RECEIVED
Sep 22 2022
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

Petitioner,

vs.

CHRISTOPHER HUGGINS,

Respondent.

APPENDIX

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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

THE STATE,

Appellant,

vs.

CHRISTOPHER HUGGINS,

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	FIRST JUDICIAL CIRCUIT
State of South Carolina, Appellant,	C/A # 2017-CP-18-888
vs.	Ticket No.: H409663
Christopher Huggins, Respondent.	

CERTIFIED COPY
2017 MAY 25 PM 1:03
CLERK OF COURT
DORCHESTER COUNTY

NOTICE OF APPEAL
AND APPEAL

TO: The Honorable Tera S. Richardson, Dorchester County Magistrate Judge, and Adam J. Russo, Counsel for Respondent Christopher Huggins.

The State of South Carolina, by and through the undersigned counsel, hereby gives notice of its appeal and appeals from an order of the Honorable Tera S. Richardson dismissing the above-referenced case. The State received notice of said order on April 25, 2017.

On January 30, 2016, Trooper K. C. Davis charged Respondent Christopher Huggins with a violation of S.C. Code § 56-5-2930 (Driving Under the Influence). On March 10, 2017, Judge Richardson heard Respondent's motion to dismiss which was subsequently denied on March 21, 2017. Respondent's attorney then moved to reconsider the dismissal which was heard on April 25, 2017. At the hearing, Respondent's counsel argued that the charge should be dismissed because Trooper Davis failed to record each of the elements required by S.C. Code § 56-5-2953. In particular, Respondent complained that some of the steps taken by Respondent during Trooper Davis' administration of the walk and turn test were obscured by the front of the patrol vehicle.

Judge Richardson reviewed the video and dismissed the charge for a failure to comply with § 56-5-2953. Specifically, she found that the failure of the video to record a portion of the walk and turn test required dismissal. Additionally, she noted that the dismissal was based, in part, on Trooper Davis' failure to provide an affidavit as required by § 56-5-2953.

A. Omission of a Portion of the Walk and Turn Test is Not a Violation of § 56-5-2953.

The magistrate erred as a matter of law in dismissing the case for failure to video record the incident site pursuant to § 56-5-2953. The relevant portion of the statute reads as follows:

> (A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.
> (1)(a) The video recording at the incident site must:
> (i) not begin later than the activation of the officer's blue lights;
> (ii) include any field sobriety tests administered; and
> (iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and show the person being advised of his Miranda rights.

S.C. Code § 56-5-2953(A)(1).

"[T]he plain language of the statute demonstrates the legislature intended video recording of the majority of an officer's encounter with a potential DUI suspect." State v. Taylor, 411 S.C. 294, 306, 768 S.E.2d 71, 77 (Ct. App. 2014). In an unpublished opinion, the Court of Appeals held that it was error to "to require [a] video recording to visibly display [the defendant's feet] in a manner that would show whether she walked heel-to-toe during the walk and turn test." State v. Dew, Op. No. 2016-UP-449 (S.C. Ct. App. filed November 9, 2016). Omission of a portion of the walk and turn test was acceptable because "a person's feet are just one of many considerations in the walk and turn test." Id. Insofar as the video here captures portions of the Respondent's performance on the walk and turn test, it satisfies the requirements of § 56-5-2953.

B. Redaction, Not Dismissal Was the Appropriate Remedy.

Even assuming that there was some flaw in Trooper Davis' video, the appropriate remedy was suppression of this portion of this video, not dismissal. Respondent's counsel argued that dismissal is the lone remedy for a violation of § 56-5-2953's videotaping requirements.[1] The Supreme Court, however, has made clear that dismissal is not the appropriate sanction for such a violation. In State v. Gordon, 414 S.C. 94, 777 S.E.2d 376 (2015), the Supreme Court evaluated an apparent violation of § 56-5-2953 involving the failure to record a portion of a field sobriety test. In describing the appropriate remedy for such a violation, the court noted:

> Even if we assume that the video of a field sobriety test is of such poor quality that its admission is more prejudicial than probative, the remedy would not be to dismiss the DUI charge. Instead, the remedy would be to redact the field sobriety test from the video and exclude testimony about the test.

Gordon, 414 S.C. at 100, 777 S.E.2d at 379 (emphasis added). Dismissal was therefore not required, and redaction was appropriate.

In support of his argument that dismissal was mandated in a circumstance such as this one, Respondent's counsel cited a number of orders emanating from circuit judges and magistrates. None of these authorities were binding on Judge Richardson or this court. In fact, Gordon's clear directive on suppression would override any persuasive effect that these lower court orders might have.

C. Trooper Davis Was Not Required to Provide an Affidavit.

Respondent's counsel suggested that suppression was impossible in a situation such as the one here because Trooper Davis failed to produce an affidavit in compliance with § 56-5-2953. Judge Richardson also appeared to adopt this reasoning in dismissing the case. Section 56-5-

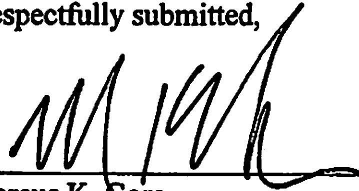
[1] In support of his proposition that dismissal was required, Respondent cited City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007). However, Suchenski does not mandate dismissal for violations of the videotaping requirements of § 56-5-2953. Rather, the Suchenski court describes dismissal as "an appropriate remedy" 374 S.C. at 17, 646 S.E.2d at 881(emphasis added), not the appropriate remedy.

2953 permits an affidavit to be used to excuse noncompliance with the videotaping requirements in a limited number of situations, none of which are applicable here. "Noncompliance is excusable: (1) if the arresting officer submits a sworn affidavit certifying the video equipment was inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it was impossible to produce the videotape because the defendant either (a) needed emergency medical treatment or (b) exigent circumstances existed...." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 346, 713 S.E.2d 278, 285 (2011). Trooper Davis could not have produced an affidavit because none of the enumerated exceptions applied, and her failure to do so was therefore irrelevant.

To the extent that Judge Richardson found that Trooper Davis failed to produce a video that complied with § 56-5-2953, she should also have considered "any other valid reason for the failure . . . based upon the totality of the circumstances." S.C. Code § 56-5-2953(B) Here, the quality of the overall video is good, save for the limited period of time when Respondent's feet are obscured during the walk and turn test. This is clearly the type of "valid reason" contemplated by the totality of the circumstances exception.

Wherefore, the State respectfully requests that the decision of the magistrate be reversed and that the case be remanded to the lower court for trial and for such other relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



Marcus K. Gore
Interim General Counsel
S.C. Department of Public Safety
P.O. Box 1993
Blythewood, South Carolina 29016
Telephone: (803) 896-7965
Fax: (803) 896-7967
Email: MarcusGore@scdps.gov
Attorney for Appellant

This 22nd day of May, 2017
Blythewood, South Carolina

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	:	FIRST JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA Appellant, vs. CHRISTOPHER K. HUGGINS, Respondent	:	C/A # 2017-CP-18-888 **CERTIFICATE OF SERVICE** Ticket No.: H409663

I HEREBY CERTIFY that on this 22nd day of May, 2017, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

The Honorable Tera S. Richardson
Dorchester County Magistrate Judge
Troy Knight Judicial Complex
212 Deming Way, Box 10
Summerville, SC 29483-4707

Adam J. Russo, Esq.
Drennan Law Firm, LLC
1350B Chuck Dawley Blvd
Mount Pleasant, SC 29464

CERTIFIED COPY
2017 MAY 25 PM 1:08
CLERK OF COURT
DORCHESTER COUNTY

Monishia L. Davis
Paralegal
S. C. Department of Public Safety

Dated: May 22, 2017

STATE OF SOUTH CAROLINA	)	**<u>H409663</u>**
	)	**CASE NUMBER**
COUNTY OF DORCHESTER	)	
	)	**IN THE SUMMARY COURT**
	)	2017-CP-18-888
STATE OF SOUTH CAROLINA	)	**TRANSMITTAL OF**
	)	**CRIMINAL APPEAL**
VS	)	
	)	
Christopher Huggins	)	
DEFENDANT		

As required by Sec. 18-3-40, SC Code of Laws, this information is transmitted to the Court of Common Pleas as the result of an appeal.

2017 JUL 31 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY

Date of Transmittal:	**July 28, 2017**
Transmitted to:	**Dorchester County Clerk of Court**
Transmitted by:	**Summerville Magistrate**
Case Caption:	**State of South Carolina vs. Christopher Huggins**
Case Number:	**H409663**

Received and verified by Rosalie Baldwin on 7-31-17.

Summerville Magistrate
212 Deming Way, Box 10
Summerville, SC 29483
Phone: (843) 832-0370
Fax: (843) 832-0371

MC26

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	

State of South Carolina,
Appellant

v.

Christopher Huggins,
Respondent.

CP Docket No.: 2017-CP-18-0888

Original Ticket No.(s): H409663

Return

2017 JUL 31 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

INTRODUCTION

This matter came before the Court on March 14, 2017. Upon calling the hearing to order, Adam Russo, Attorney for Defendant, Christopher Huggins, made a motion to dismiss the case pursuant to S.C. Code 56-5-2953, City of Rock Hill v. Suchenski, State v. Gordon, and numerous other appellate and local cases and orders. Defense's motion was based on the following facts:

1. Subsequent to a traffic stop due to speeding, Trp. K.C. Davis of the South Carolina Highway Patrol initiated an investigation of the Defendant for suspicion of Driving Under the Influence. Trp. Davis offered Defendant Standardized Field Sobriety Tests, (SFSTs) which he performed.
2. During the performance of the Walk-and-Turn SFST, the vast majority of Defendant's steps, and indeed, Defendant's lower body, are occluded by the hood of Trp. Davis' patrol vehicle.

During the motion hearing, Trp. Davis did not cite to any statute or judicial decision which supported her point. On March 21, 2017, I denied Defense's motion. Pursuant to a Motion to Reconsider, I granted Defense's motion to dismiss on April 25, 2017. Thirty (30) days later, the State filed an appeal.

LAW AND ANALYSIS

I do not believe my decision should be overturned on appeal for the following reasons:

A. THE STATE'S APPEAL IS UNTIMELY

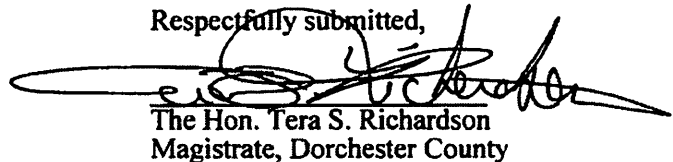
S.C. Code 18-3-20 indicates that "all appeals" from magistrate criminal matters "shall be taken [. . .] as prescribed in this chapter." Further, S.C. Code 18-3-30 indicates that a party will have only ten (10) days in which to file an appeal. There is no other authority in South Carolina to control how criminal appeals in magistrate court are to proceed. Clearly, the Magistrate Court Rules do not apply to criminal appeals, as, South Carolina Rule of Magistrate Court No. 2 limits the authority of the Magistrate court rules to civil cases, and indicate that *statutes* are to fill the gap where there is no other applicable rule. Finally, Circuit Courts, sitting in appellate jurisdiction previously, have held that the State's time limit for filing an appeal is limited to ten (10) days under equal protection principles. (See Exhibit A.)

B. IN THE EVENT THE COURT DOES NOT DISMISS THE APPEAL FOR ITS UNTIMELINESS, THE VIDEOTAPE PROVIDED BY THE STATE VIOLATES S.C. CODE 56-5-2953(A) AND THE ONLY REMEDY FOR A VIOLATION OF THIS NATURE IS A DISMISSAL OF THE CASE.

In State v. Taylor, 411 S.C. 294, which the State cites to, the Court of Appeals held that the state needed to include in the videotape any of "those events that either create direct evidence of DUI or serve important rights of the defendant." Id. It is clear that the placement of the Defendant's feet, specifically his ability to maintain heel-to-toe contact and the straightness of his steps, are important "clues" which the investigating officer uses to come to a conclusion as to whether or not the individual is materially and appreciably under the influence of alcohol, drugs, or a combination thereof. Given that these steps literally create direct evidence of DUI, the failure by Trp. Davis to adequately place a compliant, non-aggressive Defendant in such a manner so that all of his steps would be videotaped is a violation of the statute. The only authority which the State cites to which indicates otherwise is an admittedly unpublished case which is of no precedential value, and which was not even placed before the court, nor mentioned by Trp. Davis, during either the original motion to dismiss or the subsequent motion to reconsider.

Likewise, it is clear that the only remedy available in a factual scenario such as the one outlined in the "Facts" section of this return is dismissal. In State v. Sawyer, 409 S.C. 475 (2014), the Court, in Footnote 6 (which is a footnote on the holding of the case) indicated that "[t]he only arguable error of law was the circuit court's failure to dismiss the charges once it determined that the State did not produce a videotape meeting the requirements of [subsection] (A)." Id. at 482. Critically, the Court indicates in said footnote that *if* the State does not produce a videotape compliant with subsection (A) – the Court makes no distinction as to whether said subsection is the incident site tape or the breath-test site tape – *then*, the proper remedy is dismissal. The Court never later overturned this holding, nor altered this footnote in any way in the section of State v. Gordon which the State cites to. Indeed, the language of that section specifically indicates that the suppression is remedy for SFSTs videotaped in "such poor quality" that to show them to a jury would be "more prejudicial than probative" which is an analysis under South Carolina Rule of Evidence 403 and is not the correct analysis here. Instead, the analysis is, as it is under Taylor, whether a portion of the DUI investigation that creates direct evidence of DUI is videotaped or not, and, if it is not, then, conclusively, pursuant to Sawyer, the only remedy is dismissal. Given that direct evidence of DUI in this circumstance was not videotaped, I properly, and in accord with South Carolina law, dismissed the case.

