

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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OCT 11 2019

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

S.C. SUPREME COURT

State of South Carolina

Appellant,

vs.

Tony Latrell Kinard

Respondent.

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Opinion NO. 5658 (S.C. Ct. App. Filed June 19, 2019)

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**RESPONDENT'S RETURN TO WRIT OF CERTIORARI**

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Michael Laubshire  
455 St. Andrews Road, Suite E-1  
Columbia, SC 29210-4487  
(803) 708-4755

Richard Dolce  
455 St. Andrew Road, Suite E-2  
Columbia, SC 29210-4487  
(803)772-7411

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE QUESTION PRESENTED

The Court of Appeals properly concluded the trial court correctly interpreted section 56-5-2953(A) and its requirement the video recording “must show the person being advised of his Miranda Rights”

## STATEMENT OF THE CASE

On or about November 3, 2015, at approximately 6:30 p.m., Trooper Barnett responded to a wreck on the I-26 west-bound exit ramp at exit 74. Prior to his arrival on scene, Trooper Barnett activated his in-car video camera. Newberry County Deputy Snellgrove was already on scene and had detained the Respondent by placing him in handcuffs and in the rear of his patrol vehicle (App. 50-51). Deputy Snellgrove does not have any recording of this incident because his vehicle was not equipped with a video camera (App. 52) Deputy Snellgroves blue lights are flashing during the entire video making it difficult to see what is happening on the video. No field sobriety tests are conducted at the scene. The Respondent is never taken out of Deputy Snellgrove's vehicle, therefore, the arrest of the Respondent is not on the video and the Respondent is not shown being advised of this Miranda Rights. (App. 41-42) Neither the Trooper or the Deputy submitted and affidavit of failure to provide video recording.

## ARGUMENT

On or about June 19, 2019, the Court of Appeals 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, the Court of Appeals 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). The Court of Appeals 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.

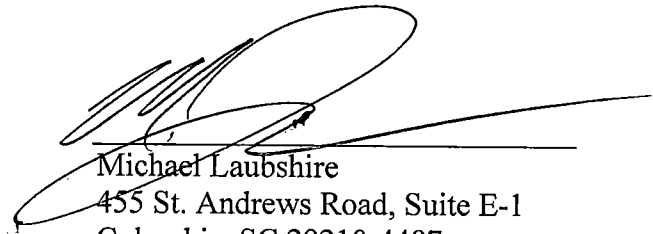
The Respondent has a right to have his conduct videotaped, any field sobriety tests videotaped, and show his arrest and the reading of Miranda. This did not occur and the Court of

Appeals 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 court deny the Petitioner's petition for certiorari on this issue, and find the trial court and the Court of Appeals 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.

October 9, 2019



Michael Laubshire  
455 St. Andrews Road, Suite E-1  
Columbia, SC 29210-4487  
(803) 708-4755

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Appellant,

vs.

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**PROOF OF SERVICE**

I, Victoria Ford, certify that I have served the within RESPONDENTS RETURN TO WRIT 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. Blicht, 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 9<sup>th</sup> day of October, 2019.



Victoria Ford, Paralegal  
Laubshire Law Firm, LLC  
455 St. Andrews Road, Suite E-1  
Columbia, SC 29210  
(803) 708-4755

# THE LAUBSHIRE LAW FIRM, LLC

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455 Saint Andrews Road, Suite E-1  
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

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**S.C. SUPREME COURT**

The Honorable Daniel E. Shearouse  
Clerk of Court, South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29211

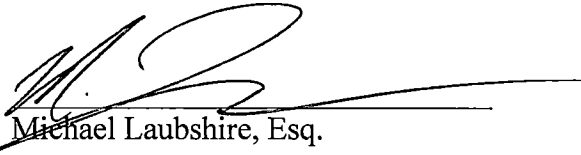
Re: The State v. Tony Latrell Kinard

Dear Mr. Shearouse:

Please find enclosed six copies of the Respondent's Return to Petition for Writ of Certiorari in the above-referenced case.

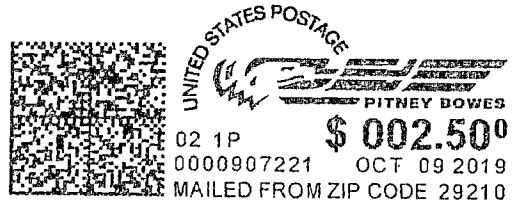
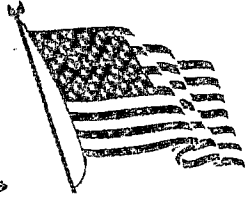
If you have any questions, please feel free to contact my office.

Sincerely,



Michael Laubshire, Esq.

cc: William M. Blich Jr., Senior Assistant Deputy Attorney General



**LAW FIRM, LLC**

Road, Suite E-1  
29210-4487

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Clerk of Court, South Carolina Supreme Court  
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Columbia, SC 29211