STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Newberry County
Hon. Donald B. Hocker, Circuit Court Judge

State of South Carolina, Petitioner,

v.

Tony Latrell Kinard, Respondent.

Opinion No. 5658 (S.C. Ct. App. filed June 19, 2019)

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

ATTORNEYS FOR PETITIONER

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on July 2, 2019. The Petition for Rehearing was denied by Order filed August 22, 2019.

STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals erred in affirming the trial court's interpretation of section 56-5-2953(A) and its requirement the video recording "show the person being advised of his Miranda rights." The Court expanded the statute by requiring the person be shown on camera when the Miranda rights are read as opposed to finding the video recording need only document the reading of the Miranda rights which is entirely consistent with this Court's determination of legislative intent.

STATEMENT OF THE CASE

Procedural History

On November 3, 2015, Respondent was involved in an automobile accident. Deputy Snelgrove responded and placed Respondent under arrest for disorderly conduct based on his conduct at the scene.[1] (6/8T.35; App.48). Trooper Barnett arrived and additionally placed Respondent under arrest for DUI. (Incident Scene Roadside Video).

At trial, Respondent moved to dismiss the case arguing the video failed to comply with section 56-5-2953(A) of the South Carolina Code. After testimony and argument, the Honorable Donald B. Hocker, dismissed the charges in a verbal order. Judge Hocker prepared a written order memorializing his dismissal, finding the State failed to comply with section 56-5-2953(A)(1)(a)(iii) of the South Carolina Code. (Order dated July 25, 2016, pp.4-5; App.6-7).The Court further found the exceptions of section 56-5-2953(B) do not apply. (Order dated July 25, 2016, p.5; App.7). Prior to receiving the signed order and based on Judge Hocker's oral ruling, the State filed a Motion to Reconsider on June 9, 2016. Judge Hocker considered the motion at a hearing held on July 25, 2016. On the same date, Judge Hocker gave both parties a copy of the signed order resulting from the June hearing.

The State prematurely served a Notice of Appeal from the July 25 Order of Judge Hocker on August 4, 2016. The Notice was served and filed prior to receiving an order regarding the State's outstanding Motion to Reconsider. This Court remanded the case to the trial court for entry of an order on the Motion to Reconsider. By Order dated October 20, 2016, Judge Hocker denied the Motion to Reconsider. (Order dated October 20, 2016; App.7-13). On October 24, 2016, the State served and filed an Amended Notice of Appeal.

[1] Respondent pled guilty to disorderly conduct in Magistrate's Court. (6/8T.11; App.24).

The South Carolina Court of Appeals issued an opinion in which it ultimately reversed and remanded the case for a new trial. The Court affirmed the trial court's interpretation of section 56-5-2953(A) and found the State failed to present a proper complying video. However, the Court found subsection (B) applied and based on the totality of the circumstances the State failure to present the video was excused. Both parties filed timely Petitions for Rehearing. On August 22, 2019, the Court of Appeals denied both Petitions. This Petition for Writ of Certiorari by the State follows.

Factual Background

Deputy Snelgrove arrived at the scene of an accident around 6:46 PM. (App.45) When he arrived, EMS and the fire department were already on scene. Deputy Snelgrove saw Respondent shouting and "throwing his hands up." (App.46). He indicated Respondent is "screaming, using profanity" while EMS is trying to check him out. (App.47). Deputy Snelgrove tries to calm him down, but Respondent "squares off" at him and continues to scream profanities and that "I'm the motherfucking God." Deputy Snelgrove can smell the alcohol on Respondent while he is screaming and cursing. (App.47). As a result, Deputy Snelgrove, for everyone's safety, places Respondent in handcuffs and arrests him for disorderly conduct. He places Respondent in the back of his patrol car. (App.48).

About ten minutes after Deputy Snelgrove arrived, Trooper Barnett arrived on scene to conduct the DUI investigation. Trooper Barnett is informed when he arrives that Respondent is in the back of Deputy Snelgrove's vehicle as a result of his arrest for disorderly conduct. (App.40; 53). He approached the vehicle to speak with Respondent, who refuses to talk and instead is doing "that thousand-yard stare." Trooper Barnett chose not to pull him out of the

vehicle to put him on camera because it would go from a controlled situation to an uncontrolled situation. (App.40).