Respectfully submitted,



The Hon. Tera S. Richardson
Magistrate, Dorchester County

Summerville, South Carolina

July 18, 2017

2017 JUL 31 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT A

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
	) C/A #2014-CP-08-00010
COUNTY OF BERKELEY	) Ticket No.: F594836
	)
The State of South Carolina,	)
	)
v.	)
	) ORDER DISMISSING APPEAL
	)
Norman B. Dudley	)
	)

RECEIVED
2017-CP-18-888
AUG 21 2015
SC Court of Appeals
15 AUG 14 PM 12: 26
CLERK OF COURT
BERKELEY COUNTY, S.C.
2017 JUL 31 PM 4: 42
CLERK OF COURT
DORCHESTER COUNTY

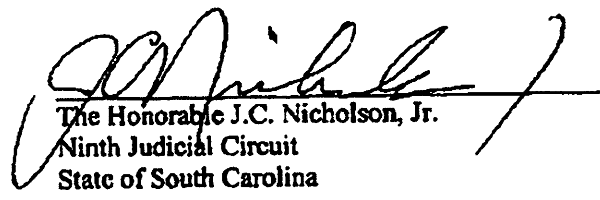
THIS MATTER came before the Court upon the State's Appeal of the Dismissal of Driving Under the Influence (First Offense) handed down by Honorable Edward L. Sessions, Berkeley County Magistrate Judge, on December 3, 2013. The Court issued its Order of Dismissal on that date and the State received notice at that time.

FINDINGS OF FACT

The Court finds upon a review of the record that the State failed to file a timely appeal in this matter having done so January 3, 2014. Section 18-3-30 of the South Carolina Code of Laws governs appeals from criminal matters in Magistrate Court. The statute provides that the notice of appeals from criminal matters in Magistrate Court shall be filed within ten days. It would be a violation of the Equal Protection Clause to not hold the prosecuting agency to the same standard as an accused in the courts of this state.

THEREFORE, IT IS HEREBY ordered that the State's Appeal is hereby dismissed.

AND IT IS ORDERED.



The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit
State of South Carolina

~~July~~ Aug 3, 2015
Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1800888

South Carolina State Of
PLAINTIFF(S)

Christopher Huggins
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☑ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☑ Other Appeal is hereby Denied.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/28/2019 .

Summerville Magistrate Dorchester County
John L. Drennan for Christopher Huggins
Adam Joseph Russo for Christopher Huggins

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 May 29 9:48 AM - DORCHESTER - COMMON PLEAS - CASE#2017CP1800888

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 May 29 9:48 AM - DORCHESTER - COMMON PLEAS - CASE#2017CP1800888

Dorchester Common Pleas

Case Caption:	South Carolina State Of VS Christopher Huggins
Case Number:	2017CP1800888
Type:	Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-05-28 16:24:22 page 3 of 3

ELECTRONICALLY FILED - 2019 May 29 9:48 AM - DORCHESTER - COMMON PLEAS - CASE#2017CP1800888

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1800888

South Carolina State Of
PLAINTIFF(S)

Christopher Huggins
DEFENDANT(S)

ELECTRONICALLY FILED - 2019 Jun 18 8:52 AM - DORCHESTER - COMMON PLEAS - CASE#2017CP1800888

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The State of South Carolina's Motion to Reconsider is hereby Denied.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/18/2019 .

Summerville Magistrate Dorchester County

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 Jun 18 8:52 AM - DORCHESTER - COMMON PLEAS - CASE#2017CP180888

State of South Carolina) In the Court of Common Pleas
) First Judicial Circuit
County of Dorchester) 2017-CP-18-00888
2017-CP-18-01241

State of South Carolina)

Plaintiff,)

vs.)

Christopher Huggins,)

Defendant.)

and)

Tyler James Evans,)

Defendant.)

May 28, 2019

St. George, South Carolina

B e f o r e:

The Honorable Brian M. Gibbons, Judge

A p p e a r a n c e s:

Mark Moore, Esquire
Attorney for the Plaintiff

Adam Russo, Esquire
Tara Frost, Esquire
Attorneys for the Defendants

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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Reply/Mr. Moore	14
Response/Mr. Russo	19
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E X H I B I T S

NO.	DESCRIPTION	I.D.	EV.

-- NO EXHIBITS ENTERED --

1 (On the record 10:55 a.m.)
2 THE COURT: All right. That takes it to the next
3 case. And that's -- I don't need the files on that one. I
4 know what this one's about.
5 MS. FROST: Yes, sir.
6 THE COURT: *State of South Carolina v Christopher*
7 *Huggins* and the *State of South Carolina v Tyler James*
8 *Evans*. And it's also No. 1 and 2 on the motion docket.
9 They'll all be heard at the same time 'cause they all
10 involving the same matter. So we'll not write your stuff
11 off, and -- did you give that to the court reporter?
12 (Brief pause.)
13 THE COURT: So this is going to be Item 6 and 7 on the
14 appeal roster, as well as Item No. 1 and 2 on the motions
15 roster. And so why don't -- why don't we, to kinda set the
16 stage for what we're doing -- well, let's do it in order.
17 Then it'll be easier for the -- for the purpose of a
18 record. So Mr. Moore?
19 MR. MOORE: Yes, Your Honor?
20 THE COURT: You represent the State of South Carolina,
21 who has appealed a decision made by the Summary Court on
22 both Item 6 and 7 on the appeal roster. State your
23 position.
24 I'm going to let you come back -- I'm going to let all
25 of the lawyers make a full record, but we'll just kinda go

1 in that way.

2 MR. MOORE: You want me to start with the appeal?

3 THE COURT: If you could identify yourself -- yeah.

4 Let's go ahead and deal with the appeal first --

5 MR. MOORE: Okay.

6 THE COURT: -- and then we'll deal with the motion to

7 -- they'll make their motion to dismiss, and then we'll

8 come back and I'll hear from you on your motion to -- their

9 motion -- your position on their motion to dismiss, and

10 then we'll go that way.

11 MR. MOORE: Okay.

12 THE COURT: Just for -- for the purpose of the court

13 reporter, identify yourselves, please.

14 MR. MOORE: Your Honor, my name is Mark Moore. I

15 represent yhe Department of Public Safety and the State of

16 South Carolina.

17 THE COURT: All right.

18 MR. MOORE: Your Honor, this was a case -- or two

19 cases that were down in Magistrate's Court. They were

20 both dismissed because in both cases, the video did not

21 show feet during the walk and turn. I believe in the

22 Evans case, there's also -- the video did not show the

23 feet and the one-legged stand, if I'm not mistaken.

24 The Magistrate in both those cases determined that

25 the remedy in -- in that situation was dismissal, and the

1 State has filed this appeal.
2 THE COURT: All right.
3 MR. MOORE: Your Honor, the State's position is, is
4 that the 56-5-2953 does not require the report of -- I'm
5 sorry. Let me go back. I apologize. The State's
6 position is, is that neither of these cases should've been
7 dismissed.
8 THE COURT: All right.
9 MR. MOORE: I was dealing with that other appeal
10 first. I apologize.
11 Basically, 29 -- or 56-5-2953 does not require the
12 recording of the performance of field sobriety tests,
13 rather the administration of the field sobriety test.
14 Under Section A-1/A-2, it says that (as read): "The video
15 recording at the incident site must include any field
16 sobriety tests administered."
17 THE COURT REPORTER: Sir, you need to read a little
18 bit slower. Just read a little bit slower if you're going
19 to read.
20 MR. MOORE: Okay. That again, repeating 56-5-2953
21 A1/A2 (as read): "The video recording at the incident
22 site must include any field sobriety tests administered."
23 The reading of field sobriety tests can -- as
24 mandated by 20 -- 56-5-2953, has never been interpreted to
25 require demonstration of a subject's performance on the

1 individual test. Most recently in *State v Gordon*, the
2 Supreme Court description of the video requirement focused
3 solely on the administration of the test rather than the
4 performance.
5 If you look at that case, there's a passage where
6 they indicate (as read): "The officer's administration of
7 the HGN is visible in the video recording. It's
8 undisputed that Gordon's face is depicted in the video.
9 It's axiomatic that the face is part of the head, the
10 officer's flashlight and arm are visible as he administers
11 the test, and the officer's instructions were audible.
12 "Thus the requirements that the head be visible on
13 the video are met in the statutory requirement that the
14 administration of the HGN field sobriety test must -- test
15 must be video recorded as satisfied."
16 The Respondent's concern in this case is -- and
17 specifically with Evans, I believe, is that the failure of
18 the video to demonstrate performance did not violate 56-5-
19 2953.
20 Furthermore, *Gordon* says nothing about the walk and
21 turn test. It addressed whether the head must be shown in
22 the recording of the HGN field sobriety test analysis, was
23 limited to HGN, and it doesn't address what constitutes an
24 acceptable reporting of other field sobriety tests,
25 including the one-legged turn -- or the walk-and-turn or

1 the one-legged stand test at issue here.
2 Omission of a portion of the walk-and-turn test is
3 not a violation of 56-5-2953. The plain language of the
4 statute demonstrates the legislature intended the video
5 recording of the majority of an officer's encounter with a
6 potential DUI suspect. The video reporting does not
7 report -- or the video reporting, under 56-5-2953, does
8 not require visible display of the Defendant speaking in a
9 manner that would show whether he walked heel-to-toe
10 during the walk-and-turn test, unlike the *Gordon* analysis
11 of the HGN test where the head is only -- the only
12 relevant body part.
13 Omission of a portion of the walk-and-turn test is
14 acceptable because the person's feet are just one of many
15 considerations of the walk-and-turn test. I believe in
16 the brief that -- or the Appellate's motion they did
17 indicate there was a case, it's an unpublished opinion or
18 just went up with the Court of Appeals, and that was the
19 rationale in that situation. But obviously that's not the
20 -- that doesn't establish any precedent.
21 In so far as a video captures portions of the
22 Defendant's walk-and-turn test, it satisfies the
23 requirements of 56-5-2953.
24 Your Honor, turning to the remedy in these
25 situations, if the -- if the video is not adequate, I

1 would -- again would say that the Supreme Court's made it
2 clear that dismissal's not the appropriate sanction for a
3 violation of 56-5-2953. In *Gordon,* the Supreme Court
4 evaluated an apparent violation of 56-5-2953 involving the
5 failure to report the HGN field sobriety test. And rather
6 than mandating dismissal for the failure, the Supreme
7 Court observed that the appropriate remedy would be the --
8 to redact the field sobriety test from the video and
9 exclude the testimony about the test.
10 And that's the State's position in this case is even
11 if you found the video was inadequate of the walk-and-turn
12 or the one-legged stand, those tests be redacted and the
13 State should be able to proceed on the prosecution. And -
14 -
15 THE COURT: Which, I guess, in this case were
16 consistent with whatever other evidence was gathered. I
17 mean, I don't know. I hadn't got to the -- what was
18 actually gathered in it, whether there was any DataMaster
19 test or results, whether or not there were refusals, or
20 other stuff at the scene.
21 MR. MOORE: Correct, Your Honor.
22 THE COURT: Okay. Go ahead. I'm listening
23 MR. MOORE: And then also the trooper was not
24 required to provide an affidavit, which I believe is one
25 of the arguments that Defendant Huggins has made. The

1 Respondent suggests that the suppression was impossible --
2 or it's suppression was impossible because the trooper
3 failed to provide an affidavit in compliance with 56-5-
4 2953, and the trial court appears to have adopt -- to have
5 adopted that reasoning it its decision to dismiss.
6 The trooper could've produced and affidavit -- or
7 couldn't have produced an affidavit in this case because
8 none of the enumerated exceptions apply and her failure to
9 do so was irrelevant. Instead, the Court should've
10 considered any other valid reasons for the failure based
11 on the totality of the circumstances under Section B of
12 56-5-2953.
13 So the State respectfully requests the decision of
14 the Magistrate be reversed and that the case be remanded
15 to lower court for trial and any other relief the Court
16 deems appropriate.
17 THE COURT: All right. Thank you.
18 MR. MOORE: Thank you, Your Honor.
19 THE COURT: And Mr. Russo, why don't you go first?
20 MR. RUSSO: Sure. Your Honor, would you like me to
21 hit the motion first?
22 THE COURT: Yeah. Hit your -- hit your motion 'cause
23 it ties into --
24 MR. RUSSO: Sure.
25 THE COURT: -- you know, he -- I wanted him to give

1 me the substantive grounds of the State's appeal --
2 MR. RUSSO: Sure.
3 THE COURT: -- before I hear the procedural grounds
4 of your motion to dismiss so I have an idea of the full
5 scope of things.
6 MR. RUSSO: Your Honor, the -- we'd ask that you
7 dismiss this appeal because we believe that the State has
8 filed its appeal outside of the jurisdictional time limits
9 for such an appeal of -- of this nature.
10 Your Honor, our belief on that -- on that comes from
11 SC Code 18-320 and 18-330. 18-3 -- 320 states in
12 pertinent part that (as read): "All appeals from
13 magistrate's court in criminal cases shall be taken and
14 prosecuted as prescribed in this chapter."
15 And then 18-330 indicates in pertinent part that (as
16 read): "The appellate, within 10 days after sentence,
17 shall file a notice of appeal."
18 Your Honor, in my case the -- the State did not file
19 a notice of appeal unto -- until day 30. I believe in Ms.
20 Frost's case, it was day 23?
21 MS. FROST: That is correct.
22 MR. RUSSO: Right. So Your Honor, in both of our
23 cases, the State is somewhere between 13 and 20 days over
24 the jurisdictional time limit.
25 Your Honor, I think that the statutes are clear and

