

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 23 2024

S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Aiken County
Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2023-000972

THE STATE,

Petitioner,

vs.

HERBERT E. PRAY, III,

Respondent.

BRIEF OF PETITIONER

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals reversibly err by affirming the magistrate court's dismissal of Pray's driving under the influence case when its conclusion the trooper's recorded act of reading Pray's Miranda rights to Pray as the trooper was driving away from the location where Pray was first encountered constituted a violation of the requirements of Section 56-5-2953(A) of the South Carolina Code of Laws was incorrect and premised upon an erroneous interpretation of that statutory provision that would lead to an absurd result and would not effectuate the legislature's intent in passing that particular provision?

STATEMENT OF THE CASE

In January of 2019, Respondent Herbert E. Pray, III was arrested following an investigation into a report of a suspected break-in. The arresting officer—a trooper from the South Carolina Highway Patrol—issued Uniform Traffic Ticket # 20192410601040 to Pray charging him with driving under the influence (“DUI”) in violation of Section 56-5-2930 of the South Carolina Code of Laws. Before his trial on that charge, Pray filed a motion to dismiss, and the State promptly submitted a response opposing the motion. On March 12, 2019, a hearing was conducted on the matter in the Aiken County Magistrate Court with the Honorable Donna H. Williamson, magistrate court judge, presiding. At the conclusion of the hearing, the magistrate court judge granted Pray’s motion and dismissed his DUI charge with prejudice. The State then timely filed an appeal with the Aiken County Court of Common Pleas.

On appeal to the circuit court, hearings were conducted on both June 11, 2019, and June 13, 2019, in the Aiken County Court of Common Pleas with the Honorable Clifton Newman, circuit court judge, presiding. At the conclusion of the hearing, the circuit court judge requested proposed order from both parties. Thereafter, through an order filed on August 12, 2019, the circuit court judge affirmed the magistrate court judge’s order dismissing Pray’s DUI charge. The State then filed and perfected another appeal.

On appeal to the appellate court, the Court of Appeals—following briefing—affirmed the circuit court judge’s appellate ruling in an unpublished opinion. State v. Pray, Op. No. 2023-UP-067 (S.C. Ct. App. filed Feb. 22, 2023). Thereafter, the State petitioned the Court of Appeals for

rehearing, and the petition was denied. The State then filed a petition for a writ of certiorari in the Supreme Court, and that petition was granted on August 13, 2024.¹

¹ The State acknowledges the work of former Senior Assistant Deputy Attorney General William M. Blich, Jr., who previously represented the State in Pray’s case and—amongst other things—prepared the petition for a writ of certiorari that was submitted to and granted by this Court. (Cert. P. pp. 1-9). In its Brief of Petitioner, the State has now incorporated a substantial portion of that petition.

STATEMENT OF FACTS

Around 3:00 a.m. in the early morning hours of January 1, 2019, Trooper Bryan Singletary of the South Carolina Highway Patrol—while assisting deputies from the Aiken County Sheriff’s Office—responded to a report of a suspected break-in at a particular residence located in Windsor, South Carolina. (App’x p. 29; p. 114; p. 116; Incident Site Recording). Upon arriving at the scene, Trooper Singletary encountered Pray, who claimed he was simply visiting a former client he met through his work for a pest control company to wish her a happy new year, outside the residence. (App’x p. 29; pp. 116-117; Incident Site Recording). As their interactions continued, Pray—who smelled of alcohol—further admitted he had a few glasses of wine that night and acknowledged he had driven his vehicle to that location. (App’x p. 29; p. 117; Incident Site Recording). Ultimately, in light of the circumstances involved, Trooper Singletary proceeded to administer—with Pray’s consent—field sobriety tests, which revealed signs of impairment on Pray’s part. (App’x p. 29; pp. 117-118; Incident Site Recording). As a result, Trooper Singletary arrested Pray for DUI and secured him in his patrol vehicle.² (App’x p. 29; p. 114; p. 118; Incident Site Recording). Following that, the trooper completed his investigation at the scene and then began driving Pray to jail. (App’x p. 29; Incident Site Recording). Along the way and just *one minute and fifty-four seconds* after the drive began, Trooper Singletary advised Pray of his rights. (App’x p. 20; Incident Site Recording). Roughly twenty minutes after that, the trooper delivered Pray to the Aiken County Detention Center.³ (Incident Site Recording).

² The Aiken County Sheriff’s Office also placed Pray on trespass notice at the request of the home’s resident. (App’x p. 29; Incident Site Recording).

³ At the detention center, Pray refused to submit to a breath test. (App’x pp. 120-121).

