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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
Rufus Lovelle Smalls Jr.,	)	2016-CP-07-1602
Appellant,	)	ORDER AFFIRMING MAGISTRATE DECISION
vs.	)	
State of South Carolina	)	
Respondent.	)	

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SC Court of Appeals

In this appeal from the magistrate court, Rufus Lovelle Smalls Jr. (Appellant) argues his charge of driving under the influence should be dismissed on the ground that the video recording produced by the State did not comply with section 56-5-2953 of the South Carolina Code (Supp. 2016). I affirm the magistrate's decision.

FACTS/PROCEDURAL HISTORY

On November 18, 2015, South Carolina Highway Patrol Trooper S. Michael (Trooper Michael) executed a traffic stop on Appellant, who was driving his vehicle on Burton Wells Road in Beaufort County. Suspecting Appellant of driving under the influence of alcohol (DUI) in violation of section 56-5-2930 of the South Carolina Code (Supp. 2016), Trooper Michael had Appellant perform three field sobriety tests in front of his police cruiser. The test at issue in this case is the "walk-and-turn" test.

The dashboard camera on Trooper Michael's patrol car recorded the entire stop, including all field sobriety tests, with continuous recording. At the beginning of the walk-and-turn test, Trooper Michael positioned Appellant in front of the cruiser's front hood, facing

directly away from his patrol vehicle. Appellant's feet were not visible on the video recording during the very beginning of the walk-and-turn test; however, the rest of his legs and body can be seen on the camera. From the time Appellant began walking, Trooper Michael orally noted the parts of Appellant's performance demonstrating intoxication, all of which can be heard on the video.

Following the field sobriety tests, Appellant was placed under arrest and charged with driving under the influence.

Appellant moved pre-trial to dismiss the charge against him, arguing the following: (1) Trooper Michael failed to comply with section 56-5-2953 of the South Carolina Code (Supp. 2016) because Appellant's feet were not fully visible during the entire walk-and-turn test; and, (2) Trooper Michael failed to submit an affidavit explaining why Appellant's actions were not fully visible. The magistrate court denied the motion, and a jury found Appellant guilty.

This appeal followed.

STANDARD OF REVIEW

"In criminal appeals from magistrate . . . court, the circuit court does not conduct a *de novo* review, but instead reviews for preserved error raised to it by appropriate exception." *State v. Taylor*, 411 S.C. 294, 299, 768 S.E.2d 71, 74 (Ct. App. 2014) (quoting *State v. Henderson*, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001)); S.C. Code Ann. § 18-3-70 (Supp. 2013) ("The appeal [from a magistrate in a criminal case] must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the

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sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law.").

"In criminal appeals from the magistrate court, the circuit court is bound by the magistrate court's findings of fact if any evidence in the record reasonably supports them." *Taylor*, 411 S.C. at 294, 768 S.E.2d at 74. "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." *Id.*

LAW/ANALYSIS

Appellant argues the magistrate court erred in denying Appellant's motion to dismiss the driving under the influence charge because section 56-5-2953 of the South Carolina Code (Supp. 2013) requires the arresting officer to record Appellant's feet during the walk-and-turn test, or to provide an affidavit explaining why the circumstances prevented the recording of Appellant's feet.

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Taylor*, 411 S.C. at 300, 768 S.E.2d at 74 (quoting *State v. Elwell*, 403 S.C. 606, 612, 743 S.E.2d 802, 806 (2013). "What a legislature says in the text of a statute is considered the best evidence of the legislative I intent or will." *Id.* "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." *Id.*; *see also State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used."). "However, penal statutes will be strictly construed against the [S]tate." *Id.*

"If the statute is ambiguous, however, courts must construe the terms of the statute." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Taylor, 411 S.C. at 300–01, 768 S.E.2d at 74 (quoting *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008).

> In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. 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.

Taylor, 411 S.C. at 301, 768 S.E.2d at 74–75 (internal citations omitted).

I find the plain language of section 56-5-2953(A) merely requires that the video recording "*include* any field sobriety tests administered." See § 56-5-2953(A) (stating the video recording from the incident site must (1) "not begin later than the activation of the officer's blue lights," (2) "include any field sobriety tests administered," and (3) include the arrest and show the driver being advised of her *Miranda*[1] rights); *Elwell*, 403 S.C. at 612, 743 S.E.2d at 806 ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." (quoting *Scott*, 351, S.C. at 588, 571 S.E.2d at 702)); see also *Taylor*, 411 S.C. at 305–06, 768 S.E.2d at 77 (explaining "the plain language of the statute does not require the video to encompass every action of the defendant, but requires video of each event listed in the

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

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statute" and stating "the legislature intended video recording of the majority of an officer's encounter with a potential DUI suspect"). Here, the video recording provides uninterrupted footage of the entire encounter between Appellant and the arresting officer, Trooper Michael—from several seconds prior to the activation of Trooper Michael's blue lights through his transport of Appellant to jail after he arrested him. Every event listed in the statute is on the video recording: the field sobriety tests administered by Trooper Michael, Appellant's arrest, and Trooper Michael advising Appellant of his *Miranda* rights.

In *State v. Gordon*, 414 S.C. 94, 777 S.E.2d 376 (2015), our supreme court addressed the requirements for the recording of field sobriety testing pursuant to section 56-5-2953(A). In *Gordon*, the supreme court did not find that the field sobriety tests must be recorded in such a manner that a jury should be able to determine the results of any field sobriety tests by watching the video recording. *See id.* at 99–100, 777 S.E.2d at 378–79 (requiring the recording of the Horizontal Gaze Nystagmus (HGN) test to show the driver's head but noting "the viewing of a video of an HGN field sobriety test has very little probative value to a jury because the eyes of the motorist are rarely, if ever, seen"); *id.* at 100, 777 S.E.2d at 379 (reinstating the driver's conviction despite finding "the jury would not have been able to determine if [the driver] passed or failed [the HGN test] by simply looking at this video"). Rather, in *Gordon*, the court's focus was on whether *the administration* of the field sobriety test was recorded. *See id.* at 99–100, 777 S.E.2d at 379 (finding the video recording complied with section 56-5-2953(A) when the officer's administration of the HGN test was visible on the video recording and focusing on the fact that the video recording included the driver's face, the officer's instructions, and the officer's flashlight and arm). It would be an impermissible expansion of the statue's operation to require the walk-and-turn test to be recorded in a manner that would allow the jury to ascertain whether

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the driver passed or failed the test. *See State v. Dupree*, 354 S.C. 676, 693, 583 S.E.2d 437, 446 (Ct. App. 2003) ("Words must be given their plain and ordinary meaning without resorting to subtle or forced construction [that] limits or expands the statute's operation.").

Based on the forgoing, I find that based on legislative intent, plain meaning of "include," and *Gordon*, no affidavit was required in this case as the video included the field sobriety tests.

CONCLUSION

I find the video recording produced by the State complies with section 56-5-2953(A). Therefore, no affidavit was required in this case, as the video included the field sobriety tests. I affirm.

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Beaufort Common Pleas

Case Caption: Rufus Lovelle Smalls Jr VS South Carolina State Of

Case Number: 2016CP0701602

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-09-06 16:52:00