1 unambiguous and speak for themselves. The State, I
2 believe, in a prior case called *"State v Norman Dudley,"*
3 attempted to argue what it will probably argue here which
4 is that the State has 30 days to appeal a criminal case
5 from magistrate court.
6 Your Honor, in that case, Judge Nicholson, sitting in
7 an appellate jurisdiction -- in -- in an appellate
8 jurisdiction, indicated that no, no the State's is not,
9 that it only has 10 days; further, that to grant otherwise
10 would violate the equal protection clause and essentially
11 burden the Defendant with a quicker action than the State
12 would have.
13 And further, Your Honor, when that went up to the
14 Court of Appeals, the Court of Appeals determined the
15 State had filed late in that case anyway. They'd filed on
16 day 31. So it came to no -- it -- it -- it didn't find a
17 relative conclusion that would've -- that would've
18 terminated our motion in this case.
19 But Your Honor, I think again the facts are just --
20 sorry, the statute's really clearly speak for themselves.
21 And we all learn in the very first year of law school that
22 the word "shall" means must.
23 I just don't think the State can provide any kind of
24 justification to get around 18-3-20 which is clear and
25 states that this chapter is the one that describes how

1 magistrates court's appeals from criminal actions are to
2 be proceeded on.
3 THE COURT: Not to steal his thunder, but what about
4 Rule 74 which says 30 days appeals to Circuit Court?
5 MR. RUSSO: Sure. Well, that would only be if you
6 found that, one, 18-330 did not apply. So you'd have to
7 get to that first; and even then you have to weave through
8 an extremely narrow passageway to get there.
9 What the State says -- what it -- what at least said
10 in -- in the *Dudley* case was that they first went to, I
11 believe, Rule of Criminal Procedure, I think it was 29,
12 which describes other rules of procedure which could be
13 applicable, and only from there does it get to Rule 74.
14 You have to go through an extremely winding passageway to
15 get to Rule 74.
16 And while I agree that we are in Common Pleas now, we
17 are in Civil Court, it's -- it's clear to -- that to get
18 to here, you have to file the -- the notice of appeal
19 within 10 days, from 18-320 or 18-330, I apologize.
20 THE COURT: Okay. Understood. Ms. Frost, you want
21 to add anything?.
22 MS. FROST: No, Your -- only the -- just the idea
23 that the State is asking this Court to require a higher
24 burden for criminal defendants that -- versus what the
25 State would -- would be required to, and -- and Judge

1 Nicholson said that that could be an issue of equal
2 protection clause and we just want to make sure that's
3 considered as well.
4 THE COURT: Thank you. Mr. Moore?
5 MR. MOORE: Thank you, Your Honor. Going back to the
6 first issue, the State's position is, is that 18-3 -- or
7 18-3-30 doesn't govern appeals by the State. It applies
8 only to a defendant appealing his sentence in magistrate
9 court upon conviction.
10 If you look at the statute again, Section A says (as
11 read): "The Appellant, within 10 days after sentence,
12 shall file a notice of an appeal with the Circuit Court."
13 And then secondly, in Section B, it says (as read): "A
14 person convicted ... " and in both these cases it's also
15 applying to a post-conviction situation, not an
16 interlocutory appeal which is what we have here.
17 The underlying statute authorizing criminal appeals
18 for magistrate's court, 18-3-10, also is facially inactive
19 -- in -- inapplicable to the State. It says (as read):
20 "Every person convicted before magistrate's court of any
21 offense, and whatever -- offense whatever and sentenced
22 may appeal from the sentence of the Court of Common Pleas
23 for the county." And again, you're dealing with a post-
24 conviction situation.
25 By their own terms, neither of these statutes applies

1 to the State. The Court can employ rule -- rules of
2 statutory construction to impose another meaning on them
3 when the terms of the statute are plain, unambiguous, and
4 convey a clear and definite meaning.
5 The State's right to appeal in South Carolina is
6 generally controlled by case law rather than statute, and
7 the State's right to appeal is a judicially created right.
8 In *State v Belviso,* the Court of Appeals reversed the
9 Circuit Court's determination that it did not have
10 jurisdiction to hear the State's interlocutory appeal when
11 it incorrectly relied on 18-3-10, holding that because the
12 State's right to appeal was judicially created, the Court
13 would look into judicial opinions instead. Because no
14 statute or cases set forth the time frame for appeals from
15 magistrate's court by the State, the procedural rules
16 would then apply.
17 The South Carolina Rule of Criminal Procedures apply
18 to magistrate court under Rule 37, the applicability
19 statute; and then if you look at the last line in Rule 37,
20 it says (as read): "In any case where no provision is
21 made by statute or -- or are --
22 THE COURT: Are you in Rule of Civil Procedure 37?
23 MR. MOORE: This is the Rules of Criminal Procedure
24 --
25 THE COURT: All right.

1 MR. MOORE: -- I'm looking at right now, the Rule 37.
2 THE COURT: Hang on. Let me -- let me find it.
3 Number 37?
4 MR. MOORE: Correct, Your Honor.
5 THE COURT: All right. I'm listening.
6 MR. MOORE: (As read): "And any case where no
7 provision is made by statute or these rules, the procedure
8 shall be according to the practices that heretofore
9 existed in the Courts of the State."
10 South Carolina Rules of Civil Procedure 74 predates
11 37, so that would've been in existence prior to. And
12 under South Carolina Rule of Civil Procedure 74, which we
13 -- was -- it's just been discussed, provides for a 30-day
14 period for service and appeal when the cases are coming
15 into the Court -- or to the common pleas.
16 The Appellant's appeal in this case, our appeal,
17 filed within 30 days of the magistrate ruling, was,
18 therefore, timely under Rule 74 of the South Carolina
19 Rules of Civil Procedure, which should apply in this
20 situation where we're dealing with an interlocutory appeal
21 by the State and not an appeal by the Defendant of a
22 criminal conviction.
23 THE COURT: All right.
24 MR. RUSSO: Let ---
25 MR. MOORE: As for the equal protection argument,

1 first argument is, is that because we're dealing with an
2 interlocutory appeal, those sections, 18-3-30, wouldn't
3 apply anyway and so it really would be an inter -- or
4 there wouldn't be -- there would be an argument for a
5 criminal defendant in the same position, that they could
6 go forward in a 30-day window.
7 But regardless of that, let's say that you do look at
8 the equal protection issue. There must be a showing that
9 -- where similarly situated persons receiving desperate
10 treatment -- in this case neither the South -- the State
11 of South Carolina nor the Department of Public Safety is a
12 person within the context of the clause. There's no basis
13 to apply the equal protection clause to find a government
14 agency is a person against whom a defendant's equal
15 protection rights are measured.
16 And the State is not, and never -- can never be
17 similarly situated to a criminal defendant and such an
18 analysis is unsupported by law.
19 Even if it were possible to find that the parties are
20 similarly situated such that an equal protection clause
21 applies, there would be no constitutional violations.
22 In this case, neither the parties ability to appeal
23 -- neither -- because neither parties ability to appeal
24 from magistrate court involves a suspect class or any
25 fundamental right, the existence of separate rules

1 prescribing different time strain -- time frames for
2 appeal would be evaluated under the rational basis
3 standard. Under this test, the requirements of equal
4 protection are satisfied when the classification by the
5 Government bears a reasonable relation to the legislative
6 purpose sought to be affected, the members of the class
7 are treated alike under similar circumstances and
8 conditions, and the classification rests on some
9 reasonable basis.
10 If the Court can discern any rational basis to
11 support a classification, regardless of whether that basis
12 was the original motivation for it, the classification
13 will withstand constitutional scrutiny.
14 18-3-30 is viewed as creating a class of criminal
15 defendants that must appeal their magistrate convictions
16 within 10 days. The classification bears a reasonable
17 relation to the legislative purpose of aiding the orderly
18 administration of justice, all members of the class are
19 treated the same, and the alleged classification rests on
20 a reasonable basis that 10 days is sufficient for a
21 criminal defendant to decide upon and file notice of
22 appeal. And in that case, the statute passes
23 constitutional muster.
24 If the legislatively approved court rule granting the
25 State 30 days to perfect and file an appeal for magistrate

1 court is seen as creating a class of prosecutors subject
2 to a different time for appeal, it too survives
3 constitutional muster like 18-3-30. It would be
4 reasonably related to aiding the administration of
5 justice, all members are treated alike, and a reasonable
6 basis exists for the creation of such a class.
7 Criminal cases in magistrate court are generally
8 prosecuted by law enforcement officers, and not lawyers.
9 Only attorneys can handle the appeals.
10 When an appellate attorney is not present during a
11 magistrate court proceedings, it takes additional time to
12 be notified by the officer that an appeal might need to be
13 taken, establish what transpired, secure a recording of
14 the -- or transcript of the proceedings, determine whether
15 an app -- an appealable issue exists, evaluate pub --
16 policy considerations in taking the appeal, and prepare
17 and file an appeal, often in the area of the state where
18 the attorney doesn't work.
19 So for those reasons, even if you did the equal
20 protection analysis, we don't feel like there would be a
21 violation under these circumstances, Your Honor.
22 THE COURT: All right. Mr. Russo?
23 MR. RUSSO: Your Honor, as you saw, what they expect
24 you to do is ignore 18-3-20, ignore 18-3-30, jump to rule
25 37 of the Rules of Criminal Procedure; then from there,

1 leapfrog to rule 74 of the Rules of Civil Procedure.

2 Your Honor, I -- I just -- for whatever reason, I

3 seem to doubt that when the legislature enacted 18-2 --

4 18-3-20 and 18-3-30, that they expected that to be the

5 rationale for how the State had a right to an appeal.

6 If anything, Your Honor, another questions arises,

7 why not jump to rule 29 of the South Carolina Rules of

8 Criminal Procedure which indicates that all post-trial

9 motions shall be made within 10 days? The State provides

10 no reason for that.

11 So Your Honor, I think that the clear, concise, and

12 quite frankly obvious -- as there's been no argument to

13 the contrary -- way to perceive these matters is to look

14 at 18-3-20, all appeals shall, apply to 18-3-30 and see

15 that the State filed 20 to 31 days late.

16 THE COURT: Anything you want to add, Ms. Frost?

17 MS. FROST: No, Your Honor.

18 THE COURT: See, the -- the problem I'm having for

19 whoever reads this transcript down the road is, you know,

20 I -- I've -- I've read the magistrate's court rule -- or

21 the -- the -- statute 18-3-20. You know, the first

22 section, A, talks about the Appellant; and then B,

23 subsection B, or maybe it's under 30, says (as read): "A

24 person convicted in magistrate's court..."

25 Well, to me that signals two different things: The

1 Appellant versus a person convicted. You know, does --
2 did the legislature intend to mean the Appellant being the
3 prosecuting agency as well or did they just mean that to
4 be a person convicted in magistrate court?
5 If they just meant it to be a person convicted in --
6 convicted in magistrate's court, why didn't they say it
7 that way in -- in section A? And of course, I -- I'm --
8 I'm well aware how this Court's supposed to interpret
9 statutes, and I'm well aware when it -- how statutory
10 interpretation should be strictly construed in favor of a
11 criminal defendant. I understand that as well.
12 All right. What I want to do, and like I indicated
13 to y'all back in chambers when y'all were giving me kind
14 of the rundown of what we were going to put on the record
15 here for the purposes of -- of any future appellate
16 remedies for either side, I -- I do want to sit on this
17 for awhile and digest everything y'all have argued to me.
18 And I'll issue a ruling hopefully if not by the end of
19 this week, certainly by the end of next week.
20 Yes, sir?
21 MR. RUSSO: Your Honor, just -- just for purpose of
22 housekeeping.
23 THE COURT: Yes?
24 MR. RUSSO: When -- when the *Dudley* case was heard in
25 front of Judge Nicholson, what had happened was the --

1 Judge Nicholson emailed both parties and indicated that he
2 was going to reach the issue on motion and not reach the
3 substantive issue. Your Honor, we haven't argued about
4 the substantive issue on our side yet --
5 THE COURT: Yeah. That's right.
6 MR. RUSSO: Do you want us --
7 THE COURT: That's right.
8 MR. RUSSO: -- do you want us to go ahead and argue
9 that, or do you want to send us an email and then we can
10 come back if you have to -- if we have to argue --
11 THE COURT: That's what I'm going to do.
12 MR. RUSSO: Okay.
13 THE COURT: And the purpose -- in -- in the interest
14 of time. In -- in -- in the event I deny the Defense's
15 motion to dismiss on procedural grounds, we will -- I will
16 revisit -- I'll retain jurisdiction and y'all can come see
17 me instead of me coming to see y'all. Maybe we can meet
18 in the middle somewhere.
19 MR. RUSSO: Fair --
20 THE COURT: Maybe we can meet in Columbia, who knows?
21 But I will -- I will listen to -- I will deal with the
22 substantive issues in the event I deny the Defense request
23 for dismissal, okay?
24 MR. RUSSO: Thank you, Your Honor.
25 MR. MOORE: Thank you, Your Honor.

1 THE COURT: Thank you very much, sir.

2 MS. FROST: Thank you, Your Honor.

3 THE COURT: That concludes the hearing of this case.

4 (Off the record at 11:15 a.m.)

5 -- END OF TRANSCRIPT OF RECORD --

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1 **CERTIFICATE**

2 I, the undersigned, Bonnie H. Kelly, Official Court
3 Reporter for the Fifth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate excerpt of transcript of record of all the
6 proceedings had and evidence introduced in the hearing of
7 the captioned cause, relative to appeal, in the Circuit
8 Court for Dorchester County, South Carolina, on the 28th
9 day of May, 2019.

