STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions
The Honorable Clayburn S. Barnette, Jr., Magistrate Court Judge
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2020-001105

THE STATE, ...RESPONDENT,

v.

DANIEL MCMICHAEL BELK,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly affirmed the magistrate court's denial of Appellant's motion to dismiss his charges pursuant to S.C. Code Ann. § 56-5-2953 because the State complied with the statute and any alleged error was harmless.

STATEMENT OF THE CASE

On August 2, 2019, Appellant was arrested for Driving Under the Influence, first offense. On March 4, 2020, a bench trial was held before the Honorable Clayburn Barnette, Jr., a York County Magistrate. Prior to trial, counsel for Appellant moved to dismiss the charge pursuant to S.C. Code Ann. § 56-5-2953 (Supp. 2019), arguing the arrest officer provided an incomplete recitation of Miranda warnings to Appellant. The magistrate denied the motion found Appellant guilty as charged.

On March 11, 2020, Appellant appealed the decision to the circuit court. A hearing was held on June 22, 2020 before the circuit court judge, the Honorable Daniel D. Hall, to address the merits of Appellant's argument. The circuit court judge affirmed Appellant's conviction in an order filed June 25, 2020. Appellant filed a motion to reconsider on July 2, 2020, which was denied via order on July 15, 2020. Appellant appealed that decision to this Court and filed his Brief of Appellant on January 4, 2021. This Brief of Respondent follows.

STATEMENT OF FACTS

During pretrial motions for Appellant's bench trial, Appellant argued his case should be dismissed because of a violation of S.C. Code Ann. § 56-5-2952(A)(1)(a)(iii) because Appellant was not fully instructed on his Miranda rights. 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.**

The Miranda instructions at issue were as follows: "You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney one will be appointed. Do you understand your rights?" The magistrate judge denied the motion to dismiss and began the bench trial. S.C. Code Ann. § 56-5-2953(A) (Supp. 2014) (emphasis added); (Magistrate's Return, p.1)[1]

Trooper Jakell with the South Carolina Highway Patrol testified, and it was through him the State published the roadside video of Appellant's arrest. As explained by Jakell, he responded to the scene of the arrest after he was notified of an accident. When he arrived, he discovered Appellant's vehicle had rear ended the vehicle in front of him. When he made contact with the Appellant, the latter was still sitting in the vehicle. Jakell detected the odor of

[1] The audio recording of the magistrate trial was corrupted and could not be given to the parties. However, the magistrate court's return memorialized the events of the trial and the parties confirmed its accuracy during the circuit court hearing. See (H.Tr.p.4, lines 1–25; H.Tr.p.7, line 8–H.Tr.p.8, line 9)

alcohol and asked Appellant to exit the vehicle, after which he administered several field sobriety tests. Following the tests, Appellant was arrested for DUI and given the Miranda instructions at issue. The State stopped playing the roadside video after showing the portion in which Appellant was Mirandized. (Magistrate's Return pp.1–2)

The State then sought to admit a second video: one which showed Jakell instructing Appellant on his Implied Consent Rights and performing a test for blood alcohol level. Trial counsel objected based on the grounds stated during the pretrial hearing, but the objection was overruled. The sample collected showed Appellant's blood alcohol level was .13 percent. The results of the test were entered into evidence. SLED Agent Nathan McCoy also testified, and explained the Data Master was working properly at the time the test was given. The State rested its case, and the magistrate court found Appellant guilty of Driving Under the Influence. Trial counsel immediately notified the court that it was appealing the conviction. (Magistrate's Return p.2)

A hearing was held on the appeal before the circuit court. The parties agreed with the facts as stated in the Magistrate's Return. However, trial counsel argued the magistrate court erred when it failed to dismiss the appeal pursuant to S.C. Code Ann. § 56-5-2953 because Jakell's Miranda instructions to Appellant were incomplete. Citing to State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (2012), trial counsel argued the Miranda warnings should have included an explanation that an attorney would be appointed "prior to any question [if] [Appellant] so desire[d]." Trial counsel also claimed the State conceded the Miranda instructions to Appellant were incomplete. Trial counsel claimed that any failure to comply with § 56-5-2953 required "per se dismissal" of Appellant's case under prior cases such as City of Rock Hill v. Suchenski,

