THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-000424

Thomas A. Williams, ... Appellant,

vs.

The State, ... Respondent.

REPLY BRIEF OF APPELLANT

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Index

Table of Authorities

Cases

Statutes

Other:

Question

Did the lower court err in concluding that the word "acts" contained in the phrase "if arrested for an offense arising out of acts alleged to have been committed" contained in S.C. Code 56-5-2950 included the act of driving under the influence when the adverbial clause modifying "committed" specifically contained driving under the influence and therefore such an interpretation would render much of the wording of the statute superfluous?

In its brief the State does not attempt to analyze the statute using traditional principles of English grammar. Instead, it first resorts to a discussion of the horrors of drunk driving and how important strong laws are in combating this problem. (Br. of Resp. at 8-9). Such an approach does not aid this court in how to interpret the statute as written.

Further, under the Standard of Review, Mr. Williams has never contended a different standard of review exists other than that stated by the State. The factual findings by the magistrate are not relevant here because the issue before the magistrate and before this Court is one of statutory interpretation which is a legal issue.

The State argues that the phrase in the statute "arrested for an offense arising out of acts" includes the act of driving under the influence. The State does not, however, acknowledge that such a reading renders the subordinate adverbial clause useless. The clause, "while the person was driving under the influence" would have no meaning if the State's interpretation is correct. As argued by the state, and also found by the circuit court below, the mere act of driving an automobile under the influence is what triggers the implied consent law. If this were the intent of the legislature, they elected an extremely complicated way of writing what should have been a

very simply statute.

If, as contended by the State, the legislature intended that every person who drives an automobile while under the influence of alcohol has given their consent to take a breath test, they needed to say only that. No law should ever make the subordinate adverbial clause dependent upon itself. When that occurs, there is no need for the subordinate adverbial clause. An adverbial phrase is defined as "A group of words, not containing a subject and a verb, used to modify a verb, adjective, verbal, clause, or sentence." Paul Roberts, *Understanding Grammar*, Harper & Row (1954). In this case the phrase is used to modify the verb "committed" to place limitations upon the verb.

The interpretation of this section as urged by Mr. Williams is also consistent with S.C. Code § 56-5-2945(A). *(See,* note 3, Br. of Resp.) In that code section the subordinate adverbial clause comes first. This does not change the importance of the clause. In that code section the law requires that there be "any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death." The driver in such a case is required to violate a law other than driving under the influence. The mere act of driving under the influence will never by itself be the proximate cause of the great bodily injury. The driver would have to commit another act such as speeding, driving left of center, or running a stop sign. Only then would the driver's actions be the proximate cause of the injuries. Thus, in that code section, as in the one at issue here, the other act has to be one other than driving under the influence. The State also argues that the "other act" could also be driving with unlawful alcohol concentration. In this case there is simply no proof Mr. Williams had an unlawful alcohol concentration. There is no datamaster reading to

draw such a conclusion.

The State's reliance upon *State v. Jansen*, 305 S.C. 320, 408 S.E.2d 235 (1991) is misplaced. The issue in *Jansen* was not the same issue presented in this case. As a general proposition, Mr. Williams agrees that a person who is arrested for driving under the influence in South Carolina has consented to give a breath sample to be tested for alcohol. The question here is under what circumstances can that test be required. *Jansen* never argued that he was not arrested for an "offense arising out of acts alleged to have been committed while [Jansen] was driving under the influence." The issue presented here was not raised.

Nor can the State succeed on the theory of harmless error. In the video, Mr. Williams explains that he has a bad knee. Further, while he is standing in front of the patrol vehicle, he is steady on this feet and not swaying. While Mr. Williams did admit to drinking 5 beers, he was not asked over what period of time. Without knowing how long he had been drinking, this information by itself is not sufficient to establish Mr. Williams was under the influence. While the State in its brief describes Mr. Williams as "struggling to maintain his balance while simply standing" (Br. of Resp. at 17) the video shows this is not correct. Nor does the video show Mr. Williams had trouble walking. (Br. of Resp. at 17). Mr. Williams did tell the officer on the way to the datamaster room that he would not blow. The State should not have been permitted to argue he refused to take the datamaster when he was not legally required to take the datamaster. The jury was left with the impression he refused a test he was required to take. The error was not harmless.

The State further argues that the error was harmless because Mr. Williams had no right to refuse the test. (Br. of Resp. at 6-7; 14). First, S. C. Code § 56-5-2950(B)(1) gives a driver in

South Carolina the absolute right to refuse the test. If the State is suggesting that Mr. Williams had no right to refuse a search of his person even without the implied consent law, they would be correct but only if the officer obtained a search warrant to take a sample of Mr. Williams' blood. *See, Missouri v. McNeely*, 133 S.Ct. 1552 (2013). No search warrant was obtained in this case.

The State urges this Court to read the Statute in such a fashion as to render meaningless the subordinate adverbial clause. As noted in the opening brief, a statute should be read in a manner that gives meaning to all the words in the Statute. *State v. Smith,* 322 S.C. 215, 471 S.E.2d 462 (1995) The reading urged by the State does not do this.

The first obligation of this Court is to interpret the Statute as written and not what the Court may think the legislature intended. If the meaning from the words used is clear, no court can then give the statute a different meaning simply because a court may believe the legislature intended something different. "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning." *State v. Morgan,* 352 S.C. 359, 366–67, 574 S.E.2d 203, 206–07. (Ct. App.2002).

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Opening Brief, this Court should reverse the conviction of Thomas Williams and remand the case for a new trial with instruction to exclude the reference to the refusal to take the datamaster test. In the event this Court hold the one statement by Mr. Williams in the patrol car is admissible, then this Court should instruct the magistrate to inform the jury that Mr. Williams was not legally required to submit to any breath test.

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