10 I do further certify that I am neither of kin,
11 counsel, nor interest in any party hereto.

12

13

14 *E/Bonnie H. Kelly*

15 Bonnie H. Kelly, CVR

16 Court Reporter

17

18 Columbia, South Carolina

19 December 15, 2019

20

21

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

THE STATE,

v.

Christopher Huggins,
Defendant.

CP Docket No.: 2017-CP-18-0888

Original Ticket No.(s): H409663

MOTION TO DISMISS APPEAL

2017 JUL 31 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY

TO: DPS General Counsel Marcus Gore, and Trooper K.C. Davis:

INTRODUCTION

1. The Defense moves to dismiss the case pursuant S.C. Code Ann 18-3-20 and 18-3-30.

FACTS

2. On April 25, 2017, subsequent to a pre-trial motion hearing, the Honorable Tera S. Richardson dismissed UTT H409663. The State, through either Trooper K.C. Davis or through its Office of General Counsel, failed to file a motion to reconsider.

3. Subsequently, twenty-seven (27) days later, on May 22, 2017, the State authored an appeal, which it caused to be filed in Dorchester County on May 25, 2017, thirty (30) days subsequent to the dismissal of UTT H409663. I received service on May 25, 2017, and, upon information and belief, the Honorable Tera S. Richardson received service of the appeal on the same date.

LAW AND ANALYSIS

4. S.C. Code 18-3-20 states, in pertinent part, as follows: "**All appeals from magistrates' courts in criminal causes** shall be taken and prosecuted as prescribed in this chapter." (Emphasis added.)

5. S.C. Code 18-3-30 states, in pertinent part, as follows: "**The appellant, within ten days after sentence, shall file notice of appeal** with the clerk of circuit court and shall serve notice of appeal upon the magistrate who tried the case [...]." (Emphasis added.)

6. Based on the foregoing, the State was between seventeen (17) and twenty (20) days too late beyond the timing requirements for an appeal of this nature.

7. Further, South Carolina courts have determined – and written orders to the effect - that it would be a violation of the Equal Protection Clause to not hold a prosecuting agency to the same standard as an accused in the criminal courts of this state. (See Exhibit A.)

WHEREFORE, the Defense would request as follows:

A. An order dismissing the case; and,

B. Such other relief as the court may decide to award.

Respectfully submitted,

John L. Drennan/Adam J. Russo
Attorneys for Defendant
1350B Chuck Dawley Blvd.
Mount Pleasant, SC 29464
(843) 606-2970 (phone)
(843) 606-2971 (fax)

Mount Pleasant, South Carolina
5/30, 2017

EXHIBIT A

2017 JUL 31 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS) NINTH JUDICIAL CIRCUIT) C/A #2014-CP-08-00010) Ticket No.: F594836
COUNTY OF BERKELEY	)
The State of South Carolina,	)
v.	) ORDER DISMISSING APPEAL
Norman B. Dudley	)

RECEIVED
2017-CP-18-888
AUG 21 2015
SC Court of Appeals
15 AUG 14 PM 12:05
CLERK OF COURT
BERKELEY COUNTY, S.C.
2017 JUL 31 PM 4:42

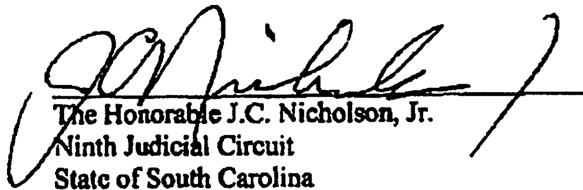
THIS MATTER came before the Court upon the State's Appeal of the Dismissal of Driving Under the Influence (First Offense) handed down by Honorable Edward L. Sessions, Berkeley County Magistrate Judge, on December 3, 2013. The Court issued its Order of Dismissal on that date and the State received notice at that time.

FINDINGS OF FACT

The Court finds upon a review of the record that the State failed to file a timely appeal in this matter having done so January 3, 2014. Section 18-3-30 of the South Carolina Code of Laws governs appeals from criminal matters in Magistrate Court. The statute provides that the notice of appeals from criminal matters in Magistrate Court shall be filed within ten days. It would be a violation of the Equal Protection Clause to not hold the prosecuting agency to the same standard as an accused in the courts of this state.

THEREFORE, IT IS HEREBY ordered that the State's Appeal is hereby dismissed.

AND IT IS ORDERED.



The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit
State of South Carolina

~~July~~ Aug 3, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) CP Docket No.: 2017-CP-18-0888
COUNTY OF DORCHESTER)

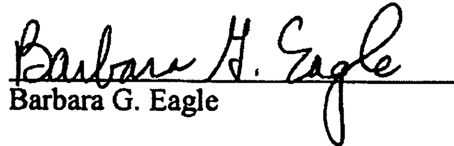
STATE OF SOUTH CAROLINA)
)
V.) **CERTIFICATE OF SERVICE BY MAIL**
)
CHRISTOPHER HUGGINS,)
)
Defendant.)

2017 JUL 31 PM 4:42
DORCHESTER COUNTY

This is to certify that I have served a copy of the Motion to Dismiss Appeal by depositing in the U. S. Mail a copy of the same in a properly addressed envelope with adequate postage to:

Judge Tara Richardson
Dorchester County Magistrate
P.O. Box 1885
Summerville, SC 29483

this 31st day of May, 2017.



Barbara G. Eagle

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	:	FIRST JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	:	C/A # 2017-CP-18-888
Appellant,	:	
vs.	:	**CERTIFICATE OF SERVICE**
CHRISTOPHER K. HUGGINS,	:	
Respondent	:	Ticket No.: H409663

I HEREBY CERTIFY that on this 22nd day of May, 2017, I mailed, via United States Mail, postage prepaid, a true and correct copy of the foregoing Notice of Appeal and Appeal, to the following:

2017 JUL 31 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY
FILED

The Honorable Tera S. Richardson
Dorchester County Magistrate Judge
Troy Knight Judicial Complex
212 Deming Way, Box 10
Summerville, SC 29483-4707

Adam J. Russo, Esq.
Drennan Law Firm, LLC
1350B Chuck Dawley Blvd
Mount Pleasant, SC 29464

Monishia L. Davis
Paralegal
S. C. Department of Public Safety

Dated: May 22, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
State of South Carolina,	)	**MOTION FOR RECONSIDERATION PURSUANT TO SCRCP 59(e)**
Appellant,	)	Civil Action No.: 2017-CP-18-00888 Ticket No.: H409663
vs.	)	
Christopher Huggins,	)	
Respondent.	)	

TO: THE HONORABLE BRIAN M. GIBBONS, CIRCUIT COURT JUDGE, AND ADAM JOSEPH RUSSO, ATTORNEY FOR RESPONDENT

On April 25, 2017, Dorchester County Magistrate Tera S. Richardson issued an order granting a defense motion to dismiss the State's charge of Driving Under the Influence against Christopher Huggins ("Respondent"). Judge Richardson found dismissal appropriate because the prosecution's roadside video failed to capture portions of the Walk and Turn field sobriety test in violation of section 56-5-2953 of the South Carolina Code, *City of Rock Hill v. Suchenski*,. 374 S.C. 12, 646 S.E.2d 879 (2007), *State v. Gordon*, 414 S.C. 94, 777 S.E.2d 376 (2015), and other appellate and local cases and orders. In response, the State filed an appeal in the Dorchester County Court of Common Pleas arguing that the magistrate erroneously concluded as follows:

(1) omission of a portion of the Walk and Turn test is a violation of section 56-5-2953;

(2) failure to record portions of the Walk and Turn test results in dismissal of an entire case, as opposed to redaction/suppression of the tests and any related testimony. *See Gordon*, 414 S.C. at 100, 777 S.E.2d at 379; and

(3) a sworn affidavit by Trooper Davis was required under section 56-5-2953.

The State's appeal was filed on May 25, 2017. On July 31, 2017, Judge Richardson filed her Return.

Prior to the issuance of the Return, on June 5, 2017, Respondent filed a motion requesting that this Court dismiss the State's appeal based upon the State's failure to timely file the appeal pursuant to sections 18-3-20 and 18-3-30 of the South Carolina Code. Included in the motion was a reference to the Equal Protection Clause. Specifically, Respondent contended that the State was required to file its appeal within ten (10) days of Judge Richardson's dismissal on April 25, 2017, and that the State's appeal filed on May 25, 2017 was untimely.

A hearing to consider the appeal and Respondent's Motion to Dismiss took place on May 28, 2019. During the hearing, the State was heard on its arguments regarding the underlying appeal of the DUI case. Additionally, Respondent argued in favor of dismissal as described above. In response, the State argued:

(1) sections 18-3-10, 18-3-20, and 18-3-30, including the time limits, are applicable to criminal defendants only, not to appeals brought by the State;

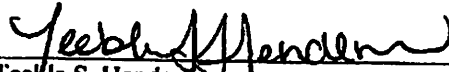
(2) because no statutory or case law sets forth the timeframe for appeals by the State from magistrate's court, the South Carolina Rules of Civil Procedure are implicated; and

(3) any discrepancy between the time limits for appeal by either party is lawful and neither implicates nor violates the Equal Protection Clause.

On May 29, 2019, this Court issued a Form 4 Order stating that the "Appeal is hereby denied" and further, that "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not timely filed." Based upon the arguments made above, the State respectfully requests that the Court reconsider, alter, or amend its ruling to dismiss this appeal as untimely and proceed on the merits of the State's appeal.

In the alternative, the State moves the Court for a formal written order which sets forth the grounds upon which the Court has relied in dismissing this appeal.

Respectfully Submitted,



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Blythewood, South Carolina
June 4, 2019

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	FIRST JUDICIAL CIRCUIT
State of South Carolina, Appellant, vs. Christopher Huggins, Respondent.	Civil Action No.: 2017-CP-18-00888 Ticket No.: H409663 **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4th day of June, 2019, I mailed, via first class Unites States mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Reconsideration to the presiding Circuit Court judge. Respondent's counsel of record was automatically served with the same via e-filing.

The Honorable Brian M. Gibbons
Post Office Drawer 580
Chester, South Carolina 29706

Adam J. Russo, Esquire
1350B Chuck Dawley Boulevard
Mount Pleasant, South Carolina 29464

Paula Davis, Paralegal
SCDPS Office of General Counsel

Blythewood, South Carolina
June 4, 2019

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By:______________________________

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar Number 15608
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ATTORNEYS FOR APPELLANT

June 17, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

THE STATE,

Appellant,

vs.

CHRISTOPHER HUGGINS,

Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Record on Appeal on Respondent by electronic mail at the address listed in AIS and will send a hard copy at a later date in the United States mail, postage prepaid, addressed to:

Adam J. Russo, Esquire
Drennan Law Firm LLC
1350B Chuck Dawley Blvd
Mount Pleasant, South Carolina 29464

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

This 17th day of June, 2020.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

vs.

Christopher Huggins, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court committed an error of law in dismissing the appeal of the magistrate's ruling filed by State as untimely when it was clearly filed within thirty days and section 18-3-30 of the South Caroline Code, which requires an appeal after a sentence to be filed within ten days, does not apply to an appeal filed by the State. Further, the Circuit Court committed an error of law to the extent it relied on Equal Protection to find the State had to file its appeal within ten days.

STATEMENT OF THE CASE

In January 2016, Respondent was ticketed for DUI. (State's Notice of Appeal and Appeal; R.1). At a pretrial hearing on March 14, 2017, before the Honorable Tera S. Richardson, Respondent moved to dismiss the case on the basis that the State failed to comply with the video recording statute, section 56-5-2953 of the South Carolina Code. (Magistrate's Return; R.7). On April 25, 2017, Magistrate Richardson dismissed the case. (Magistrate's Return; R.7; Respondent's Motion to Dismiss Appeal; R.41).

On May 22, 2017, the State served Respondent's counsel with a Notice of Appeal to the Circuit Court. The Notice of Appeal was filed on May 25, 2017, which was the day both Respondent's counsel and Magistrate Richardson received the appeal. (State's Notice of Appeal and Appeal; R. 1; Respondent's Motion to Dismiss Appeal; R.41). The State's Notice of Appeal was served twenty-seven days from the magistrate's order and filed thirty days after the order. Judge Richardson issued her Return on July 18, 2017. (Magistrate's Return of Appeal; R.7). Respondent filed a Motion to Dismiss Appeal. (Respondent's Motion to Dismiss Appeal; R.41).

On May 28, 2019, a hearing on the State's appeal and Respondent's Motion to Dismiss took place before the Honorable Brian M. Gibbons.[1] (5/28T.1; R.17). At the hearing, the State maintained the dismissal by the magistrate was improper. Respondent asserted the appeal should be dismissed based on the failure to file the Notice of Appeal within 10 days pursuant to section 18-3-30 of the South Carolina Code. The State countered that the statute did not apply and the Notice of Appeal needed to be served and filed within 30 days pursuant to Rule 74, SCRCP. The Court issued a Form 4 Order in which he found: "Appeal is hereby Denied. Not timely filed." He further found: "Respondent's Motion to Dismiss is hereby Granted, the Appeal was not

[1] This case was heard at the same time as State v. Tyler James Evans, which is also currently pending before this Court and addresses the same issue. See Appellate Case Management Number 2019-001068

timely filed." (Form 4 Dismissal Order; R.12). The State served and filed a Motion for Reconsideration maintaining the appeal was timely, or in the alternative, seeking a formal written order setting forth the grounds for the Court's dismissal of the appeal. (State's Motion to Reconsider; R.47). Judge Gibbons denied the motion on June 18, 2019, by Form 4 Order. (Form 4 Denial of Motion to Reconsider; R.15).

