is that here today? Is the incident from New
16 Year's Day 2019 still continuing today because he is here
17 as part of the proceeding for this ticket? I just think
18 that we need to stick with what the legislature has written
19 and not force any kind of strange construction and just
20 say --

21 THE COURT: Well, are there any extraordinary facts
22 of this case that would -- like the one that I gave in my
23 1980 example? I mean are they're any unusual extenuating
24 facts in this case that would justify Miranda not being
25 given on Cedar Road?

1 MR. SUSSMAN: No, sir, Your Honor, Mr. Pray was
2 cooperative. There was no exigent circumstance which is
3 mitigated by subsection B. There is no exception --

4 THE COURT: Yeah, that's the word I was looking
5 for, exigent circumstances.

6 MR. SUSSMAN: No, sir, there's no exigent
7 circumstance. In fact, the trooper enjoys placing Mr. Pray
8 under arrest 22 minutes and 50 seconds into the video.
9 They do not leave the incident scene until 39 minutes in
10 the video. So the trooper -- there's nothing exigent
11 because the trooper has 6 minutes and 10 seconds to
12 complete his inventory of Mr. Pray's car. You know,
13 there's nothing exigent at all. And if there would have
14 been exigent circumstance that they were putting forward,
15 or proposing, that would have been raised at the trial
16 court level and it was not.

17 THE COURT: So he was at Pray's house for how long
18 before they took him off?

19 MR. SUSSMAN: No, they weren't at Mr. Pray's house,
20 they were at --

21 THE COURT: There on Cedar Road.

22 MR. SUSSMAN: Yes, sir, at Cedar Road for 6 minutes
23 -- from the time Mr. Pray is placed in handcuffs until the
24 time that troopers car departs the incident scene, sit 6
25 minutes and 10 seconds.

1 THE COURT: Well, what took him so long in giving
2 the Miranda Rights?

3 MR. SUSSMAN: Your Honor, that's the very issue
4 we're here on today. That delay and not just the delay in
5 reading them before he left, but in the delay in not
6 reading them until after he'd already left. That's the
7 exact reason we're here today, asking the Court to affirm
8 the trial court's decision.

9 THE COURT: All right. I've thrown you a lot of
10 softballs. Have you hit them all out of the park you
11 think?

12 MR. SUSSMAN: I mean, I'm ready for a curve ball,
13 Your Honor. I think this is a fairly straightforward case,
14 though.

15 THE COURT: All right. Well, we're going to take a
16 moment and let you ponder your response, Mr. Grimes. We
17 have the luxury of not being loaded with as many things
18 that we have been loaded with for about 2 and a half weeks.
19 So we're going to take a few minutes and come back.

20 No, I do have one thing -- well, I'll think about
21 it when I come back. It will center around the passing up
22 the decision of Court of Appeals. So I'll hit that when we
23 come back.

24 (A brief recess was observed.)

25 THE COURT: All right. Before we proceed with you,

1 Mr. Grimes, the -- on the question of handing up to Court
2 of Appeal's decision, the, you know, we did this murder
3 case a couple of weeks ago in Barnwell and the guy's
4 charged with attempted, murder and attempted murder and the
5 solicitor's arguing transferred intent saying that he
6 attempted, that he murdered one person and even though he
7 didn't shoot the baby that the guy he murdered was holding,
8 that the murder of one, that that intent transfers to the,
9 the baby, so therefore he's guilty of attempting to murder
10 the baby under transferred intent.

11 And he handed up to me a Court of Appeals decision
12 by Mike Baxley, where they appealed and Mike Baxley held in
13 an armed robbery case that if you intend to rob one person
14 and you're mistaken as to robbing this person and you rob
15 somebody else, that transferred intent applies or shifts to
16 the other person and so he wanted me to charge the jury
17 that transferred intent applies to the attempted murder
18 charge. And I thought about it and I said well, without a
19 new attempted murder statute, you must have a specific
20 intent to kill, it's written in the statute. And the
21 Supreme Court has recently held that.

22 Now, with murder it's a general intent statute, so
23 you generally can intend to do serious bodily injury and if
24 the person dies, that's murder, but in attempted murder,
25 you must have a specific intent to kill. So based on those

1 two burdens, I refused to give the jury charge and of
2 course, the defendant -- it became moot because he was
3 found not guilty of both charges.

4 Now, so yesterday, I'm in Barnwell and the
5 solicitor hands up a Supreme Court decision on the same
6 issue and the Supreme Court -- well, it basically agreed
7 with me and disagreed with the solicitor, even though it --
8 even though they didn't specifically rule. But the general
9 intent crime transferred intent would not go the a specific
10 intent crime, even though they said a decision on that we'd
11 leave to another day.

12 And I say that because many times when people hand
13 up Court of Appeals decisions they're often appealed to the
14 Supreme Court and, and we get a different result or
15 different interpretation. I notice this case is from 2014
16 and I assume by now it's over and there was no appeal or
17 the Supreme Court hasn't spoken.

18 MR. GRIMES: Well, Mr. Miller called me about his
19 issue of law and we discussed it prior, I think, to the
20 charge conference in that case and I did look at that case
21 that the Supreme Court handed down yesterday and it pretty
22 much sidestepped specific intent because the trial counsel
23 arguing the general intent, I think in the --

24 THE COURT: Right. They didn't raise the issue
25 really.

1 MR. GRIMES: Right.

2 This is a 2014 case and I think defense counsel and
3 I were both reading from the same paragraph. They're
4 talking about the purpose of the statute, but that first
5 section that they're talking about to create direct
6 inference of DUI arrests, they're citing a Supreme Court
7 case.

8 THE COURT: All right.

9 MR. GRIMES: They're citing the town of Mount
10 Pleasant case. And the second section that I referenced
11 where they're talking about protecting important rights of
12 the defendant, so if you recall, I mentioned there were two
13 important purposes of the statute. The first one, the
14 Supreme Court issued the opinion on what that purpose was.
15 And the second purpose, they talked about protecting
16 important rights of the defendant. Defense counsel argued
17 that to you.

18 So both parties were arguing that this Court of
19 Appeals case would apply. If you agreed -- Your Honor can
20 disagree with me, but I don't know how that would
21 necessarily affect either of our argument because --

22 THE COURT: Well, it probably doesn't, but it just
23 gave me a chance to reflect that...

24 MR. GRIMES: The Court or Appeals when reviewed by
25 the Supreme Court, has an interesting track record, but I

1 don't know that this is necessarily a controversial.

2 THE COURT: Well, you all are -- you know when
3 y'all are arguing the same case, so I understand.

4 MR. GRIMES: Interestingly, Judge, I was listening
5 to defense counsel's argument and there were a few things
6 that I had a problem with and parts because we're arguing
7 the same thing. He's told you that there's a -- it's
8 unambiguous, it's a clear unambiguous term or sentence and
9 the Court doesn't need to construe it in any particular
10 way. It's clear on its face. And when that occurs and
11 it's clear with the intent of the legislature, the Court
12 won't construe it. But then he's asked the Court to
13 construe the language because it's a penal statute that the
14 Court has to construe it against the State.

15 Well, if it's clear and unambiguous, the Court
16 doesn't construe it at all. So there is no construing it
17 against the State. It's clear and it's unambiguous, it
18 just means what it means and there is no meaning assigned
19 to it other than upon its face. And the reason I'm -- the
20 argument from the defense is it's clear and unambiguous,
21 which would mean you don't have to assign a meaning to it,
22 but that you should construe it against the State.

23 Those compete. It's either ambiguous and the Court
24 has to assign a meaning to it or it's unambiguous, in which
25 case you just read it the way it is and don't assign a

1 meaning to it. They're asking you, technically to do both
2 which is not the way statutes are interpreted.

3 MR. SUSSMAN: I don't believe that's what I asked,
4 Your Honor. But I just offer that.

5 MR. GRIMES: In any event, the defense counsel
6 proposed --

7 THE COURT: Mr. Sussman, I'm very much a stickler
8 for people interjecting arguments when not recognized by
9 the Court. It never helps anything. It kind of side
10 tracks and wastes time when the say, Judge, let me clarify
11 this when someone else is talking. It generally doesn't
12 clarify anything, it's just sort of a distraction. So I
13 usually tell the lawyers, even arguing objections during a
14 trial and the rule says there's no arguments on object
15 unless requested by the Court. That same thing applies to
16 any kind of argument.

17 But go ahead.

18 MR. GRIMES: The defense has told you that it's
19 clear and ambiguous and they propose two different
20 definitions to you just in their argument. One that it
21 would be in a place where the officer encountered the
22 suspect. In this instance, it's the same place as they're
23 second definition, which is where the trooper gave the
24 field sobriety tests. Here's the problem with both of
25 those: One, the first definition where he encounters the

1 suspect isn't even mentioned in the statute. The second
2 one is Roman Numeral II. The Miranda Rights is Roman
3 Numeral III. So if incident site absolutely must mean
4 where the field sobriety tests are given at Roman Numeral
5 II, then why can it not also be where the Miranda Rights
6 were given at Roman Numeral III. Why is Roman Numeral II
7 any more significant or important than Roman Numeral III.

8 The point is that they didn't tell you that an
9 incident site is anywhere where the blue lights are
10 activated, which is Roman Numeral I. But they didn't tell
11 you that it's anywhere where the field sobriety tests are
12 given. Well, there's no obligation to give field sobriety
13 tests. And Your Honor talked about the case that you
14 prosecuted or your office did where they didn't give that
15 guy field sobriety tests. So if they didn't give them
16 field sobriety tests, now they don't have an incident site.
17 It doesn't exist. That doesn't make any sense.

18 But defense has told you that wherever the field
19 sobriety tests are given, that's the incident site. Well
20 that's Roman Numeral II. We could be arguing the same
21 thing. Anywhere Miranda Rights are given, that's the
22 incident site, because that's Roman Numeral III takes
23 place, that's the incident site. It could be that the
24 incident site means --

25 THE COURT: So --

1 MR. GRIMES: I, II, or III.

2 THE COURT: So under your interpretation, it's
3 within the -- the incident -- if it's where Miranda is
4 given then it's within the officer's discretion.

5 MR. GRIMES: Well, that goes into the defense's
6 argument that somehow the defendant's rights weren't
7 protected and that clearly didn't happen. In this case
8 it's not alleged to have happened in this case. Nobody
9 attempted to put in any evidence that was taken in
10 violation of Miranda, but the other thing is Miranda case
11 applies to the defendant whether anybody tells him it does
12 or not. And the defense's argument was that somebody
13 sitting in this chair could talk or do something else not
14 responsive to a custodial interrogation and it could be
15 used against him.

