STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARMINE JAMES MIRANDA, III,

APPELLANT

APPELLATE CASE NO 2016-001786

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

I.

The trial court reversibly erred in admitting the test results of Appellant's medical blood draw where the chain of custody for the test results was fatally defective because the State failed to identify the hospital laboratory technician that tested and analyzed Appellant's blood sample.

II.

The trial court erred reversibly by instructing the jury that they could infer, pursuant to South Carolina's implied consent law S.C. Code Ann. § 56-5-2950, that Appellant was under the influence of alcohol if his blood alcohol content was .08 or higher when the blood draw in Appellant's case was undertaken for medical purposes and did not conform with the requirements of the implied consent statute.

STATEMENT OF THE CASE

On January 11, 2016, the Greenwood County Grand Jury indicted Appellant Carmine Miranda for Felony Driving Under the Influence Resulting in Death. R. 256 - 257.

On August 1-3, 2016, Appellant proceeded to trial before the Honorable Donald B. Hocker and a jury. R. 1. Patricia Bolen represented Appellant, and Senior Assistant Solicitor Elizabeth White and Assistant Solicitor Will Maxey represented the State. The jury found Appellant guilty as charged. R. 261, l. 13 – 262, l. 5. The trial court sentenced Appellant to sixteen years imprisonment. R. 283, l. 2.

ARGUMENT

I.

The trial court reversibly erred in admitting the test results of Appellant's medical blood draw where the chain of custody for the test results was fatally defective because the State failed to identify the hospital laboratory technician that tested and analyzed Appellant's blood sample.

Relevant Facts

In the early morning hours of October 16, 2014, Greenwood County sheriff's deputies responded to a report of a two car accident on State Highway 34. R. 54, l. 14 – 59, l. 8. Deputy Todd Stevens was the first deputy to arrive. The accident was a head-on collision between two cars traveling in opposite directions. *Id.*

One car, a white Honda four door sedan, was resting in the middle of the road with "massive front end damage." R. 54, l. 25 – 55, l. 7. The second vehicle was a red two door Mercedes coupe, belonging to Appellant, that had come to rest on the shoulder of the east bound lane. *Id.* Appellant's car also had significant front-end damage.

When Stevens arrived, Appellant was lying on the road just outside of the passenger door receiving medical treatment. Appellant had obvious injuries, including a large cut across his face. Appellant's blood was "everywhere" on the passenger side compartment of his car. There was no blood on the driver's side. R. 58, l. 5 – 68, l. 7. Petey Miller, the driver of the Honda, was still in his vehicle. Stevenson would testify at trial that he "could smell the odor of alcohol coming from" Appellant. R. 55, ll. 21-25.

In addition to EMS workers, two friends of Miller's were already at the accident scene when police arrived, Anthony Abbott and Lesley Ashely. Abbott was the first person at the accident. R. 94, l. 18 – 98, l. 17. In his initial statement to police, Abbott recollected that

Appellant was lying across the passenger seat, "[i]t appeared that he was sitting on the passenger side." R. 96, ll. 9-23. Appellant was bleeding profusely. R. 91, l. 4 – 93, l. 7.

Afraid Appellant's car might catch fire, Abbott pulled Appellant out of the wreck. *Id.* Abbott stated that Miller appeared unresponsive and stuck in this car. *Id.* According to Abbott, Miller and Appellant were the only people at the accident scene when he arrived. *Id* Abbott did not smell alcohol on Appellant. *Id.*

Lesley Ashley, Abbott's cousin, was the second person to reach the accident scene. R. 114, l. 11 – 118, l. 21. She helped Abbott pull Appellant out of his car. She also took Appellant's wallet out to look for proof of insurance and his driver's license. Ashley found a debit card belonging to an "Elisa Clark" in Appellant's wallet. R. 127, ll. 2-6.

In her first statement to police, Ashley said that she did not smell alcohol on either Appellant or Miller. R. 122, l. 8 – 123, l. 18. Ashley left the accident scene to wake up Miller's parents, who lived nearby, and drove them to the hospital in Greenville where Miller and Appellant were being treated. R. 117, l. 4 – 119, l. 23.

While at the hospital she interrogated Appellant as he laid in the emergency room, demanding to know if he had been drinking. *Id.* According to Ashely, Appellant winked at her and told her that he was on his way to a bar when the accident happened. *Id.*

Deputy Stevens concluded that Appellant's car had crossed the road's centerline before it struck Miller's Honda. Stevens went to the hospital and placed Appellant under arrest. R. 61, l. 1 – 63, l. 17. Stevens read Appellant the implied consent advisement. Appellant refused to submit to a blood draw and informed Stevens that he was not driving at the time of the accident. R. 61, l. 2 – 63, l. 20.

