

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 26 2015

Appeal from York County
Honorable Lee S. Alford, Circuit Court Judge
Appellate Case Tracking No. 2014-002770

SC Court of Appeals

The State,

Appellant,

vs.

Steven Hoss Walters, Jr.,

Respondent.

MOTION TO HOLD APPEAL IN ABEYANCE

Appellant, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

Counsel filed a Motion to Certify to South Carolina Supreme Court, asking the Supreme Court to certify this appeal for review. The Motion was served and filed August 20, 2015. A copy of the Motion is attached.

II.


The State asks this Court to hold this appeal in abeyance pending a determination by the South Carolina Supreme Court regarding whether the case shall be certified for review. The issues in the appeal are similar to the issues recently addressed by the South Carolina Supreme Court in State v. Gordon, which currently has a Petition for Rehearing pending review.

WHEREFORE, Appellant prays that the Court hold this matter in abeyance until the South Carolina Supreme Court rules on the undersigned's Motion to Certify; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 
William M. Blitch, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

August 26, 2015

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PROOF OF SERVICE

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

James W. Boyd, Esquire
1544 Ebenezer Road
Rock Hill, South Carolina 29732

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

This 26th day of August, 2015.



SALLY ELLISON
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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**MOTION TO CERTIFY APPEAL
TO SOUTH CAROLINA SUPREME COURT**

Pursuant to Rule 204(b), SCACR, the State asks this Court to certify the above entitled appeal¹ for consideration by the South Carolina Supreme Court. The State asserts the appeal contains issues of significant public interest and legal principles of major importance.

The underlying appeal arises out of a vehicle stop in which Respondent was ultimately ticketed for driving under the influence. Similar to this Court's recent opinion in State v. Gordon, Op. No. 27554 (Filed August 5, 2015), a video was produced but the case was ultimately dismissed. The video, recorded in the dark with the Trooper's vehicle lights and flashers running, begins when it is required under section 56-5-2953 and contains all required recordings under the statute. The circuit court dismissed the case finding the Trooper's hand is not sufficiently visible throughout the HGN test. This case

¹ Final Briefs of the parties are filed with the South Carolina Court of Appeals and are available through the South Carolina Appellate Case Management System (C-Track).

provides the Court the opportunity to clarify and apply its recent opinion in Gordon regarding what is required to be seen during the HGN test in order for the video to be in compliance with the statute. Further, the case will allow this Court to provide additional guidance regarding application of its new rules announced in Gordon regarding when a case should be dismissed versus when a field sobriety test should be redacted or either no remedy is required because the jury is capable of weighing the evidence.

Also, the Court can provide further instruction on the legislative intent behind “include any field sobriety tests administered” by handling conflicting rulings out of the lower courts in which this circuit court found dismissal required because the officer’s hand became blocked by the defendant’s head while performing the HGN test, while another circuit court dismissed a case because the viewer could not see the eyes of the defendant.² Video recording from a stationary fixed point camera showing both the defendant’s eyes and full view of the officer’s hand at all times is not possible. This Court can address the inconsistencies in lower court opinions and needs to provide guidance in regards to what aspects of the HGN test are required to be seen for a video to be considered sufficient.

Additionally, the circuit court in this case found the provision of section 56-5-2953(B), which provides for consideration of the totality of the circumstances prior to dismissing the appeal, is not applicable to the instant case. Certifying the appeal will allow this Court to consider the interplay between subsections (A) and (B) of the statute and provide guidance to magistrates and the circuit court regarding application of the various sections.

² The State is also seeking certification in State v. Tiffanie Nicole Turner, Appellate Case Tracking Number 2014-002556, in which this issue is addressed.

Driving under the influence is a significant public issue in South Carolina. South Carolina ranked worst in the nation in the percentage of traffic fatalities attributable to drunk driving—roughly 44% of all traffic deaths in South Carolina compared to 31% nationwide. This case allows this Court to provide further guidance to the law enforcement on the front lines so they understand the requirements when they make a DUI traffic stop. The Court can also provide guidance for magistrates and the circuit court for how to hand DUI cases when the video may not be perfect—something frequently encountered when the majority of drunk driving arrests occur at night.

A significant number of DUI cases are being dismissed based on the videos being recorded in less than optimal conditions while a law enforcement officer is having to worry about the person he has stopped and his surroundings more than a dash mounted video camera. This case, along with several other cases the State will seek to certify for this Court's consideration³, will allow this Court to provide much needed guidance to law enforcement and the courts regarding DUI arrests and prosecutions.

WHEREFORE, the State asks the Court to certify this appeal for its consideration pursuant to Rule 204(b) and the significant legal and public interests involved; and for such other and further relief as the Court may deem just and proper.

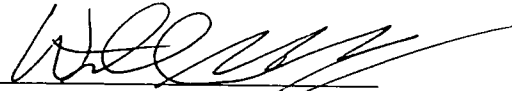
Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

³ The undersigned will also ask to certify two other cases involving video recordings of the HGN test in light of Gordon. Further, the undersigned will seek certification of two cases which involve other issues related to the video recordings required under section 56-5-2953.

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit



William M. Blich, Jr.
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Post Office Box 11549
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August 20, 2015

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IN THE SUPREME COURT

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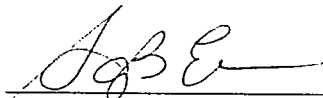
PROOF OF SERVICE

I, Sally Ellison, certify that I have served the Motion to Certify Appeal to the South Carolina Supreme Court on Respondent by depositing a copy of same in the United States mail, postage prepaid, addressed to:

James W. Boyd, Esquire
1544 Ebenezer Road
Rock Hill, South Carolina 29732

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

This 20th day of August, 2015.



SALLY ELLISON
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AB



ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

August 26, 2015

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

Re: State v. Steven H. Walters, Jr.
Appellate Case Tracking No. 2014-002770

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of a 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: James W. Boyd, Esquire
Victim Services