

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Aiken County
The Honorable Clifton B. Newman, Circuit Court Judge
Appellate Case Number 2019-001400

The State of South Carolina,

Appellant,

vs.

Herbert E. Pray, III,

Respondent.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIESii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT4

I. The circuit court erred in affirming the magistrate court’s dismissal of the case. Both courts erred in finding the officer’s reading of Respondent’s Miranda rights as he was driving away from the location Respondent was located violated the requirements of section 56-5-2953(A) of the South Carolina Code. The interpretation by both the magistrate and circuit courts leads to an absurd result and does not effectuate the intent of the legislature in passing the section.....4

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992)..... 5

Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 501 S.E.2d 725 (1998) 6

State v. Baker, 310 S.C. 510, 512, 427 S.E.2d 670, 672 (1993)..... 5

State v. Elwell, 396 S.C. 330, 336, 721 S.E.2d 451, 454 (Ct. App. 2011) 5, 6, 8

State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008) 5

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007)..... 5

State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) 5

Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011) 6, 8

Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000)..... 6

Statutes

S.C. Code Ann. § 56-5-2953(A) (Supp. 2014) 4, 5, 6

STATEMENT OF ISSUES ON APPEAL

- I. The circuit court erred in affirming the magistrate court's dismissal of the case. Both courts erred in finding the officer's reading of Respondent's Miranda rights as he was driving away from the location Respondent was located violated the requirements of section 56-5-2953(A) of the South Carolina Code. The interpretation by both the magistrate and circuit courts leads to an absurd result and does not effectuate the intent of the legislature in passing the section.

STATEMENT OF THE CASE

On January 1, 2019, Respondent was arrested for driving under the influence (DUI). He was issued a Uniform Traffic Ticket. (UTT; R.____). Respondent moved to dismiss his case based on his assertion the State failed to comply with the video statute, section 56-5-2953(A) of the South Carolina Code. (Motion to Dismiss; R.____). The State filed a Response March 12, 2019. On the same date, the magistrate court held a hearing on the motion to dismiss. The magistrate dismissed the case based on a violation of the video recording statute. (Transcript of Magistrate Court Hearing; Magistrate's Return; R.____).

On March 21, 2019, the State appealed the ruling to the Circuit Court. (Notice of Appeal and Appeal from Magistrate's Court; R.____). The Magistrate filed her Return on March 25, 2019. (Magistrate's Return; R.____). The circuit court held hearings on June 11 and 13, 2019. Following the hearings on August 9, 2019, the circuit court issued an order affirming the dismissal by the Magistrate. (Order on Appeal; R.____). The State served its Notice of Appeal on August 16, 2019. This brief follows.

STATEMENT OF FACTS

Trooper Singletary responded to a call at a residence. When he arrived, he confronted Respondent. Respondent admitted driving to the residence and having a couple glasses of wine. (Incident Site Video). After discussion with Respondent, Trooper Singletary had Respondent perform field sobriety tests. (Incident Site Video). As stipulated at the magistrate's court hearing, Respondent was placed under arrest 22 minutes and 50 seconds into the Incident Site Video. (Incident Site Video). At approximately 39 minutes into the video, Trooper Singletary began driving with Respondent in his car. Throughout the time, the incident site video continued recording. At approximately 40 minutes and 54, or after they had been driving for almost two minutes, Trooper Singletary reads Respondent his Miranda rights. The full interaction, including the reading of the Miranda rights are included on the incident site video. (Incident Site Video).

ARGUMENT

- I. **The circuit court erred in affirming the magistrate court's dismissal of the case. Both courts erred in finding the officer's reading of Respondent's Miranda rights as he was driving away from the location Respondent was located violated the requirements of section 56-5-2953(A) of the South Carolina Code. The interpretation by both the magistrate and circuit courts leads to an absurd result and does not effectuate the intent of the legislature in passing the section.**

The circuit court erred in affirming the magistrate court's dismissal of the case based on an incorrect interpretation of the requirement of section 56-5-2953(A) and the determination that Miranda must be read at the same location where arrest occurred. The interpretation by both courts leads to an absurd result and does not effectuate the intent of the legislature. The descriptive term "incident site" does not refer to an exact location, but instead is logically construed as a term to differentiate the video from the one at the "breath test site." This Court should find the magistrate and circuit court erred in requiring Respondent be read his Miranda rights at the same location in which field sobriety tests were performed and he was arrested, and instead find that the term just refers to which video must include which required items from section 56-5-2953(A).

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 whether the reference to incident site in the statute was designed to restrict where all the events under subsection (A)(1) had to occur in order to be properly included in the video or whether it was merely a descriptive term used to differentiate one video from another—the video required by subsection (A)(1) from the video required by subsection (A)(2).