Police were unable to contact a magistrate to secure a search warrant. R. 17, l. 7 – 20, l. 23. Unable to get a search warrant, Deputy Stevens decided not to force Appellant to submit to a warrantless blood draw under the implied consent laws. *Id.* However, emergency room personnel had Appellant undergo a blood draw for medical purposes at 1:18 a.m.. R. 187, l. 6 – 190, l. 23. Appellant had a blood alcohol content of .20. R.. 211, l. 13 – 213, l. 24.

Miller died from his injuries. Appellant's injuries were severe, requiring him to be air-lifted to Greenville for treatment. Appellant broke his femur in multiple places and several ribs. On October 24, 2014, police executed a search warrant for Appellant's hospital treatment records from the night of accident. R. 24, l. 13 – 28, l. 16.

Trial

At trial, the State sought to introduce the results and records from Appellant's blood draw, undertaken at the hospital for medical purposes. R. 197, l. 13 – 207, l. 23. Registered nurse Shannon Rogers drew Appellant's blood. R. 190, ll. 12-20. She testified without absolute certainty that she did not conduct the blood draw at the behest of law enforcement. *Id.*

Hospital employee Christian Lomax took the blood sample to the lab. R. 175, l. 17 – 176, l. 24. Chris Allsep and Christy Lazzo were the two employees working in the hospital's lab on the night of the accident. Allsep testified that he did not remember whether he or Lazzo tested Appellant's blood sample. R. 193, l. 14 – 196, l. 22.

Allsep proffered that he would not have tested the sample if it had appeared tampered with. *Id.* He further explained that, if the sample tested correctly, the individual lab technician would not conduct further analysis. *Id.* However, Allsep was unable to remember and there was no documentation that established which technician tested the sample or whether the test had been done correctly. *Id.* For unknown reasons, Lazzo did not testify.

Documentation of the blood draw entered into evidence at trial did not include chain of custody information and did not identify which of the two technicians tested the sample. R. 284. Curiously, the blood draw documentation noted that the results of the blood test "MUST NOT BE USED FOR NON-MEDICAL PURPOSES." *Id.* (*emphasis original*). Moreover, an abbreviation "NCC" was entered next to the BAC test results. According to the footnotes section of the test results, "NCC" stands for "NO CHAIN OF CUSTODY." *Id.* (*emphasis original*).

Defense counsel objected to the admission of the BAC test results on the grounds that the State failed to adequately establish a sufficient chain of evidence. R. 199, l. 1 – 200, l. 12. Defense counsel noted that while the nurse who drew the blood and the employee that submitted the sample to the lab both testified, the only lab technician that testified, Allsep, could not say whether he analyzed the sample or whether the sample had been properly submitted and tested. *Id.*

The Court denied the defense's motion, finding the chain of evidence was sufficiently established. R. 201, l. 8 – 202, l. 13. Specifically, the court recalled that Lomax placed the sealed sample into the centrifuge for testing and that Allsep, and only Allsep, could have picked up the sample from the centrifuge for further testing. *Id.* The court concluded that the failure to identify which of the lab technicians actually tested Appellant's sample did not render the chain of evidence defective. *Id.*

The defense then countered that *State v. Cribb*, 310 S.C. 518, 426 S.E.2d 306 (1992), required the State to identify everyone in the chain of custody and that the State's failure to identify whether Lazzo or Allsep tested the sample meant that the chain of evidence was fatally incomplete. R. 202, l. 22 – 206, l. 6. The court replied that *Cribb* only required the proponent of

the evidence to identify the people who handled the evidence, not produce them at trial or determine who specifically tested the evidence. *Id.*

Seemingly overlooking Lazzo's failure to testify, the court then noted, "that's exactly what we've got. We've got the three individuals that have been identified who handle the blood." R. 203, ll. 11-17. The defense clarified that the State could not prove whether Lazzo or Allsep tested Appellant's sample. R. 204, ll. 6-13.