16 Well, Miranda doesn't say well, sit still and not
17 try to look drunk in the car while we ride to the jail.
18 That's not the advisement they're getting. If -- that's
19 what the defense's argument -- well, they can say a bunch
20 of stuff in the car when nobody's asking them questions, or
21 drool all over their self or something and they need to be
22 warned that that might be used against them. Well, it
23 might be used against you, but it's not custodial
24 interrogation, it doesn't even apply to your Miranda
25 Rights.

1 So that argument kind of fails, you're going to
2 have nose Miranda Rights what they tell them to you or not,
3 and agree they have to tell them to you and I agree it has
4 to be video recorded when they do, it's just not important
5 where that happens. And this statute doesn't say it's
6 important where that happens. And --

7 THE COURT: You know, I had one in Fairfield
8 County, the officer had on the video camera and -- the
9 camera wasn't directly focused on the defendant. It -- I
10 think it caught the defendant's face but then didn't
11 include his feet. It doesn't get the whole body. It was,
12 the camera was just sort of misdirected to miss some of the
13 field sobriety tests and I affirmed the -- I said I think
14 they complied with the statute. It was appealed and it was
15 reversed, probably, I think an unpublished opinion. And
16 really sort of hits on what Mr. Sussman's arguing about,
17 the statute would have to be strictly complied with. It
18 can't be a hit or miss as to them.

19 MR. GRIMES: Well, I think the Taylor case is
20 significant on that fact because they were pretty clear,
21 they didn't interpret the statute so strictly that this
22 minor thing occurred and the case was dismissed.

23 THE COURT: Yeah, well, it says a -- and that was
24 an interesting item that, I underlined that where they kind
25 of, it says incident -- the video recording of an incident

1 briefly omits the suspect, but that omission does not occur
2 during any of the important events, I guess. So I think
3 the --

4 MR. GRIMES: Well, when it talks about that, it's
5 talking about those two things, the offense that create
6 evidence of a DUI which is no allegation that occurred in
7 this case or that served the important rights of the
8 defendant. Again, all of his rights were served. He was
9 provided his Miranda and there isn't any allegation of
10 physical abuse in any way. I think the --

11 THE COURT: Well, it includes the arrest of the
12 defendant and shows the person being advised of his
13 Miranda. So you're saying the two can be at different
14 times and different places. That's the essence of --

15 MR. GRIMES: Well, in this place, they're really
16 close in time and they're not very far away in distance.

17 THE COURT: Well, we said --

18 MR. GRIMES: Well, I think theoretically, it could
19 be further apart in time and further apart in distance.
20 There are a lot of specific things that the State has to do
21 when prosecuting a DUI case. If they wanted to add
22 something additional, they could have. They didn't. There
23 is no time requirement whatsoever in this statute.

24 THE COURT: Well, Mr. Sussman referred to the TV
25 shows and he said it's almost automatic when the officer

1 says, You're under arrest. You have the right to remain
2 silent, anything you say is going to be used against you in
3 a court of law, da, da, da. But you never see on the TV
4 where you're under arrest and then six minutes later
5 Miranda is given.

6 MR. GRIMES: Well, Your Honor --

7 THE COURT: Not that TV controls us, but I'm just,
8 for a point of discussion and looking at the statute.

9 MR. GRIMES: Some of the officers on the road today
10 may be young enough they didn't grow up watching cops, but
11 in any event, when somebody is arrested, many times,
12 they're not given Miranda Rights at all. And unless
13 they're subjected to custodial interrogation it's not
14 important.

15 THE COURT: On a -- well, you're not -- well, we're
16 talking about a video --

17 MR. GRIMES: I admit -- it's different. It's the
18 DUI statute; it's different.

19 THE COURT: Okay.

20 MR. GRIMES: These officers could arrest people all
21 day long and never read them their Miranda Rights, you
22 know, and frequently do. The only reason he's getting the
23 Miranda Rights, probably, is because it's required by
24 statute, that there isn't any, there isn't any allegation
25 that he was interrogated prior to getting these Miranda

1 Rights.

2 THE COURT: And so tell me again, why did they
3 reverse Judge McCauley in this Taylor case.

4 MR. GRIMES: Well, I guess the initial
5 interpretation at the lower court was that when it said
6 that the conduct of the defendant must be video recorded --
7 this is in the fourth section, this is before you get down
8 to the two types of videos where it's 29-53 big A, a person
9 must have his conduct at the incident site and breath test
10 site video recorded. This defendant was off the camera for
11 a brief period of time, I think of his own accord, in
12 between any of these things happening in the Roman
13 numerals.

14 In other words, not when he was given his field
15 sobriety tests and not when he was being arrested and not
16 when he got his Miranda rights. He was on camera for all
17 of that time, but at some other point in time, he was
18 briefly off camera and the trial judges, or the trial
19 judge, he dismissed the case because they said well his
20 conduct wasn't on the entirety of the video recording and
21 that strict construction was kind of done away with by
22 Court of Appeals and they said but conduct doesn't mean
23 every single action he takes, it just means the actions are
24 important for the video --

25 THE COURT: You think the Taylor case does away the

1 strict compliance?

2 MR. GRIMES: No.

3 THE COURT: I thought you just said is that. Oh,
4 you didn't mean that.

5 MR. GRIMES: No, it did away with the trial court's
6 interpretation of conduct being so strict. It doesn't do
7 away with strict compliance with the statute.

8 THE COURT: Okay.

9 MR. GRIMES: Basically the construction that the,
10 the meaning that the trial court gave to the conduct was
11 too strict because it required, basically the defendant be
12 on camera the entire time. And the Court of Appeals said
13 no, that's not the case. Conduct doesn't mean every single
14 action that he took.

15 THE COURT: But if this -- say if you win this case
16 and it goes up through the appellate process and the
17 Supreme Court probably grants certiorari to hear this case
18 like they did in the one, that transfer of intent case, you
19 know. When I left here I had to be on the panel with Judge
20 Lockemy and others and, he's the chief of Court of Appeals,
21 and he talked about how the Supreme Court only hears cases
22 they want to hear unless it was in their original
23 jurisdiction. So otherwise, they may hear a few through a
24 writ of certiorari and this was one of them.

25 So this sounds like one of that may end up in the

1 Supreme Court. And the question before the Supreme Court
2 would be the importance of the law enforcement officer,
3 arresting officer, giving Miranda at the time of arrest as
4 required by the statute versus the officer giving Miranda
5 at some other time without a showing of exigent
6 circumstances. Would that -- do you think that would be
7 the question that it would boil down to in the Supreme
8 Court?

9 MR. GRIMES: No. Absolutely not, Your Honor;
10 absolutely no.

11 THE COURT: Well, what do you think it would be?

12 MR. GRIMES: Well, the reason I don't think that is
13 because this statute doesn't say that Miranda has to be
14 given at any particular time or that it has to be given at
15 the time a person is arrested. It doesn't say -- the only
16 requirement regarding Miranda Rights is that it is video
17 recorded.

18 THE COURT: Well, what I'm saying is, if the
19 Supreme Court would look at it, what signal would that be
20 to law enforcement if they did not have to give Miranda at
21 the time of the arrest? I mean as you've stated in general
22 cases, Miranda is given if -- if it's not given properly
23 then statements can't be used against the defendant --

24 MR. GRIMES: Well --

25 THE COURT: -- because of violation Miranda. It

1 doesn't mean that they can't be prosecuted. In this case,
2 the judge rules, what? That you can't be prosecuted if
3 Miranda is given timely?

4 MR. GRIMES: Well, the trial judge ruled that the
5 Miranda Rights weren't given at the particular location, as
6 best I can tell of their ruling.

7 THE COURT: All right.

8 MR. GRIMES: But that DIDN'T have anything to do
9 with they weren't given soon enough to the arrest, or that
10 they weren't given soon enough to protect to defendant in
11 some particular fashion. The defense has argued that it
12 relates to a location, not a time, not to the arrest, not
13 anything of that nature. So that's not even before us that
14 they weren't given --

15 THE COURT: Well, not before us, but it would be
16 before the Supreme Court because they don't care, they
17 don't care what the lawyers argue too much, they --

18 MR. GRIMES: Maybe, maybe something, I don't know
19 that they can invite me to argue for them or if the AG's
20 office would even want me to. But the argument thus far
21 has been that the Miranda Rights weren't given at a
22 particular location and the State's position is that
23 incident site or -- that first phrase, I don't even know
24 that we need to couch the incident site as a particular
25 term. But that first phrase is talking about the

1 importance of a video recording, not the importance of a
2 particular place. And all of the stuff that's important to
3 be reported is recorded.

4 Now, from prosecuting DUI's and I don't think this
5 has changed, really anything since I've had the DUI
6 prosecution job years ago, the camera has to come on when
7 the blue lights come on. That's not excusable.

8 THE COURT: Right.

9 MR. GRIMES: It has to include all this stuff just
10 like the State v. Taylor when it says it has to be on
11 video, the conduct. It has to include the field sobriety
12 tests, the arrest, and the Miranda Rights. After that
13 happen, they could turn the video recorder off and drive to
14 the jail in silence or without the video recording. They
15 don't. That's really most likely projection of the officer
16 and the suspect. But the, the statute ends there. The
17 blue lights come on, field sobriety tests, arrest, Miranda
18 Rights, and you can turn the camera off.

19 THE COURT: So if you --

20 MR. GRIMES: And you've complied with this first
21 section in this video recording.

22 THE COURT: How many law enforcement officers, you
23 believe, are there in Aiken County, including highway
24 patrol and all the town police officers and everybody? A
25 hundred?

1 MR. GRIMES: More than that.

2 THE COURT: More than a hundred? Okay. Well if
3 you had a hundred of them in here today, would you tell
4 them that it's not necessary to give Miranda at the time of
5 the DUI arrest?

6 MR. GRIMES: Well, I would tell them to avoid being
7 arguing this again, which would probably, you know, not --
8 there's no reason to delay. And in this case, we don't
9 know what that reason was, but it wasn't really a delay.
10 It was a minute and 54 seconds. It's not like it was some
11 kind of nefarious delay as suggested by the defense, or
12 that the defendant went all night not knowing his Miranda
13 Rights. That's not anything that happened in this case,
14 but --

15 THE COURT: It seems like the defense is saying
16 there must be some showing of exigency that would justify
17 it not being done -- I guess the incident location is
18 important within the time of arrest.