374 S.C. 12, 646 S.E.2d 879 (2007). (H.Tr.p.4, line 1–H.Tr.p.7, line 2; H.Tr.p.13, line 4–H.Tr.p.14, line 3)

In response, the State argued trial counsel's demand that the case against him be dismissed was a result "plainly absurd" and not intended by the legislature. The State explained Jakell's instructions substantially complied with Miranda. And the correct remedy for the incomplete Miranda warnings was suppression of Appellant's post-arrest statements to officers; the same remedy which was used by the magistrate judge during trial. The State also pointed out that trial counsel was relying on dated case law for its argument; in State v. Gordon, 414 S.C. 94, 777 S.E.2d 376 (2015), that videos deemed "incomplete" under § 56-5-2953 do not result in automatics dismissals of cases, but instead require courts to perform balancing tests to determine whether it is more prejudicial than probative to allow videos of incomplete Miranda warnings into evidence. In Appellant's case, there was no prejudice in allowing the video into evidence. (H.Tr.p.7, line 3–H.Tr.p.11, line 11)

In rebuttal, trial counsel argued Gordon did not modify or otherwise overrule Suchenski, and the opinion actually stated Suchenski did not apply to the facts of that case. Further, he claimed an incomplete Miranda instruction means no Miranda instruction was given, because Miranda "is a yes or no checkbox." Thus, according to Suchenski, the magistrate should have dismissed Appellant's case. (H.Tr.p.11, line 12–H.Tr.p.13, line 3)

When questioned by the circuit court, trial counsel admitted that all of Appellant's post-Miranda statements to Jakell were suppressed during the trial. The circuit court decided to take the matter under advisement. On June 25, 2020, the circuit court affirmed Appellant's conviction. (H.Tr.p.14, lines 4–23; June 25, 2020 Order)

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs where the trial court's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

"In criminal appeals from magistrate . . . court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception." State v. Henderson, 347 S.C. 455, 457, 556 S.E.2d 691, 692 (Ct. App. 2001); S.C. Code Ann. § 18-3-70 (2014) ("The appeal [from the magistrate court in a criminal case] must be heard by the Court of Common Pleas upon the grounds of exceptions made and upon the papers required under this chapter, without the examination of witnesses in that court. And the court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the court may seem meet and conformable to law."). In criminal cases, the appellate court sits solely to review errors of law. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion." State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). An abuse of discretion occurs when the trial court's ruling is based on an error of law. State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008).

ARGUMENT

The circuit court properly affirmed the magistrate court's denial of Appellant's motion to dismiss his charges pursuant to S.C. Code Ann. § 56-5-2953 because the State complied with the statute and any alleged error was harmless.

Appellant argues the circuit court judge erred in denying his motion to dismiss because the incomplete Miranda warnings required the dismissal of his charge. The State disagrees with this allegation of error. The State complied with the requirements of the recording statute and, even if the Miranda warnings were incomplete, the proper remedy was the one utilized by the magistrate judge: exclusion of his post-arrest statements to law enforcement. Accordingly, dismissal was inappropriate.

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." California v. Trombetta, 467 U.S. 479, 485 (1984). The fundamental fairness standard requires criminal defendants to be given a meaningful opportunity to present a complete defense. Id.; see State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) ("Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense."). However, a defendant is not entitled to a "perfect" investigation or trial; only a fair one. See State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one."); see also Patterson v. New York, 432 U.S. 197, 208 (1977) ("Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person."); see generally Baker v. McCollan, 443 U.S. 137, 146 (1979) (instructing law enforcement officers are not required to perform entirely error-free investigations).

Pursuant to S.C. Code Ann. § 56-5-2930(A):

> It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.

(Supp. 2014).

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.**
>
> . . .
>
> (B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn

> affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. **Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances**; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

S.C. Code Ann. § 56-5-2953(A)–(B) (Supp. 2014) (emphasis added).

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 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. This 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).

Appellant was properly Mirandized

Initially, the State notes that, despite its admission at trial, Appellant's Miranda warnings were, in fact, adequate. Without question, before the accused is subjected to custodial interrogation, he or she must be informed of the right to remain silent; any statement made may be used as evidence against him or her; the right to the presence of an attorney; and if he or she cannot afford an attorney one will be appointed prior to questioning. State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct. App.1996). Notably, no "talismanic incantation" is required to satisfy the requirements of Miranda; provided the warnings given to the defendant were the functional equivalent of those stated in Miranda, said warnings will be deemed adequate.

