

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 12 2019

SC Court of Appeals

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

State of South Carolina

Appellant,

vs.

Tony Latrell Kinard

Respondent.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

On or about June 19, 2019, this Court reversed the trial court's decision dismissing the Respondent's Driving Under the Influence charge and remanded the case for a new trial. In the aforementioned court order, this court had correctly affirmed the trial court's determination that the Petitioner failed to provide a proper video under S.C. Code Ann. §56-5-2953(A). This Court applied the clear legislative intent and properly applied the law to the facts of this case and reached the proper result that the Petitioner had failed to comply with S.C. Code Ann. §56-5-2953(A)(1)(a)(iii) that requires the incident site video must include the arrest of the person and must "show" the person being advised of his Miranda rights. No part of this Court's opinion, interpretation, and analysis of S.C. Code Ann. §56-5-2953(A)(1)(a)(iii) has been overlooked or misapprehended by the Court.

Further, the provisions of S.C. Code Ann. §56-5-2953, are penal in nature and therefore must be strictly construed against the State and in favor of the Respondent. Town of Mt. Pleasant v. Roberts, 713 S.E. 2d 278, 393 S.C. 332 (2011); State v. Johnson, 720 S.E 2d 516, 393 S.C. 182 (Ct App. 2011). If the language of a statute is unambiguous and conveys a clear and definite meaning, then the rules of statutory interpretation are not needed and the court has no right to impose a different meaning. Town of Mt. Pleasant v. Roberts, 713 S.E. 2d 278, 393 S.C. 332 (2011); State v. Johnson, 720 S.E 2d 516, 393 S.C. 182 (Ct App. 2011). In interpreting a statute, the court will give words their plain and ordinary meaning, and will not resort to forced construction that would limit or expand the statute. Town of Mt. Pleasant v. Roberts, 713 S.E. 2d 278, 393 S.C. 332 (2011); State v. Johnson, 720 S.E 2d 516, 393 S.C. 182 (Ct App. 2011). Therefore, according to Rule 221(a) South Carolina Appellate Court Rules the Court should deny this petition for rehearing on this issue.

In this case, the Court was asked to interpret S.C. Code Ann. §56-5-2953(A)(1)(a)(iii) that requires and specifically states that the incident site video must include the arrest of the person and must show the person being advised of his Miranda rights. In its opinion this Court correctly explained the policy and legislative intent of this statute. The Court correctly found the requirement of the statute that the video must show the person being advised of his Miranda rights was not met by the Petitioner. Petitioner's failure to produce videotape as required by the statute is grounds for dismissal, if no exceptions apply. The City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E. 2d 879 (2007). Further, in Suchenski, the South Carolina Supreme Court has held that State v. Huntley, 349 S.C. 1 (2002) does not apply to Section 56-5-2953. Huntley held that in order for a dismissal for a statutory violation there must be a showing that the violation was prejudicial to the defendant. The Court in Suchenski distinguished Huntley because Section

56-5-2953 specifically provides for the remedy of dismissal.

The States argument that S.C. Code Ann. §56-5-2953(A)(1)(a)(iii) that requires the incident site video must include the arrest of the person and must “show the person being advised of his Miranda rights” does not require the person be “shown” on video as he is being read Miranda is inconsistent with the plain reading of the statute and absurd.

Trooper Barnett never asks the Respondent to exit the vehicle so that Respondent could be shown on video as required by law. Trooper Barnett made no attempt to remove Respondent from the vehicle so that Respondent could be shown on video as required by law. There is no evidence in the record that Respondent made or presented any aggressive behavior toward Trooper Barnett.

The Respondent has a right to have his conduct videotaped, any field sobriety tests videotaped, and show his arrest and the reading of Miranda. This did not occur and this Court has correctly found Petitioner has failed to properly videotape the Respondent being advised of his Miranda rights as required by S.C. Code Ann. §56-5-2953(A)(1)(a)(iii) which requires the incident site video must include the arrest of the person and must show the person being advised of his Miranda rights.

CONCLUSION

For the foregoing reasons, the Respondent requests the panel deny the Petitioner’s petition for rehearing, and find the trial court and this Court correctly interpreted the definition of “show” in S.C. Code Ann. §56-5-2953(A)(1)(a)(iii) that requires the incident site video must include the arrest of the person and must show the person being advised of his Miranda rights.

July 12, 2019

A handwritten signature in black ink, appearing to read 'Michael Laubshire', written over a horizontal line.

Michael Laubshire
455 St. Andrews Road, Suite E-1
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ATTORNEY FOR RESPONDENT

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PROOF OF SERVICE

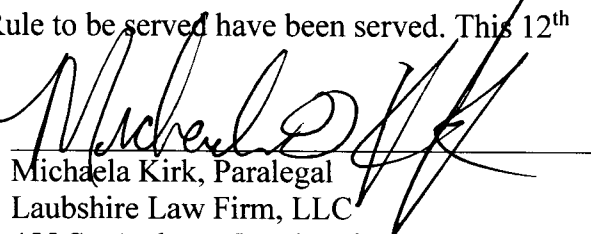
I, Michaela Kirk, certify that I have served the within Petition for Rehearing on the Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

Alan Wilson
Attorney General

William M. Blich, Jr.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

David M. Stumbo
Solicitor, Eighth Judicial Circuit

I further certify that all parties required by Rule to be served have been served. This 12th day of July, 2019.



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July 12, 2019

VIA HAND DELIVERY

The Honorable Jenny A. Kitchens
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

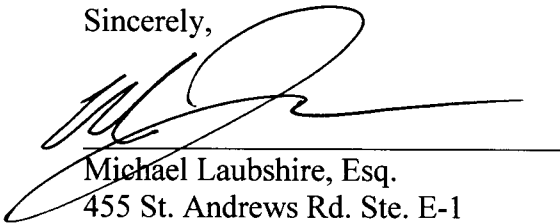
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Re: The State v. Tony Latrell Kinard
Appellate Case No. 2016-001639

Dear Ms. Kitchings:

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

Sincerely,



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Attorney for the Defendant

Enclosures

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