

State of South Carolina

In the Supreme Court

Motion for Bail
Pending

Appellate Review

James Curtis Cobbert, III
Petitioner

V.

State of South Carolina
Respondent

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OCT - 4 2013

S.C. Supreme Court

Motion For Bail

2012 - 207554

James C. Cobbert III
Petitioner

Broadriver CI
4460 Broadriver Rd
Columbia, Sc 29210

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OCT 07 2013

SC Court of Appeals

Index

Index	_____	1
Issue Presented	_____	2
Motion	_____	3
Brief	_____	4
Conclusion	_____	9

Issue Presented

According to (SCACR) 243 (K) Bail Pending Appellate Review. Petitioner shall be admitted Bail due to the following:

°The merits of the case

°The strong probability of prevailing on those merits

°The nature of relief that will be received

And the unjust amount of time Petitioner has done over the constitutionally correct sentence (Reckless Homicide)

State of South Carolina
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v.

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Respondent

In the Supreme Court
Case No: 2012-207554

Motion For Bail
Pending Appellate
Review

Plaintiff moves the court for an Motion For Bail Pending Appellate Review. On the 21st day of Oct 2013. Petitioner respectfully shows the court the reasoning and merits pertaining to the case. Petitioner exercises full discretion in the matter, in compliance with (SCACR) 243 (k). Plaintiff respectfully ask for the court to review and grant bond

Wherefore Plaintiff request that due to the circumstances and Merits of the case. Bond be set at an attainable margin.

Respectfully Submitted

cc. Attorney Generals Office



4460 Broadriver rd
Columbia Sc 29210

The question of whether or not if Reckless Homicide is an lesser included offense of failure to stop for blue light resulting in death is Novel in South Carolina.

The South Carolina Blue light statute was before the court on several occasions. In Us v Baseboro 551 F.3d 226 C.A.4 (N.C) 2009. The government went as far as to categorize the South Carolina statute (56-5-750(A)) In Baseboro courts applied the categorical approach to determine if 56-5-750(A) fail within the range of an violent felony. In determining this question the court stated, "We find that failing to stop for blue light generally proscribes conduct that poses the potential for serious injury to another." Courts also wrote, "Most cases of failure to stop for blue lights involve the deliberate choice by the driver to disobey the police officer signal. This disobedience poses the threat of a direct confrontation between the police officer and the occupants of the vehicle, which, in turn, creates a potential for serious physical injury to the officer, other occupants of the vehicle, and even bystanders."

The act of failing to stop for blue lights is an act of "recklessness, generally and undisputedly. Recklessness which is, conduct whereby the actor does not desire harmful consequences but nonetheless foresees the possibility and consciously takes the risks," (Black's Law Dictionary ^{8th} Edition) Is precisely the state in which actor is engaging in when failing to stop for blue light. "Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards the risk which his or her conduct is creating."

Brief

According to (SCACA) 243(K), an petition for bail can be admitted after the service of the notice of appeal by either the applicant or the state. The authority to grant bail would be exercised with caution and only in exceptional cases only.

Petitioner brings forward the novelty of an issue thats pending in the South Carolina Appellate Courts. James Curtis Cobbert III v. The State, Appellate Case No: 2012-207554

In this present case, Mr. Cobbert is charged with Reckless Homicide 56-5-2910; and Failure to Stop For Blue Lights Resulting in Death 56-5-750(c)(2). Petitioner inserts that his United States Constitution was violated based on ineffective assistance of counsel under the Sixth Amendment. Due to the fact that Plea counsel advised Petitioner to plea to two charges that would violate his United States Constitution under the Double Jeopardy clause of the fifth Amendment. This constitutional guarantee is applicable to the state through the due Process Clause of the fourteenth Amendment Benton v Maryland 395 U.S. 784, 89 S.Ct. 2056, 2062. 23 L.ED. 2d 707 (1969).

In South Carolina, there is no applicable case law supporting an legal conviction for the offenses of Reckless Homicide and Failure to stop for blue lights resulting in death in a single proceeding.

See William Shepard McAninch & W. Gaston Fairney, The Criminal Law of South Carolina 12-15 (2d ed. 1989). Recklessness has also been defined as "Something more than mere negligence or carelessness... a conscious failure to exercise due care or ordinary care or a conscious indifference to the rights and safety of others or a reckless disregard thereof" State v. Tucker, 273 S.C. 736, 739, 259 S.E. 2d 414, 415 (1979).