19 MR. GRIMES: Well, I would say this, Judge, there
20 isn't an exigency because they didn't not comply with the
21 statute.

22 THE COURT: Okay.

23 MR. GRIMES: So there's no need for exigency, they
24 complied with the statute and video recorded him getting
25 his Miranda Rights and to -- there is no relation to

1 anything per the defense's argument that would be a
2 violation other than this incident site that they've
3 decided to suggest definitions to, not the same definition,
4 but different definitions that just happen to go along with
5 their position, but don't necessarily go along with the
6 logical reading of the statute that coincides with the
7 meaning and the intent of the statute that the definitions
8 they propose don't go along with that. But they had
9 proposed some definitions.

10 So the State's position is kind of twofold. One,
11 we don't think you need to define incident site because
12 it's a descriptor and it just describes which of the two
13 videos we're talking about.

14 THE COURT: All right.

15 MR. GRIMES: If Your Honor decides you need to
16 define incident site. I would suggest that there's no real
17 practical way that I can think of, but if you go along with
18 the defense's argument that these Miranda Rights weren't
19 given at the incident site, it obligates the Court to
20 define what incident site and the definitions that the
21 magistrate came up with aren't appropriate. The
22 definitions that the defense attorney has presented to Your
23 Honor aren't appropriate. I don't know how you would
24 define it, but there's not a logical, consistent way to
25 apply it in case after case.

1 THE COURT: All right, sir. What say to that
2 Mr. Sussman?

3 MR. SUSSMAN: Thank you, Judge. I think I made my
4 point here. I don't think anybody wants to hear me run
5 through it again. You know what we're dealing --

6 THE COURT: Definitely not run through it again,
7 but if you have some extra that's fine.

8 MR. SUSSMAN: Yes, sir, I'm going to keep it
9 brief. You know, we're looking at this statute, we read
10 the simple heading, the video recording at the incident
11 site must. That's where the stuff has to happen. It did
12 not happen here. We're asking you to give these words
13 their plain meaning and as far as me asking you to do two
14 conflicting things as far as construing it against the
15 State and giving it's plain meaning, what I'm asking you to
16 do first and foremost, please, is to give it its plain
17 meaning. Incident site, the scene or the location.

18 But if we're going to do some kind of forced
19 interpretation, if we're going to try to stretch the
20 meaning beyond the bounds of what's reasonable, then, in
21 that case, I would ask you to follow the case law in State
22 v. Blackman, which is to construe a penal statute, strictly
23 against the State and in favor of the defendant. Those are
24 not conflicting things. There's actually -- first thing
25 I'd ask you to do is, let's just read this in the English

1 that the legislature wrote it in.

2 Now, as far as State v. Taylor, you know, all we
3 need is the conduct, you know, all we need is a majority of
4 it, well, this isn't, you know, someone stepping off camera
5 to blow their nose in the ditch. This is the Miranda
6 warnings. They're pretty important, they're very
7 important. There's like, there's Supreme Court cases about
8 it. There's a bunch of progeny about the Miranda warnings.
9 I understand the troopers and the officers have very
10 difficult jobs. Well, we have clear in our statute what
11 they have to do. You arrest somebody, you read the Miranda
12 at the incident site. The convoluted and mind-bending
13 position that they're putting forward, well, at the
14 incident site, that's where the action is. It's when the
15 party ends, the drinking and driving stops. It's when --
16 and this isn't in the statute, but I'm not just making it
17 up. It's common sense. It's where the action is. Where
18 the party stops, where the arrest is made, where the field
19 sobriety tests are done, where Miranda must be read.

20 If that is not the incident scene, if this plain
21 English meaning is not what we're looking at here, if
22 that's not how we define incident scene, well, if incident
23 scene also covers the trip to the jail, then incident scene
24 also covers us here today right now. If we don't put an
25 ending to this definition of incident scene, then, well,

1 it's fine, read Miranda on the way to the jail. Well, in
2 that line of reasoning, the trooper could show up right
3 now, having never read Miranda and read it to Mr. Pray here
4 in court and that would be part of our incident scene. So
5 I'm just asking you to give this statute it's plain
6 meaning. And I don't want to say it ten other ways.
7 That's what we're asking for today, Judge.

8 THE COURT: All right. Final words if any,
9 Mr. Grimes.

10 MR. GRIMES: I don't think I have anything to add.

11 THE COURT: All right. So I want the parties to
12 prepare proposed orders, addressing these issue before me,
13 and I'll review, sign, or modify and we'll see who wins.
14 I'm conflicted to a degree, but because I have to do a --
15 because an opinion is necessary that it would be appealed
16 from as Mr. Grimes is, well, Judge, if you decide that then
17 you must decide what's an incident location. Well, I want
18 you all to submit your proposed orders that contain what
19 you think is necessary in the proposed orders and I'll
20 review it, tweak it, and sign the one that I think reflects
21 what the justice of this situation requires.

22 How much time y'all need do that?

23 MR. GRIMES: Possibly at least a couple of weeks,
24 Judge. I'm going to be out for --

25 THE COURT: I'm not pushing you.

1 MR. GRIMES: Thirty days?

2 THE COURT: I'll be busy one way or the other. I'm
3 not pressing you for time, I just need to know.

4 MR. SUSSMAN: Thirty days. I think thirty days
5 would be reasonable, Your Honor.

6 THE COURT: All right. And when you -- just send
7 it to me in my e-mail and then copy the other person and
8 the other person will have some time to make any comment,
9 criticism of what the other has submitted. All right.

10 MR. GRIMES: Thank you, Your Honor.

11 THE COURT: Very good.

12

13 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
 2 County of Aiken) **Certificate of Reporter**

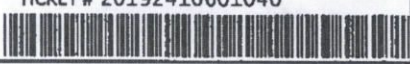
3
 4
 5
 6 I, Brenda J. Sigwald, Official Court Reporter for
 7 the Second Judicial Circuit of the State of South Carolina,
 8 do hereby certify that the foregoing is a true, accurate,
 9 and complete Transcript of Record of the proceedings had
 10 and evidence introduced in the trial of the captioned case,
 11 relative to appeal, in the Court of Common Pleas in and for
 12 the State of South Carolina on the 13th day of June, 2019.

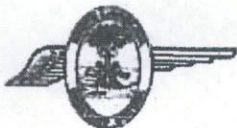
13 I FURTHER CERTIFY that I am neither kin, counsel,
 14 nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
 16 seal at Aiken County, this 22nd day of November, 2019.

17
 18
 19
 20
 21 Brenda J. Sigwald
 22 Brenda J. Sigwald,
 23 Court Reporter and Notary Public
 24 For the State of South Carolina
 25 My commission expires
 January 4, 2020

VOID ☐
NOTES

Form 5-438 Rev. 08/2017		UNIFORM TRAFFIC TICKET STATE OF SOUTH CAROLINA VERSUS		CITY/COUNTY: Aiken
FIRST NAME HERBERT		MIDDLE NAME E		LAST NAME PRAY
STREET [REDACTED]		CITY [REDACTED]		STATE SC
ZIP CODE [REDACTED]		DRIVER'S LICENSE NO. [REDACTED]		NONE ☐ CLASS ☐ YES ☒ NO ☐
RACE W	SEX M	BIRTH DATE [REDACTED]	HGT. 70	WGT. 235
HAIR GRY	EYES BRO	VEHICLE NO. NONE ☐ STATE (NAME OF VEH) JPJ719 SC FORD 03		
VEHICLE OWNER FIRST NAME HERBERT		MIDDLE NAME E		LAST NAME PRAY
OWNER STREET [REDACTED]		CITY [REDACTED]		STATE SC
ZIP CODE [REDACTED]		INCIDENT NO: 19CH000088		
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT				
NAME OF TRIAL COURT CENTRAL TRAFFIC COURT		STREET 420 Hampton Avenue North East		
DATE OF TRIAL 01/24/2019		TIME OF TRIAL 0900		CITY Aiken
STATE SC		ZIP CODE 29801		
VIOLATION SECTION NO. 56-05-2930(A)		VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO ☐ DRIVING UNDER THE INFLUENCE; 1ST OFFENSE: REFUSED TEST		
DATE OF VIOLATION 01/01/2019		TIME OF VIOL. 0302		SC POINTS [REDACTED]
VIOLATION LOCATION SEC 966 CEDAR RD		COUNTY 02		
LAT 33.47945		LONG -81.5430		CITY WINDSOR
NAME AND RANK OF ARRESTING OFFICER SINGLETERY B		TFC		SOCIA OFFICER NUMBER 5763-1884
BAIL DEPOSITED JAIL		DATE OF ARREST 01/01/2019		BOND AMOUNT REQUESTED
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: NOLO CONTENDERE ☐ FORFEITED BOND ☐ NOT GUILTY ☐ DETERMINED BAC: ☐		
CHARGE CONVICTED OF		SAME AS ORIGINAL ☐ SC POINTS		
JAIL	SUSPEND	FINE	AMT. COLLECTED	AMT. SUSPENDED
COMMITTED TO		Vehicle Searched YES		
CERTIFIED CORRECT		DATE		Arrest as Result of Collision NO
Electronic Copy - Trial Officer / Driver's Record		TICKET # 20192410601040		
				



**SOUTH CAROLINA HIGHWAY PATROL
GENERAL SESSIONS REPORT**

K2
1-29-2019
RSussman

RECEIVED
JAN 29 2019

☐ Habitual Offender ☐ Accident 2019241060 Concealed Weapons Holder: _____ Grand Jury Date: 1/1
Ticket/Warrant #: 1. 1040 2. _____ 3. _____ 4. _____ 5. _____
Arresting Trooper: B.R. Singletary Rank: L/CPL

Cause Dates for Prior Offenses:

Prior Offenses: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____ 6. _____
State of South Carolina vs. Herbert E Pray III DOB: [REDACTED]
Address: [REDACTED]
Driver's License #: [REDACTED] State: SC Social Security Number: [REDACTED]
Description: Eyes: [REDACTED] n Hair: [REDACTED] Height: [REDACTED] Weight: [REDACTED] Race: [REDACTED]

Charges: 1. DUI 1st 4. _____
2. _____ 5. _____
3. _____ 6. _____

Date of Violation: 01/01/2019 Time of Violation: 03:02 Date of Arrest: 01/01/2019
Type of Test: DMT Datamaster Testing Officer: L/Cpl. B.R. Singletary
Evidence In Possession: Please See Attached

Witness Name: _____ Home Phone: () -
Address: _____ Business Phone: () -

Vehicle Information:

Year: 2003 Model: Raner Make: Ford Tag: JPJ719 Color: Red
Owner's Name: SAA State of Tag: _____
Address: SAA Towed by: Waynes
☒ Request ☐ Rotation

Narrative: Please see attached incident report.