California v. Prysock, 453 U.S. 355, 359–62 (1981). Notably, the United States Supreme Court has repeatedly emphasized that the core warnings, as stated in Miranda, are accurate and complete. See Florida v. Powell, 559 U.S. 50, 59–60 (2010) (citing with approval Miranda's requirements that a criminal suspect, prior to custodial interrogation, be advised "that he has the right to the presence of an attorney.") In fact, the United States Supreme Court has found too specific of a warning about when a suspect was entitled to an attorney could be misleading; in Prysock, the Court noted the defendant was properly Mirandized because "nothing in the warnings given [Prysock] suggested any limitation on the right to the presence of appointed counsel different from the **clearly conveyed rights to a lawyer in general** . . . ," which distinguished it from other California cases in which suspects were told their rights to appointed counsel would occur "at a future point in time after police interrogation, and therefore did not fully advise the suspect[s] of [their] right to appointed counsel before such interrogation. See Prysock, 453 U.S. at 360–61 (referencing United States v. Garcia, 431 F.2d 134 (CA9 1970) and People v. Bolinki, 67 Cal.Rptr. 347, 355 (Cal. Ct. App.1968)). In Powell, the Court specifically refused to require law enforcement provide more specific recitations such as those utilized by other law enforcement agencies,[2] noting they were "admirably informative" but such "precise formulation[s]" were unnecessary to meet the requirements of Miranda. Powell, 559 U.S. at 64. Thus, despite Appellant's argument to the contrary, the Miranda warnings provided to Appellant were in complete compliance with Miranda and its progeny because the warnings communicated his broad, unrestricted right to an attorney.

[2] The United States Supreme Court specifically referenced the standard Miranda warnings given by the FBI which provide, in relevant part: "You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning." Powell, 559 U.S. at 64.

Even if Appellant was Not Properly Mirandized, Dismissal was Inappropriate

As to the merits of Appellant's argument, it is predicated upon the belief that full advisement of his Miranda warnings was a critical element of his charged offense. He is mistaken. For example, nothing in §§ 56-5-2930 or 56-5-2953 requires that the jury actually be shown the issuance of Miranda warnings to a defendant; the presence of the Miranda warnings is solely related to whether the trial judge should admit the video into evidence and is not included as an element of the offense defined with S.C. Code Ann. § 56-5-2930. In fact, § 56-5-2930(J)(3) specifically allows for "a video recording of the person's conduct at the incident site and breath testing site taken pursuant Section 56-5-2953 . . . **subject to redaction under the South Carolina Rules of Evidence.**" (emphasis added). It would be an extreme act to reverse Appellant's conviction when the actual evidence of his guilt was submitted properly to the magistrate and complied with the letter of the law. Further, it is counterintuitive to preclude the State from using **non-custodial** evidence against Appellant based solely on the presence of Miranda warnings, a requirement for **custodial** statements, particularly when the magistrate judge excluded Appellant's post-arrest statements from evidence. For example Miranda warnings were not required to be given to Appellant before Jakell conducted the field sobriety tests because field sobriety testing is not considered "custodial interrogation"[3] for the purposes of Miranda. See, e.g., State v. Peele, 298 S.C. 63, 64–66, 378 S.E.2d 254, 255–56 (1989).

As conceded by Appellant, his issues with the recording were with its content; it is undisputed the recording itself exists and showed Jakell providing Appellant with Miranda warnings. However, defects in evidence or procedure generally do not affect admissibility. See,

[3] In fact, field sobriety testing is an important factor in determining whether probable cause exists for an arrest for driving while intoxicated. See Lapp v. SCDMV, 387 S.C. 500, 505–06, 692 S.E.2d 565, 568–69. (Ct. App. 2010).

e.g., State v. Odom, 382 S.C. 144, 676 S.E.2d 124 (2009) (citing State v. Huntley, 349 S.C. 1, 562 S.E.2d 472 (2002)). Any issues regarding the quality of the content of the video should go to its weight and the weight to be assigned the video by the trier of fact. See State v. Cope, 405 S.C. 317, 342 n.6, 748 S.E.2d 194, 207 n.6 (2013) ("factual discrepancies . . . go to the weight of the evidence"); State v. Dicapua, 373 S.C. 452, 636 S.E.2d 150, 153 (Ct. App. 2007) (Stilwell, J., concurring opinion) (lack of audio on surveillance videotape of a drug sting went to the weight of the evidence, not its admissibility); Weaver v. Lentz, 348 S.C. 672, 680, 561 S.E.2d 360, 364-365 (Ct. App. 2002) ("Questions as to the accuracy of conclusions drawn go solely to the weight of the testimony, rather than its admissibility."); see also, State v. Salisbury, 330 S.C. 250, 498 S.E.2d 655, 665 (Ct. App. 1998) (conflict in testimony regarding condition of breathalyzer machine went to weight of the test results rather than admissibility of the evidence), *aff'd as modified*, 343 S.C. 520, 541 S.E.2d 247 (2001). .

The State also observes that Appellant's argument is based upon a hyper-technical reading of § 56-5-2953: the Statute requires the video recording show a defendant being read his Miranda rights, but Miranda instructions which omit important language are defective and the equivalent of not actually being Mirandized. However, Appellant's interpretation, fails under a simpler, plain language interpretation of § 56-5-2953(iii) because the statute requires the recording of the Miranda warnings given but does not specify that the warnings must be complete and accurate, just that they be recorded. Such an interpretation is consistent with the Supreme Court's decision in Gordon. In Gordon, the court reviewed whether this Court erred in affirming the circuit court's reversal of the defendant's magistrate court conviction for driving under the influence. The circuit court reversed the conviction because, under its interpretation of § 56-5-2953(ii), the Horizontal Gaze Nystagmus (HGN) field sobriety test was not adequately

recorded due to the inherent darkness of the nighttime arrest, precluding Gordon's head from being "sufficiently visible through the entire administration of the [HGN] test" despite the officer's use of the headlights in his car and a flashlight while performing the test. See Gordon, 414 S.C. at 96–97, 777 S.E.2d at 377.