Throughout the interaction with Respondent, Trooper Barnett's in-car camera recorded the incident scene. (Video Recording of Incident Scene). Trooper Barnett specifically addresses Respondent upon opening the door to Deputy Snelgrove's vehicle.[2] 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.[3] 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 agreed at the hearing: "You do hear the Miranda . . . you do hear the arrest . . . ." (App.20).

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 Recording of Incident Scene). He tells Respondent he is not coming out of the vehicle. The Respondent continues to express his belief he is God and use profanity. He also tells the officers not to put their hands on him when they are attempting to secure his seat belt in the back seat of the Deputy's vehicle. (Video Recording of Incident Scene).

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[2] 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; App.20; 23; 38).

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

ARGUMENT

I. The Court of Appeals erred in affirming the trial court's interpretation of section 56-5-2953(A) and its requirement the video recording "show the person being advised of his Miranda rights." The Court expanded the statute by requiring the person be shown on camera when the Miranda rights are read as opposed to finding the video recording need only document the reading of the Miranda rights which is entirely consistent with this Court's determination of legislative intent.

The Court of Appeals erred in affirming the trial court's determination the State failed to provide a proper video under section 56-5-2953(A) of the South Carolina Code. The Court misapprehended the clear legislative intent and misinterpreted the statute to fulfill that legislative intent. This Court should grant the Petition for Writ of Certiorari to determine the proper interpretation of section 56-5-2953(A), and its requirement the video recording "show the person being advised of his Miranda rights," is to document the reading of Miranda such that the jury and court knows it occurred and not that the video recording must show the person on camera as he is being read Miranda.

Section 56-5-2953 requires:

> (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.**

S.C. Code Ann. § 56-5-2953 (A) (Supp. 2014) (emphasis added). 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. . . .").

The Court of Appeals and trial 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. The statute does not require the person be shown as he is being read Miranda; instead, it requires the video to show him being advised—i.e. document the fact he was read Miranda. This can certainly be accomplished, as it was in this case, without the person being on camera and without adding an additional requirement not articulated in the statute.

The Court of Appeals correctly explained the policy and legislative intent behind the statute. "[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. This 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 of Appeals, however, misinterpreted the language of the statute and created a nonexistent requirement culminating in an absurd result.

Not requiring a person to be on camera, but, instead, requiring a video that shows the advisement as it occurs, 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 this 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 by the officer 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 and Court of Appeals 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, Trooper Barnett specifically addresses Respondent upon opening the door to Deputy Snelgrove's vehicle.[4] The Trooper asks Respondent to look at him and then asks him to discuss the accident. Based on Respondent's response, the Trooper notes Respondent is not willing to talk about the wreck. Trooper Barnett, while interacting with Respondent, indicates there is a very strong smell of alcohol. He then reads Respondent his Miranda rights, which are clearly heard on the video recording.[5] 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 . . . ." (App.20). The video recording presented by

[4] 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; App.20; 23; 38).

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

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 language of the statute, nor the legislative intent, requires.

The Court of Appeals' 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." (App.47-48). Instead of taking him out of the vehicle, which the Trooper indicates would result in an uncontrolled situation, Trooper Barnett notes Respondent's 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 this 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 and is a futile exercise which would merely serve to place the officers and others in unnecessary danger. Nothing will be learned by having Respondent's face or body 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, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

BY: _____
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

September 23, 2019

STATE OF SOUTH CAROLINA

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Certiorari to the Court of Appeals
Appeal From Newberry County
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State of South Carolina, Petitioner,

v.

Tony Latrell Kinard, Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition For Writ of Certiorari to the Court of Appeals and Appendix 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 23rd day of September, 2019.

CAROLINE COLLINS
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

September 23, 2019

HAND-DELIVERED
The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
1231 Gervais Street
Columbia, S. C. 29211

Re: State v. Tony L. Kinard

Dear Mr. Shearouse:

Enclosed please find six copies of the Petition for Writ of Certiorari and two copies of the Appendix, along with Proof of Service, in the above-referenced case.

Thank you for your attention to this matter.

Sincerely,

William M. Blitch, Jr.
Senior Assistant Deputy Attorney General

Enclosures

cc: The Honorable Jenny A. Kitchings (one copy of Petition enclosed)
Michael V. Laubshire, Esquire (one copy of Petition and Appendix enclosed)
Richard J. Dolce, Esquire (one copy of Petition and Appendix enclosed)
Victim Advocacy Division (one copy of Petition enclosed)