AGENCY I.D.
SC002SP00

INCIDENT REPORT

CASE NUMBER	1993-180111	NCIC	INQ.	ENTD.
-------------	-------------	------	------	-------

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE				UNITS ENTERED	TYPE VICTIM				
	1. Driving under the Influence {90D}				☒ YES ☐ NO	☐ YES ☒ NO	Highway/Road/Alley					☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☒ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.				
	2.				☐ YES ☐ NO	☐ YES ☐ NO										
3.				☐ YES ☐ NO	☐ YES ☐ NO											
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)										ZIP CODE		WEAPON TYPE			
	436 CEDAR RD, WINDSOR, SC										29856					
	INCIDENT DATE		24 HR. CLOCK		TO DATE		24 HR. CLOCK		DISPATCH DATE/TIME 24 HR. CLOCK				LOCATION NO.			
	1/1/2019		03:02		1/1/2019		04:30		1/1/2019		3:02:00 AM		3:02:00 AM		4:30:00 AM	
SUBJECT NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE		
					#1 #2 #3			* J S O U								
	ADDRESS				CITY			STATE	ZIP CODE	LOCATION NO.						
NARRATIVE	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE		
	Society/Public				#1 #2 #3			* J S O U								
	HEIGHT				WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
PROPERTY EST.	ADDRESS				CITY			STATE	ZIP CODE	LOCATION NO.						
	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -				COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO											
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:															
ADMINISTRATIVE	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☒ ASSISTED ☐				J - This Jurisdiction, S - State, O - Out of State, U - Unknown											
	☒ SUSPECT NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES			
	PRAY, HERBERT E III				W	M	65	N		510	235	GRY	BRO			
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				HAS BEARD											
	ADDRESS				CITY			STATE	ZIP CODE	LOCATION NO.						
					WILLISTON			SC	29853							
	☒ ARREST				SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK.			ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ UNK.			DATE/TIME OF OFFENSE			DATE/TIME OF ARREST		
	☒ JAIL				TOTAL #			ARRESTED:								
	☒ SUMMONS				DRUGS ☐ YES ☒ NO ☐ UNK. TYPE:											
ON JANUARY 1ST, 2018 AT 03:02 HOURS, I WAS IN THE AREA OF 436 CEDAR RD IN AIKEN COUNTY, SOUTH CAROLINA WHEN I OVERHEARD A BREAK-IN IN PROGRESS COME ACROSS THE SHERIFF'S OFFICE RADIO. I ADVISED THE RESPONDING UNIT THAT I WOULD PROVIDE BACK-UP FOR HIM. BOTH UNITS ARRIVED ON SCENE AT 03:02 HOURS AND WE OBSERVED A WHITE MALE WALKING OFF THE FRONT PORCH OF THE RESIDENCE. DEPUTY CHRISTENSEN MADE CONTACT WITH THE SUBJECT AND IDENTIFIED HIM AS MR. HERBERT PRAY BY HIS SOUTH CAROLINA DRIVER'S LICENSE. MR. PRAY STATED THAT HE WORKED FOR AIKEN PEST CONTROL AND HE WAS IN THE AREA WHEN HE SAW A LIGHT ON IN THE RESIDENCE. HE STATED THAT MS. ANDERSON LIVED AT THE RESIDENCE AND HE KNEW HER FROM BEING A CLIENT WITH																
JURISDICTION OF THEFT JURISDICTION OF RECOVERY																
TYPE(GROUP) STOLEN DAMAGED BURNED RECOVERED SEIZED FORGED																
TOTAL VALUE																
SUBJECT IDENTIFIED ☒ YES ☐ NO SUBJECT LOCATED ☒ YES ☐ NO ☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER ☐ EX-CLEAR UNDER 18 ☒ EX-CLEAR 18 AND OVER																
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY																
REPORTING OFFICER(S) DATE UNIT NUMBER APPROVING OFFICER DATE UNIT NUMBER																
SINGLETARY, BRYAN R 1/3/2019 5763-1884 CALVERT, DANNY LEE 1/18/2019 0239-3022																
FOLLOW-UP OFFICER INVESTIGATION ☐ YES ☒ NO																

SUPPLEMENTARY INCIDENT REPORT

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 4 PAGES

NARRATIVE	THE PEST CONTROL BUSINESS. HE STATED THAT WHEN HE SAW THE LIGHT ON HE WANTED TO STOP AND WISH HER A HAPPY NEW YEAR. HE STATED THAT HE KNOCKED AT THE DOOR A FEW TIMES BUT SHE NEVER RESPONDED. WHILE SPEAKING WITH MR. PRAY, I DID SMELL AN ODOR OF ALCOHOL EMITTING OFF OF HIS PERSON. HE DID STATE THAT HE DID CONSUME SOME WINE BEFORE COMING TO THE RESIDENCE. DEPUTY CHRISTENSEN DID MAKE CONTACT WITH THE OWNER WHO HE WAS ABLE TO IDENTIFY AS MS. SUSIE SMITH. SHE STATED THAT SHE DID NOT KNOW WHO HE WAS AND WISHED TO PUT HIM ON TRESPASS NOTICE. DEPUTY CHRISTENSEN THEN TURNED MR. PRAY OVER TO ME FOR FURTHER QUESTIONING HIM ABOUT HIS ALCOHOL CONSUMPTION. I DID ASK MR. PRAY IF HE HAD DROVE TO THE RESIDENCE AND IF THE WHITE FORD RANGER THAT WAS IN THE FRONT YARD WAS HIS AND HE STATED YES. I ASKED MR. PRAY IF HE WOULD PERFORM FIELD SOBRIETY TESTING TO ENSURE HE WAS OKAY TO DRIVE AND HE STATED HE WOULD.					
	THE FIRST TEST ADMINISTERED WAS THE HORIZONTAL GAZE NYSTAGMUS TEST. PRIOR TO BEGINNING THE TEST IT WAS DETERMINED MR. PRAY WAS NOT WEARING CONTACTS. ALSO, PRIOR TO ATTEMPTING THE TESTS, MR. PRAY INDICATED HE DID NOT HAVE ANY MEDICAL PROBLEMS THAT WOULD HAVE PREVENTED HIM FROM PERFORMING THE TESTS. MR. PRAY DID STATE THAT HIS LEFT LEG WAS SHORTER THAN HIS OTHER BUT IT WOULD NOT PREVENT HIM FROM PERFORMING THE TEST. MR. PRAYS EYES WERE CHECKED AND HIS EYES DISPLAYED EQUAL TRACKING AND HIS PUPILS WERE EQUAL SIZES. MR. PRAY WAS INSTRUCTED TO FOLLOWING THE STIMULUS WITH HIS EYES ONLY, KEEPING HIS HEAD STILL. AFTER STATING HE UNDERSTOOD THE INSTRUCTIONS MR. PRAY ATTEMPTED THIS TEST AND THE RESULTS OF THIS TEST DISPLAYED 6 OF THE 6 POSSIBLE CLUES. A LACK OF SMOOTH PURSUIT IN HIS LEFT EYE. A LACK OF SMOOTH PURSUIT IN HIS RIGHT EYE. A DISTINCT AND SUSTAINED NYSTAGMUS IN THE LEFT EYE AT MAXIMUM DEVIATION. A DISTINCT AND SUSTAINED NYSTAGMUS IN THE RIGHT EYE AT MAXIMUM DEVIATION. AN ONSET OF NYSTAGMUS IN THE LEFT EYE PRIOR TO 45 DEGREES. AN ONSET OF NYSTAGMUS IN THE RIGHT EYE PRIOR TO 45 DEGREES. IT WAS OBSERVED THAT MR. PRAY WAS SWAYING WHILE THE TEST WAS BEING ADMINISTERED AND HE HAD TO BE REMINDED NUMEROUS TIMES TO KEEP HIS HEAD STILL.					
	THE SECOND TEST ADMINISTERED WAS THE NINE STEP WALK AND TURN TEST. MR. PRAY WAS INSTRUCTED TO PUT HIS LEFT FOOT ON THE LINE AND HIS RIGHT FOOT IN FRONT OF IT WITH HIS RIGHT HEEL TOUCHING THE TOE OF HIS LEFT FOOT. HE WAS INSTRUCTED TO STAND IN THIS MANNER					
				JURISDICTION OF THEFT		JURISDICTION OF RECOVERY
	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	
	REASON FOR EXCEPTIONAL CLEARANCE:		1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY			
	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER	
	SINGLETARY, BRYAN R		1/3/2019	5763-1884	CALVERT, DANNY LEE	
					FOLLOW-UP OFFICER	
					INVESTIGATION ☐ YES ☒ NO	

