

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA

vs.

HERBERT E. PRAY, III,  
DEFENDANT

IN THE COURT OF COMMON PLEAS

**ORDER ON APPEAL**

C/A No.: 2019-CP-02-00690  
Ticket No.: 20192410601040  
(Driving Under the Influence)

This matter came before the Court on June 11 and 13, 2019, in the Court of Common Pleas for Aiken County. Appellant challenges the pre-trial order of the magistrate dismissing the above-referenced charge. Appellee was present at the hearing, represented by Robert I. Sussman. Appellant was represented at the hearing by Assistant Solicitor Sam Grimes. The Court herein affirms the order of the Magistrate court dismissing the charge.

**Background**

The parties stipulated to the relevant facts at the hearing before the magistrate. Trooper Singletary responded to the "Incident Location" of 436 Cedar Road, Windsor, SC, according to his Aiken County Sheriff's Office Incident Report. The Trooper's dash camera recorded Mr. Pray performing various Field Sobriety Tests. Approximately 22 minutes and 50 seconds into the video, Trooper Singletary places Mr. Pray under arrest for DUI but does not read his Miranda rights at that time. Once an additional six (6) minutes and ten (10) seconds have passed from the time of arrest, the Trooper departs the incident location of 436 Windsor Road with Mr. Pray in his patrol vehicle, heading towards the Aiken County Detention Center. After almost two (2) additional minutes have passed from the time the Trooper left the incident scene, the Trooper finally reads Mr. Pray his Miranda rights, while the pair are still in the Trooper's patrol car and heading to the jail.

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SC Court of Appeals

The Magistrate below found that the Trooper's advisement of Miranda rights almost two (2) minutes after the Trooper departed the incident location of 436 Windsor Road and eighteen (18) minutes and four (4) seconds after Mr. Pray was placed under arrest did not comply with S.C. Code § 56-5-2953. Accordingly, the Magistrate dismissed the charge for the Trooper's failure to comply with the video statute mentioned above.

### **Issue on Appeal**

The State appeals the Magistrate's ruling that advisement of Miranda rights at a location other than where the officer responded and other than where the arrest was made violates S.C. Code § 56-5-2953. To settle this issue, the Court must only perform a plain reading of S.C. Code § 56-5-2953 (A). Appellee contends that the Magistrate was correct by interpreting the statute to require that Miranda rights be read at the location where the arrest was made.

### **Standard of Review and Applicable Law**

"In criminal cases, the appellate court sits to review errors of law only". *State v. Baccus*, 367 S.C. 41, 48 (2006). Statutory interpretation is subject to *de novo* review on appeal. *State v. Taylor*, 411 SC 294 (2014) quoting *City of Greer v. Humble*, 402 SC 609, 613 (Ct. App. 2013)("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").

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *Sloan v. Hardee*, 371 S.C. 495, 498 (2007). In doing so, we must give the words found in the statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499. Thus if the words are unambiguous, we must apply their literal meaning. *Id.* at 498. However, "When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant."

*State v. Blackmon*, 304 S.C. 270, 273 (1991). Additionally, “Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345 (2009).

**Conclusions of Law**

**Incident site refers to the location where the arrest is made and where Miranda rights must be given.**

S.C. Code § 56-5-2953 mandates video recording at two separate locations, the incident site and the breath test site. The statute begins- “A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.” S.C. Code §56-5-2953(A). After that first phrase, the next subsection describes what the video from each location must contain.

- S.C. Code § 56-5-2953. Incident site and breath test site video recording.**
- (A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the **incident site** and the **breath test site** video recorded.
    - (1)(a) **The video recording at the incident site must:**
      - (i) not begin later than the activation of the officer’s blue lights;
      - (ii) include any field sobriety tests administered; and
      - (iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and **show the person being advised of his Miranda rights.**
    - (b) A refusal to take a field sobriety test does not constitute disobeying a police command.
    - (2) The video recording at the **breath test site** must...

It is unambiguous that the arresting officer must produce two separate video recordings, one from the incident site and one from the breath test site. *Id.* It is also clear that each video must capture specific actions. The video from the **incident site** must include any FST’s administered, the arrest of a person for DUI, and **the person being advised of his Miranda**

**rights. *Id.*** All of the actions listed under “incident site” must be recorded, and plainly must all occur at a singular location. Otherwise, there would be no reason to group these required actions under the same heading. The phrases “incident site” and “breath test site” have important purpose within the statute. These phrases direct arresting officers as to *what* must be recorded in a DUI arrest as well as *where* each task must be performed and recorded.