The State served its Notice of Appeal to the Court of Appeals on June 26, 2019. This brief follows.

ARGUMENT

I. The Circuit Court committed an error of law in dismissing the appeal of the magistrate's ruling filed by State as untimely when it was clearly filed within thirty days and section 18-3-30 of the South Caroline Code, which requires an appeal after a sentence to be filed within ten days, does not apply to an appeal filed by the State. Further, the Circuit Court committed an error of law to the extent it relied on Equal Protection to find the State had to file its appeal within ten days.

The circuit court erred in finding the State had to serve and file its Notice of Appeal to the circuit court within ten days pursuant to section 18-3-30 of the South Carolina Code. By its express terms, the statute does not apply to the State's appeal. The circuit court should have considered the appeal timely filed pursuant to section 14-3-330 of the South Carolina Code, section 18-7-20 of the South Carolina Code, and Rule 74, SCRCP. Finally, to the extent the circuit court relied on Respondent's argument that equal protection required application of section 18-3-30 to the State's Notice of Appeal, the Court committed an error of law. This Court should find the Notice of Appeal was timely filed and remand to the circuit court to consider the State's appeal from the magistrate's decision dismissing the case.

Initially, it should be noted that the State's right to appeal is not controlled by section 18-3-10 et seq., but instead is controlled by case law. The State's right to appeal has been found in instances where a judge's pre-trial ruling significantly impacts the State's ability to prosecute the appeal or when it finally decides the action. See e.g., State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985); S.C. Code Ann. § 14-3-330 (Supp. 2019). This Court addressed the right of the State to appeal in State v. Belviso, 360 S.C. 112, 600 S.E.2d 68 (2004), and found that it was not tied to the statutory scheme found in Chapter 3 of Title 18. As a result, this Court should not

be looking to the statutes for a determination of the right of the State to appeal or the timing of the State's appeal.

I. Application of Section 18-3-30

The circuit court erred in its interpretation and application of section 18-3-30 as the section, based on its own express language, does not apply to a notice of appeal filed by the State. The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. Id. at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. Id.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Pittman, 373 S.C. at 561, 647 S.E.2d at 161. However, the statute must also be read as a whole and in harmony with its purpose. State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). Accordingly, "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

Chapter 3 of Title 18 is entitled "Appeals from Magistrates in Criminal Cases". See S.C. Code Ann. § 18-3-10 thru -70 (Supp. 2019). Section 18-3-10 states: "Every person convicted before a magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county." S.C. Code Ann. § 18-3-10 (Supp. 2019). The initial

section of this Chapter makes indicates that the provisions apply to a person convicted in magistrate court. Section 18-3-20 then states: "All appeals from magistrates' courts in criminal causes shall be taken and prosecuted as prescribed in this chapter." S.C. Code Ann. § 18-3-20 (Supp. 2019). It is followed then by section 18-3-30, which appears to be the primary section relied upon by the circuit court to determine the State's appeal was untimely:

> (A) The appellant, **within ten days after sentence**, shall file notice of appeal with the clerk of circuit court and **shall serve notice** of appeal upon the magistrate who tried the case and **upon the designated agent for the prosecuting agency or attorney who prosecuted the charge**, stating the grounds upon which the appeal is founded.
>
> (B) A person convicted in magistrates court who pays a fine assessed by the court does not waive his right of appeal and, upon proper notice, may appeal his conviction within the time allotted in this section.

S.C. Code Ann. § 18-3-30 (Supp. 2019). The language used in the statute makes it clear the provision applies only after a person is sentenced. The fact it applies to a defendant convicted and sentenced in magistrate's court is further highlighted by the fact that it explicitly requires service upon the prosecuting agency or prosecuting attorney. If the legislature intended the statute to apply in every criminal case no matter whether the defendant, a city, a county, or the State is the appealing party, it would have worded the statute significantly different. It could have provided that all appeals from a criminal case be made within ten days of sentence or judgment, and it could have simply provided for service on the opposing party. Instead, it specifically determined only one party had a ten day requirement, a defendant who has been sentenced, and expressed a requirement that the defendant serve the prosecuting agency.

This Court should not rewrite the statute as the circuit court did in an attempt to apply it to an appeal by the State of a pretrial procedural dismissal. See Brown v. S.C. Dep't of Health &

Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) ("An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute."). As three justices frankly reiterated in a recent case: "If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.**" Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added). The circuit court erred in interpreting section 18-3-30 in a way not intended by the express language chosen by the legislature and in rewriting the statute to make it apply to the State's Notice of Appeal. This Court should construe section 18-3-30 consistent with the clear unambiguous language chosen by the legislature and find it is intended to only apply to a criminal defendant who is appealing, an interpretation consistent with the entirety of the Chapter.

II. Appropriate Time for Service and Filing of Notice of Appeal

As discussed, section 18-3-30 does not apply to the State's Notice of Appeal. As a result, this Court should look to other statutes or rules for a determination of the State's deadline for service and filing of its Notice of Appeal. The two main provisions which would be applicable to the State's Notice of Appeal are section 18-7-20 of the South Carolina Code and Rule 74 of the South Carolina Rules of Civil Procedure.

Because there is no specific statute setting forth the time frame in which the State as the prosecuting agency must file and serve its Notice of Appeal, one should look to the general statutes and rules addressing appeals from magistrate court to circuit court. First, Chapter 7 of

Title 18 addresses all appeals not otherwise covered in the Title. Specifically, section 18-7-20 states:

> The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.

S.C. Code Ann. § 18-7-20 (Supp. 2019). This general provision would apply to any appeal not otherwise covered, which would mean it would apply to any appeal filed by someone other than a criminal defendant who has been convicted and sentenced.

Additionally, Rule 74 of the Rules of Civil Procedure states:

> Except for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals. Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court or administrative agency or tribunal within the time provided by the statute, or by this rule when no time is fixed by statute, for service of the notice of intention to appeal.

Rule 74, SCRCP. Significantly, the Editor's Notes to Rules 74 and 75, SCRCP, provide:

> These Rules 74 and 75 are added to make uniform the procedure on appeals to the Circuit Court where there is no provision by statute. They do not replace any provisions as to such appeals in Title 18 of the Code , or other statutes providing for appeals from administrative decisions; but are added to supply omissions in these statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted.

The South Carolina Supreme Court has also found Rule 74 to be applicable to appeals from magistrate court. See State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 51 (2011). Clearly,

Rule 74 and the allowance of thirty days is intended to apply to the prosecuting agency—the State—because there is no statute in Title 18 providing for the time to file and Rule 74 is specifically intended to fill that void. Accordingly, the circuit court erred in applying section 18-3-30 when it does not apply to the prosecuting agency, and should have applied either section 18-7-20 or Rule 74, SCRCP, to allow 30 days for service and filing of the Notice of Appeal.

III. Equal Protection is Not Applicable

Finally, equal protection does not require the State to be held to the same ten day service and filing requirements after a pre-trial ruling as a defendant who has been convicted and sentenced. Application of section 18-3-30 as it is written to apply only to a criminal defendant who has been convicted and sentenced does not violate the Equal Protection Clause.

The South Carolina Supreme Court has stated:

> This Court has a very limited scope of review in cases involving a constitutional challenge to a statute. All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt.

State v. Harrison, 402 S.C. 288, 292-293, 741 S.E.2d 727, 729 (2013) (internal citations omitted). The Equal Protection Clause of the United States Constitution provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The South Carolina Constitution provides no "person shall be denied the equal protection of the laws." S.C. Const. art. I, § 3. "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

Not all classifications are unconstitutional, however, for "[t]he equal protection clause only forbids irrational and unjustified classifications." Bodman v. State, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). Further, "[t]he equal protection clause is not an independent limit on the action of the state. It only forbids legislative enactments which transgress the equal protection rights of persons." Hibernian Soc'y v. Thomas, 282 S.C. 465, 472, 319 S.E.2d 339, 343 (Ct. App. 1984) (internal citations omitted). Notably, the equal protection clause does not operate to remedy situations that are merely unfair. See Davis v. County of Greenville, 313 S.C. 459, 465, 443 S.E.2d 383, 386 (1994) ("The fact that [a government] classification may result in some inequity does not render it unconstitutional."). Instead, any perceived unfairness in filing deadlines should be remedied by legislative measures.

As long as the statute "does not implicate a suspect class or abridge a fundamental right, the rational basis test is used" to determine whether the classification falls into the prohibited group. Id. (citing Denene, Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004)). "A classification does not violate the Equal Protection Clause if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 599-600 (2001) (citing Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999)). "A classification will survive rational basis review when it bears a reasonable relation to the legislative purpose sought to be achieved, members of the class are treated alike under similar circumstances, and the classification rests on a rational basis." Bodman, 403 S.C. at 69, 742 S.E.2d at 367. The classification will be upheld if there is "any reasonably conceivable

state of facts" that would provide a rational basis for it. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 313 (1993).

As the Supreme Court explained in Bodman:

> We give great deference to the General Assembly's decision to create a classification. Consequently, those who challenge the validity of one under rational basis review must "negate every conceivable basis which might support it." Furthermore, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." The classification also does not need to completely achieve its purpose to withstand constitutional scrutiny. Moreover, "[t]he fact that the classification may result in some inequity does not render it unconstitutional."

Id. at 69-70, 742 S.E.2d at 367-368 (internal citations omitted). "Accordingly, [this Court's] entire equal protection inquiry revolves around interplay between the specific classification created and the purported basis for it, with a challenger coming under rational basis review facing a steep hill to climb." Id. at 70, 742 S.E.2d at 368.

In the instant case, the classification of a criminal defendant filing an appeal versus the prosecuting agency such as the State filing an appeal does not involve a suspect class. Inherently suspect classifications include those based on factors "such as race, religion, or alienage." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 429, 593 S.E.2d 462, 469 (2004). The classification in the instant case does not involve any of the suspect classifications.

Further, the classification setting forth a specific time for service and filing of the notice of appeal does not impact a fundamental right. Fundamental rights are those guaranteed by the United States Constitution, and are not implicated by the classification in this case. See e.g., Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972) (right to vote); Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (right of interstate travel); Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (rights guaranteed by the

First Amendment); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942) (right to procreate). Because the defendant still has the right to an appeal, the timing required for exercising that right does not implicate a fundamental right.

In addition, members of the same class are treated similarly. All those similarly situated to Respondent, meaning all criminal defendants convicted and sentenced in magistrate court, have the same requirement of a ten day time for filing and serving the Notice of Appeal. As a result, there is not disparate treatment between like individuals. There are no arbitrary rules treating one convicted and sentenced appellant different from another. The statute sets forth one time frame for all convicted and sentenced individuals seeking to appeal to the circuit court. The Legislature chose to treat differently situated entities, the prosecuting agencies, differently because of having different requirements and considerations prior to filing a Notice of Appeal.

The classification in the case *sub judice*, therefore, must only satisfy the rational basis test. The classification of allocating a different time for filing of a Notice of Appeal between a criminal defendant and the prosecuting agency meets the rational basis test. The defendant has an interest in having his appeal begun quickly because he has been convicted and sentenced. Further, the prosecuting agency's determination of whether to appeal may be a more complicated question. The agency will need to determine whether it can even appeal under the Mcknight standard or pursuant to section 14-3-330. The agency will have to determine whether it is best to not appeal in certain situations—the saying bad facts make bad law is a prime example of the type of consideration that must be made.

Significantly, there may be communication issues between the actual person prosecuting the case and the persons in the agency who will ultimately make the determination on whether to file the appeal. The South Carolina Supreme Court has approved law enforcement officers

prosecuting cases in magistrate court. In these circumstances, it will need to be an attorney and not the law enforcement officer who must make the decision whether to appeal from magistrate court to circuit court where the solicitor or other attorney on behalf of the State will appear. This is vastly different than for a criminal defendant who knows the outcome and is the one to make the decision on whether to appeal. There is clearly a rational basis why the Legislature would believe ten days is sufficient for a criminal defendant who has been convicted and sentenced to determine whether to appeal, while giving a broader time frame for the prosecuting agency which must communicate at multiple levels and take into account much more than just the specific case and its ruling.

Accordingly, because the distinction between a ten-day filing requirement for a convicted and sentenced criminal defendant and the thirty-day requirement for the prosecuting agency has a rational basis, the circuit court—to the extent it relied on an equal protection argument to reach its conclusion—erred as a matter of law in finding the State was required to meet a ten-day service and filing requirement.[2]

[2] It should be noted that even if Equal Protection required the prosecuting agency and the convicted defendant to have the same filing and service requirements, the remedy would not be to arbitrarily subject the State to the ten day requirement of section 18-3-30, but instead would have been to declare the ten-day restriction in 18-3-30 unconstitutional and then the default of 30 days would apply to all. However, as the State asserts there is no Equal Protection violation, there is no need for any remedy and the case should be remanded for consideration of the timely appeal in circuit court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the circuit court finding the State's appeal was untimely should be reversed and this case remanded to the circuit court to consider the merits of the State's appeal.

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

June 25, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

vs.

Christopher Huggins, Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellant filed June 25, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).
This 25th day of June, 2020.

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
S.C. Bar No. 15608

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

vs.

Christopher Huggins, Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Final Brief of Appellant on Respondent by email at the address listed in AIS and by having a copy delivered to:

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I further certify that all parties required by Rule to be served have been served.
This 25th day of June, 2020.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

v.

