

Case Name: State v Henkel (S.C. Sup. Ct., Opinion Number 27541, July 1, 2015)

FACTS:

A witness observed a vehicle being driven erratically on I-385 and ultimately wrecking. Sergeant Hiott responded to the wreck and organized a search after learning from a witness that the driver had fled the scene. Officers were unable to locate the driver and cleared the scene. Several hours later, Sergeant Hiott responded to a call indicating an individual had been found walking down I-385. When Sergeant Hiott arrived, he found respondent receiving medical care in an ambulance. Sergeant Hiott read respondent his Miranda¹ rights and conducted a horizontal gaze nystagmus (HGN) test while respondent was in the ambulance. Sergeant Hiott initiated his audio recording device by a switch on his belt during the HGN test.² After the HGN test, Sergeant Hiott learned respondent was not going to the hospital, so he led respondent from the ambulance to the side of his vehicle and asked him to recite the alphabet. Respondent failed both the HGN and ABC tests. The ABC test and Sergeant Hiott's admonitions while administering the HGN test were captured by audio recording. Neither test was captured by video recording. Sergeant Hiott arrested respondent for DUI, placed respondent in his patrol vehicle, faced the incar camera towards respondent, and read respondent his Miranda rights again. Respondent sought dismissal of the charge alleging the videotape of his conduct at the scene failed to comply with the statutory videotaping requirements. Subsection 56–5–2953 (A) requires that an individual have his conduct recorded at the incident site, and that the recording must include that individual being advised of his Miranda rights prior to the administration of field sobriety tests.

PROCEDURAL HISTORY:

The trial court denied Henkels' motion to dismiss; finding that the videotape complied with the requirements of the statute. The Court of Appeals reversed. This appeal followed.

ISSUE:

Did the videotape of respondent's conduct made at the scene of his traffic accident investigation comply with the videotaping requirements of S.C. Code Ann. § 56–5–2953, as it existed in January 2008?

HOLDING:

Yes. We find the language of the exception in subsection (B) ambiguous, and construe the exception to require compliance with subsection (A) need only begin at the time videotaping becomes practicable, and continue until the arrest is complete.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Bryant v. State*, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). However, "[a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010).

If the statute is ambiguous, courts must construe the terms of the statute. *Lester v. S.C. Workers' Comp. Comm'n*, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006). We have strictly construed § 56-5-2953. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 346, 713 S.E.2d 278, 285 (2011).

We find the language of the exception in subsection (B) ambiguous and construe the exception to require compliance with subsection (A) when it becomes practicable to begin videotaping. Accordingly, we find Court of Appeals' majority erred, for two reasons, in finding once videotaping begins pursuant to an exception in subsection (B), that full compliance with subsection (A) is necessary. First, the majority opinion violates the legislative intent of the statute. 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. *Roberts*, 393 S.C. at 347, 713 S.E.2d at 285 (finding the purpose of § 56-5-2953 is to create direct evidence of a DUI arrest). During a traffic stop, the subject, his vehicle, and his interaction with the officer can be videotaped by the car-mounted camera that is initiated by the officer's blue lights. Requiring an officer to repeat Miranda and field sobriety tests on camera in a situation contemplated in subsection (B) is not consistent with the legislative intent of the DUI recording statute.

Here, the legislative concerns with videotaping one-on-one traffic stops to capture the interactions between an officer and the subject are not present. See *Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 (holding "language must be construed in light of the intended purpose of the statute."). Numerous officers and emergency personnel observed respondent's conduct at the scene. Officer Hamilton testified he was the first responder that located respondent walking down I-385. Officer Hamilton testified respondent was unsteady on his feet, he was confused, and he was talking with a slurred voice. Officer Terry testified he also responded to the call reporting that respondent was walking down I-385 and he believed respondent was definitely intoxicated. He explained respondent was slurring his speech, his posture was slumped over, and he smelled like alcohol.

Second, the majority opinion fails to consider the statute as a whole. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) ("In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole."). In effect, the majority opinion would render the exceptions for road blocks, traffic accident investigations, and citizens' arrests meaningless, if during an encounter it becomes practicable to begin videotaping. The majority requires an arresting officer to repeat Miranda warnings and field sobriety tests if it becomes practicable to begin videotaping; especially when, as occurred here, Miranda and a portion of a field sobriety test were conducted prior to the moment when videotaping became practicable. We hold the phrase "as soon as videotaping is practicable in these circumstances," applies to both when videotaping must "begin" and when videotaping must "conform to the provisions of this section."

Accordingly, we hold when an individual's conduct is videotaped during a situation provided for in subsection (B), compliance with subsection (A) must begin at the time videotaping becomes

practicable and continue until the arrest is complete. Subsection (A) of the statute as it existed at the time of respondent's arrest only required respondent's conduct be videotaped and Miranda warnings be given prior to field sobriety tests. We find the audio recording of respondent's field sobriety tests adequately captured his conduct at the scene of the traffic accident investigation. Additionally, because respondent was given Miranda warnings prior to the time videotaping became practicable, we hold the videotape complies with subsection (A) because the videotape need only begin complying with subsection (A) from the time videotaping became practicable. See footnote 5, supra.

We reverse the Court of Appeals and reinstate respondent's conviction because the videotape satisfied the requirements of § 56-5-2953 once videotaping became practicable.

REVERSED.