

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Spartanburg County
Hon. J. Mark Hayes, II, Circuit Court Judge

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Aug 31 2020

S.C. SUPREME COURT

State of South Carolina,

Petitioner,

v.

Kenneth Taylor,

Respondent.

Opinion No. 2020-UP-215 (S.C. Ct. App. filed July 15, 2020)

**PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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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 22, 2020. The Petition for Rehearing was denied by Order filed August 6, 2020.

STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals erred in affirming the dismissal of the underlying case based on the failure of the defendant to appear on video at the time he is read his Miranda rights. The erroneous interpretation of section 56-5-2953(A) requiring Respondent to be seen on camera while being advised of his Miranda rights is contrary to the language of the statute and the intent of the legislature.

STATEMENT OF THE CASE

Procedural History

Respondent was arrested for driving under the influence (DUI) and having an open container. (Uniform Traffic Tickets H 276630 and H 276631; App.36). He proceeded to trial in Magistrate Court on May 25, 2016, before the Honorable James B. Paslay. Respondent moved to dismiss the case alleging the State failed to comply with section 56-5-2953(A) of the South Carolina Code. The Magistrate dismissed the case. (Magistrate's Return; App.9).

The State filed its Notice of Appeal to the circuit court on June 2, 2016, and the Magistrate filed his Return on June 7, 2016. (Magistrate's Return; App.9). The Honorable J. Mark Hayes heard the appeal on September 6, 2016. By Order on Appeal, electronically filed on October 20, 2016, Judge Hayes affirmed the dismissal of the case by the Magistrate. (Order on Appeal; App.3). The State filed a Notice of Appeal on October 28, 2016. The Court of Appeals granted Respondent's counsel's request to be relieved as counsel. The State serve a Brief of Appellant on Appellant at his last known addresses; however, all mail to Respondent was returned. The State filed its Final Brief with the Court. Respondent never filed a brief or participated in the appeal.

The Court of Appeals issued an Opinion affirming the dismissal of the case on July 15, 2020. See State v. Taylor, Op. No. 2020-UP-215 (S.C. Ct.App. filed July 15, 2020). The State served and filed a Petition for Rehearing on July 22, 2020, and the Petition was denied by Order of the Court of Appeals dated August 6, 2020. This Petition follows.

Factual Background

Respondent's vehicle was located on the side of the road by a Spartanburg County deputy. Trooper Thornton arrived at the scene and confronted Respondent. Upon initial contact,

Respondent admits to drinking a couple shots of Jose Cuervo tequila and a couple beers. (Video of Incident Scene). Trooper Thornton asks Respondent to do his alphabet from E to X. He recites E, F, G, H, I, J, K, L, M, N, O, P, Q, R, X. When Trooper Thornton asks him about S, T, U, V, and W, Respondent states the letters come after X. (Video of Incident Scene). Respondent then has trouble describing where he lives, indicating he was a little shook up. Trooper Thornton tells Respondent he is going to have to take him to county to offer him a breath test. Respondent tells him "I'm a good guy. . . . I'm already going to fail it." (Video of Incident Scene).

Respondent is placed under arrest and handcuffed. Trooper Thornton places Respondent in the front seat of his vehicle. After a short discussion with the deputy, Trooper Thornton joins Respondent in his vehicle. Prior to beginning the Miranda rights, Trooper Thornton informed Appellant he would be offered a test at the jail. Appellant responded: "I think we need to go to the jail because I got to pee." Trooper Thornton then stated: "Okay, well, I'll read it real fast." (Video of Incident Scene).

Trooper Thornton did not turn around the camera to face into the passenger compartment or turn on an interior camera. During the reading, the camera remains facing out the front of Trooper Thornton's vehicle. On the recording, Trooper Thornton is heard reading Respondent his Miranda rights. During the reading Respondent states "Yep" after Trooper Thornton explains his right to remain silent and his right to an attorney. After the full rights are read, Respondent acknowledges the rights and his understanding of his rights. On the road to the jail, Trooper Thornton turns on the interior camera to show Respondent in the vehicle with him. (Video of Incident Scene).

ARGUMENT

- I. **The Court of Appeals erred in affirming the dismissal of the underlying case based on the failure of the defendant to appear on video at the time he is read his Miranda rights. The erroneous interpretation of section 56-5-2953(A) requiring Respondent to be seen on camera while being advised of his Miranda rights is contrary to the language of the statute and the intent of the legislature.**

The Court of Appeals erred in affirming dismissal of this case based on an erroneous interpretation of section 56-5-2953(A) in which the Court required Respondent to be seen on camera at the time he is advised of his Miranda¹ rights. The dismissal violates the clear legislative intent behind the statute and writes into the law a requirement not consistent with that legislative intent.

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,

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

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).

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.

This Court 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. Citing to Roberts, this Court 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. See State v. Taylor; 411 S.C. 294, 306, 768 S.E.2d 71, 77 (Ct. App. 2014) ("requiring video recording of the person's arrest and of the officer issuing *Miranda* warnings serves to protect important rights of the defendant"). 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, State v. Sawyer, 409 S.C. 475, 477, 763 S.E.2d 183, 184 (2014) (analyzing the breath test portion of the former statute which required that the video "must include the reading of *Miranda* rights" and finding that the audio portion of the recording was the most significant); see also, 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 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 and documents Respondent being read his Miranda rights. The facts stipulated to at the hearing as well as seen on the video indicate Respondent is moved into the passenger seat of Trooper Thornton's vehicle. Prior to beginning the Miranda rights, Trooper Thornton informed Appellant he would be offered a test at the jail. Appellant responded: "I think we need to go to the jail because I got to pee." Trooper Thornton then stated: "Okay, well, I'll read it real fast." (Video of Incident Scene). Unfortunately, Trooper Thornton did not turn around the camera to face into the passenger compartment or turn on an interior camera. On the recording, Trooper Thornton is heard reading Respondent his Miranda rights.² During the reading Respondent states "Yep" after Trooper Thornton explains his right to remain silent and his right to an attorney. After the full rights are read, Respondent acknowledges the rights and his understanding of his rights. The video recording presented by the State shows Respondent being advised of his Miranda rights to the extent necessary to comply with the statute and the legislative intent behind the statute. See State v. Taylor, 411 S.C. 294, 305, 768 S.E.2d 71, 77 (Ct. App. 2014) ("*Suchenski, Murphy, and Gordon* demonstrate the plain language of the statute does not require the video to encompass every action of the defendant, but requires video of each event listed in the statute."). There is no doubt that Miranda rights being read to Respondent are recorded on the video. Accordingly, the circuit court erred in dismissing the case because the State complied with section 56-5-2953(A).

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

² The Miranda rights heard being read on the video recording are legally correct, and there has been no allegation to the contrary.

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. . . .”). The circuit 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, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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