Christopher Huggins, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The Circuit Court properly dismissed the appeal of the magistrate's ruling filed by the State as untimely, as the State clearly filed its appeal far beyond the time limit of ten (10) days from the magistrate's ruling, as understood by 18-3-20 and 18-3-30 of the South Carolina Code. Further, while the Circuit Court did not rely on equal protection principles to find that the State had to file its appeal within ten (10) days, had it so relied, this would have been proper.

STATEMENT OF THE CASE

On January 30, 2016, Christopher Huggins, the Respondent, was arrested and charged with DUI 1st Offense. During the course of this arrest, Respondent was issued Uniform Traffic Ticket (hereinafter "UTT") H409663. At a pretrial hearing on March 14, 2017, before the Honorable Tera S. Richardson, Respondent moved to dismiss the case on the basis that the State failed to comply with section 56-5-2953 of the South Carolina Code. (Magistrate's Return; R. 7). On April 25, 2017, Magistrate Richardson granted Respondent's motion and dismissed UTT H409663. (Respondent's Motion to Dismiss Appeal; R. 41).

Subsequently, the State authored an appeal on May 22, 2017, which it caused to be filed in Dorchester County on May 25, 2017, thirty (30) days subsequent to Magistrate Richardson's dismissal of UTT H40966. (Respondent's Motion to Dismiss Appeal; R. 41). Magistrate Richardson issued her return on July 18, 2017. (Magistrate's Return of Appeal; R.7). Respondent filed a Motion to Dismiss Appeal. (Respondent's Motion to Dismiss Appeal; R. 41).

The hearing on the Appeal was continued numerous times by the State, without objection by the Respondent, in reference to *State v. Dudley*, No. 2015-001785, 2018 WL 2979768, at*1 (Ct. App. June 13, 2018). The state was unsuccessful in this appeal. Subsequently, on May 28, 2019, a hearing on the State's appeal and Respondent's Motion to Dismiss took place before the Honorable Brian M. Gibbons. (5/28T.1; R.17). The State, in its statement of the case, incorrectly asserts that Respondent asserted that the appeal should be dismissed based on a failure to file the Notice of Appeal within 10 days pursuant to section18-3-30 of the South Carolina Code. Rather, the Respondent relied on both 18-3-20 and 18-3-30 in conjunction with the rest of Title 18. The State countered that the statute did not apply and the Notice of Appeal needed to be served and

filed within 30 days pursuant to Rule 74, SCRCP. The Court granted Respondent's motion and issued a Form 4 Order, wherein he found "Appeal is hereby denied. Not timely filed." (Form 4 Dismissal Order; R.12). The State served and filed a Motion for Reconsideration. This motion was denied on June 18, 2019, by Form 4 Order. (Form 4 Denial of Motion to Reconsider; R.15).

The State served its Notice of Appeal to the Court of Appeals on June 26, 2019. On August 2, 2019, Respondent made a motion to dismiss the appeal with the Court of Appeals, citing Rule 260, SCACR. This, and a similarly situated motion to dismiss in January 2020 were denied. The State exchanged the file from the Department of Public Safety to the Attorney General's Office in December, 2019. This appeal followed and was filed on April 21, 2020.

ARGUMENT

I. The Circuit Court did not commit an error of law in dismissing the appeal of the magistrate's ruling filed by the State as untimely, as the State clearly filed its appeal far beyond the time limit of ten (10) days from the magistrate's ruling, as understood by 18-3-20 and 18-3-30 of the South Carolina Code. Further, while the Circuit Court did not rely on equal protection principles to find that the State had to file its appeal within ten (10) days, had it so relied, this would have been proper.

The circuit court was correct in finding the State had to serve and file its Notice of Appeal to the circuit court within ten days pursuant to sections 18-3-20 and 18-3-30 of the South Carolina Code. By its express terms, section 18-3-20 requires that "all" appeals from "criminal causes" in Magistrate court "shall" be taken and prosecuted according to that "chapter". Likewise, the language of 18-3-30 refers to an "appellant" having 10 days to file and serve the notice of appeal. The court was correct in not applying 18-7-20 and Rule 74, SCRCP, as they are either more general statutes than 18-3-20 and 18-3-30, or they do not apply in the manner that the state suggests. Finally, there is no evidence that the court relied on equal protection in its analysis and decision at the circuit court level; however, if it did, then it did so properly.

1. The Application of 18-3-20 and 18-3-30

"The cardinal rule of statutory construction is to ascertain the and give effect to the intent of the legislature. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). In interpreting statutes, the Court looks to the plain meaning of the statute and the intent of the legislature. *State v. Gaines*, 380 S.C. 23, 32, 667 S.E. 2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. *Id.* Statutes which are part of the same legislative scheme should be construed together. *Stardancer Casino, Inc. v. Stewart*, 347 S.C. 377, 556 S.E.2d 357 (2001). In construing statutory language, the statute must be read as a whole, and sections

which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. *State v. Alls*, 330 S.C. 528, 500 S.E.2d 781 (1998). Furthermore, the court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. *South Carolina Coastal Council v. South Carolina State Ethics Comm'n*, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991).

Title 18 of the Code of Laws of South Carolina is entitled "Appeals" and it contains only four (4) chapters. Chapter 1 is entitled "General Provisions", Chapter 3 is entitled "Appeals from Magistrates in Criminal Cases", Chapter 7 is entitled "Appeals to Circuit and County Courts in Other Cases", and Chapter 9 is entitled "Appeals to Supreme Court and Court of Appeals". From the titles of the Chapters alone, it becomes clear that the legislature had a specific and clear intent for Title 18, Chapter 3: to govern magistrate's criminal appeals. The language of various statutes within the Title makes it even clearer. Section 18-1-30 indicates that any "party aggrieved" may appeal "in the cases prescribed in this title". Section 18-3-20 reads:

> **All** appeals from magistrates' courts in criminal causes **shall** be taken and prosecuted as prescribed in **this chapter**."

(Emphasis added.) Section 18-3-30(A) reads, in pertinent part:

> The **appellant, within ten days** after sentence, shall file notice of appeal with the clerk of court and shall serve notice of appeal on the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge[...]." S.C. Code Ann. § 18-3-20 (Supp. 2019).

(Emphasis added.) Based upon the language of 18-3-20 and 18-3-30, when read in conjunction with one another and Section 18-1-30, along with the structure of the Chapters within the title, it is clear that the intent of the legislature with regards to Chapter 3 was to have it govern the structure of all criminal appeals from magistrate's court, including those originating with the state. This is clarified further in *State v. Belviso*, 360 S.C. 112, 600 S.E.2d 68 (2004). The *Belviso* court recognized that affirming the State's right to appeal adverse outcomes from magistrate court was "consistent with the intent of the Legislature, especially when our statutory law is considered in its entirety [. . .] [i]n construing the statutory scheme as a whole, we 'escape the absurdity' and give efficacy to the manifest intention of the General assembly. [. . .] In doing so, our judicial decisions addressing the 'right of appeal' are in accord with legislative intent." *Id.* at 116-117. Thus, *Belviso* recognizes that the intent of the legislature is to govern the way that all appeals from criminal cases in magistrate court are prosecuted via Title 18. But if the "statutory law" as understood by *Belviso* indicates that the legislature's intent was to govern *all* criminal appeals in magistrate court, then how can that not be true – given that the statutes have not be amended since the time of *Belviso's* publication – in the instant appeal?

The State seeks, rather, for the Court to issue an order indicating that the intention of the Legislature, in enacting Title 18, Chapter 3, was to not apply it to the only party who is a necessary party in a criminal prosecution, and thus allow the State to "island hop" from specific and unavoidable statutes to either general or clearly non-applicable ones.

Further, language specific to 18-3-30 should not be used to disqualify it from controlling the timing of the state's appeal, as this language is specific guidance set up to aid a rather peculiar type of litigant common to magistrate court: the pro se litigant. Summary courts in South Carolina handle the vast majority of all criminal cases created within its borders, and upon

information and belief, the majority of those individuals who appear in magistrates court on criminal matters (including traffic tickets) are pro se. Thus, statistically speaking, it is likely that a defendant who would be interested in appealing his case would be pro se. While it is not difficult for an experienced prosecutor to quickly ascertain the method to perfect his appeal, a pro se defendant, attempting to perfect service on one of the many various departments, organs, and permutations of the State may have trouble, even in a less populous county. Thus, the language about serving prosecuting agencies and prosecutors is meant to ensure that a pro se defendant is clearly and adequately guided so as to know what and whom needs to be given notice that they are appealing.

2. The Court was correct in not applying 18-7-20 or Rule 74, SCRCP.

It is a fundamental canon of statutory construction that "where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given effect. *Denman v. City of Columbia*, 691 S.E.2d 465, 468 (S.C. 2010). In this case, while urging the Court to apply section 18-7-20 to Respondent's appeal, the initial brief of the Appellant literally calls that code section a "general provision". (Initial Brief of Appellant, at 8). As such, given the specificity of 18-3-20 and 18-3-30, those statutes would control in the event that the court held there was a conflict.

Further, the state misstates the application of Rule 74, SCRCP to criminal cases originating in magistrate's courts. While the state suggests that the South Carolina Supreme Court has found that Rule 74 is "applicable" to magistrate's courts appeals, the *Oxner* case it cites to says something very different. 391 S.C. 132, 134, 705 S.E.2d 51, 51. In *Oxner*, the court

held that the rules of civil procedure apply to the circuit court sitting in appellate jurisdiction, to wit:

> ISSUE[:] Whether a party may appeal an erroneous subject matter jurisdiction ruling without first preserving the issue for appellate review? ANALYSIS[:] We begin by correcting the state's mischaracterization of respondent's appeal in the circuit court. Specifically, the State argues this criminal appeal is not subject to the South Carolina Rules of Criminal Procedure. In making that argument, the State ignores S.C. Code Ann. § 18-3-10 (Supp. 2009) which provides that criminal appeals from magistrate's court are made to the Court of Common pleas. Further, under the SCRCP, these appellate "proceedings in the circuit court shall be in accordance with [the SCRCP]." Rule 74, SCRCP. 391 S.C. 132, 134, 705 S.E.2d 51,41 (2011).

Thus, the _Oxner_ court recognizes two very specific notions which are damaging to the state's case: first, that appeals from magistrate's courts proceed based on the statutes located in Title 18, and that the SCRCP only apply to the circuit court sitting in appellate jurisdiction – not to the origination of the appeal from magistrate's court itself.

3. The Circuit Court did not rely on Equal Protection Principles, in Granting Respondent's motion to Dismiss, or in the alternative, if it did, Doing so was Proper.

While there is no indication in any of the Form 4 orders that the Circuit court relied on The State argues that equal protection principles in granting Respondent's motion to dismiss, in the event that it did, it did so properly. The State argues that there is no application for the equal

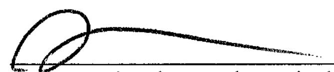
protection clause in this analysis unless there is some implication of a suspect class or an abridgment of a fundamental right. However, in *Griffin v. Illinois*, the US Supreme Court has held that "due process and equal protection both call for procedures in criminal trials which allow no invidious discrimination [. . .] Appellate review has now become an integral part of the [. . .] trial system for finally adjudicating the guilt or innocence of a defendant. Consequently, at all stages of the proceedings, the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations." 76 S.Ct. 585, 590 (1956). Therefore, failing to equate the defendant and the state does abridge the fundamental right to be treated equally in a court of law, and thus, in the event that the circuit court did mean to implicate the equal protection clause in its granting of Respondent's motion to dismiss, it did so properly.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the decision from the Circuit Court, finding that the State's appeal was not filed in a timely manner pursuant to the South Carolina Code.

Respectfully Submitted,

ADAM J. RUSSO



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ATTORNEY FOR RESPONDENT

July 19, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

vs.

Christopher Huggins, Respondent

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Appellee filed July 20, 2020, complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellee Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007) requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses). This 20th day of July, 2020.

ADAM J. RUSSO
Attorney for Respondent
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian Gibbons, Circuit Court Judge
Appellate Case No. 2019-001067

The State of South Carolina		Appellant,
	v.	
Christopher Huggins		Respondent.

PROOF OF SERVICE

I do hereby certify that I have served the Final Brief of Respondent in the above-captioned action, by depositing it in the United States Mail, postage prepaid on this 20th day of July, 2020, addressed to:

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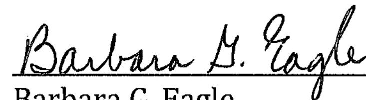

Barbara G. Eagle
Case Manager Specialist
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July 20, 2020
Mt. Pleasant, South Carolina

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Appellant,

v.

Christopher Huggins, Respondent.

Appellate Case No. 2019-001067

Appeal From Dorchester County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2022-UP-320
Heard April 13, 2022 – Filed August 3, 2022

AFFIRMED

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia, for Appellant.

Adam Joseph Russo, of Drennan Law Firm, LLC, of Mount Pleasant, for Respondent.

PER CURIAM: In an appeal from the circuit court acting in its appellate capacity, the State argues that the circuit court erred in finding the State's Notice of Appeal from the magistrate court was untimely. We affirm.

FACTS/PROCEDURAL HISTORY

Respondent Christopher Huggins (Huggins) was ticketed for driving under the influence (DUI) in January 2016. At a pretrial hearing in front of a magistrate judge on March 14, 2017, Huggins moved to dismiss the case based on the State's failure to comply with the video recording statute.[1] The magistrate judge dismissed the case on April 25, 2017, and on May 22, 2017, the State served Huggins's counsel with a Notice of Appeal to the circuit court. The Notice of Appeal was filed on May 25, 2017,[2] the same day both Huggins's counsel and the magistrate court received the appeal. The magistrate court issued a Return on July 18, 2017, and Huggins filed a Motion to Dismiss Appeal.

