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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court
Appellate Case Number: 2020-001184

On Grant of Petition for Certiorari from the Court of Appeals
Court of Appeals Case Number: 2016-002238

Appeal from Spartanburg County
J. Mark Hayes, II., Circuit Court Judge
Common Pleas Case Number: 2016-CP-42-02066

Appeal from the Spartanburg Magistrate Court
James B. Paslay, Magistrate Judge
Uniform Summons Number: H-276630

The State, Petitioner
v.
Kenneth Taylor, Respondent

**Motion of the South Carolina Association of Criminal Defense Lawyers
for Leave to File an *Amicus Curiae* Brief**

The South Carolina Association of Criminal Defense Lawyers moves this Court for leave to file an *amicus curiae* brief in support of the Respondent, Kenneth Taylor.

Statement of Interest of *Amicus Curiae*

The South Carolina Association of Criminal Defense Lawyers (SCACDL) is a non-profit corporation devoted to protecting the liberty of the citizens of South Carolina by fighting to ensure justice and due process for all persons accused of any criminal act. The SCACDL seeks to provide a united voice in challenging legislation directed to limiting or eliminating the rights of the individual and to labor for laws that preserve equal access to justice for all. The members of the SCACDL collectively provide representation at all levels of the judicial process from administrative proceedings at the local level to the United States Supreme Court.

The SCACDL also provides regular education focused on all aspects of criminal defense. The topics of these seminars include the introduction to the practice of criminal defense, known as Criminal Defense 101, advanced training concerning the defense of criminal sexual conduct cases, and one of the nation's most comprehensive and well attended annual driving under the influence seminars regularly attended by hundreds of lawyers.

The SCACDL membership is comprised of more than 500 lawyers licensed in the State of South Carolina and effectively all of the state level public defenders. The SCACDL employs a lobbyist to seek criminal justice reform in the legislature and a lawyer who serves as the executive director. This Court has accepted *amicus curiae* briefs from the SCACDL in the past. See *State v. Slocumb*, 827 S.E.2d 148 (SC 2019), *In re Kevin R.*, 762 S.E.2d 387 (SC 2014), *State v. Hepburn*, 753 S.E.2d 402 (SC 2013), *Price v. Turner*, 691 S.E.2d 470 (SC 2010), *Binney v. State*, 683 S.E.2d 478 (SC 2009), *State v. Hubner*, 683 S.E.2d 279 (SC 2009), *McKnight v. State*, 661 S.E.2d 354 (SC 2008), and *Johnson v. Catoe*, 520 S.E.2d 617 (SC 1999).

Reasons Why an *Amicus Curiae* Brief from the SCACDL is Desirable

In the case before the Court, an *amicus* brief from SCACDL is beneficial because the Respondent has not filed a brief following the grant of the government's petition for certiorari, is not represented by counsel as his previous attorney was relieved prior to the grant of cert and does not appear to have received any actual notice of the continuation of this litigation after his counsel was relieved. See C-Track entry from the Court of Appeals dated 9.12.17 (characterizing the notice provided by that court as being "undeliverable" to Kenneth Taylor). While not a substitute for a true adversarial challenge made by a party with a direct interest in the controversy, the SCACDL is the entity whose interests are most closely aligned with that of the Respondent. Thus, submission of an *amicus curiae* brief from the SCACDL will hone the

arguments in an effort to achieve the most intellectually accurate opinion from this Court.

More specifically, three different courts interpreted the statutory obligation that law enforcement video recordings in driving under the influence investigations “show the person being advised of his *Miranda*¹ rights”² to mean that the subject of the investigation and the officer reading the *Miranda* rights are both captured on the video portion of the recording. This reading is consistent with the ordinary meaning of the word “show.” See Black’s Law Dictionary, Abridged Sixth Edition, p. 962, West Publishing (1991)(“Something that one views or at which one looks and at the same time hears.”) Even assuming there is ambiguity concerning the interpretation of the word “show,” the opinions already rendered in this case are consistent with the rules of statutory interpretation which require that a statute not be read to produce an absurd meaning counter to legislative intentions. See *Town of Mount Pleasant v Roberts*, 713 SE2d 278 (SC 2011).

In contrast to the previous court rulings and with no current opposition provided by the Respondent, the State seeks to persuade this Court that the phrase at issue, “show the person being advised of his *Miranda* rights,” should be interpreted as having the same meaning as a related phrase in a previous version of this same statute³ which required that a video “must include the reading of *Miranda* rights.” See Brief of Petitioner, p. 7, citing *State v. Sawyer*, 763 S.E.2d 183, 184 (SC 2014). Essentially, the State asks this Court to sit as a super legislature and rewrite the amended version of the statute to remove the requirement imposed by the legislature.

¹*Miranda v Arizona*, 384 US 436 (1966).

²SC Code Section 56-5-2953(A)(1)(a)(iii).

³SC Code Section 56-5-2953 was amended by 2008 Act No. 201, § 11 with an effective date of February 10, 2009.

Thus, a robust adversary is necessary to expose this executive branch overreach and the SCACDL is the best situated organization to serve as an adversarial surrogate in light of the absence of the Respondent from any meaningful participation in the process.

Conclusion

Therefore, undersigned respectfully requests that this Court grant this Motion and allow the SCACDL 30 days to file an *amicus curiae* brief in support of the Respondent. Alternatively, the SCACDL requests that this Court allow the SCACDL to enter an appearance as *amicus curiae* in support of the Respondent and adopt a proposed brief submitted by Jason Scott Luck, Esq. along with a motion for Mr. Luck to be appointed as a Guardian Ad Litem.

Respectfully submitted by,

/s/James A. Brown, Jr.
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May 26, 2021
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