Appellant contends that the phrases “incident site” and “breath test site” do not refer to particular locations, but merely differentiate between two videos. However, this position overlooks the clear meaning of the word “incident” as well as the fact that the arrest and the advisement of Miranda rights are required in the same video and under the same heading. If the location of the arrest is not the same location where Miranda rights must be read, then the Legislature would not have included them under the same heading of “incident site.” Further, if the term “incident site” was not intended by the Legislature to describe the location where particular actions must be recorded, the Legislature would have chosen a number of possible ways to differentiate between the two required video recordings. Instead, the Legislature used the terms “incident site” and “breath test site” not only to differentiate between two required recordings, but more importantly to dictate where each recording must take place.

Appellant contends that if the term “incident site” is of geographical importance, the arresting officer could have driven Mr. Pray back to the same location at a different time and video recorded an advisement of Miranda rights to comply with the statute. While the State argues that this instance illustrates an absurd result that would be reached if “incident site” is given geographical importance, this hypothetical instance actually highlights the importance of giving “incident site” its only clear and plain meaning. The “incident site” is where the officer

responds, encounters the driver, performs FST's, arrests the driver, and is **where Miranda rights** must be read.

The "incident site" in this case is the same place as the "incident location" on the Trooper's own "Incident Report"- 436 Cedar Road. In all of these uses of the word, "incident" refers to a single location: where the officer responded, where the officer administered FST's, and where the officer arrested Mr. Pray- but **not** where the officer read Mr. Pray his Miranda rights. Moreover, in defeating the absurd result that Appellant contends would occur if the word incident is given geographical importance, an incident is not an indefinite event. The incident is over when the arrest is made, Miranda rights are read, and the Trooper leaves the scene.

"The purpose of the video requirement in the statute 'is to create direct evidence of a DUI arrest.'" *Taylor*, at 305 quoting *Town of Mt. Pleasant* at 347. "In addition, ...requiring video recording of the person's arrest and of the officer issuing *Miranda* warnings serves to protect important rights of the defendant." *Taylor* at 306. The reading of Miranda rights is a routine part of any officer's arrest procedure. In the unique field of DUI arrests, Defendants are secured in the officer's car after being placed under arrest, and often remain in the car for a period of time while the officer completes paperwork and then transports the driver to jail. To protect the Constitutional rights of the driver, and to prevent the driver from unknowingly incriminating himself while restrained in a car and still being video recorded, the Legislature has required that Miranda rights be read at the incident site, after arrest, and before the officer leaves that site.

The magistrate court correctly ruled that "incident site" refers to the place where field sobriety tests are administered and where a person is placed under arrest. It is true that field sobriety tests are not always performed, and in the case of traffic accidents and other limited circumstances, a person is not always arrested at the incident site. However, in these limited

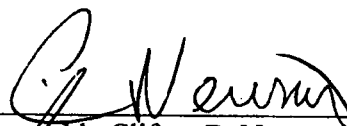
circumstances, the Legislature has provided an exception to the video requirements of S.C. Code § 56-5-2953. In the case before the Court, none of these exceptions apply and none were raised by the State. Therefore, the magistrate ruled correctly that the reading of Miranda rights at a location other than the incident scene, ie. where the driver was arrested, is a violation of S.C. Code § 56-5-2953.

**Conclusion**

A plain reading of S.C. Code § 56-5-2953 illustrates that two separate recordings must be produced in a DUI arrest, as well as where each recording must occur. The phrases "incident site" and "breath test site" are clear, unambiguous, and plainly describe what must be recorded and where it must be recorded. The trooper in this case read Miranda rights after departing the incident site. Therefore, the trooper did not comply with S.C. Code § 56-5-2953 and the dismissal of the charge was proper.

**THEREFORE**, it is **ORDERED** that the order of the magistrate dismissing the charge is affirmed.

**IT IS SO ORDERED.**



Honorable Clifton B. Newman  
Chief Administrative Judge  
Second Judicial Circuit

Columbia, S.C.  
August 9  
~~July~~, 2019.