On May 28, 2019, the circuit court held a hearing on the State's appeal and Huggins's Motion to Dismiss. At that hearing, the State maintained the dismissal by the magistrate was improper. Huggins argued that the appeal should be dismissed based on the State's failure to file the Notice of Appeal within ten days, relying on S.C. Code Ann. §§ 18-3-20, -30 (2014). The State argued that Title 18 was inapplicable and the Notice of Appeal only needed to be served and filed within 30 days of the order being filed pursuant to Rule 74, SCRCP. The circuit court granted Huggins's Motion to Dismiss Appeal and issued a Form 4 Order, in which the court stated that the State's appeal was not timely filed and therefore denied.

The State then served and filed a Motion for Reconsideration, maintaining that the appeal was timely or, in the alternative, seeking a formal written order setting forth the grounds for the court's dismissal of the appeal. The Motion for Reconsideration was denied by the circuit court. This appeal followed.

STANDARD OF REVIEW

Our appellate review in criminal cases is limited to correcting errors of law. *City of Rock Hill v. Suchenski*, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007), *abrogated on other grounds by State v. Taylor*, 436 S.C. 28, 38, 870 S.E.2d 168, 173 (2022).

---

[1] S.C. Code Ann. § 56-5-2953 (2018).

[2] The State's Notice of Appeal was served twenty-seven days, and filed thirty days, after the magistrate's order was issued.

LAW/ANALYSIS

The State argues that Rule 74, SCRCP, rather than Title 18, should govern the time requirements for filing appeals from the magistrate court and that the circuit court erred in dismissing the appeal. We disagree.

"While a limited right of appeal in criminal cases has been conferred upon the State by statute in a number of jurisdictions, the extent of the right of the prosecution to appeal in this jurisdiction has been defined by our judicial decisions." *State v. Tillinghast*, 375 S.C. 201, 202–03, 652 S.E.2d 400, 401 (2007) (quoting *State v. Holliday*, 255 S.C. 142, 144, 177 S.E.2d 541, 542 (1970)). "Based primarily upon the double jeopardy provisions of the Constitution, we have long recognized that the State has no right of appeal from a judgment of [a]cquittal in a criminal case, unless the verdict of acquittal was procured by the accused through fraud or collusion." *Holliday*, 255 S.C. at 145, 177 S.E.2d at 542. However, the State may appeal in limited situations, including those involving a dismissal prior to the jury being sworn. *Tillinghast*, 375 S.C. at 203, 652 S.E.2d at 401. In the current case, the State sought to appeal the magistrate court's dismissal of a DUI case against Huggins. No jury had been sworn; thus, the State had the right to appeal.

Our precedents hold that the State's right to appeal "is defined by our *judicial decisions, not statutory law*." *State v. Belviso*, 360 S.C. 112, 115, 600 S.E.2d, 68, 70 (Ct. App. 2004) (emphasis added) (citing *State v. McKnight*, 353 S.C. 238, 238, 577 S.E.2d 456, 457 (2003)). However, we must ensure that "our judicial decisions addressing the 'right of appeal' are in accord with legislative intent." *Id.* at 117, 600 S.E.2d at 71. Further, in defining the State's right to appeal, we must construe applicable statutes in their entirety so as to avoid "a result so plainly absurd that it could not possibly have been intended by the Legislature." *Id.* at 116–17, 600 S.E.2d at 70–71 (quoting *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)). "In construing the statutory scheme as a whole, we 'escape the absurdity' and give efficacy to the manifest intention of the General Assembly." *Id.* "While it is true that the *purpose* of an enactment will prevail over the literal import of the statute, this does not mean that this [c]ourt can completely rewrite a plain statute." *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (emphasis added). Our supreme court "has interpreted statutes in accord with legislative intent *despite contrary literal*

meaning in cases where there has been an oversight by the legislature that is *clearly in conflict* with the overall intent of the statute." *Id.* (emphases added). "The [c]ourt's primary function in interpreting a statute is to ascertain the intent of the legislature." *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 318 S.C. 516, 518, 458 S.E.2d 550, 551 (1995) (citing *Browning v. Hartvigsen*, 307 S.C. 122, 414 S.E.2d 115 (1992)). "The real purpose of the legislature will prevail over the literal import of the words." *Id.*

Chapter 3 of Title 18 of the South Carolina Code applies to "Appeals From Magistrates in Criminal Cases." Section 18-3-30(A) provides: "The appellant, within ten days after sentence, shall file [the] notice of appeal with the clerk of circuit court and shall serve notice of appeal upon the magistrate . . . and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge . . . ." The next subsection states "[a] person convicted in magistrate[']s court . . . may appeal his conviction within the time allotted . . . ." § 18-3-30(B).

Subsection (A) of the statute refers to "the appellant," provides the time frame to appeal as being "within ten days after *sentence*," and directs the appellant to "serve [the] notice of appeal upon . . . the designated agent for the prosecuting agency or attorney who prosecuted the charge." § 18-3-30(A). Associating the filing deadline with sentencing does not take into account circumstances in which no sentence exists, i.e., the State's appeal of either the dismissal of an indictment or other charging document before a jury is sworn, or the granting of a new trial after conviction. *See Tillinghast*, 375 S.C. at 203, 652 S.E.2d at 401 ("[T]he State may appeal an order quashing an indictment or the grant of a new trial after conviction if based on an error of law."). Additionally, as the State itself is the prosecuting agency to be served pursuant to subsection (A) and there is no alternative reference to service on the defendant, the State argues that its appeals from the magistrate's court cannot be subject to this provision's time frame and that its time requirements are provided instead by Rule 74, SCRCP.

The State's argument that Rule 74, SCRCP, applies is incorrect. Rule 74, SCRCP, provides guidance only when no time limits are prescribed by statute. In this instance, however, a ten-day time limit is provided in Title 18 that applies to both the defendant and the State with regard to filing appeals from the magistrate's court. Subsection (B) states "[a] person convicted in magistrate's court . . . may appeal his conviction within the time allotted in this section." § 18-3-30(B). While Title 18 indicates that the appellant implicitly contemplated is the defendant, we cannot imagine that the general assembly would not intend for the same ten-day period to apply to both parties. Any other reading of the time requirements set forth in Title 18, including one that would trigger the application of Rule 74 to

provide time limits, would be inconsistent with the legislature's intent, as it would be plainly absurd to allow two similarly situated parties to be subject to two wholly inconsistent time requirements. *Belviso*, 360 S.C. at 116–117, 600 S.E.2d at 70–71 (holding that courts must construe statutes in a way that avoids "result[s] so plainly absurd that [they] could not possibly have been intended by the Legislature." (quoting *Kiriakides*, 312 S.C. at 275, 440 S.E.2d at 366)); *see also Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("[T]his [c]ourt has interpreted statutes in accord with legislative intent despite contrary literal meaning in cases where there has been an oversight by the legislature that is clearly in conflict with the overall intent of the statute."). Thus, Rule 74 does not apply in the instant case.

Therefore, we affirm the holding of the circuit court, because the State was properly subjected to the same ten-day requirement as a defendant appealing an order of the magistrate's court.

CONCLUSION

We find the circuit court did not err in finding that the State's Notice of Appeal from the magistrate's court was untimely. Therefore, the ruling of the circuit court is

AFFIRMED.

GEATHERS and HILL, JJ., and LOCKEMY, A.J., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

v.

Christopher Huggins, Respondent.

PETITION FOR REHEARING

On August 3, 2022, this Court affirmed the circuit court's decision dismissing the State's appeal from magistrate's court as untimely served and filed. This Court misapprehended or overlooked clear reasons the Legislature may have chosen to establish different time requirements for the State and a criminal defendant, as well as relevant and long-standing case law and statutory construction principals. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the circuit court erred in dismissing the State's appeal as untimely, and find, based on 1) the clear language of section 18-3-30; 2) the Legislature's presumed understanding of the existing statutes and rules when it last amended the section; as well as 3) the clear rationale for the legislative intent behind disparate treatment, the State is entitled to thirty days to serve and file its appeal.

As the South Carolina Supreme Court has made abundantly clear, the appellate courts "do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly." Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996). "If a statute is

clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning." Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970).

> Under the plain meaning rule, it is **not the court's place** to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (emphasis added).

"If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it dehors the statute." Abell v. Bell, 229 S.C. 1, 4, 91 S.E.2d 548, 550 (1956). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992). "While it is true that the purpose of an enactment will prevail over the literal import of the statute, **this does not mean that this Court can completely rewrite a plain statute.**" Hodges, 341 S.C. at 87, 533 S.E.2d at 582 (emphasis added). As three Justices noted in a concurring opinion:

> If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. **Courts do not have that power.** . . . There is no principle of statutory interpretation that allows a court to simply do what it thinks is just and right.

Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J. concurring) (emphasis added).

The language of the section 18-3-30 is very clear and unambiguous. The Court's opinion even details exactly what the statute requires and then explains how it cannot apply to the State.

While this Court ultimately concludes "the appellant implicitly contemplated is the defendant," the opinion recognizes section 18-3-30 is not written in a way to make it applicable to the State.

This Court notes its ability to interpret the language of a statute, even against its literal meaning in cases where it is "absurd" or "clearly in conflict with the overall intent of the statute." However, this Court misapprehends the cases that allow contrary interpretation. The ability to alter the plain language only occurs when it is **impossible** to fulfill the intention behind the statute itself. The South Carolina Supreme Court articulated the rule many years ago and provided excellent examples that sit in clearly different posture than how this Court is currently attempting to re-interpret section 18-3-30. In Stackhouse v. Rowland, 86 S.C. 419, 68 S.E. 561 (1910), the Court explained:

> However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect. The cardinal rule, that the courts should in all cases give effect to the obvious intent of the Legislature, and that every technical rule of construction should yield to the clear meaning of the statute, is stated in Endlich on Stat. Inter. § 295. Numerous cases in which clerical errors have been corrected by the courts pursuant to this principle are given in section 319 of the same work.
>
> This rule has been followed in many cases in this and other jurisdictions. In Waring v. Cheraw, etc., Ry. Co., 16 S. C. 416, the word "hereinafter" was read "hereinbefore," when the use of the former would have destroyed the manifest purpose of the statute. In Kitchen v. Southern Ry. Co., 68 S. C. 554, 48 S. E. 4, the word "of" was construed to mean "or," in order to give full effect to the meaning of Lord Campbell's act. In Baldwin v. Travis County, 40 Tex. Civ. App. 149, 88 S. W. 480, the word "taxed" was substituted for "attached," the court holding that the use of the latter word "appears to be improper and inapt, in that it does not appear to definitely express or convey the meaning evidently intended by the Legislature." In California Loan Co. v. Weis, 118 Cal. 489, 50 Pac. 697, it was held that the word "July" which was

> evidently intended, should be read instead of "June," which had been used in the act under consideration. In Re Frey, 128 Pa. 593, 18 Atl. 479, the word "city" was inserted instead of "county," when the court was of opinion that "the section is senseless and absurd as it is written, while the purpose of the Legislature is perfectly obvious and certain."

Id. at 562. Significantly, the Court provided a very clear warning regarding the use of the rule: "While this rule is generally recognized, the courts in applying it should **exercise circumspection to avoid any effort to amend statutes**. The principle depends upon the absurdity being manifest and the legislative intent obvious." Id. (emphasis added). In the instant case, this Court did not alter the language of the statute to address a manifest absurdity.[1] Instead, it rewrote the statute to apply to a party which was never intended to be covered by the statute. This is the function of the Legislature and not the appellate courts.

Further, Chapter 3 of Title 18 explicitly does not apply to the State or a State's appeal. In Section 18-3-10 the Legislature specifically granted a right to appeal only to a "person convicted before a magistrate of any offense whatever and sentenced." S.C. Code Ann. § 18-3-10 (Supp. 2019). The initial section of this Chapter indicates that the provisions of the Chapter apply to a person convicted in magistrate court. Because the following statutes must be read in light of the initial section, the procedures and rules the statutes provide related to an appeal must apply only to a criminal defendant who has been convicted and sentenced. See State v. Prince, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999) ("Statutes must be read as a whole and sections that are part of the same general statutory scheme must be construed together and each given effect, if reasonable."). They cannot, by the very language of the initial section, apply to the State.

[1] This Court's own language in its opinion indicates the absurdity is not manifest. This Court held: "**we cannot imagine** that the general assembly would not intend for the same ten-day period to apply to both parties." This Court's imagination is insufficient to warrant amendment/re-writing of the statute to apply to the State when the language chosen by the Legislature evinces a different intention.

Additionally, if this Court intends to look beyond the very clear and unambiguous language of the statute, then a look at the original version shows the legislature never intended the statute to apply to the State as appellant. The original version as passed in 1880 reads in relevant part:

> The appellant shall, within five days after sentence, serve a notice of appeal upon the Trial Justice who tries the case, stating the grounds upon which the appeal is founded.
>
> . . . .
>
> That the said appeal shall be heard by the Court of General Sessions upon the grounds of exception made, and upon the papers hereinbefore required, and without the examination of witnesses in said Court. And the said Court may either confirm the sentence appealed from, reverse or modify the same, or grant a new trial as to the said Court may seem meet and conformable to law.

