

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case Tracking No. 2014-000280

RECEIVED

SEP 25 2014

SC Court of Appeals
Appellant,

The State,

vs.

William Russell Patterson,

Respondent.

JOINT MOTION TO HOLD APPEAL IN ABEYANCE

Appellant and Respondent, through their undersigned counsel, would respectfully show unto this Court as follows:

I.

This appeal arises from a driving under the influence (DUI) conviction in magistrate's court. Prior to trial, Respondent's counsel moved to dismiss arguing the State failed to comply with section 56-5-2953(A) of the South Carolina Code. The magistrate ruled one field sobriety test (the heel-to-toe) conformed to the requirements of the statute and concluded the issue of whether or not the other test (the HGN) conformed was "mute" [sic] because the test only determined the presence of alcohol and not intoxication. Respondent appealed to the circuit court, which found, after viewing the video, the HGN test did not meet the requirements of the statute.

II.

After the decision in this case, this Court issued its opinion in State v. Gordon, 408 S.C. 536, 759 S.E.2d 755 (Ct. App. 2014). In Gordon, the magistrate did not make a

direct ruling on whether the HGN test complied with section 56-5-2953(A). The circuit court made a ruling regarding the sufficiency of the video recording of the HGN test and, upon concluding it was not sufficiently recorded, reversed Gordon's conviction. This Court enunciated a standard for recordings of the HGN test during a DUI investigation. The Court then remanded the case to the magistrate court to make the factual finding regarding whether Gordon's head was visible in the recording.

III.

The State has filed a Petition for Writ of Certiorari with the Supreme Court seeking review of this Court's decision in Gordon. Any review of Gordon will necessarily include the appropriate standard by which a magistrate must review the recording to determine whether the State complied with section 56-5-2953(A). The Supreme Court review will likely also determine whether remand to the magistrate is required or whether the appellate court can make the finding as a matter of law.

IV.

The same issues presented in Gordon and pending before the Supreme Court are present as issues in the instant case. The standard adopted ultimately by the Supreme Court in Gordon will have to apply in this case, and any determination by the magistrate or this Court regarding whether the video recording met the requirements of section 56-5-2953(A) will be pursuant to that standard. Further, if the Supreme Court finds remand to the magistrate court is necessary in Gordon because the magistrate must make the initial factual determination, then it is likely remand will be necessary in this case as it is undisputed the magistrate never determined whether the video recording of the HGN complied with the statute. As a result, the parties believe judicial economy is best served by holding this appeal in abeyance pending the outcome of the Gordon appeal in the

Supreme Court. If remand is determined to be necessary, then the magistrate is best served by having the Supreme Court's decision in Gordon prior to making his determination. If remand is not necessary, then the appeal may proceed through this Court and all parties and the Court will have a better understanding of the requirements for the video and how those requirements impact the instant case.


WHEREFORE, the parties pray that the Court hold this matter in abeyance pending a final determination of the issues present in the case of State v. Gordon, 408 S.C. 536, 759 S.E.2d 755 (Ct. App. 2014); allow the State to serve and file an Amended Initial Brief of Appellant after the Supreme Court's action, allow Respondent thirty days from the service of the State's Amended Initial Brief of Appellant to serve and file the Initial Brief of Respondent; or in the alternative, allow Respondent thirty days from the denial of this motion to serve and file his Initial Brief of Respondent; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

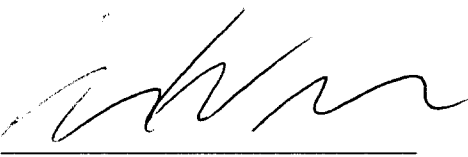
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ATTORNEYS FOR APPELLANT
September 18, 2014

ATTORNEY FOR RESPONDENT

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the Joint Motion to Hold Appeal in Abeyance on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Christopher A. Wellborn, Esquire
Christopher A. Wellborn, P.A.
142 Oakland Avenue, Suite C
Rock Hill, South Carolina 29730

I further certify that all parties required by Rule to be served have been served.

This 25th day of September, 2014.

Ellen R. DuBois

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ALAN WILSON
ATTORNEY GENERAL

September 25, 2014

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. William R. Patterson
Appellate Case Tracking No. 2014-000280

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of a Joint Motion to Hold Appeal in Abeyance along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General

Enclosures

cc: Christopher A. Wellborn, Esquire
Victim Services

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