STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-000882

THE STATE,

Appellant,

v.

DANNY JAME PLUMLEY,

Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. The CDL implied consent statute should be read as a whole.

Plumley argues that the CDL implied consent statute, S.C. Code §56-1-2130, must be read as a whole. The State agrees, which is why it must point out that Plumley's argument completely ignores §56-1-2130(B), the core of the CDL implied consent statute and the lynchpin of the State's argument. Although Plumley cites §2130(A) and (C), he omits §2130(B) from his brief altogether. Brief of Respondent at 4–5. This is likely because Plumley's argument falls apart when read next to the plain language of subsection (B), which makes clear that the warnings for refusal of BAC tests required by §2130 apply only to traffic stops of commercial vehicles:

> Tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the driver of a commercial motor vehicle, has probable cause to believe that the driver was driving a commercial motor vehicle while having a measurable amount of alcohol in his system.

S.C. Code Ann. §56-1-2130(B) (2018) (emphasis added). This is in addition to subsection (C)'s provision that warnings are to be given before tests "as provided in subsection (A)," i.e. to a "person who drives a commercial vehicle in this State...." There is no ambiguity here. The specific warning required by §2130 must be given only in the scenario specified in the statute: traffic stops of commercial vehicles.

II. Plumley conflates warnings of the consequences of refusal—required by §2930—with warnings of the collateral consequences of conviction of various driving offenses under §2110—which are not required by statute.

As discussed above, S.C. Code §56-1-2130 is the implied consent statute that requires officers to give warnings about the consequences of refusal to give a BAC sample to CDL drivers who are arrested while driving their commercial vehicles. By contrast, S.C. Code §56-

1-2110 is a penalty statute; it provides for suspension of a person's CDL "if convicted" of various driving offenses, including some committed while driving a personal vehicle. §2110 does not contain a warning requirement of any kind, but pertains only to collateral consequences of conviction of enumerated driving offenses. Plumley still has not committed a CDL violation under §2110 because he hasn't been convicted of refusing. His argument—that officers are required to give warnings of the collateral consequences of conviction for §2110 driving offenses—has no textual support. Contrary to his claim, such a warning is not "expressly provided by law." Brief of Respondent at 3.

This Court should not imply such a requirement into the statute. The DUI law is already filled with so many procedural requirements that trained officers struggle to comply with it, and necessarily take a scrupulous, step-by-step approach to avoid summary dismissal for the slightest deviation from its requirements. In doing so, officers (and policymakers at SLED) rely on the written words of the statute. While Plumley's requested warning would be more comprehensive, it is not required by statute. The statute's purpose was fulfilled when Plumley was warned that he did not have to take the test. City of Florence v. Jordan, 362 S.C. 227, 233, 607 S.E.2d 86, 90 (Ct. App. 2004) (explaining statute's purpose is "to ensure suspects are informed of their rights to refuse any test and, if consent is obtained, to ensure the tests are conducted in an accurate, reliable, and fair manner"). The lower court erred when it implied yet another warning requirement into the statute when the plain language requires no such warning.

The implied consent statute requires officers to warn drivers of the immediate consequences for refusal to give a BAC test while driving a commercial vehicle. It does not require officers to warn drivers of the collateral CDL consequences that follow conviction of a

driving offense enumerated in §2110, which includes offenses committed while driving a personal vehicle. Because officers rely on the written words of the statute, the lower courts erred by implying this requirement into the statute.

III. The State was not required to remind the Court to make specific findings of prejudice in order to preserve the issue for appeal.

The necessity of making specific findings was before the magistrate because this requirement is express in the statute. The trial court's duty to make findings is not dependent on the State reminding him to do so. The failure of a trial court to make specific findings required by law is an abuse of discretion that is always reviewable by an appellate court. In any case, the State raised the trial court's failure to make specific findings in its motion to reconsider, positively preserving the issue. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Likewise, the State's arguments regarding statutory construction are matters of law that are always before this Court when it conducts a de novo review to determine the meaning of a statute.

Because Plumley knew he had the right to refuse the test, the procedure was fair. If Plumley had refused the test and been given a year-long suspension at an administrative hearing instead of six months, he would have a good argument that he was misled as to the length of suspension and suffered prejudice. But because he gave a sample, the length of the punitive suspension for refusal is completely irrelevant. If he is convicted of DUI, he will end up with the same year-long CDL suspension. He cannot show prejudice in this case. The magistrate court committed legal error when it held otherwise and when it failed to make specific findings required by statute before excluding the test results.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

December 23, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Hon. Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-000882

THE STATE,

Appellant,

v.

DANNY JAME PLUMLEY,

Respondent.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Initial Reply Brief of Appellant and Designation of Matter on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, David A. Wilson, Esquire, 200 Whitsett Street, Suite 100B, Greenville, SC 29601.

I further certify that all parties required by Rule to be served have been served.
This 23rd day of December, 2019.

Anne Mueller

Anne A. Mueller
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

December 23, 2019

David A. Wilson, Esquire
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RE: State v. Danny Jame Plumley
Appellate Case No. **2019-000882**

Dear Mr. Sumner:

I am enclosing two (2) copies of the Initial Reply Brief of Appellant and Designation of Matter in the above-referenced case.

Sincerely,

Joshua A. Edwards
Assistant Attorney General
Bar # 101188

JAE/aam
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Advocacy Division