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Jul 22 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Spartanburg County  
Honorable J. Mark Hayes, II, Circuit Court Judge  
Appellate Case Tracking No. 2016-002238

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State of South Carolina,

Appellant,

vs.

Kenneth Taylor,

Respondent.

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PETITION FOR REHEARING

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On July 15, 2020, this Court affirmed the trial court's decision dismissing the underlying case because the video presented by the State failed to have Respondent on camera at the time his Miranda rights were read. This Court misapprehended or overlooked the language of the statute and the clear legislative intent which only requires the State to "demonstrate" Respondent was read his Miranda rights and not show him while he is being read his Miranda rights. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the video presented by the State complied with the requirements of section 56-5-2953(A) of the South Carolina Code, reverse the lower court's decision, and remand for a new trial.

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.

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 portion "show the person being advised of his Miranda rights" is the portion of the statute at issue in this case.

First and foremost, the clear language of the statute conflicts with this Court's opinion. The language does not say "show the person **as he is** being advised of his Miranda rights" it says "show the person being advised of his Miranda rights." By requiring the video to show Respondent "**as he is** being advised" writes into the statute three words which are not present. It is not for this Court to rewrite the language of the statute chosen by the legislature. See Brown v. S.C. Dep't of Health & Env'tl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute."). As three justices frankly reiterated in a recent case: "If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.**" Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added).

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). The video is to **document** the procedures used and the entirety of the interaction between the person and the officer through arrest. The South Carolina Supreme 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). Any interpretation of the statutory language must be made in light of that intended purpose by the legislature—a purpose of establishing evidence the stop was conducted in a manner fair to the person being placed under arrest and documenting the interactions between the person and law enforcement.

It is clear the legislature’s intent was to require the State to **document** the steps taken 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 having the defendant on camera during the reading. See e.g., Henkel, 413 S.C. at 16, 774 S.E.2d at 462 (finding the audio recording of an ABC field sobriety test sufficient to comply with statutory requirements).

Nothing is gained by watching Appellant sit and listen to the Miranda rights being read and watching him respond acknowledging his understanding of those rights. It was error for the circuit court to impose a requirement and this Court to affirm the requirement Respondent be “seen” during the reading of Miranda, when the statutory interpretation most consistent with the legislative intent would require the State to “make apparent” or “demonstrate” he was read his Miranda rights—something which can be done when the audio clearly captures the Miranda rights being read and Respondent’s response as it did in this case.

Additionally, “[t]he legislature is presumed to intend that its statutes accomplish something.” State v. Long, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005). Here, the 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. State v. Elwell, 396 S.C. 330, 336, 721 S.E.2d 451, 454 (Ct. App. 2011). “The statute must be interpreted with realistic circumstances and rationales in mind.” Elwell, 396 S.C. at 336, 721 S.E.2d at 454; 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. . . .”). This Court’s interpretation defeats the purpose of the statute and clearly ends in an absurd result in this case.

## CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the trial court erred in misinterpreting section 56-5-2953(A) requiring Respondent to be seen on the camera as opposed to just documenting the reading of his Miranda rights, reverse the decision of the circuit court affirming the magistrate's dismissal of the case, and remand for a new trial with the admission of the video.

Respectfully submitted,

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PROOF OF SERVICE

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I, Caroline Collins, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to the two last known addresses for Respondent:

Kenneth Taylor  
26-C Oakland Avenue  
Inman, South Carolina 29349

Kenneth Taylor, Inmate # 00168407  
Kershaw Correctional Institution  
4848 Gold Mine Hwy  
Kershaw, South Carolina 29069

I further certify that all parties required by Rule to be served have been served.  
This 22<sup>nd</sup> day of July, 2020.



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