In police pursuits, the possibility of getting away far out weighs the possibility of hurting others or even self. In Sykes v. US 131 S.Ct. 2267 U.S., 2011 courts wrote, "When a perpetrator flees police in a car, his determination to elude capture makes a lack of concern for the safety of others an inherent part of the offense. Even if he drives without going full speed or the wrong way, he creates the possibility that police will, in a legitimate and lawful manner, exceed or almost match his speed or use force to bring him within their custody. His indifference to these collateral consequences has violent-even lethal-potential for others."

Even though an mere failure to stop would provide sufficient enough evidence of recklessness, Under South Carolina law 56-5-750(A) unquestionably covers both intentional and unintentional conduct. US v. Baseboro 551 F.3d 226 C.A.4 (N.C.) 2009.

To be sure, § 56-5-750(A) unquestionably covers both intentional and unintentional conduct, as the word "Fail," unlike the word "Refuse," can refer to both intentional and unintentional acts. For example, a defendant can violate the statute by intentionally failing to stop. In the event that state shows that the defendant intentionally failed to stop by attempting to avoid law enforcement vehicle by speeding up (or in some other manner), the state enjoys the rebuttable presumption that defendant violated the statute. See S.C. Code Ann § 56-5-750(A) ("An attempt to increase in speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled by a siren or flashing light is prima facie evidence of a violation of this section). However, when the defendant negligently fails to stop, say, because he was wearing headphones through which he played music on his Ipod too loudly, the state does not enjoy this presumption, but the state still is free to prove the defendant violated the statute, even though the defendant failed to stop simply because of his own behavior.

Petitioner inserts that even though the South Carolina failure to stop for blue lights 56-5-750(A) covers negligent and reckless acts, 56-5-750(c)(2) proscribes only one type of behavior. Therefore in analyzing this instant case, state should be set to ^{only} review cases where there was an death as a result of failing to stop. In Sykes v. U.S. 131 S.ct. 2267 U.S, 2011. Data from the national highway Traffic Safety Administration was displayed.

That data showed that, "Approximately 100 police officers, pedestrians, and occupants of other cars are killed each year in chase-related crashes. (National center for statistics & Analysis, Fatalities in motor vehicle Traffic crashes Involving Police in Pursuit) 37-56 (2010) (reporting 1,269 death between 2000 and 2009)

There is no dispute that Failing to stop for blue lights resulting in death, displays recklessness. No matter how different the wording of the statute from state to state is, this typical offense categorizes operating an vehicle in a reckless disregard. Not only in these typical offense ~~do~~ you see just an mere failure to stop; you also see illegal lane changes, speeding, running red lights, running stop signs, etc. . . . As a matter of law. Reckless homicide is an lesser included offense of failure to stop for blue lights resulting in death. The test for determining when a offense is a lesser included offense of another offense is whether the greater of the two offense includes all the elements of the lesser. State v. Northcutt, 372 S.C. 207, 215, 641 S.E. 2d 873, 877 (2007) IF the lesser offense contains an element which is not included in the greater offense it is not a lesser included offense of the greater offense.

Based on the merits of the case Petitioner should receive an bond that is reasonable; if not an PR bond! This is an injustice, an situation that courts should look favorably to the plaintiff due to the fact that Petitioner has done 7 year 8 months for an charge that only requires 5 years 1 month with

work credits.

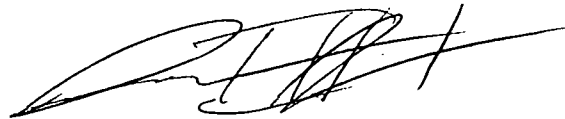
Conclusion

Petitioner should be granted bail.

Respectfully
Submitted,

James Curtis Cobbert III
4460 Broadriver rd
Columbia Sc 29210

Oct 1st, 2013



on the 30th day of September, 2013
Susan H. Frye

My Commission Expires
March 5, 2018

State of South Carolina
In the Supreme Court

Proof of Service

James Curtis Cobbert III

Petitioner

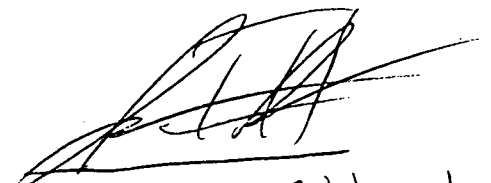
✓

State of South Carolina

Respondent

Certificate of Service

I certify that a true copy of an motion
for bail pending Appellate review in this
case have been served on John Whitmire,
Esquire this 1th day of October 2013 .



James Cobbert