Significantly, the entirety of Trooper Singletary’s interactions with Pray—including the trooper’s act of advising Pray of his Miranda⁴ rights—was captured on the trooper’s patrol vehicle’s recording system, and the recording continued without interruption all the way to the point where Trooper Singletary and Pray arrived at the detention center. (App’x p. 3; p. 119; Incident Site Recording). Nevertheless, defense counsel moved for the dismissal of Pray’s DUI charge based on a purported violation of the recording requirements set out in Section 56-5-2953(A) of the South Carolina Code of Laws. (App’x pp. 14-15). More specifically, defense counsel maintained—while acknowledging his argument could be construed as “splitting hairs”—the fact Pray was not advised of his Miranda rights until after the trooper began driving him away from the residence where he was arrested was fatal to the prosecution and required dismissal. (App’x pp. 14-15; pp. 20-24). The State disagreed, but the magistrate court judge agreed with Pray’s argument and dismissed the DUI charge. (App’x pp. 16-17; p. 26).

The State then appealed. (App’x pp. 32-34). However, upon considering the matter, the circuit court judge affirmed the magistrate court judge’s ruling, concluding the fact the trooper advised Pray of his rights “almost” two minutes after they began driving to the detention center constituted a violation of Section 56-5-2953 that warranted dismissal. (App’x pp. 3-4; p. 8; p. 111). In so concluding, the circuit court judge ruled all the events that must be recorded pursuant to Section 56-5-2953(A)(1) must “plainly” all occur at a singular physical location. (App’x p. 6; p. 8).

Once again, the State appealed. (App’x pp. 130-143). However, on appeal, the Court of Appeals summarily affirmed. (App’x pp. 164-165).

⁴ Miranda v. Arizona, 384 U.S. 436 (1966).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When conducting appellate review of an issue hinging on the interpretation of a statute, the appellate court will review the matter de novo. State v. Whitner, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012). And, in doing so, the appellate court is free to decide the matter without affording any deference to the trial judge because questions of statutory interpretation are questions of law. Id.; see State v. Taylor, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022) (“A question of statutory interpretation is a question of law, which is subject to de novo review and which we are free to decide without deference to the courts below.”).

ARGUMENT

The Court of Appeals reversibly erred by affirming the magistrate court’s dismissal of Pray’s driving under the influence case because its conclusion the trooper’s recorded act of reading Pray’s Miranda rights to Pray as the trooper was driving away from the location where Pray was first encountered constituted a violation of the requirements of Section 56-5-2953(A) of the South Carolina Code of Laws was incorrect and premised upon an erroneous interpretation of that statutory provision that would lead to an absurd result and would not effectuate the legislature’s intent in passing that particular provision.

In the case sub judice, the Court of Appeals affirmed the magistrate court judge’s dismissal of Pray’s DUI case based on a purported violation of Section 56-5-2953(A) of the South Carolina Code of Laws. Significantly, in doing so, the Court of Appeals ignored the legislative intent underlying that particular statutory provision and interpreted its language in a manner that would lead to an absurd result. The Court of Appeals erred. Contrary to its conclusion, the descriptive phrase “incident site” contained in Section 56-5-2953(A) does not refer to an exact singular location but, instead, is logically construed as a phrase intended to differentiate the “incident site” recording from the distinct recording required to be captured at the “breath test site.” Thus, the Court of Appeals erred by wrongly interpreting Section 56-5-2953(A) as unyielding requiring the trooper to read Pray his Miranda rights at the exact same location—and only that location—where the field sobriety tests were performed and Pray was arrested. Accordingly, this Court should now reverse the decision of the Court of Appeals and find Section 56-5-2953(A) does not require all events to occur in one specific physical location and, instead, employs the phrases “incident site” and “breath test site” to identify which recording must include the different events specified in the statutory provision.

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, courts look 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. And, importantly, a 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).

Through the enactment of Section 56-5-2953, our legislature set out the following recording requirements applicable in DUI cases:

(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) (emphasis added).

As to that provision's purpose, 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. Significantly, this Court has 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).

With that in mind, the Court of Appeals—in interpreting and applying Section 56-5-2953 to Pray's case—overlooked the legislative intent behind the video recording statute. Contrary to the conclusion reached by the Court of Appeals, this Court should determine, in light of the legislative intent, the phrase "incident site" in Section 56-5-2953 is not one designed to limit the specific physical location where everything that must be captured on the recording happens but, instead, is a broad phrase used to identify the particular video recording being referenced and distinguish it from the other one discussed in the statutory provision, which is the one that is generally captured at the breath test location.