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER		INQ.	ENTD.
1993-180111			

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 3 of 4 PAGES

NARRATIVE	WITH HIS HANDS TO HIS SIDES UNTIL THE TEST INSTRUCTIONS WERE COMPLETED AND THE TEST DEMONSTRATED. MR. PRAY WAS INSTRUCTED NOT TO BEGIN THE TEST UNTIL TOLD TO START. HE WAS INSTRUCTED TO TAKE NINE STEPS ALONG THE LINE IN A HEEL-TO-TOE MANNER. AFTER THE NINTH STEP HE WAS TO STOP AND TURN AROUND KEEPING HIS LEAD FOOT ON THE GROUND, TAKING SEVERAL SMALL STEPS WITH THE OTHER FOOT TO TURN AROUND. AFTER TURNING AROUND HE WAS TO TAKE NINE STEPS IN A HEEL-TO-TOE MANNER BACK ALONG THE LINE, IN THE DIRECTION HE HAD COME FROM. MR. PRAY WAS FURTHER INSTRUCTED TO WATCH HIS FEET AT ALL TIMES WHILE WALKING, KEEP HIS ARMS DOWN TO HIS SIDE, TO COUNT HIS STEPS OUT LOUD, AND ONCE HE STARTED THE TEST NOT TO STOP THE TEST. AFTER THE TEST WAS DEMONSTRATED MR. PRAY STATED HE UNDERSTOOD THE INSTRUCTIONS AND WAS INSTRUCTED TO BEGIN THE TEST. AFTER ATTEMPTING THE WALK AND TURN TEST MR. PRAY DISPLAYED 7 OF 8 POSSIBLE CLUES. MR. PRAY WAS UNABLE TO KEEP BALANCE DURING THE INSTRUCTION PHASE, HE STARTED THE TEST BEFORE THE INSTRUCTION PHASE WAS COMPLETED, HE STOPPED THE TEST AND ASKED FOR FURTHER INSTRUCTION AFTER HE HAD WALKED NINE STEPS, HE MISSED HEEL-TO-TOE STEPS, HE USED HIS ARMS FOR BALANCE, AND HE TURNED IMPROPERLY.					
	THE THIRD TEST ADMINISTERED WAS THE ONE LEG STAND TEST. MR. PRAY WAS INSTRUCTED TO STAND WITH HIS HEELS TOGETHER AND HANDS DOWN TO HIS SIDES WHILE THE INSTRUCTIONS WERE GIVEN AND DURING THE TEST. MR. PRAY WAS INSTRUCTED NOT TO BEGIN THE TEST UNTIL HE WAS INSTRUCTED TO START, AND AFTER THE TEST HAD BEEN DEMONSTRATED. WHEN INSTRUCTED TO START, HE WAS TO RAISE THE FOOT OF HIS CHOICE OFF THE GROUND APPROXIMATELY 6 INCHES. WHILE HIS LEG WAS RAISED HE WAS TO KEEP HIS LEG STRAIGHT, WATCH HIS RAISED FOOT, AND TO COUNT OUT LOUD BY THOUSANDS (ONE THOUSAND ONE, ONE THOUSAND TWO, ONE THOUSAND THREE...) AND TO CONTINUE THE TEST UNTIL TOLD TO STOP (30 SECONDS). AFTER THIS TEST WAS DEMONSTRATED AND INDICATING HE UNDERSTOOD THE INSTRUCTIONS MR. PRAY ATTEMPTED THIS TEST. THE RESULT OF THIS TEST DISPLAYED 3 OF THE 4 POSSIBLE CLUES. DURING THIS TEST MR. PRAY SWAYED WHILE BALANCING, HE USED HIS ARMS FOR BALANCE(RAISED THEM MORE THAN 6 INCHES FROM THE BODY) AND HE PUT HIS FOOT DOWN. HE HAD TO BE REMINDED TO WATCH HIS FOOT WHILE CONDUCTING THE TEST.					
	MR. PRAY WAS THEN PLACED UNDER ARREST AT 03:26 HOURS FOR DRIVING UNDER THE INFLUENCE. HE WAS SEARCHED AND PLACED IN THE FRONT SEAT OF MY PATROL VEHICLE. WAYNE'S TOWING WAS					
			JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	
	REASON FOR EXCEPTIONAL CLEARANCE:		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER			
	REPORTING OFFICER(S)		DATE		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	SINGLETARY, BRYAN R		1/3/2019		0239-3022	
					FOLLOW-UP OFFICER	
					INVESTIGATION ☐ YES ☒ NO	

ADMINISTRATIVE

AGENCY I.D.
SC002SP00

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER	NCIC	
	INQ.	ENTD.
1993-180111		

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 4 of 4 PAGES

REQUESTED BY MR. PRAY TO SECURE HIS VEHICLE AND THEY WERE REQUESTED TO THE SCENE. WHILE SEARCHING MR. PRAYS VEHICLE, I DID LOCATE A SMALL AMOUNT OF WHAT APPEARED TO BE RED WINE IN A GEORGIA FOOTBALL CUP IN THE CUP HOLDER.

MR. PRAY WAS TRANSPORTED TO THE AIKEN DETENTION CENTER WHERE HE WAS PLACED IN THE DMT DATAMASTER ROOM HE WAS READ HIS IMPLIED CONSENT RIGHTS AT 04:15 HOURS. MR. PRAY STATED THAT HE WAS REFUSING TO SUBMIT A BREATH SAMPLE. A NOTICE OF SUSPENSION WAS COMPLETED AND MR. PRAY WAS PROVIDED WITH ALL APPROPRIATE DOCUMENTATION. HE WAS THEN LEFT TO THE CUSTODY OF THE AIKEN COUNTY DETENTION CENTER STAFF.

NARRATIVE

JURISDICTION OF THEFT

JURISDICTION OF RECOVERY

ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY				
	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
	SINGLETARY, BRYAN R	1/3/2019	5763-1884	CALVERT, DANNY LEE	1/18/2019
				FOLLOW-UP OFFICER	
			INVESTIGATION ☐ YES ☒ NO		



SOUTH CAROLINA LAW ENFORCEMENT DIVISION
BREATH ALCOHOL ANALYSIS TEST REPORT
DRIVING UNDER THE INFLUENCE



SUBJECT BIOGRAPHICAL INFORMATION

SUBJECT NAME: HERBERT E PRAY III
RACE: WHITE
SEX: M
DOB: [REDACTED]

DL NUMBER: [REDACTED]
DRIVER'S LICENSE: SC
SUBJECT ADDRESS: [REDACTED]
WILLISTON SC 29653

ARREST INFORMATION

OFFICER NAME: B R SINGLETARY
TICKET NUMBER: ECITAION
ARREST DATE: 01/01/2019

AGENCY ORI: SCSHP0700
COUNTY OF ARREST: 02 - AIKEN
ARREST TIME: 03:26

OPERATOR INFORMATION

TEST OPERATOR: B R SINGLETARY
CERTIFICATION #: DMT009712
SOLUTION LOT #: 17802

BREATH TEST VIDEO RECORDED? YES
SUBJECT'S MOUTH CHECKED AND
ANY FOREIGN MATERIAL REMOVED? YES
SUBJECT ADVISED OF APPLICABLE RIGHTS? YES

AGENCY ORI: SCSHP0700
EXPIRATION DATE: 05/16/2019
BOTTLE: 1241

SUBJECT INFORMED OF VIDEO RECORDING? YES
SUBJECT INFORMED OF TYPE SAMPLE REQUESTED? YES
SUBJECT OBSERVED FOR A MINIMUM OF (20)
TWENTY MINUTES? NO

SUBJECT'S BREATH ALCOHOL TEST RESULTS

DATAMASTER DMT SERIAL # 111107

TEST DATE

01/01/2019

OBSERVATION START TIME:

04:12:30

SUBJECT SAMPLE

REQUESTED

04:20:07

Subject's Signature

Arresting Officer's Signature

(Received Copy) Date/Time

Test Operator's Signature

VISIT WWW.SLED.SC.GOV AND CLICK ON IMPLIED CONSENT. THEN CLICK ON BREATH SITE VIDEO RECORDINGS. ENTER THE REQUESTED INFORMATION FROM THE BOX BELOW TO ACCESS THE VIDEO RECORDING OF THIS BREATH TEST:

SUBJECT ID: 1691E3C388
SUBJECT PASSWORD: 39227

DATE/TIME: 01/01/2019 04:20:07
DMT SERIAL NUMBER: 111107

IMPORTANT NOTICE

INFORMATION FROM THIS REPORT WILL BE USED TO ACCESS THE BREATH TEST VIDEO. ANYONE WITH THIS INFORMATION WILL HAVE ACCESS TO THE VIDEO. PROTECT THIS REPORT AS YOU WOULD ANY IMPORTANT DOCUMENT. SLED ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED ACCESS.

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Herbert E PRAY III
Subject's Name (Print)



[Redacted] Date of Birth

[Redacted] Driver's License Number

SC State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here-> - Inform subject of video recording.
If answer is No, start here -> - Inform subject of type samples requested (i.e. breath, blood, urine).
- (B) Provide subject with a written copy of the following advisement and read the advisement to the subject:
- You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
 - The arresting officer has directed that samples be taken for alcohol and/or drug testing.
 - The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least six (6) months, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program, and your refusal may be used against you in court.
 - If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
 - If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month, with the option of ending the suspension if you enroll in the Ignition Interlock Device Program.
 - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, shall provide you affirmative assistance.
 - You have the right to request a contested case hearing within thirty (30) days of the issuance of the notice of suspension.
 - If you do not request a contested case hearing or if your suspension is upheld at the contested case hearing, you shall enroll in an Alcohol and Drug Safety Action Program.
- If applicable, perform the following procedures:
- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
- (D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
- (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)

ADVERTENCIA Y LECTURA DE DERECHOS POR MANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS (DUI)

- (A) ¿Se grabará el análisis en video? Si la respuesta es Si, empiece aquí-> - Informe a la persona que va a ser grabada en video.
Si la respuesta es No, empiece aquí-> - Informe a la persona de las muestras que se requieren (ejemplos: soplar, sangre, orina).
- (A) Dele a la persona una copia escrita de la advertencia siguiente y lea la advertencia al sujeto:
- (B) Dele a la persona una copia escrita de la advertencia siguiente y léasela a la persona:
- Usted está arrestado por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código Legal de Carolina del Sur de 1976, según su enmienda.
 - El policía que efectuó el arresto dispuso que le sacaran muestras de alcohol y/o drogas para ser analizadas.
 - Se obtendrán y analizarán las muestras según la Sección 56-5-2950 y las normas del SLED.
 - Usted no está obligado a hacerse los análisis ni a proporcionar muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar su privilegio de manejar en Carolina del Sur por lo menos durante seis (6) meses con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque. Negarse a ello podrá usarse en su contra en un tribunal.
 - Si usted se somete a los análisis o proporciona las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0.08%) o más, podría ser acusado en vez de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
 - Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, su privilegio de manejar en Carolina del Sur debe ser suspendido por lo menos durante un (1) mes con la opción de terminar la suspensión si se inscribe en el Programa del Dispositivo de Bloqueo del Arranque.
 - Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice por su cuenta los análisis adicionales que usted tendrá que pagar y en ese caso, el agente debe brindarle ayuda si usted la solicita.
 - Usted tiene el derecho de solicitar una audiencia para disputar el caso dentro de los treinta (30) días a partir de la fecha en que se emitió la notificación de la suspensión.
 - Si usted no solicita una audiencia para disputar el caso o si se le confirma la suspensión en la audiencia para disputar el caso, usted tiene que inscribirse en un Programa de Medidas de Seguridad para el Consumo Responsable del Alcohol y las Drogas.
- Si es pertinente, haga lo siguiente:
- (C) Inspeccione la boca de la persona y quite todo material extraño de la boca. (No se requiere si se niega la persona.)
- (D) Ingrese los datos biográficos en el DataMaster DMT. (Obligatorio para todos los análisis aunque se niegue la persona.)
- (E) Observe a la persona un mínimo de (20) minutos antes de obtener una muestra de su aliento. (No se requiere si se niega la persona.)