The Supreme Court reinstated Gordon's conviction, finding "common sense dictate[d]" Gordon's head must be visible in the video, but the circuit court's "hyper-technical[]" interpretation of the statute contradicted its plain and ordinary meaning, particularly when the results of an HGN test (eye movement) are rarely, if ever, seen in this type of recording. Id. at 99-100, 777 S.E.2d at 378-79. The court further found that, even if the video of the field sobriety test was "of such a poor quality that its admission is more prejudicial than probative," the correct remedy was not dismissal of the case but redaction of the field sobriety test from the video and excluding testimony about the test; even without the proper redaction, there was sufficient evidence justifying the conviction, including Gordon's other field sobriety tests and his breath alcohol analysis report. Id. at 100, 777 S.E.2d at 379.

Appellant's reliance on City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 897 (2007), is misplaced because the facts of the case differ greatly from Appellant's situation. In Suchenski, the arresting officer's vehicle recorder ran out of tape before the defendant was arrested, and as a result, there was **no** recording of the last field sobriety test or the arrest, both events required to be recorded under the statute. Thus, under the statute, the officer could not produce a videotape of all of the required events. The officer testified a tape had never ended during an arrest before, and he did not know the tape was about to run out, but assumed the videotape was running as usual. The magistrate denied the defendant's motion to dismiss, finding exigent circumstances excused full compliance with the statute. The circuit court

reversed on appeal. The South Carolina Supreme Court affirmed, finding the City's claim of exigent circumstances was not preserved for review, and in the absence of an exception, section 56-5-2953(B) required dismissal of the charge. Id.

As explained in S.C. Code Ann. § 56-5-2953(B), "[n]othing in th[at] section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances . . . ." In this case, unlike Suchenski, the State produced a videotape of the entire incident site and all events required to be documented under the statute. The video recording clearly documented the entirety of the Miranda warnings provided by Jakell to Appellant. Gordon found "per se dismissal" of charges like in Suchenski inappropriate when the State complies with the plain and ordinary meaning of the language in § 56-5-2953. The statute requires the recording capture the reading of Miranda rights to a defendant, and in Appellant's case the instructions, as given, were recorded. Further, even if this Court finds admission of the Miranda warnings was improper, the magistrate judge complied with Gordon by excluding Appellant's post-arrest statements from evidence. Exclusion of those statements had a minimal impact on the State's case because other evidence of Appellant's guilt, including the results of the blood alcohol test and the results of the field sobriety tests, was presented by the State.

Finally, the State asseverates that Appellant's interpretation of the statute would lead to absurd results in it and other cases. See Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (finding courts will reject an interpretation of a statute leading to an absurd result clearly unintended by the legislature); 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."). For example, in another case in which a defendant was read his

Miranda rights but the recording skipped over a small portion of the officer reading the rights, that defendant would be entitled to dismissal of the case simply because of a small technical error out of the State's control. It is clearly not the intention of the legislature to require the complete dismissal of charges because of a minor glitch, particularly when that glitch does not affect the remainder of the State's evidence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

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May 5, 2021

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions
The Honorable Clayburn S. Barnette, Jr., Magistrate Court Judge
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v.

DANIEL MCMICHAEL BELK,.....APPELLANT.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the same Designation of Matter to be Included in the Record on Appeal as Appellant.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email to the address listed in AIS and with a copy of the same to follow in the United States mail, postage prepaid, addressed to:

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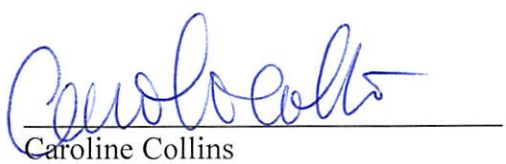
I further certify that all parties required by Rule to be served have been served this 5th day of May, 2021.



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Subject: The State v. Daniel McMichael Belk (2020-001105)
Attachments: BELK Daniel - Initial Brief of Respondent and Designation of Matter - 2020-001105 (02561403xD2C78).PDF

Good Morning Mr. Taylor and Mr. Brown,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter in The State v. Daniel McMichael Belk (2020-001105). These documents will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. In addition to this email, hard copies will be placed in the mail.

If you will, please reply to confirm receipt.

Thank you!

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