

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
SEP 16 2013
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COMMON PLEAS COURT
Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-03563
Appellate Case No.: 2012-208627

State of South Carolina, ... Respondent,
v.
Andrew T. Looper, ... Appellant.

RECORD ON APPEAL

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

J. FALKNER WILKES
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

COUNSEL FOR APPELLANT

INDEX

Order denying rehearing	1
Order of circuit court reversing magistrate	2
Order of Magistrate	3
State's Notice of Appeal to the circuit court	6
Transcript of hearing in magistrate court	8

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

State of South Carolina)

Plaintiff,)

v.)

Andrew T. Looper)

Defendant)
_____)IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2011-CP-23-03563

ORDER DENYING RESPONDENT'S
MOTION TO RECONSIDER UNDER SCRC
RULE 59(e)

This matter comes before the Court on Respondent's Motion to Reconsider under SCRC Rule 59(e). This Court has considered the motion therein and the applicable law and finds that it's order of September 13, 2011 is appropriate. Therefore, Respondent's Motion to Reconsider is Denied.

IT IS SO ORDERED.

January 13, 2012

Letitia H. Verdin
Circuit Judge

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP2303563

2011 SEP 13 AM 11:54

South Carolina State Of vs. Andrew T Looper

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

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: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Magistrate's Order granting Defendant's Motion to Suppress was in error and accordingly Defendant's Motion to Suppress was in error. This decision is reversed and remanded for further proceedings.

Dated at Greenville, South Carolina, this September 7, 2011.

Court Reporter:



PRESIDING JUDGE - LETITIA H. VERDIN

9/13/11
This judgment was entered on the 9/13/11, and a copy mailed first class this 9/13/11, to attorneys of record or to parties (when appearing pro se) as follows:

Denton Matthews Assistant Solicitor 305 E. North Street,
Ste 325 Greenville, SC 29601

Steve W. Sumner Attorney At Law 1088 N. Church Street
Greenville, SC 296011539

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

State of South Carolina,)

vs)

Andrew T. Looper,)

Defendant.)

IN THE MAGISTRATE'S COURT

THIRTEENTH JUDICIAL CIRCUIT

Ticket No: 54668ET

ORDER

RECEIVED

JUL 20 2011

Chick Springs
Summery Court

THIS MATTER CAME BEFORE THE COURT as a jury trial set for May 2, 2011. Present for the Defendant was his counsel of record, Steve W. Sumner, of the Greenville County Bar. Present and representing the Solicitor's office was attorney William Ryan Holloway, also of the Greenville County Bar. The Defendant and arresting officer were also present.

Prior to the beginning of the trial the Court inquired as to whether or not the Defendant had any pretrial motions. Defendant's counsel answered in the affirmative. Defendant's counsel proceeded to request a "Jackson vs. Denno" hearing in terms of the voluntariness of any statements from the Defendant and; second, the Defendant asked for a hearing to determine whether or not the actions of the arresting officer and the arrest of the Defendant were constitutional. Accordingly, Greenville County deputy Matthew Smith (the arresting officer) was sworn and his testimony taken. Additionally, the "road tape" was marked as evidence and received by the Court as "Defendant's Exhibit 1."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The testimony and exhibit established that the Defendant was stopped in Greenville County for travelling 78 mph in a 45 mph zone.
2. Deputy Smith approached the driver's side window of the Defendant and inquired of the Defendant for his driver's license, registration and insurance card. The Defendant denied

CRS

consuming any alcoholic beverages earlier. The officer received the requested documents from the Defendant. The total time for this interaction was approximately one minute and fifteen seconds (1:15).

3. The deputy then went back to his patrol car and stayed for approximately twelve (12) minutes. He then issued the Defendant two citations: one for speeding and one for an expired vehicle tag. The deputy then went on to explain in significant detail the maximum fine for each ticket, how to remedy the expired vehicle tag citation, then advised the Defendant as to the court date, time and address of the court. The deputy then went on to tell the Defendant he could pay these tickets in advance and not appear personally in court.

This interaction lasted approximately one minute and thirty seconds (1:30). At the conclusion of this interaction with the Defendant, and after giving the Defendant these two tickets, the officer inquired of the Defendant as to why he had gone downtown earlier, and if he had consumed "beers or liquor or what." The Defendant responded, "Yes, sir, I did."

4. After this interaction, the officer asked the Defendant to perform three field sobriety tests; and ultimately, the Defendant was placed under arrest and charged with driving under the influence.

The Defendant argued that based upon the testimony and exhibit, along with the testimony as outlined herein, that the officer lacked articulable reasonable suspicion of further criminal activity to continue the Defendant's detention beyond the point where he had issued him the two citations for speeding and expired vehicle tag. The Court heard extensive arguments from both counsel on this point. The Court also received and gave close examination to the cases of State v Williams, 571 S.E.2d 703 (SCCA2002) and State v Rivera 682 S.E.2d 307 (S.C.App. 2009). After giving full consideration to the testimony of the arresting officer, the videotape of the incident in question (Defendant's Exhibit 1), the applicable case law and arguments of counsel the Court hereby grants the Defendant's motion to

CHH

dismiss the DUI charge on the grounds that the continued investigative detention of the Defendant as discussed above violated his rights under the 4th Amendment of the US Constitution.

THEREFORE, in accordance with this Order Ticket Number 54668ET issued to Andrew T. Looper is hereby dismissed.



The Honorable Charles R. Garrett
Greenville County Magistrate Court Judge

7/20/11
Date

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

RECEIVED

MAY 10 2011

Chick Spring
Summary Court

APPEAL FROM GREENVILLE COUNTY
Summary Court

Charles R. Garrett, Magistrate Court Judge

Case No. 54667ET

The State, ...Appellant

v.