Act No. 403, 1880 S.C. Acts 493. The original statute, especially the latter portion, makes it clear it applied only to a defendant and not the State. Since that time, the statute has been amended 3 times: 1) 1968, which retained the provision requiring the appellant to file within five days of sentence as subsection A, did not include any provision to provide for a time for a State's appeal, and amended the statute to include only a subsection B which was similar to the current subsection B; 2) 1973, which only amended the time to allow for ten days instead of five, but again made no changes to set a time limit for a State's appeal; and 3) 2010, which again did not add any language setting a time limit for a State's appeal, but instead added language which further identified the intent of the statute as applying only to an appealing defendant by requiring the notice of appeal be served "upon the designated agent for the prosecuting agency or attorney who prosecuted the charge".

Undoubtedly, by 2010 the Legislature knew the State had a right to appeal from magistrate's court to the circuit court, notwithstanding the language of Section 18-3-10 which

only provides a statutory right to appeal to a "person convicted before a magistrate of any offense whatever and sentenced." See State v. Belviso, 360 S.C. 112, 116, 600 S.E.2d 68, 70 (Ct. App. 2004) ("This authority provides ample support for the circuit court's ability to hear the State's appeal from the magistrate court's pre-trial rulings dismissing the open container charge and suppressing critical evidence in connection with the charge of driving with an unlawful alcohol concentration.") (citing State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 (1991); State v. Whetstone, 333 S.C. 376, 510 S.E.2d 225 (Ct. App. 1998); State v. Rowlands, 343 S.C. 454, 456, 539 S.E.2d 717, 718 (Ct. App. 2000)); State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985) ("A pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable under S.C. Code Ann. § 14–3–330(2)(a) (1976)."). The Legislature not only declined to set a time requirement for a State's appeal in 2010, but only amended to the statute to make it even more obviously applicable only to a criminal defendant by requiring service upon the designated agent of the prosecuting agency or the attorney who prosecuted the charge.[2]

Additionally, at the time of the 2010 amendment to section 18-3-30, the Legislature was well aware of other provisions which would apply to State's appeals from magistrate court to circuit court absent a specific statute and instead of section 18-3-30. See State v. Corey D., 339 S.C. 107, 112, 529 S.E.2d 20, 23 (2000) (Finding "there is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects."). The Legislature had

[2] The addition of this language demonstrates the Legislatures tacit understanding that many of the prosecutions in magistrate court occur without an attorney representing the State—in some counties nearly all prosecutions for DUI occur without an attorney representing the State. Otherwise, there would be little need for the language allowing service on the "designated agent" as opposed to the "prosecuting attorney."

two alternatives for consideration of a time requirement for a State's appeal from magistrate's court—Section 18-7-20 of the South Carolina Code or Rule 74 of the South Carolina Rules of Civil Procedure. As a result, consideration of the 2010 amendment, even if the clear language of the statute alone was insufficient, established the Legislature intended section 18-3-30 to **only** apply to a criminal defendant and not the State.

Section 18-7-20, which applies to appeals to circuit court not otherwise covered in Title 18, indicates when and how appeals should be taken. The provision appears in a Chapter entitled Appeals to Circuit and County Courts in Other Cases. The term "Other Cases" would apply when Title 18 does not already contain a statutory provision providing for an appeal. As Chapter 3 specifically applies only to a criminal defendant's ability to appeal, a State's appeal would qualify as an "Other Case" triggering the provisions of Chapter 7. Accordingly, under section 18-7-20:

> The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.

S.C. Code Ann. § 18-7-20 (Supp. 2019). As a result, applying section 18-7-20 would allow for 30 days for the State to serve its Notice of Appeal. The Legislature, in 2010 when it last amended section 18-3-30, would have been well aware of section 18-7-20 because it has read the same since 1989. See Act No. 20, 1989 S.C. Acts; see also, Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 570, 743 S.E.2d 778, 783 (2013) ("[T]his Court must presume the legislature knew of and contemplated the [prior existing statutes] in enacting [an act]").

Additionally, Rule 74, SCRCP, was put in place effective May 1, 1986, and provided a means and time requirement for a State's appeal absent any other applicable provision. The

provision is applicable, even to appeals from criminal cases in magistrate court, because the appeals are taken to the Court of Common Pleas. See State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (finding the Rules of Civil Procedure applicable under Rule 74, SCRCP). This Court clearly overlooked Rule 74 and, in particular, the Editor's Notes to Rules 74 and 75, SCRCP. Rule 74 of the Rules of Civil Procedure states:

> Except for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be in accordance with the statutes providing such appeals. Notice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court or administrative agency or tribunal within the time provided by the statute, or by this rule when no time is fixed by statute, for service of the notice of intention to appeal.

Rule 74, SCRCP. Significantly, the Editor's Notes to Rules 74 and 75, SCRCP, provide:

> **These Rules 74 and 75 are added to make uniform the procedure on appeals to the Circuit Court where there is no provision by statute.** They do not replace any provisions as to such appeals in Title 18 of the Code, or other statutes providing for appeals from administrative decisions; but are added to supply omissions in these statutes where no provision is made for the time to file notice of intention to appeal, the form of the record on appeal, or how it shall be transmitted.

Clearly, Rule 74 and the allowance of thirty days is intended to apply to the prosecuting agency—the State—because, unless this Court finds section 18-7-20 applies, there is no statute in Title 18 expressly providing for the time in which the State must serve its notice of appeal. Rule 74 is specifically intended to fill that void.

The Legislature would have been aware of both section 18-7-20 and Rule 74, SCRCP, when it chose in 2010 to again not provide for any explicit time requirement for the service of a

State's appeal under section 18-3-30. Berkebile v. Outen, 311 S.C. 50, 53, 426 S.E.2d 760, 762 (1993) ("A basic presumption exists that the legislature has knowledge of previous legislation when later statutes are passed on a related subject."). Accordingly, this Court overlooked both Rule 74, SCRCP, and section 18-7-20 and their applicability to a State's appeal, especially in light of the legislative history surrounding section 18-3-30 which clearly indicates the Legislature has always intended it to only apply to criminal defendants.

Also, this Court overlooked the fact the Legislature clearly knows how to apply a time requirement to both a criminal defendant and the State. S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control, 390 S.C. 418, 426, 702 S.E.2d 246, 251 (2010) (Acknowledging: "Had the legislature intended for the time period to begin running from the date a party receives notice of the decision, the statute would have been drafted accordingly." Further, the Court looked to other statutes and explained: "The use of the phrase 'receipt of the decision' in [a separate statute] indicates that had the legislature intended for the fifteen day time period to begin after receipt of notice, the legislature knew how to draft the statute to accomplish this result."). The Court need not look beyond Rule 203 of the South Carolina Appellate Court Rules to determine that the Legislature knew how to draft a time requirement applicable to both a criminal defendant and the State. The Rule includes language similar to section 18-3-30 which clearly relates solely to the criminal defendant: "After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents **within ten (10) days after the sentence is imposed**." Rule 203(b)(2), SCACR (emphasis added). However, the Rule also provides: "In those cases in which the **State is allowed to appeal** a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal

must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief." Id. (emphasis added). In Rule 203, it was necessary to explicitly indicate the State's time for service of the appeal because otherwise, the Rule would, by its very language, not apply to the State. Additionally, section 18-7-20, which is written very broadly and could apply to any party seeking to appeal, is an example the Legislature could have followed had they intended section 18-3-30 to be broadly construed to cover all possible appealing parties in the criminal case from magistrate's court. Clearly, had the Legislature intended section 18-3-30 to apply to the State, they certainly knew how and could have easily amended the language when they last amended the statute in 2010.

Significantly, this Court clearly overlooks relevant considerations which demonstrate a criminal defendant and the State are not "similarly situated parties" when it comes to a determination on whether or not to appeal from a magistrate court decision. As a result, there are very logical and rational reasons why the Legislature would allow additional time for a State's appeal.

Initially, the calculus regarding a decision to appeal is very different between a criminal defendant and the State. The defendant only has to determine whether it is in his best interest to appeal his conviction and sentence. He does so with full knowledge of the actual facts regarding his guilt or innocence of the charges, the ramification of not appealing, and the possible remedies if he were to succeed on appeal. He does not have to consider any other case or how a ruling in his case may impact anyone else's future trial. As mentioned previously, the Legislature originally believed a defendant needed only five days to make his decision because it was recognized that it should not be a hard decision requiring extended contemplation.

On the other hand, the State, as the Sovereign, has significant considerations to make prior to appealing a ruling. Initially, the State must review the underlying ruling and determine if it meets the standard set forth in McKnight that would even allow the State to pursue the appeal. Considerations regarding the benefit or efficacy of taking the underlying appeal also are much more complicated. While appealing may be best for the individual case, an appeal may or may not be best for all future prosecutions. The State is required to consider the broad ramifications of an appeal prior to bringing the appeal. If the State is successful, that may be beneficial in this particular case, but is it the best outcome for all future prosecutions or will the rule set forth by the Court alter those prosecutions in unintended ways. Additionally, the downside to an appeal may be too great to warrant the appeal in the individual case. The State must be concerned about whether a case has particularly bad facts and the old adage that bad facts make for bad law. See Doggett v. United States, 505 U.S. 647, 659 (1992) (Thomas, J. dissenting) (acknowledging the old adage and commenting: "Just as 'bad facts make bad law,' so too odd facts make odd law."). The State necessarily must consider ramifications far beyond the case before it and do what is in the best interest for the people of South Carolina, including the defendant, and not just one individual. As a result, it is logical and rational that the Legislature would allow additional time for the State to make its determinations.

Additionally, prosecutions in magistrate court frequently have another very significant consideration—the cases are frequently not prosecuted by an attorney for the State who will take part in the ultimate determination on whether or not to seek the appeal. Prosecutions, in particular DUI prosecutions, are frequently handled by the officers making the arrest. A report, written by Clemson University and commissioned by the South Carolina Department of Transportation notes that South Carolina is one of two states in the nation that allow officers to

prosecute their DUI cases. See Applying Successfully Proven Measures in Roadway Safety to Reduce Harmful Collisions in SC, available at https://www.scdot.scltap.com/wp-content/uploads/2017/06/SPR-711-FHWA-SC-17-08-Final-Report.pdf. Further, in their 2020 report, Mothers Against Drunk Drivers indicated that their monitoring of several counties DUI prosecutions revealed numerous cases being prosecuted by officers. The report, which looked at seven counties, found multiple counties primarily had officers prosecute the cases that were monitored. See Mothers Against Drunk Driving South Carolina, COURT MONITORING REPORT, REFUSAL TO CHANGE, available at https://online.flippingbook.com/view/533447/.

When an officer prosecutes a DUI, new difficulties arise for the State in seeking an appeal. First, there may be communication issues between the actual person prosecuting the case and the persons in the agency who will ultimately make the determination on whether to file the appeal. The trooper or other office may not bring the appeal from magistrate's court. Instead, the appeal would need to be initiated and handled by the solicitor's office or the Department of Public Safety. As a result, communication of the nature of the offense, the evidence and arguments presented to the magistrate, and the magistrate's ruling all must take place prior to the State even beginning its analysis on whether to pursue an appeal. Therefore, it is clear that a criminal defendant and the State of South Carolina are not similarly situated parties.[3]

This Court should grant the rehearing; find section 18-3-30 by its clear and unambiguous language does not provide the State a time restriction for its service of a notice of appeal from

[3] I also note that this Court did not specifically rely on an Equal Protection for its ruling, even though it referenced the concept of similarly situated parties. It is clear Equal Protection would not apply. Additionally, even if Equal Protection required the prosecuting agency and the convicted defendant to have the same filing and service requirements, the remedy would not be to arbitrarily subject the State to the ten day requirement of section 18-3-30, but instead would have been to declare the ten-day restriction in 18-3-30 unconstitutional and then the default of 30 days would apply to all.

the magistrate court; conclude either Rule 74, SCRCP, or section 18-7-20 is the appropriate time requirement for the service of the notice of appeal allowing the State thirty days to serve its notice; hold the criminal defendant and the State of South Carolina are not similarly situated parties; and reverse the circuit court's ruling that the appeal was untimely and allow the appeal by the State to go forward.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the circuit court erred in dismissing the appeal because it was timely served and filed under either section 18-7-20 or Rule 74, SCRCP, because section 18-3-30 does not apply to an appeal by the State based on its explicit and unambiguous language. The State asks this Court to publish its opinion, whether rehearing is granted or denied, because the issue is one that is ongoing in appeals from magistrate's court and a binding opinion is necessary to end any confusion.[4]

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 18, 2022

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[4] See, e.g., Shenoa L. Payne, *The Ethical Conundrums of Unpublished Opinions*, 44 Willamette L. Rev. 723, 728 (2008) ("With such widespread national availability of 'unpublished' opinions, the term 'unpublished' has a new and ironic meaning. . . . Even though a court may wish to prevent a particular opinion from having precedential effect, the court is at least aware that, whether designated 'published' or 'unpublished,' its opinion is 'going to be read, collected, and analyzed.' " (footnotes omitted)).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case Tracking No. 2019-001067

The State, Appellant,

v.

Christopher Huggins, Respondent.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing by emailing a copy to Respondent's counsel of record, Adam J. Russo, Esquire, at his primary email addresses as provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 18th day of August, 2022.

CAROLINE COLLINS
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The South Carolina Court of Appeals

The State, Appellant,

v.

Christopher Huggins, Respondent.

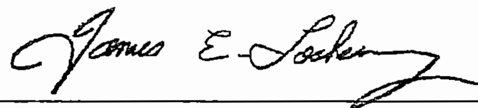
Appellate Case No. 2019-001067

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

______________________________ J.

______________________________ J.


______________________________ A.J.

Columbia, South Carolina

cc:
Adam Joseph Russo, Esquire
Alan McCrory Wilson, Esquire
William M. Blitch, Jr., Esquire
The Honorable Brian M. Gibbons

FILED
Aug 23 2022