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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON CERTIORARI TO THE SOUTH CAROLINA COURT OF APPEALS
Appeal from Spartanburg County
Circuit Court

J. Mark Hayes, II
Circuit Court Judge

Supreme Court Case No.: 2020-001184

State of South CarolinaPetitioner,

v.

Kenneth Taylor Respondent.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, the *Amicus Curiae* would request rehearing of Part II of this Court’s February 23, 2022, opinion (“Opinion”) on account of the following points overlooked or misapprehended by this Court:

I. This Court’s holding on suppression is an impermissible advisory opinion.

The propriety of the *per se* dismissal rule of *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (2007), was not before this Court. While the State opposed a *per se* dismissal of Taylor’s charges before the Magistrate Court and Circuit Court, it did not pursue this argument on appeal. Accordingly, this argument is waived. *E.g. First Savings Bank v. McLean*, 314 S.C. 361,

444 S.E.2d 513 (1994) (issues not argued in the brief are deemed abandoned and will not be considered on appeal).

This Court’s holding abrogating in part the *per se* dismissal rule of *Suchenski* (part II of the Opinion) has no effect on the legal rights of the parties of this appeal, rendering this holding an advisory opinion. *See Power v. McNair*, 255 S.C. 150, 155, 177 S.E.2d 551, ___ (1970) (An advisory opinion does not settle the legal rights of the parties.). As this Court held a little over a year ago:

Courts do not give advisory opinions or answer questions that are not asked. *See, e.g., Rutland v. S.C. Dep't of Transp.*, 400 S.C. 209, 216 n.4, 734 S.E.2d 142, 145 n.4 (2012) (“We decline, as we must, to [rule on issues] not presented to us. Appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” (internal alteration and quotation marks omitted) (citation omitted)).

State v. Harrison, 432 S.C. 448, 464, 854 S.E.2d 468, 476 (2021); *see also Booth v. Grissom*, 265 S.C. 190, 192, 217 S.E.2d 223 ,___ (1975) (“It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.”); *In re Chance*, 277 S.C. 161, 284 S.E.2d 231 (1981) (“This Court has consistently refrained from rendering such [advisory] opinions.”). As part II of the Opinion consists of an advisory opinion, this Court should rescind it, while continuing to affirm the Court of Appeals.

II. The Court’s suppression remedy is inconsistent with the intent and text of S.C. Code § 56-5-2953.

This Court’s holding abrogating in part the *per se* dismissal rule of *Suchenski* (part II of the Opinion) runs counter to the plain text of South Carolina’s DUI statute. Subsection B of South Carolina’s DUI statute implies the proper relief for failure to produce a video compliant with the statute is dismissal: “Failure by the arresting officer to produce the video recording required by this section is **not alone a ground for dismissal of any charge...**” S.C. Code § 56-5-2953(B) (emphasis added). Subsection B does not read: “dismissal of any charge or suppression of

evidence”, which would imply the existence of other forms of relief. This Court should rescind part II of the Opinion, while continuing to affirm the Court of Appeals.

III. The Court’s advisory opinion on suppression will lead to unintended consequences.

Part II of the Opinion also creates uncertainty and unintended consequences. While the *per se* dismissal rule of *Suchenski* is a blunt instrument, it is simply and efficiently applied, freeing up the time and attention of the judiciary and law enforcement. Now courts considering DUIs will be preoccupied with a host of new questions, including, but not limited to: is the entire video suppressed, or a portion? If a portion, is only the defective *Miranda* warning redacted, is the video post-blue-light-activation suppressed, or is the video post-*Miranda* suppressed? The only certain result of part II of the Opinion is a swell of competing opinions, appeals, and petitions defining and redefining the contours of this new suppression remedy. As a matter of policy and judicial economy, part II of the Opinion should be rescinded and the Court of Appeals should be affirmed.

CONCLUSION

This Court should reconsider and rescind part II of its February 23, 2022 opinion. The Court of Appeals should be affirmed.

Dated: 03/08/2022

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