The State then interjected that the identity of the lab technician that specifically tested the sample was irrelevant because Lomax had testified that Appellant's sample was sealed when he placed it in the centrifuge and Allsep had testified that **he** would not have analyzed an unsealed sample. R. 204, l. 14 – 206, l. 17. Thus, the State argued that d the chain was complete as far as was practicable and was sufficient because Appellant's blood sample was non-fungible. *Id.*

When pressed, the State conceded that none of the medical records contained chain of evidence information and that they only way the State knew the identity of the two lab technicians was through the hospital's payroll records. *Id.* After these additional arguments, the court denied Appellant's motion to suppress the results of the blood alcohol tests. *Id.*

Discussion

The chain of custody for the results of Appellant's blood alcohol test was fatally incomplete as the State failed to identify the technician that tested and analyzed Appellant's sample. R. 196, l. 23 – 207, l. 23. The State has the duty to establish a chain of custody as far as practicable. *State v. Governor,* 362 S.C. 609, 608 S.E.2d 474 (Ct. App. 2005).

Where a piece of evidence passes through the hands of several people, the question of who handled it and what was done with it from the time it was obtained cannot be left to conjecture. *Raino v. Goodyear Tire and Rubber Co.*, 309 S.C. 255, 422 S.E.2d 98 (1992); *see*

also Tant v. Dan Rive Inc., 286 S.C. 140, 146, 332 S.E.2d 534, 537 (Ct. App. 1985) *partially vacated on other grounds by, Tant v. Dan River Co.*, 289 S.C. 325, 345 S.E.2d 495 (1986) (holding that the chain of evidence was "completely established" where the sample material was identified by the party who collected it and the DHEC lab technician who analyzed it.).

The proponent of the evidence must account for possession of the item from the time of the occurrence to the time the item is offered as evidence, and establish that there were no alterations at any stage in the chain. *State v. Wells*, 336 S.C. 223, 426 S.E.2d 814 (Ct. App. 1992) (*overruled on other grounds by, Burgess v. State*, 329 S.C. 88, 495 S.E.2d 445 (1998)) (holding that the trial court did not err in admitting clothes worn by defendant on night of murder where agent who collected the clothes could not testify to how the clothes were handled once in the evidence holding room, but where no forensic testing was done on the clothes).

When challenged, the chain of custody for blood alcohol test results must trace possession of the specimen from the time it is taken from the body to the time it is analyzed. *Raino*, 309 S.C. at 258, 495 S.E.2d at 100; *see also State v. Williams*, 301 S.C. 369, 392 S.E.2d 181 (1990) (evidence of blood test was inadmissible where there was no evidence of who took and sealed or transported blood sample); *see also Benton v. Pellum*, 232 S.C. 26, 100 S.E.2d 534 (1957) (holding that "the party offering [a blood alcohol sample] is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to **the final custodian by whom it is analyzed**.")

In *Raino v. Goodyear Tire and Rubber Co.*, the plaintiff was injured in a car accident and sued Goodyear alleging the tires on his car were defective. 309 S.C. at 257-258, 422 S.E.2d at 99-100. In an effort to prove that the plaintiff's intoxication was the proximate cause of the

accident, not its tires, Goodyear sought to enter the results of the plaintiff's blood alcohol test into evidence. *Id.*

After the accident, Raino was taken to the hospital for treatment. A blood sample taken revealed Raino had a .10 BAC. *Id.* However, the trial court found the test results inadmissible because Goodyear failed to establish "any chain of evidence or custody." *Id.*

On appeal, Goodyear argued that the tests should have been admitted because all hospital employees who handled the sample in the emergency room were medically qualified and the sample was immediately taken to the hospital lab. *Id.* The Supreme Court disagreed and found the chain fatally incomplete as Goodyear did not know who handled the blood sample, including who handled it in the lab. *Id.* "There are not mere gaps in the chain. Appellants failed to establish the proper chain of custody." *Id.*

In *State v. Cribb*, the defendant appealed his conviction for three counts of felony DUI raising, among other issues, the trial court's admission of his blood alcohol test results. Cribb argued that the State had failed to sufficiently establish the chain of evidence. 310 S.C. at 522, 426 S.Ed.2d at 309. Two nurses treated Cribb when he arrived at the hospital. *Id.* One nurse administered an intravenous solution ("IV"). It was the hospital's practice to have the nurse administering the IV conduct the blood draw. *Id.*

However, the nurse who administered the IV did not recall drawing Cribb's blood, but assumed that she would have. *Id.* The second attending nurse did not conduct the blood draw. *Id.* The State was also unable to identify who brought the blood sample to the lab for testing. *Id.* Unlike in Appellant's case, lab technician who tested the sample was identified and testified at trial. The hospital's documentation did not disclose who drew the blood or transported the sample to the lab. *Id.*

The Supreme Court reversed Cribb's conviction, holding that the State failed to establish the identity of the persons who handled the test sample. *Id.* "The evidence in the record of this case does not identify those persons who handled the blood from the time it was drawn until the time it was tested." *Id.* Therefore, admitting the results of the blood alcohol test constituted an abuse of discretion. *Id.*

Appellant's case is a mirror image of *Cribb*. In *Cribb*, the State could prove who tested the blood sample, but could not prove who drew the sample or transported it to the lab. *Id.* In Appellant's case, the State could identify who drew Appellant's blood sample and who transported it to the lab, but could not prove who tested the sample. R. 196, l. 23 – 207, l. 23.