X *Paul Kelly*
Subject's Signature
Firma de la Persona (recibió una copia)

121

[Signature]
Officer's Signature
Firma del Agente

119

11/1/19 09:15
date/time
fecha/hora

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

vs.

HERBERT E. PRAY, III,
DEFENDANT

IN THE COURT OF COMMON PLEAS

**MEMORANDUM IN SUPPORT OF
APPEAL**C/A No.:
Ticket No.: 20192410601040
(Driving Under the Influence)**Background**

Trooper Singletary arrested the Respondent on the above-referenced DUI charge as a result of an encounter that occurred in the front of a residence. The video recording captured by the dashcam recorder on Singletary's vehicle includes the conduct of the Respondent, the field sobriety tests, the arrest of the Respondent and ultimately the advisement of Miranda rights as required by S.C. Code §56-5-2953. The Magistrate below found the Trooper's advisement of Miranda less than two minutes after leaving the scene where the Trooper encountered Respondent violated §56-5-2953, despite it being recorded on the incident site video.

Issue on Appeal

The issue on appeal is whether an advisement of Miranda on video occurring less than 2 minutes driving time driving time away from the location where a defendant is arrested complies with S.C. Code §56-5-2953. To determine this issue, the Court must necessarily interpret S.C. Code §56-5-2953(A). The State contends the Magistrate erred by interpreting the statute to require the Miranda advisement at the location where the field sobriety tests are performed.

§56-5-2953 Incident site and breath test site video recording.

(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.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2) **The video recording at the breath test site must:**

(a) include the entire breath test procedure, the person being informed that he is being video recorded, and that he has the right to refuse the test;

(b) include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test; and

(c) also include the person's conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period.

(3) The video recordings of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(emphasis added)

Standard of Review and Applicable Law

“In criminal cases, the appellate court sits to review errors of law only”. *State v. Baccus*, 367 S.C. 41, 48 (2006). Statutory interpretation is subject to *de novo* review on appeal. *State v. Taylor*, 411 SC 294 (2014) quoting *City of Greer v. Humble*, 402 SC 609, 613 (Ct. App. 2013)(“Moreover, [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.”)

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.” *Sloan v. Hardee*, 371 S.C. 495, 498 (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.” *Id.* at 499. Thus if the words are unambiguous, we must apply their literal meaning. *Id.* at 498. However, “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.***” S.C. *State Ports Auth. v. Jasper County*, 368 S.C. 388, 398 (2006) (emphasis added). We therefore should not concentrate on isolated phrases within the statute. *Id.* Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose. *State v. Sweat*, 379 S.C. 367, 376 (Ct.App.2008), *aff’d*, 386 S.C. 339 (2010). In that vein, we must read the statute so “that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,” for “[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law” *id.* at 377, 382.

Argument

Incident site describes the video and does not specify a location.

The magistrate interpreted the phrase ‘at the incident site’ to require the advisement of Miranda rights to occur at the same location as the field sobriety tests were performed.

Importantly the statute begins by requiring video recording in two instances – “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.” S.C. Code §56-5-2953(A). Following that first phrase, the subsection breaks down into what is required of each video. The videos are referenced by type – the video “at the incident site” and the video “at the breath test site”. *Id.* It is clear from the structure of the section, that “at the incident site” and “at the breath test site” are references that describe which video the statute is discussing. The phrases are separated in a manner consistent with that reference and distinguished in no other way. Because the location is the only way the phrases and videos are distinguished in the statute, it is clear that is the purpose for the wording. The phrases are not ‘surplusage’, and do have a purpose in the statute.

However, they should not be interpreted to have any other purpose than as a descriptor – the sole purpose for which they exist in the statute.

To impart any meaning more than as a descriptor would result in a forced construction and would cause an absurd result which couldn't have been the intention of the legislature. In reading what is required in each of the two videos – the content is all related to the conduct of the suspect, the suspect's interaction with law enforcement, and the advisements. There is no requirement that the location itself be recorded or documented in anyway. In other words, the location itself is not a significant concern of the legislature. Additionally, the suspect's Miranda rights apply equally no matter where he is located.

There is no time constraint for compliance with video recording requirements enumerated in the statute¹ so, following the interpretation proposed by Respondent, the trooper in this case could have driven the 1 minute and 54 seconds back toward the location he first encountered the Respondent and provided the Miranda advisement. Or, the Trooper could have taken the Respondent to that location at a different time and video recorded an advisement of Miranda rights to comply with the statute. Both of those instances illustrate the absurd result reached following the interpretation proposed by Respondent. "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. *Town of Mt. Pleasant*, 393 SC 342, 342-3 (2011) There is simply no import in the location that the advisement is provided. As an example, the *Taylor* Court explained in a case involving the same statute: "Nonetheless,

¹ A prior version of the statute required the advisement of Miranda rights prior to the administration of field sobriety tests. In contrast, the present version does not have a requirement for when the advisement of Miranda rights occurs.

interpreting the statute to require dismissal of the charges when the defendant is off camera for a short period of time and the gap does not occur during any of those events that either create direct evidence of a DUI or serve important rights of the defendant **would result in an absurdity that could not possibly have been intended by the legislature.**” *Taylor* at 306 (emphasis added).

The purpose of the statute has already been determined. “The purpose of the video requirement in the statute ‘is to create direct evidence of a DUI arrest.’” *Taylor*, at 305 quoting *Town of Mt. Pleasant* at 347. “In addition, ...requiring video recording of the person’s arrest and of the officer issuing *Miranda* warnings serves to protect important rights of the defendant.” *Taylor* at 306. In the present case, the clear and previously determined purpose of the statute has been met. The Respondent’s rights were protected and evidence of that fact was preserved on video. To interpret the statute to require dismissal in this instance would force a construction upon the statute which serves no purpose

Respondent’s contention that *incident site* refers to a specific location does not comport with a practical reading of the statute. *Incident site* is not a defined term and its meaning is not obvious in context. It is clear, however, that the legislature did not intend to place such importance as Respondent would suggest on the term:

1. Generally the crime of DUI will occur for some distance. In many instances, after an officer initiates a traffic stop still more distance will be travelled. The location the suspect’s vehicle comes to a rest can be determined by the will of the driver or the instance of a collision. Respondent’s proposed interpretation places great import on something so arbitrarily determined – and entirely unrelated to a suspect’s rights.

2. The statute does not require the *incident site* to be documented in any respect. If the term *incident site* was as important as relative to a suspect's rights, there would be a requirement that the incident site be itself video recorded for documentation. There is no such requirement regarding the *incident site*.
3. If *incident site* was as important as Respondent proposes, it would be a defined term. DUI is a crime that involves driving and by nature covers distance and many locations – all of which are the site of a crime. Interpreting *incident site* to be a term that creates great importance on a particular location leaves the obvious question as to what location.

Conclusion

The only interpretation which results in a meaningful reading of §56-5-2953(A) that does not limit or expand the meaning of the statute is to interpret *incident site* to describe which of the two videos that sentence is referencing. This is the interpretation of *incident site* that has a logical purpose consonant with the purpose of the statute and which avoids an absurd result.

March 21, 2019
Aiken, SC

s/ Samuel Grimes

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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.

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June 29, 2020

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

STATE OF SOUTH CAROLINA,

Appellant,

vs.

HERBERT E. PRAY, III,

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:

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

This 29th day of June, 2020.



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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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The circuit court erred in affirming the magistrate court's dismissal of the case. Both courts erred in finding the officer's reading of Respondent's Miranda rights as he was driving away from the location Respondent was located violated the requirements of section 56-5-2953(A) of the South Carolina Code. The interpretation by both the magistrate and circuit courts leads to an absurd result and does not effectuate the intent of the legislature in passing the section.

STATEMENT OF THE CASE

On January 1, 2019, Respondent was arrested for driving under the influence (DUI). He was issued a Uniform Traffic Ticket. (UTT; R.112). Respondent moved to dismiss his case based on his assertion the State failed to comply with the video statute, section 56-5-2953(A) of the South Carolina Code. (Motion to Dismiss; R.12). The State filed a Response March 12, 2019. On the same date, the magistrate court held a hearing on the motion to dismiss. The magistrate dismissed the case based on a violation of the video recording statute. (Transcript of Magistrate Court Hearing; Magistrate's Return; R.16).

On March 21, 2019, the State appealed the ruling to the Circuit Court. (Notice of Appeal and Appeal from Magistrate's Court; R. 30). The Magistrate filed her Return on March 25, 2019. (Magistrate's Return; R. 7). The circuit court held hearings on June 11 and 13, 2019. Following the hearings on August 9, 2019, the circuit court issued an order affirming the dismissal by the Magistrate. (Order on Appeal; R. 1). The State served its Notice of Appeal on August 16, 2019. This brief follows.

STATEMENT OF FACTS

Trooper Singletary responded to a call at a residence. When he arrived, he confronted Respondent. Respondent admitted driving to the residence and having a couple glasses of wine. (Incident Site Video). After discussion with Respondent, Trooper Singletary had Respondent perform field sobriety tests. (Incident Site Video). As stipulated at the magistrate's court hearing, Respondent was placed under arrest 22 minutes and 50 seconds into the Incident Site Video. (Incident Site Video). At approximately 39 minutes into the video, Trooper Singletary began driving with Respondent in his car. Throughout the time, the incident site video continued recording. At approximately 40 minutes and 54, or after they had been driving for almost two minutes, Trooper Singletary reads Respondent his Miranda rights. The full interaction, including the reading of the Miranda rights are included on the incident site video. (Incident Site Video).

ARGUMENT

- I. The circuit court erred in affirming the magistrate court's dismissal of the case. Both courts erred in finding the officer's reading of Respondent's Miranda rights as he was driving away from the location Respondent was located violated the requirements of section 56-5-2953(A) of the South Carolina Code. The interpretation by both the magistrate and circuit courts leads to an absurd result and does not effectuate the intent of the legislature in passing the section.