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). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute’s language must be construed in light of the intended purpose of the statute. Id. at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Pittman, 373 S.C. at 561, 647 S.E.2d at 161. However, the statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). Accordingly, “[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. . . .”).

“[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. The South Carolina Supreme 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).

Initially, the State fully complied with the requirements of the statute as written. The video recording at the incident site included all of the required items listed in subsection (A)(1). It began upon turning on his blue lights, which as can be seen on the video occurred a distance away from where the arrest was made, meaning the “incident site” obviously has to be a broad term or either it was error to activate the blue lights before arriving at the location where the arrest would occur. The video included all field sobriety tests administered. Finally, the same video that began upon activation of the blue lights some distance from the house includes the arrest of Respondent at the house and clearly shows Respondent being advised of his Miranda rights as he rides in the vehicle with Trooper Singletary well before he arrives at the breath test site. The statute does not indicate the video must show the person being advised of his Miranda rights at the location where he is arrested, it merely requires a video show Respondent’s conduct and include various items, all of which are on the video provided by Trooper Singletary.

In the instant case, nothing is gained by interpreting the term “incident site” as a narrow location restriction on where all the events must occur, and instead, an absurd result occurs by requiring the case to be dismissed even though the entirety of the reading of Miranda rights is on camera and recorded with both video and sound. As discussed, the video is activated and begins prior to Trooper Singletary’s arrival at the house where Respondent is ultimately arrested. Clearly the incident site could not be restricted to only a single location as the incident site video spans a significant area. Had Trooper Singletary advised Respondent of his Miranda rights where he was arrested, it would have created no different evidence or more substantive evidence than what was created in the video provided. As a result, the legislative intent of creating direct evidence of the stop and ending swearing matches is entirely preserved by finding the “incident site” term is a term differentiating the videos and not a specific situs restriction.

Additionally, if the term “incident site” in the instant case only referred to the house and yard as Respondent argued to the courts, then the officer could be free to turn off the video as soon as they pull out of the location and not record any of the conduct of the person arrested on their way to where the breath test will be administered. Determining the need to only record at a very specific location seems counter to the legislative intent because as soon as the officer and person leave that site, the video can be turned off and it again becomes a swearing match. Interpreting the term “incident site” to mean something other than a narrow location restriction again furthers the intent of the legislature by requiring that video to run as long as possible to record the defendant’s conduct. Again, the interpretation suggested by Respondent and adopted by the magistrate and circuit court leads to an absurd result clearly not contemplated or intended by the Legislature.

This Court needs to determine, in light of the legislative intent as found by the South Carolina Supreme Court, that the term “incident site” is not one that attempts to limit the specific location where everything happens, but instead is a broad term used to define the video recording being referenced. Limiting the relevancy of the video to a single location could have a detrimental effect on what conduct is recorded or how a case is presented which is not in line with the determination that the video “is to create direct evidence of a DUI arrest.” Roberts, 393 S.C. at 347, 713 S.E.2d at 285. Further, limiting a video requirement only to the specific scene where an individual is provided field sobriety tests or is officially arrested would not achieve the result of “reduc[ing] 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. The end result in this case is a prime example of the absurd result that occurs by limiting the definition of “incident site” too greatly because we have a clear video showing Respondent being advised of his Miranda rights, and no further direct evidence or reduction in a swearing contest would have occurred if the reading was one minute and 54 seconds earlier while still in the front yard of the home as opposed to in the vehicle on the way to the breath test site.

Accordingly, this Court should apply the legislative intent and determine that “incident site” is a broader term than recognized by the magistrate and circuit courts, reverse the dismissal of this case, and remand for a trial.

CONCLUSION

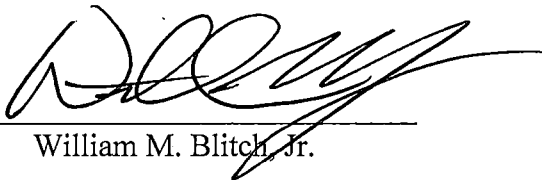
For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court affirming the magistrate court's dismissal of the case should be reversed and this case remanded for trial.

Respectfully submitted,

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February 21, 2020

STATE OF SOUTH CAROLINA
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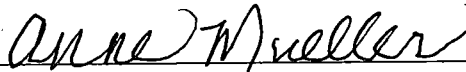
Respondent.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Initial Brief of Appellant and Designation of Matter on Respondent by having two copies delivered to:

Robert I. Sussman, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 21st day of February, 2020.


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February 21, 2020

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RE: State v. Herbert E. Pray, III
Appellate Case No. 2019-001400

Dear Mr. Sussman:

I am enclosing two (2) copies of the Initial Brief of Appellant and Designation of Matter in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

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Enclosures

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

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