Like *Cribb*, the blood draw used in Appellant's case was originally taken for medical purposes. *Id.*; *Cribb*, 310 S.C. at 522, 426 S.Ed.2d at 309. Unsurprisingly, in both cases, hospital documentation failed to complete the chain of evidence. R. 284. In Appellant's case, the results of the blood alcohol included two express disclaimers stating that the blood sample had no chain of custody and that the "RESULT MUST NOT BE USED FOR NON MEDICAL PURPOSES (EMPLOYMENT OR LEGAL TESTING). R. 284.

The State efforts at trial to equate their failure to identify who tested the sample with the failure, in other cases, to identify everyone who came into contact with the disputed evidence was misguided. *Id.* For example, in *State v. Hatcher*, the State failed to identify the courier who transported the drugs from the arresting agency to SLED. 392 S.C. 86, 708 S.E.2d 750 (2011). The SLED evidence technician that tested the drugs testified that he received the drugs in the same double sealed bag that they were placed in when recovered.

Where the person who collected the sample to be tested and the person who finally analyzed the sample are both known and testify, the chain is sufficiently established absent proof of

tampering, bad faith, or ill-motive. *State v. Taylor*, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct.App.2004) (*emphasis added*). This was not the circumstances of Appellant's case.

In Appellant's case, the front and middle portions of the chain were complete. The final portion of the chain was missing. *Cribb*, 310 S.C. at 522, 518 S.E.2d at 309. Rogers testified she drew Appellant's blood. Lomax testified that he delivered the blood sample to the lab intact.

There was no testimony as to who tested and analyzed Appellant's blood sample and how the sample was tested. R. 193, l. 12 – 208, l. 15. Like in *Cribb*, the State was limited to generating testimony on the lab's usual practice and routine. *Id.*; *Cribb*, 310 S.C. at 522, 518 S.E.2d at 309. As *Cribb* makes clear, this is insufficient. *Id.* The inexplicable failure to produce any documentation or regarding which technician tested Appellant's blood sample was more than a weak link in the chain of evidence was a fatal gap. *Id.*

Accordingly, the trial court committed an abuse of discretion when it admitted the results of Appellant's blood alcohol test and Appellant is entitled to a new trial.

II.

The trial court erred reversibly by instructing the jury that they could infer, pursuant to South Carolina's implied consent law S.C. Code Ann. § 56-5-2950, that Appellant was under the influence of alcohol if his blood alcohol content was .08 or higher when the blood draw in Appellant's case was undertaken for medical purposes and did not conform with the requirements of the implied consent statute.

Relevant Facts

During the jury instructions conference, defense objected to the trial court charging jurors they could infer Appellant was under the influence of alcohol if his blood alcohol content was .08 or above. R. 226, l. 10 – 227, l. 8. The defense stated that the inference instruction was part of the implied consent statute. S.C. Code Ann. § 56-5-2950, regulating how arresting officers conducted sobriety tests and recorded any breathalyzer or other tests. *Id.*

Since the blood test in Appellant's case did not follow the requirements of S.C. Code Ann. § 56-5-2950, the State should not have received the inference of intoxication instruction. Citing to *Cribb*, the defense posited that the implied consent statute did not apply to tests that were not ordered by the arresting officer. *Id.*; 310 S.C. at 308, 426 S.E.2d at 520-521.

The State countered that the inference of intoxication at .08 was "part of the DUI law." R. 227, ll. 9-17. "As far as implied consent, I think that – to say that you only have to – you can only charge that if you go under tis specific implied consent statute, I don't think that's what the legislature intended." *Id.*

The court denied Appellant's motion and charged the jury that:

> Inferences of the amount of alcohol in the Defendant's blood at the time of the alleged violation is shown by chemical analysis of the Defendant's breadth or other bodily fluids may be considered by you in deciding whether the Defendant was under the influence. If the alcohol concentration was 8/100ths of one percent, commonly know as .08, or more, it may be inferred that the Defendant was under the influence. This inference is simply an evidentiary fact to

be considered by you along with the other evidence in this case and you may give it the weight you decide it should receive.

