STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Newberry County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case Tracking No. 2016-001639

State of South Carolina, Appellant,

vs.

Tony Latrell Kinard, Respondent.

PETITION FOR REHEARING

On June 19, 2019, this Court reversed the trial court's decision dismissing the underlying DUI case and remanded for a new trial. However, this Court affirmed the trial court's determination that the State failed to provide a proper video under section 56-5-2953(A) of the South Carolina Code. This Court misapprehended or overlooked the clear legislative intent and misinterpreted the statute to fulfill that legislative intent. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the State presented a proper video in compliance with section 56-5-2953(A), and remand for a new trial.

In this case, the Court was asked to interpret the requirement of the statute that the video recording at the incident site must include the arrest of a person and "show the person being advised of his Miranda rights." S.C. Code Ann. § 56-5-2953(A)(1)(a)(iii) (Supp. 2014). The only word at issue is "show" and exactly what must be shown on the video in order to be in compliance.

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). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). "The 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)(emphasis added); State v. Baker, 310 S.C. 510, 512, 427 S.E.2d 670, 672 (1993) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."). Courts will reject an interpretation of a statute leading to an absurd result clearly unintended by the legislature. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 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. . . .").

This Court correctly explained the policy and legislative intent behind the statute. As this Court previously stated: "[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. The South Carolina Supreme Court has 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 these interest in mind, the Court, however, misinterpreted the language of the statute and created a requirement with an absurd result.

This Court found the requirement of the statute that the video must "show the person being advised of his Miranda rights" means it must show the person **as** he is being advised of his Miranda rights. This is not the requirement of the statute. This Court, like the trial court, interpreted the statute to require the person be on camera at the time of the reading of Miranda rights. However, the statute does not require the person be shown as he is being read Miranda it requires the video to show him being advised. This can be accomplished, as it was in this case, without the person being on camera.

Further, not requiring him to be on camera, but requiring a video that shows the advisement, is entirely consistent with the legislative intention behind the statute. The video is to **document** or **demonstrate** the procedures used and the entirety of the interaction between the person and the officer through arrest. The video is to **document** the stop, **document** any field sobriety tests the Trooper administered, and **document** the arrest including the reading of Miranda warnings. As the South Carolina Supreme Court, citing to Roberts, further opined: "Subsection (A) was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461(2015).

It is clear the legislature's intent was to require the State to **document** or **demonstrate** the steps taken at the incident site to ensure a fair procedure was used and that the intoxicated individual's rights were not violated. Considering these underlying purposes of the statute, the State submits that the most appropriate definition of "show" is "to make apparent," see Black's Law Dictionary (10th ed. 2014), or in the alternative, "to demonstrate, reveal, or make evident." See The American Heritage Dictionary of the English Language, New College Edition 1199 (1980); Webster's New World Dictionary of the American Language, 2nd College Edition 1319

(1976). This definition of "show" best comports with the legislative intent while still giving effect to the plain language of the statute. The video can document the reading of Miranda and provide a jury with the necessary information to know Miranda was read without giving them a view of the defendant and his reactions. It was error for the circuit court to impose a requirement Respondent be "seen" during the reading of Miranda when the statutory interpretation most consistent with the legislative intent would only require the State to "make apparent" or "demonstrate" he was read his Miranda rights.

The video recording in this case clearly demonstrates Respondent was read his Miranda rights. First, the Trooper specifically addresses Respondent upon opening the door to Deputy Snelgrove's vehicle.[1] Trooper Barnett asks Respondent to look at him and then asks him to discuss the accident. The Trooper then notes based on Respondent's response he is not willing to talk about the wreck. The Trooper then indicates there is a very strong smell of alcohol. He then reads Respondent his Miranda rights, which are clearly heard on the video recording.[2] Respondent does not respond when asked if he understood his rights, and after a moment, Trooper Barnett indicates he will take Respondent's silence as he understood his rights. Respondent is then clearly placed under arrest on the video recording and when asked if he understands, the Trooper again takes his silence as acknowledgement of his understanding. (Video Recording of Incident Scene). As Respondent's counsel agrees: "You do hear the Miranda . . . you do hear the arrest . . . ." (6/8T.7; R.18). The video recording presented by the State "shows" Respondent being advised of his Miranda rights. It does not show him **as** he is being advised, but that is not what the statute requires.

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[1] There is absolutely no assertion by Respondent that he is not present in the back of the Deputy's vehicle. His counsel admits he is in the vehicle, agrees Miranda is given, and agrees his client is placed under arrest on the video recording. (6/8T.7; 10; 25; R.18; 21; 36).

[2] No argument has been made that the Miranda warnings were deficient in any way.

This Court's interpretation defeats the purpose of the statute and clearly ends in an absurd result in this case. Here, an individual is placed under arrest for disorderly conduct because of his behavior at the scene. Deputy Snelgrove explains to Trooper Barnett right after the Trooper arrives that Respondent is in handcuffs in his vehicle because Respondent made threats to the deputy and others. (Video of Incident Scene). Further, Deputy Snelgrove testified regarding Respondent's behavior upon the Deputy's arrival at the scene, including using profanity and having a "God complex." (6/8T.34-35; R.45-46). Instead of taking him out of the vehicle, the Trooper notes his odor of alcohol and reads him his Miranda warnings before placing him under arrest for DUI. Approximately six minutes after Respondent is placed under arrest for DUI, the Deputy has to again confront Respondent because Respondent is becoming unruly in the Deputy's vehicle. (Video of Incident Scene). The Respondent continues to express his belief he is God and use profanity.

As noted before there is no indication Respondent was not in the vehicle at the time Miranda was read and the video clearly includes the reading of Miranda rights. The video leaves no question Trooper Barnett properly advised Respondent of his Miranda rights and arrested Respondent for DUI. If the primary legislative intent, as explained by the South Carolina Supreme Court, is to document the stop to provide direct evidence of what occurred, having Respondent on camera at the time he is advised of his Miranda rights provides no additional evidence. Nothing will be learned by having his face on camera. Instead, the important part of an advisement of Miranda rights is the fact the officer provides a complete and correct advisement, which is clearly **demonstrated** by the video. It leads to an absurd result to find the State failed to satisfy the legislative intent of the statute because the trooper did not have Respondent on camera when that would have added nothing of evidentiary value.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the trial court incorrectly interpreted the definition of "show" in section 56-5-2953(A)(1)(a)(iii), find the proper interpretation is to "document" or "demonstrate" as would be consistent with the legislative purpose behind the statute, and reverse and remand for a new trial.[3]

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

July 2, 2019

[3] The State completely agrees with this Court's analysis that even if the State failed to provide a proper video under subsection (A) of the statute, the case was improperly dismissed based on the totality of the circumstances under subsection (B).

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Michael V. Laubshire, Esquire
455 St. Andrews Road, Suite E-1
Columbia, South Carolina 29210-4487

Richard J. Dolce, Esquire
Post Office Box 4403
Irmo, South Carolina 29063

I further certify that all parties required by Rule to be served have been served.
This 2nd day of July, 2019.

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ALAN WILSON
ATTORNEY GENERAL

July 2, 2019

VIA HAND DELIVERY
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Tony L. Kinard,
Appellate Case No. 2016-001639

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of the Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

William M. Blitch, Jr.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

Enclosures
cc: Michael V. Laubshire, Esquire (copy enclosed)
Richard J. Dolce, Esquire (copy enclosed)
Victim Advocacy Division (copy enclosed)