The circuit court erred in affirming the magistrate court's dismissal of the case based on an incorrect interpretation of the requirement of section 56-5-2953(A) and the determination that Miranda must be read at the same location where arrest occurred. The interpretation by both courts leads to an absurd result and does not effectuate the intent of the legislature. The descriptive term "incident site" does not refer to an exact location, but instead is logically construed as a term to differentiate the video from the one at the "breath test site." This Court should find the magistrate and circuit court erred in requiring Respondent be read his Miranda rights at the same location in which field sobriety tests were performed and he was arrested, and instead find that the term just refers to which video must include which required items from section 56-5-2953(A).

Section 56-5-2953 requires:

(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 Ann. § 56-5-2953(A) (Supp. 2014) (emphasis added). The court was asked to interpret whether the reference to incident site in the statute was designed to restrict where all the events under subsection (A)(1) had to occur in order to be properly included in the video or whether it was merely a descriptive term used to differentiate one video from another—the video required by subsection (A)(1) from the video required by subsection (A)(2).

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). “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)(emphasis added); State v. Baker, 310 S.C. 510, 512, 427 S.E.2d 670, 672 (1993) (“A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.”). Courts will reject an interpretation of a statute leading to an absurd result clearly unintended by the

legislature. 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. . . .”).

“[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).

Initially, the State fully complied with the requirements of the statute as written. The video recording at the incident site included all of the required items listed in subsection (A)(1). It began upon turning on his blue lights, which as can be seen on the video occurred a distance away from where the arrest was made, meaning the “incident site” obviously has to be a broad term or either it was error to activate the blue lights before arriving at the location where the arrest would occur. The video included all field sobriety tests administered. Finally, the same video that began upon activation of the blue lights some distance from the house includes the arrest of Respondent at the house and clearly shows Respondent being advised of his Miranda rights as he rides in the vehicle with Trooper Singletary well before he arrives at the breath test site. The statute does not indicate the video must show the person being advised of his Miranda rights at the location where he is arrested, it merely requires a video show Respondent’s conduct and include various items, all of which are on the video provided by Trooper Singletary.

In the instant case, nothing is gained by interpreting the term “incident site” as a narrow location restriction on where all the events must occur, and instead, an absurd result occurs by requiring the case to be dismissed even though the entirety of the reading of Miranda rights is on camera and recorded with both video and sound. As discussed, the video is activated and begins prior to Trooper Singletary’s arrival at the house where Respondent is ultimately arrested. Clearly the incident site could not be restricted to only a single location as the incident site video spans a significant area. Had Trooper Singletary advised Respondent of his Miranda rights where he was arrested, it would have created no different evidence or more substantive evidence than what was created in the video provided. As a result, the legislative intent of creating direct evidence of the stop and ending swearing matches is entirely preserved by finding the “incident site” term is a term differentiating the videos and not a specific situs restriction.

Additionally, if the term “incident site” in the instant case only referred to the house and yard as Respondent argued to the courts, then the officer could be free to turn off the video as soon as they pull out of the location and not record any of the conduct of the person arrested on their way to where the breath test will be administered. Determining the need to only record at a very specific location seems counter to the legislative intent because as soon as the officer and person leave that site, the video can be turned off and it again becomes a swearing match. Interpreting the term “incident site” to mean something other than a narrow location restriction again furthers the intent of the legislature by requiring that video to run as long as possible to record the defendant’s conduct. Again, the interpretation suggested by Respondent and adopted by the magistrate and circuit court leads to an absurd result clearly not contemplated or intended by the Legislature.

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. 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 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. 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 showing Respondent being advised of his Miranda rights, and 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.

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, reverse the dismissal of this case, and remand for a trial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court affirming the magistrate court's dismissal of the case should be reversed and this case remanded for trial.

Respectfully submitted,

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July 17, 2020

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.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellant filed July 17, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses). This 17th day of July, 2020.


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

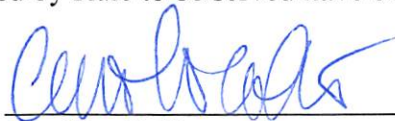
Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Final Brief of Appellant and Certificate of Compliance on Respondent by sending an electronic copy via email to the address listed in AIS for the following individual along with a physical copy to follow:

Robert I. Sussman, Esquire
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Augusta, Georgia 30901

I further certify that all parties required by Rule to be served have been served.
This 17th day of July, 2020.



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THE 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.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

- I. The Circuit Court did not err in affirming the Magistrate Court's finding that the officer's reading of Respondent's Miranda rights after the officer departed the location of encounter, field sobriety tests, and arrest violated the requirements of what must be included on "The video recording at the incident site" as stated in section 56-5-2953(A) of the South Carolina Code.

STATEMENT OF THE CASE

On January 1, 2019, Respondent was arrested for driving under the influence (DUI). Respondent was issued a Uniform Traffic Ticket. (UTT; R. p. 112). Respondent filed a Motion to Dismiss his DUI charge in Magistrate Court on March 8, 2019 and asserted that the State failed to comply with the video statute, section 56-5-2953(A) of the South Carolina Code, by not reading Respondent his Miranda rights at the “incident site”. (Magistrate’s Return; Motion to Dismiss; R. p. 12). The State filed a Response on March 12, 2019. (Magistrate’s Return; State’s Response to Defendant’s Motion; R. p. 14).

On March 12, 2019, the Magistrate Court held a hearing on the Motion to Dismiss. Both parties stipulated at the hearing that the arresting trooper responded to a call at a particular address, where the trooper located Respondent, had Respondent perform field sobriety tests, arrested Respondent, and inventoried Respondent’s vehicle, all video recorded and at the same location. (Magistrate’s Return; Transcript of Magistrate Court Hearing p. 2, lines 3-45-p. 3, lines 1-19; R. p. 17, lines 3-45-p. 18 lines 1-19). The parties further stipulated that the arresting officer read Respondent his Miranda rights on video, but in the officer’s moving vehicle, after departing the location above. (Magistrate’s Return; Transcript of Magistrate Court Hearing p. 3, lines 1-19; R. p. 18 lines 1-19). The Magistrate dismissed the case based on a violation of the video recording statute. (Magistrate’s Return; Transcript of Magistrate Court hearing p. 9, lines 25-41; R. p. 24 lines 25-41).

On March 21, 2019, the State appealed the ruling to the Circuit Court. (Notice of Appeal and Appeal from Magistrate Court; R. p. 30). The Magistrate filed her Return on March 25, 2019. (Magistrate’s Return; R. p. 7). The Circuit Court held hearings on June 11 and 13, 2019. On August 9, 2019, the Circuit Court issued an order affirming the dismissal by the Magistrate.

(Order on Appeal; R. pp. 1-6). The State served its Notice of Appeal on August 16, 2019.

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. On review, “the appellate court is limited to determining whether the trial judge abused his discretion.” State v. Garris, 394 S.C. 336, 344, 714 S.E.2d 888, 893 (Ct. App. 2011). “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law”. Id.

STATEMENT OF FACTS

Trooper Singletary responded to call at a residential address. When the trooper arrived at that address, he made his first contact with Respondent. (Dash Camera Video). After discussion with Respondent, the trooper administered field sobriety test on Respondent. (Dash Camera Video). As stipulated at the Magistrate Court hearing, Respondent was placed under arrest 22 minutes and 50 seconds into the Dash Camera Video, but Respondent was not read his Miranda rights at that time. (Dash Camera Video; R. p. 17, lines 3-45-p. 18, lines 1-19). Once Respondent was placed under arrest, Trooper Singletary questioned Respondent regarding his preference of a towing company and whether Respondent had been previously arrested for DUI, eliciting verbal responses from Respondent. (Dash Camera Video). All the above was captured on the trooper's forward-facing dash camera.

At approximately 27 minutes and 50 seconds into the video, Respondent was placed in the front seat of the trooper's patrol car. (Dash Camera Video) At this point, Respondent was being video and audio recorded by the trooper's rear-facing dash camera, which had been turned on to record contemporaneously with the forward-facing dash camera. (Dash Camera Video). At 28 minutes and 19 seconds into the video, prior to searching Respondent's vehicle, the trooper questioned Respondent if there was anything illegal in Respondent's vehicle, including open containers or drugs, and Respondent gave verbal responses to this questioning. (Dash Camera Video).

The trooper proceeded to search Respondent's vehicle. (Dash Camera Video) After he discovered what he believed to be an open container of wine, the trooper questioned Respondent as to the contents of the container, eliciting further verbal response from Respondent. (Dash Camera Video). At 39 minutes into the Dash Camera Video, and approximately 16 minutes and

10 seconds after Respondent was placed under arrest, the trooper departed the location where everything described above occurred. (Dash Camera Video).

While in the trooper's moving vehicle, Respondent continued to have conversation with the trooper, with the dash camera still recording. (Dash Camera Video). 40 minutes and 49 seconds into the video, Respondent asked the trooper if he was being arrested, which prompted and reminded the trooper to read the Respondent his Miranda rights, for the first time during the entire interaction. (Dash Camera Video). The trooper then read Respondent his Miranda rights at 40 minutes and 54 seconds into the video, after almost two minutes of driving away from the incident site, more than 18 minutes after Respondent was arrested, and after asking Respondent numerous questions both specifically about the allegation of DUI as well as other, general questions. (Dash Camera Video).

ARGUMENT

- I. The Circuit Court did not err in affirming the Magistrate Court's finding that the officer's reading of Respondent's Miranda rights after the officer departed the location of encounter, field sobriety tests, and arrest violated the requirements of what must be included on "The video recording at the incident site" as stated in section 56-5-2953(A) of the South Carolina Code.

The Circuit Court correctly affirmed the Magistrate Court's dismissal of the DUI charge based on the determination that the State failed to comply with section 56-5-2953(A). First, both courts correctly held that section 56-5-2953(A) requires the arresting officer to read to Respondent his Miranda rights at the incident site, and that the incident site is the location where Respondent was located by law enforcement, performed field sobriety tests, and was subsequently arrested. Second, both courts correctly determined that failure to comply with the requirements of section 56-5-2953 required the dismissal of the DUI charge. City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007); The Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278, (2011); State v. Johnson, 396 S.C. 182, 720 S.E.2d 516 (Ct. App. 2011). At no point has Appellant argued that the arresting officer's non-compliance with the statute was mitigated by any of the exceptions included in the statute, or that dismissal of the charge was not appropriate if there was a violation of the requirements of section 56-5-2953.

"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).