R. 258, ll. 2-15.

Discussion

The trial court erred in erred reversibly when instructing the jury that they could infer Appellant was intoxicated if he had a blood alcohol content of .08 or greater because Appellant's blood draw was not done at the direction of the arresting officer, Deputy Stevens, but was done for purposes of medical treatment.

Thus, S.C. Code Ann. § 56-5-2950, the implied consent statute, was inapplicable and instructing the jury on the inference of intoxication found in S.C. Code Ann. § 56-5-2950(G) was improper. R. 226, l. 10 – 227, l. 8. The court's instructions were based on an improper interpretation of the scope of S.C. Code Ann. § 56-5-2950 that contravened not only the clear intent of the legislature when crafting South Carolina's DUI laws, but also disregarded the cannons of statutory interpretation and existing case law.

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002) (*citing State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999) *cert. denied as improvidently granted, State v. Hudson*, 346 S.C. 139, 551 S.E.2d 253 (2001).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan* at 366, 574 S.E.2d 203, 547 S.E.2d at 206. Words must be given their plain and

ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Id.*

Courts should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *Hudson*, 336 S.C. 237, 519 S.E.2d 577.

Finally, penal statutes must be strictly construed against the State and in favor of the defendant. *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991). Any doubt as to the proper construction should be resolved in favor of the citizen against the state. *State v. Cutler*, 374 S.C. 376, 264 S.E.2d 420 (1980); *see also Yates v. United States*, 135 S.Ct. 1074 (2015) (ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity).

South Carolina Code Section 56-5-2950 establishes a comprehensive implied consent regime detailing how evidence of a suspected DUI is to be collected, documented, and stored. Under S.C. Code Ann. § 56-5-2950(A), the "arresting officer" can administer a breathalyzer test or, under certain circumstances, order a urine or blood test on a suspect he has arrested on suspicion of drunk driving.

Unlike blood draws undertaken for medical purposes, a blood draw pursuant to the implied consent statute is done at the direction of law enforcement after the suspect has been arrested. *Cribb*, 310 S.C. at 520-521, 426 S.E.2d at 308. In addition to empowering police, S.C. Code Ann. § 56-5-2950 also contains a number of procedural and evidentiary safeguards. S.C. Code Ann. § 56-5-2950(J). For instance:

> No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the

> commencement of the testing procedure, the person has been given a written copy of and verbally informed that:
>
> (1) the person does not have to take the test or give the samples, but that the person's privilege to drive must be suspended or denied for at least six months with the option of ending the suspension if the person enrolls in the Ignition Interlock Device Program, if the person refuses to submit to the test, and that the person's refusal may be used against the person in court;
>
> (2) the person's privilege to drive must be suspended for at least one month with the option of ending the suspension if the person enrolls in the Ignition Interlock Device Program, if the person takes the test or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent or more;
>
> (3) the person has the right to have a qualified person of the person's own choosing conduct additional independent tests at the person's expense;
>
> (4) the person has the right to request a contested case hearing within thirty days of the issuance of the notice of suspension; and
>
> (5) if the person does not request a contested case hearing or if the person's suspension is upheld at the contested case hearing, the person shall enroll in an Alcohol and Drug Safety Action Program.

S.C. Code Ann. § 56-5-2950(B).

In addition, any blood test must be administered within three hours of a suspect's arrest. S. C. Code Ann. § 56-5-2950(A). The arresting officer must also provide "affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests." S.C. Code Ann. 56-5-2950(E).

In exchange for following the procedures and safeguards of S.C. Code Ann. § 56-5-2950, police and prosecutors are given a power evidentiary instruction:

> In the criminal prosecution for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 the alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following:

> (1) if the alcohol concentration was at that time five one-hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol;
>
> (2) if the alcohol concentration was at that time in excess of five one-hundredths of one percent but less than eight one-hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other evidence in determining the guilt or innocence of the person; or
>
> (3) if the alcohol concentration was at that time eight one-hundredths of one percent or more, it may be inferred that the person was under the influence of alcohol.

S.C. Code Ann. § 56-5-2950(G). The inference of intoxication instruction is the State's incentive for complying with the sometimes onerous due process safeguards imposed by South Carolina's implied consent laws.

