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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Aiken County
Hon. Clifton B. Newman, Circuit Court Judge
Appellate Case No. 2023-000972

The State, Petitioner,

v.

Herbert E. Pray, III, Respondent.

Opinion No. 2023-UP-067 (S.C. Ct. App. filed February 22, 2023)

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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ATTORNEYS FOR PETITIONER

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on March 14, 2023. The Petition for Rehearing was denied by Order filed May 18, 2023.

STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals erred in affirming the magistrate court's dismissal of the case. The Court 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 leads to an absurd result and does not effectuate the intent of the legislature in passing the section.

STATEMENT OF THE CASE

Procedural History

On January 1, 2019, Respondent was arrested for driving under the influence (DUI). He was issued a Uniform Traffic Ticket. (UTT; App.114). 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; App.14). 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; App.18).

On March 21, 2019, the State appealed the ruling to the Circuit Court. (Notice of Appeal and Appeal from Magistrate's Court; App. 32). The Magistrate filed her Return on March 25, 2019. (Magistrate's Return; App. 9). 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; App. 3).

The State served its Notice of Appeal on August 16, 2019. After briefing, the Court of Appeals affirmed the magistrate court's dismissal of the underlying case. State v. Pray, Op. No. 2023-UP-067 (S.C. Ct. App. filed February 22, 2023). The Court denied the State's Petition for Rehearing and this Petition followed.

Factual Background

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 less than 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 Court of Appeals erred in affirming the magistrate court's dismissal of the case. The Court 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 leads to an absurd result and does not effectuate the intent of the legislature in passing the section.

The Court of Appeals erred in affirming the magistrate court's dismissal of the case while ignoring the legislative intent and interpreting section 56-5-2953(A) of the South Carolina Code in a manner which leads to an absurd result. 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." The Court of Appeals erred in requiring Respondent be read his Miranda rights at the exact same location in which field sobriety tests were performed and he was arrested. This Court should grant the Petition for Writ of Certiorari and find that the statute does not require all events to occur in one specific physical location, but the terms "incident site" and "breath test site" identify 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.**
>
> . . . .

> (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.

S.C. Code Ann. § 56-5-2953(A) (Supp. 2014) (emphasis added).

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.

The Court of Appeals 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 the Court of Appeals and this 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. This Court specifically 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, 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 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 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 then 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.

The Court of Appeals also 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 grant the Petition for Writ of Certiorari, apply the legislative intent, and determine that "incident site" is a broader term than recognized by the lower courts. Therefore, this Court should find the reading of Miranda on the departure from the house and yard in this case while being recorded on the "incident site" video is sufficient to comply with section 56-5-2953.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition For Writ of Certiorari to the Court of Appeals and Appendix by emailing a copy to Respondent's 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 17th day of July, 2023.

CAROLINE COLLINS
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