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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 2025-UP-384

THE STATE,

RESPONDENT,

V.

JAKAVIS GREEN,

APPELLANT

APPELLATE CASE NO. 2023-000846

PETITION FOR REHEARING

On November 26, 2025, this Court issued an unpublished opinion in the above referenced matter finding the issue of the constitutionality of S.C. Code § 56-5-2120(b) was not properly preserved for appellate review. Pursuant to Rule 221(a), SCACR, Jakavis Green requests that this Court grant rehearing on this issue based upon the arguments and facts set forth below. Appellant respectfully asserts that this Court's opinion that this matter was not preserved below is in error. Specifically, Appellant's trial counsel filed a written motion in advance of trial that specifically alleged that the language contained in S.C. Code § 56-5-2120(b) did not provide clear guidance to the public or law enforcement as to which was the proper lane of travel to enter

as a left turn is made. R. 98 – 99. In its reply, the state acknowledged the law was untested in the courts but argued that the statute, when read in context with the South Carolina Driver's Manual, dictated the proper lane *can be inferred* as the far left lane of the entering street. R. 121 (emphasis added). Appellant's counsel filed a written reply, in part to address reliance on the Driver's Manual as a source of authority, specifically argued the void for vagueness concept. R. 127 – 129. As part of this written submission, counsel for appellant argued in writing that the statute was "nonsensical" (R. 129) and violated the void for vagueness principal outlined by the United States Supreme Court in Kolender v. Lawson, 461 U.S. 352 (1983) (R. 127), a case appellant also cited in his brief to this Court.

The trial court was on written notice the unclear and contradictory meaning of S.C. Code § 56-5-2120(b) was a matter before the Court. The issue was briefed by both parties below. R. 114 – 130. Counsel for appellant argued before the lower court that "statement [in the statute] is just nonsensical" and was not clear "what lane of traffic a driver turning left should turn into." R. 13, ll. 18 – 21; R. 17, ll. 2 - 8. Counsel for appellant also argued that the added language "whenever practical" further undermined the meaning of the statute. R. 13, l. 22 – 39, l. 4. The state reiterated its argument that the statute was clear. R. 14, l. 22 – 15, l. 9. The trial court ultimately ruled the statute gave clear guidance as to the proper lane of travel in which to turn. R. 44, ll. 6 – 15. As argued extensively in Appellant's Brief before this Court, the trial court's ruling on this point is in error.

To the extent the Respondent has relied upon good faith in supporting the initial traffic stop, the "Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law—must be objectively reasonable." Heien v. North Carolina, 574 U.S. 54, 66 (2014). Had the officer here, as in Heien, been faced with statutory language that provided

sufficient guidance, to the public at large or the officer, as to which lane was proper, then good faith would support the traffic stop. However, a statute that can be interpreted so as to apply to any lane of travel, so that the officer has absolutely no guidance as to the proper lane to enforce, would not fall within the objectively reasonable toleration asserted by Respondent. Here, S.C. Code § 56-5-2120(b) may be interpreted so as to apply to any lane a driver turns into in completing a left hand turn. As such, an officer may simply pick, randomly, which lane the officer chooses to enforce based upon the whims (or bias) of the officer. Respondent's reliance upon the objectively reasonable mistake outlined in Heien is misplaced and grants officers under S.C. Code § 56-5-2120(b) *carte blanche* to stop any vehicle turning left regardless of which lane that vehicle enters upon completing its turn.

As argued in his Brief before this Court, guidance here can be found in Georgia's virtually identical statute. In McNair v. State, 678 S.E.2d 69 (Ga. 2009), the Supreme Court of Georgia found its turn statute (almost identical language to S.C. Code § 56-5-2120(b)) "can be read as setting forth two directly contradictory ways for executing a left-hand turn onto a multi-lane roadway. Because of the language in the statute, both methods are equally plausible. The law is well established that a statute violates due process if it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application." McNair, 678 S.E.2d at 71. The Court in McNair found virtually identical statutory language confusing, allowing a driver, the public, and the police, little true guidance as to which lane to turn into, while clearly defining from which lane to begin the turn.

If S.C. Code § 56-5-2120(b) is unconstitutionally vague so as to apply to whatever lane an officer elects, as outlined in Appellant's Brief and McNair, Heien's good faith reliance fails

since the statute, on its face, can be interpreted to apply to any and all lanes at all times, making compliance (and enforcement) an impossibility.

Contrary to this Court's ruling, the issue presented in Appellant's brief was argued and ruled upon below. Appellant has not altered the basis for the argument, and the trial court was provided ample opportunity to address the merits of the argument. Notably, Respondent in this matter did not assert that the void for vagueness issue was unpreserved for this Court's review. While Respondent correctly asserts that the underlying convictions were not for violating S.C. Code § 56-5-2120(b)), the initial stop was solely supported by the officer's interpretation of the left turn statute. R. 44, ll. 11 – 22. As such, the stop was unlawful, and the lower court should have dismissed the charges that stemmed from the unlawful stop.

Appellant respectfully requests that this Court reconsider its decision that the constitutionality of S.C. Code § 56-5-2120(b) was not properly preserved for appellate review and address the merits of the issue presented in Appellant's Brief.

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ATTORNEY FOR APPELLANT

This 11th day of December 2025.

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THE STATE,

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS) this 11th day of December 2025.

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