Furthermore, case law interpreting the reach of S.C. Code Ann. § 56-5-2950 has consistently distinguished between tests conducted under the statute and tests conducted under circumstances not conforming to S.C. Code Ann. § 56-5-2950. In *State v. Carrigan*, this Court found error where the trial court instructed jurors that they could presume Carrigan was intoxicated based on a blood alcohol level of .164. 284 S.C. 610, 615-616, 328 S.E.2d 119, 122 (Ct. App. 1985).

At the time of the decision, the implied consent statute only permitted testing by breathalyzer. *Id.* Carrigan underwent a blood draw. *Id.* The Supreme Court reversed Carrigan's conviction finding that jury instruction on the inference of intoxication in the implied consent statute was inapplicable to Carrigan for a number of reasons, two of which are relevant to Appellant's case. *Id.*

First, the Court concluded that Carrigan's blood draw was not conducted at the direction of the arresting officer, but was taken by a hospital technician for medical treatment purposes. *Id.*

The Court also noted that the State failed to prove the technician was qualified to conduct the blood draw. *Id.*

Second, the Court held that "it does not appear that the amount of alcohol in Carrigan's blood was shown by chemical analysis of his breath," as required by the plain language of S.C. Code Ann. § 56-5-2950(B), as it was written at the time of the case. *Id.* Therefore, the Supreme Court held that the trial court reversibly erred in instructing jurors that they could infer Carrigan was intoxicated pursuant to S.C. Code Ann. § 456-5-2950. *Id.*; *see also State v. Kinner*, 301 S.C. 209, 391 S.E.2d 251 (1999) (applying *Carrigan* when concluding that the trial court erred in giving the inference of intoxication instruction where defendant underwent a blood test.).

In *Cribb*, the Supreme Court held that the implied consent statute does not apply to a blood sample obtained prior to a suspect's arrest. 310 S.C. at 520-521, 426 S.E.d2d at 308. In reversing Cribb's convictions, the Supreme Court analyzed whether the implied consent statute applied when the defendant was not in custody at the time of chemical testing. *Id.*

Looking to the language of S.C. Code Ann. § 56-5-2950, the Court concluded that the statute did not apply, "[i]n our view, the references to arrest and apprehension, when given their plain and ordinary meaning, indicate that the legislature intended to limit the operation of section 56-5-2950(a) to testing for evidence of driving under the influence after an arrest has been effected." *Id.* at 521, 426 S.E.2d at 308.

Carrigan and *Cribb* make clear that, in order to properly instruct jurors on the inference of intoxication, police must have strictly complied with the requirements of S.C. Code Ann. § 56-5-2950. In Appellant's case, the State asserted that the blood draw was done for medical purposes and not at the direction of Deputy Stevens, the arresting officer. R. 17, l. 5 – 30, l. 6; R.

211, l. 3 – 213, l. 24; *see also State v. Hunter*, 305 S.C. 560, 410 S.E.2d 242 (1991) (holding that blood test results taken for the purposes of medical treatment were admissible despite failure to comply with implied consent statute as "implied consent statute had no relevance" under the circumstances.).

Here, this Court's holding in *Carrigan* is controlling. *See Carrigan*, 284 S.C. 610, 615-616, 328 S.E.2d 119, 122 (Ct. App. 1985). Thus, the trial court erred in instructing jurors that they could infer Appellant was intoxicated pursuant to S.C. Code Ann. § 56-5-2950(G) where the State admitted that the blood draw was not conducted at the direction of the arresting officer, but was conducted for the purposes of medical evaluation. Accordingly, Appellant is entitled to a new trial.

CONCLUSION

Based on the foregoing arguments, Appellant Carmine Miranda respectfully requests that this Court reverse Appellant's conviction and remand this case to the Greenwood County Court of General Sessions.

John H. Strom
Appellate Defender

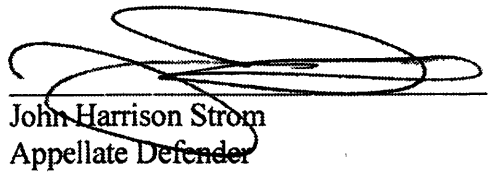
ATTORNEY FOR APPELLANT

This 29th day of September, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 29, 2017



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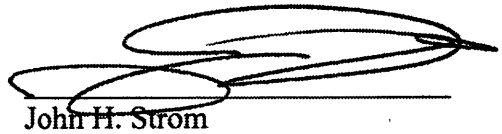
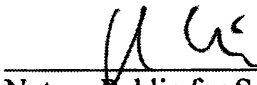
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon V. Henry Gunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of September, 2017.



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of September, 2017.



_____ (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025