

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
Appellate Case Tracking No. 2020-001184

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S.C. SUPREME COURT

The State,

Petitioner,

v.

Kenneth Taylor,

Respondent.

RETURN TO PETITION FOR REHEARING

On February 23, 2022, this Court affirmed the lower court’s dismissal of Kenneth Taylor’s DUI case based on the State’s failure to fully comply with the requirements of section 56-5-2953(A) of the South Carolina Code. The Court, in answering what is required to comply with the statute, also provided the appropriate remedy for a failure to strictly comply with the requirement that the video recording “must . . . show the person being advised of his Miranda rights.” The two aspects go hand in hand and are necessary for a complete discussion of the requirements of section 56-5-2953(A). As a result, the Petition for Rehearing should be denied.

Initially, the State notes that it may not be proper for a Petition for Rehearing to be served and filed by an *Amicus Curiae* when the underlying party has not served and filed a Petition. As discussed by former Chief Justice Toal in her book: “A party may file a petition for rehearing requesting that the appellate court reconsider an opinion, order, judgment or decree.” Jean Hofer Toal et al., Appellate Practice in South Carolina 371 (3d ed. 2016). Generally speaking,

an *Amicus Curiae* is only entitled to participate as much as provided by the Court. In this case, the *Amicus Curiae* was allowed to submit a brief and participate in argument. See Order of the South Carolina Supreme Court dated June 18, 2021. There has been no order of the Court allowing any additional participation, including the filing of a Petition for Rehearing. See, e.g., Rule 213, SCACR (“A brief of an amicus curiae may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court.”).

On the merits, the State believes this Court properly addressed the remedy associated with a failure to comply, based on the remainder of this Court’s opinion, with the requirement that both the officer and defendant “must be visibly seen and audibly heard” on a video recording of a DUI incident scene. While this Court has indicated it will not pass on purely advisory issues, the remedy for a violation goes hand in hand with the pronouncement made by the Court regarding the requirements of the video recording statute. This Court will take the opportunity to address an issue directly related to the primary issue of the appeal for the edification of the bench and bar. See, e.g., State v. Jones, 435 S.C. 138, 142, 866 S.E.2d 558, 560 (2021) (taking the opportunity to clarify issue preservation rules with respect to pre-trial rulings of constitutional dimension when the determination was not necessary to the outcome of the appeal); Stone v. Thompson, 428 S.C. 79, 87, 833 S.E.2d 266, 270 (2019) (after prospectively abolishing common law marriage, the court took the opportunity to update the standards courts are to apply in future common-law marriage litigation); State v. Gordon, 414 S.C. 94, 100, 777 S.E.2d 376, 379 (2015) (after concluding the video complied with the requirements of section 56-5-2953(A) with regard to the HGN test, this Court then stated: “Even if we assume that the video of a field sobriety test is of such poor quality that its admission is more prejudicial than probative, the remedy would not be to dismiss the DUI charge. Instead, the remedy would be to redact the field sobriety test

from the video and exclude testimony about the test.”). These are only a few examples of related issues being addressed by this Court when it is asked to decide an issue that has broader repercussions, with Gordon being the most analogous by this Court providing the remedy for the failure to properly document the HGN test on a video recording when the Court already concluded the video requirement was met.

The determination of what is required to be on the video recording under section 56-5-2953(A) goes hand in hand with the imposition of a remedy for the violation. This Court properly clarified the remedy to apply in future cases to prevent the unnecessary dismissal of DUI cases based solely on the failure to properly “show” Miranda warnings being read on the video and the unnecessary expenditure of judicial resources to raise and address an issue directly connected to the issue in this case.

Additionally, this Court’s determination of the proper remedy—suppression—for a failure to “show” a person being read Miranda warnings is entirely proper in light of the remedies provided by this Court in Gordon and the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The rationale behind the video recording 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). 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”). If the main purpose behind the video recording is to protect the rights of the defendant and to create direct evidence, it is logical to conclude where the video fails to do so the Court should look to

the particular remedy associated with the right to determine the remedy appropriate for the failure to document the protection of that right. Miranda indicates the proper remedy is the suppression of any tainted evidence obtained in violation of its requirements. As a result, it is entirely logical that the failure by the State to fully or properly document the protection afforded by Miranda—especially when it is abundantly clear the protection was actually provided as in this case—should not result in any harsher remedy than the failure to provide the protection in the first place.

As this Court noted in its opinion, a *per se* dismissal rule can lead to absurd results that were clearly not intended by the legislature in drafting section 56-5-2953. 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 properly concluded “suppression of tainted evidence flowing from the failure to administer Miranda warnings in accordance with subsection 56-5-2953(A)—not *per se* dismissal of the DUI charge—is the proper remedy.”

The *Amicus Curiae* indicates courts will struggle with the new remedy and determinations to be made. The remedy and determinations, however, are the same as courts have made since the United States Supreme Court issued Miranda. Courts at all levels from Magistrate to Supreme Court have had to make determinations of whether evidence is tainted by a failure to properly provide Miranda warnings and then make the determination of the scope of the appropriate remedy. Setting forth a known remedy should not result in unintended

consequences or cause any additional difficulties in determining the “contours” of this long-standing suppression remedy.

This Court properly issued Part II of its Opinion, and the Petition for Rehearing, to the extent it is properly considered by the Court since it has been filed by an *Amicus Curiae* without specific leave to file the Petition, should be denied.

CONCLUSION

For all of the foregoing reasons, the State requests the Court deny the Petition for Rehearing served and filed by the *Amicus Curiae* and uphold its prior Opinion.

Respectfully submitted,

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