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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

William Russell Patterson,

Respondent,

vs.

The State,

Appellant.

**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 crossed the center line while driving and was suspected of 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. The video, while taken in the dark, begins when it is required under section 56-5-2953 and contains all required recordings under the statute. The circuit court reversed Respondent's conviction finding the Respondent's head is not sufficiently visible during the HGN test. This case 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.

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.

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

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).

video camera. This case, along with several other cases the State will seek to certify for this Court's consideration², will allow this Court to provide much needed guidance to law enforcement and the courts regarding DUI arrests and prosecutions.

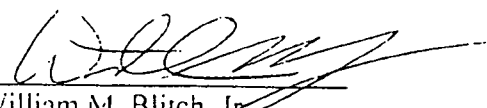
WHEREFORE, the State asks the Court to certify this appeal for its consideration pursuant to Rule 204(b) and the significant legal and public interests involved; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Attorney General

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ATTORNEYS FOR PETITIONER

August 20, 2015

² 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.

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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:

Christopher A. Wellborn, Esquire
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 20th day of August, 2015.


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