Limiting the scope of the phrase "incident site" in the recording statute 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 the recording's purpose is "to create direct evidence of a DUI arrest." Id. Further, limiting the recording 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.

Here, the State fully complied with the requirements of the statute as written, and the “incident site” recording captured in Pray’s case included all the required events listed in subsection (A)(1). First, the recording began upon the activation of the trooper’s vehicle’s blue lights, which—as reflected on the recording—occurred a distance away from where the arrest was made. S.C. Code Ann. § 56-5-2953(A)(1). Second, the recording included all field sobriety tests administered to—and failed by—Pray. Id. Third and finally, the same recording that began upon activation of the trooper’s vehicle’s blue lights some distance from the residence showed Pray’s arrest at the house *and* likewise clearly showed Pray being advised of his Miranda rights as he was riding in the trooper’s vehicle at a point in time well before he arrived at the breath test site. Id. Therefore, the recording in Pray’s case contained everything it needed to contain in order to comply with the statutory requirements set out in Section 56-5-2953. Id. And, that was particularly true given the statute does *not* indicate the recording must show the person being advised of his Miranda rights at the location where he is arrested and, instead, merely requires a recording to show the suspect’s conduct along with other specified things, all of which were captured on the recording provided by Trooper Singletary in Pray’s case.

Meanwhile, nothing would be gained by interpreting the phrase “incident site” as a narrow location restriction on where all the events *must* invariably occur, and, instead, an absurd result would occur by requiring a case to be dismissed even though the entirety of the reading of Miranda rights was on camera and recorded with both video and sound. As discussed, the recording in Pray’s case began prior to the trooper’s arrival at the house where Pray was

ultimately arrested. Clearly the “incident site” could not be restricted to only a single location as the “incident site” recording spans a significant area. Had Trooper Singletary advised Pray 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 recording provided. As a result, the legislative intent of creating direct evidence of the incident and ending swearing matches would be entirely preserved and served by finding the “incident site” term is a term differentiating the recordings as opposed to a specific situs restriction.

In affirming the dismissal of Pray’s DUI charge, the Court of Appeals improperly 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) (“We will reject a statutory interpretation when to accept it 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.”); Ray Bell Constr. Co. v. Sch. Dist. of Greenville Cnty., 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[.]”). More specifically, interpreting the phrase “incident site” to be a singular narrow location signifying where the suspect is first located—or where the first interaction occurs—is unnecessarily restrictive and will certainly lead to absurd results.

In this particular case, the “incident site” as argued by Pray was solely the house and yard where Pray was first located. If, for example, field sobriety tests were conducted at that location and then Pray wandered down the street three or four houses away while being pursued by the officer with the recording running, would there now be two incident sites? Does the officer have

to redo the field sobriety test at the new location or bring Pray back to the house and yard before he can validly arrest him and read him his Miranda warnings? It would be absurd to suggest our legislature intended such meaningless actions to be invariably required before a valid DUI conviction can be obtained.

Moreover, the end result here is a prime example of the type of absurd result that could and would occur by limiting the definition of “incident site” too greatly since the State has a clear recording in Pray’s case that began before the officer arrived at the location where Pray was first found, *continued on* without interruption from that point going forward all the way until the trooper delivered Pray to the breath test location, and indisputably showed Pray being advised of his Miranda rights along with all the other statutorily-specified events. In light of that, the statute’s purpose was fully satisfied in Pray’s case, and no further evidence production or reduction in a swearing contest would have occurred if Pray had been advised of his rights roughly two minutes earlier when he was still in the yard of someone else’s home as opposed to in the patrol vehicle on the way to the breath test site—especially when everything was captured on the same continuously-running recording. Certainly, the phrase “incident site” should not be so narrowly read as to lead to dismissal under such circumstances.

Accordingly, for all those reasons, this Court should reject the statutory interpretation adopted by the Court of Appeals, determine the phrase “incident site” is a broader phrase than the lower courts found it to be, find the recording depicting the trooper’s reading of Miranda to Pray shortly after their departure from the house and yard was sufficient to comply with the statute’s requirements, and remand Pray’s case for trial on his DUI charge. By doing so, this Court will be interpreting Section 56-5-2953 in a manner consistent with its recognized purpose and will prevent an absurd result from occurring in this case or any future DUI cases.

CONCLUSION

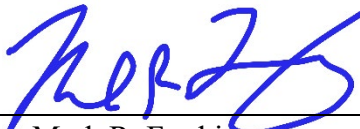
For all the foregoing reasons, it is respectfully submitted the decisions of the lower courts should be reversed and Pray's case should be remanded for trial.

Respectfully submitted,

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