Pursuant to section 56-5-2953, a person charged with driving under the influence must have his conduct at the incident site and breath test site recorded as follows:

Section 56-5-2953. **Incident site and breath test site** video recording.

(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.**

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2)The video recording at the **breath test site** must:

(a) include the entire breath test procedure, the person being informed that he is being video recorded, and that he has the right to refuse the test;

(b) include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test; and

(c) also include the person's conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period.

(3) The video recordings of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the

equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

S.C. Code Ann. § 56-5-2953(Supp. 2014) (emphasis added). At issue in this case is whether the phrase “incident site” refers to a particular location, and whether the State must perform and record the actions listed under sections 56-5-2953 (A)(1)(a)(ii) to (iii) at that same location, or “incident site”

This Court has determined that section 56-5-2953 serves two primary purposes. The first purpose is to create direct evidence of a DUI arrest by requiring the video include any field sobriety tests administered. State v. Taylor, 411 S.C. 294, 306, 768 S.E.2d 71, 77 (Ct. App. 2014). The other purpose, 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.” Id.

It is unambiguous that the arresting officer must produce two separate video recordings, one from the incident site as required in subsection (A)(1) and one from the breath test site as required in subsection (A)(2). It is also clear that each video must capture specific actions. The incident site video must include any field sobriety tests administered, the arrest of a person for DUI, and the person being advised of his Miranda rights. All the actions under the “incident site”

heading must be recorded, and plainly must all occur at a singular location. Otherwise, there would be no reason to group these required actions under the same heading. The phrases “incident site” and “breath test” site have an important purpose within the statute. These phrases direct arresting officers as to what must be recorded as well as where each task must be performed and recorded.

It is clear that the Legislature intended for the location of the arrest to be the same location where Miranda is read, absent specifically enumerated exceptions, as the two requirements are grouped not only under the same heading of incident site video requirements, but more importantly within the same sentence and within the same subsection, (A)(1)(a)(iii). Plainly and clearly, since they appear within the same sentence of (A)(1)(a)(iii), the Legislature intended to protect the accused’s rights by requiring that the accused be given the Miranda advisement as soon as possible after arrest.

Appellant contends that nothing is gained by interpreting the term “incident site” as a narrow location restriction on where certain events must occur. In making this argument, Appellant asserts that even if Trooper Singletary had advised Respondent of his Miranda rights where he was arrested, it would have created no different or more substantive evidence than what was created in the video actually provided. However, this position incorrectly focuses on the wrong objective of section 56-5-2953, which is creating direct evidence of a DUI arrest. Taylor, 411 S.C. at 306, 768 S.E.2d at 77. Instead, this case must be analyzed in light of the video statute’s other primary purpose, which is to protect the rights of the defendant. Id.

Appellant does not contend that dismissal of the charge is an improper remedy for unexcused noncompliance with section 56-5-2953, or that a subsection (B) exception mitigated the violation of subsection (A). Instead, Appellant contends that the trooper’s reading of Miranda

in the trooper's moving patrol vehicle, after departing the location where the trooper responded to the call, first made contact with Respondent, had Respondent perform field sobriety tests, and arrested Respondent, satisfies the requirements of the subsection (A)(1)(a) incident site video recording.

In arriving at this conclusion, Appellant argues that the phrases "incident site" and "breath test site" do not refer to particular locations, but merely differentiate one video from another- the "incident site" video required by subsection (A)(1)(a) from the "breath test site" video required by subsection (A)(2). Under Respondent's logic that "incident site" is meant to describe a particular video and is not meant to describe a location, the arresting officer could theoretically let the incident site video record indefinitely, and then bring the defendant back on camera days later to read Miranda and still be in compliance with section 56-5-2953. This would lead to an absurd result clearly not contemplated or intended by the Legislature and highlights the importance of giving "incident site" its only clear and plain meaning.

The word "incident" is defined as "a discrete occurrence or happening." Black's Law Dictionary 830 (9th ed. 2009). "Site" is defined as "A place or location; esp., a piece of property set aside for a specific use." Black's Law Dictionary 1513 (9th ed. 2009). "Incident" is clearly a singular word, as is "site", and the phrase "incident site" is ordinarily and plainly understood to refer to a single, specific location. Therefore, subsection (A)(1)(a)'s language that "the video recording at the incident site must:" unambiguously requires that all actions on the video recording from the incident site must occur at the same location.

If the Legislature did not intend for the term "incident site" to describe a single location where the listed actions must be recorded, and only meant for the term to distinguish one video from another, they would have chosen a number of possible ways to differentiate between the

two required video recordings. Instead, however, the Legislature used the terms “incident site” and “breath test site” to describe where each recording must take place. The incident site is where the officer responds, encounters the driver, performs any field sobriety tests, arrests the driver, and where Miranda must be read.

Further, numerous forms prepared and completed by the State in this case also refer to this single, particular location. The incident site in this case is the same place as the “INCIDENT LOCATION” on the trooper’s own Incident Report. (Incident Report; R. p. 114). It is the same location as the “crime location” on the trooper’s Probable Cause Affidavit. (Magistrate’s Return; Probable Cause Affidavit; R. p. 27). It is the same location (but for a typographical error regarding the street number) as the trooper’s “VIOLATION LOCATION” on his Uniform Traffic Ticket. (UTT; R. p. 112). In fact, the Uniform Traffic Ticket includes latitude and longitude GPS coordinates under “VIOLATION LOCATION,” indicating with extreme precision that the incident took place at a single location. (UTT; R. p. 112). All of these documents indicate that the incident site or location refers to a specific place, which is: where the trooper responded, where the trooper administered field sobriety tests, and where the trooper arrested Respondent- but **not** where the trooper read Miranda in this case.

In the case at hand, Trooper Singletary was called to a residence in Aiken County. (Incident Report; R. p. 114). The call was not in reference to a road block, traffic accident investigation, or citizen’s arrest. There were no issues with the video recording equipment, no emergency medical treatment was required, and no exigent circumstances existed, as contemplated by subsection (B) of section 56-5-2953.

The video in this case begins upon the activation of the trooper’s blue lights, and Appellant relies on this fact for the argument that “incident site” does not refer to a singular

location because officers normally initiate their blue lights while traveling in their vehicle and before arriving to a scene. Appellant argues that “incident site” is a broad term that can cover a span of distance, since the blue light language is included in the subsection (A) requirements regarding the incident site video. However, this argument is defeated by looking at the plain and unambiguous language of the statute. The statute does not read that the video recording at the incident site must “show” the officer’s activation of the blue lights, instead it reads that the incident site video must “not begin later than the activation of the officer’s blue lights.” S.C. Code Ann. § 56-5-2953 (A)(1)(a)(i) (Supp. 2014). Therefore, the activation of blue lights does not mark the beginning of an indefinite incident, but instead tells the arresting officer when he must turn on his camera that will ultimately capture certain events that must occur at the actual incident site.

Shortly after the trooper initiated his blue lights and began recording, he arrived at the incident site he was called to. After performing field sobriety tests, Respondent was arrested but not read Miranda. (Dash Camera Video). Respondent was then placed in the trooper’s patrol vehicle, where the trooper proceeded to ask Respondent incriminating questions regarding any prior DUI arrests and the presence of any contraband in Respondent’s vehicle. (Dash Camera Video). The trooper asks other questions that elicited verbal, audio and video recorded responses from Respondent, all without Respondent being read Miranda. (Dash Camera Video).

After searching Respondent’s car, the Trooper then confronted and questioned Respondent regarding an open container of alcohol found in the car. (Dash Camera Video). Once the trooper departed the scene, Respondent asked the trooper if he was being arrested for DUI. (Dash Camera Video). Finally, after having been in custody for more than 18 minutes, after having been questioned about the alleged crime of DUI while in custody, after driving almost 2

minutes away from the location of encounter, field sobriety tests and arrest, and only after being prompted by Respondent, the trooper read his Miranda rights. (Dash Camera Video).

In the unique field of DUI arrests, defendants are secured in a patrol car after being arrested and often remain in the car for a period of time while the officer completes paperwork and then transports the defendant to jail. A driver charged with DUI can incriminate himself after arrest not only by answering questions about alcohol consumption and driving, but also by responding to any question, as the State routinely argues that a driver's speech, enunciation, and demeanor are evidence of intoxication.

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 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. Although the violation of the Miranda requirement of section 56-5-2953 was likely not intentional by the trooper, the violation occurred nonetheless.

It is true that field sobriety tests are not always performed, video equipment sometimes fails despite reasonable maintenance efforts, and in the case of a traffic accident or other limited circumstances, a driver is not always arrested at the incident site. However, the Legislature has provided an exception to the video requirements of section 56-5-2953. In this case, none of those exceptions apply and none were raised by Appellant.

Accordingly, this Court should apply the unambiguous, plain and clear meaning of "incident site" and decide that the lower court was correct in affirming the trial court's dismissal of the charge due to the State's unexcused violation of § 56-5-2953.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the Circuit Court affirming the Magistrate Court's dismissal of the case should be AFFIRMED and this case DISMISSED.

Respectfully submitted



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July 20, 2020

THE 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.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent filed July 20, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses.

This 20th day of July, 2020.



Robert I. Sussman, Esquire

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ATTORNEY FOR RESPONDENT

THE 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.

PROOF OF SERVICE

I, Robert I. Sussman, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by sending an electronic copy via email to the address listed in AIS for the flowing individual along with a physical copy to follow:

William M. Blitch, Jr., Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.
This 20th day of July, 2020


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**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

Appeal From Aiken County
Clifton Newman, Circuit Court Judge

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

AFFIRMED

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.

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*¹ 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.²

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

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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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ATTORNEYS FOR APPELLANT

March 14, 2023

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.

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.



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THE 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,
Herbert E. Pray, III,

vs.

Appellant,
Respondent.

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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ATTORNEY FOR RESPONDENT

May 8, 2023

THE 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,
Herbert E. Pray, III,

vs.

Appellant,
Respondent.

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. Blich, Jr., at his primary email address as provided by the Attorney Information System (AIS).

This 8th day of May, 2023.



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ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

State of South Carolina, Appellant,

v.

Herbert E. Pray, III, Respondent.

Appellate Case No. 2019-001400

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.



C.J.



J.



A.J.

Columbia, South Carolina

cc:

Robert Irvin Sussman, Esquire
William M. Blich, Jr., Esquire
Alan McCrory Wilson, Esquire

FILED
May 18 2023