Andrew T. Looper, ...Respondent

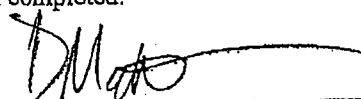
NOTICE OF APPEAL

The State of South Carolina hereby appeals the pretrial order of the Honorable Charles R. Garrett granting the Respondent's Motion to Dismiss due to lack of probable cause.

This Appeal is made on the following grounds:

1. The Respondent did not prove that there was a lack of reasonable suspicion as required by State v. Williams, 571 S.E.2d 703 (S.C. Ct. App. 2002) and State v. Rivera, 682 S.E.2d 307 (S.C. Ct. App. 2009), to continue detention. The officer had the smell of alcohol coming from the defendant's vehicle and the fact that the defendant lied about having had anything to drink that night. These facts combined more than meet the reasonable suspicion standard which was established in Williams and Rivera.
2. The evidence, including the field sobriety tests, the breath test results (a.20%), and breath test video, should not have been suppressed under the "fruit of the poisonous tree" doctrine since the officer had the reasonable suspicion necessary to elongate the traffic detention once the initial purpose had been completed.

Dated: May 9, 2011



Denton Matthews, Assistant Solicitor
Thirteenth Judicial Circuit
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8647
Attorney for the State

Other Counsel of Record:
Steve Sumner, Esquire
114 Manly St.
Greenville, SC 29601

ROA 6

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

RECEIVED

MAY 10 2011

Chick Springs
Summary Court

APPEAL FROM GREENVILLE COUNTY
Summary Court

Charles R. Garrett Magistrate Court Judge

Case No. 54667ET

The State, ...Appellant

v.

Andrew T. Looper, ...Respondent

PROOF OF SERVICE

I certify that I have served Notice of Appeal in the above-captioned matter by mailing the same addressed to Steve Sumner, Esquire, 114 Manly St., Greenville, SC 29601.



Denton Matthews
Assistant Solicitor
Thirteenth Judicial Circuit
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8647
Attorney for the State

May 9, 2011

ROA 7

MOTION HEARING - STATE VS. ANDREW LOOPER

 ORIGINAL

STATE

VS.

ANDREW TALMADGE LOOPER

MOTION HEARING

MAY 2, 2011

1 JUDGE:

2 This is the motion hearing before the court on a DUI
3 case of Andrew Looper. State of South Carolina
4 versus Andrew Looper. There is a motion to be made
5 before the court. Mr. Sumner is representing Andrew
6 Looper. Mr. Sumner, do you have some motions?

7 MR. SUMNER:

8 I do, Your Honor. May it please the court.
9 Briefly, the facts of Mr. Looper's case as I
10 understand them are as follows. Mr. Looper was
11 travelling around 75 to 80 miles an hour on
12 Rutherford Road, Deputy Smith was working. He
13 turned around on Mr. Looper, turned his blue lights

14 on him and subsequently a stop occurred. Your
15 Honor, I'm going to ask for a Denno hearing at this
16 point in terms of the voluntariness of what was said
17 and whether or not the actions of Deputy Smith will
18 pass constitutional muster. So at this point in
19 time I want to call Deputy Smith to the stand and be
20 sworn and ask him do you have the road tape with
21 you?

22 DEPUTY SMITH:

23 It's in your --

24 MR. SUMNER:

25 Okay. And do you have it cued up to the stop? Or,

1 you know, he's finding it.

2 DEPUTY SMITH:

3 Yeah.

4 MR. SUMNER:

5 Okay. Is that only of this stop?

6 DEPUTY SMITH:

7 Yeah.

8 MR. SUMNER:

9 Okay. That's fine. And Your Honor, why don't we
10 just go ahead and mark for purposes of this motion
11 we'll mark Deputy Smith's road tape as Defense
12 Exhibit 1 for purposes of this so that way we can
13 keep the record clean.

14 DEPUTY SMITH:

15 Steve, I'm way too short you're going to have to --

16 MR. SUMNER:

17 In the spirit of us working together I don't mind.

18 How about that, I don't mind.

19 DEPUTY SMITH:

20 I appreciate that.

21 THE COURT:

22 (Inaudible) because I can't -- I'd have to get up in
23 my chair.

24 MR. SUMNER:

25 Well I think Matt and I can figure it out.

1 THE COURT:

2 Well Matthew can do it (inaudible).

3 MR. SUMNER:

4 There we are.

5 THE COURT:

6 You just all work together, somebody will get it
7 right.

8 MR. SUMNER:

9 We can get it right. We can get it right. Close --
10 you got the (inaudible). Brian, have you got the
11 controller?

12 DEPUTY SMITH:

13 Yeah.

14 MR. SUMNER:

15 Okay. And Judge, just for the record we're now
16 cuing up the field tape that's been identified by
17 Deputy Smith as to this case and we're now getting
18 it cued up in order to begin this hearing. Let's
19 back it up just a little bit if you don't mind.
20 Let's back it up a little bit, just a little bit.
21 Is that the beginning (inaudible)? Is that the
22 beginning of (inaudible)? Can we pause it here?
23 Okay, now we -- Your Honor, I think we've got the
24 field tape cued up to this point. And you've
25 administered the oath; is that correct, Sir? You

1 have not, okay.

2 THE COURT:

3 Do you solemnly -- raise your right hand. Do you
4 solemnly swear the testimony you give to this court
5 is the truth, the whole truth, and nothing but the
6 truth so help you God?

7 DEPUTY SMITH:

8 I do.

9 THE COURT:

10 Your name and your occupation, please, sir.

11 DEPUTY SMITH:

12 It's Deputy Smith with the Greenville County
13 Sheriff's office.

14 MR. SUMNER:

15 Okay. Your Honor, may it please the court.

16 EXAMINATION BY MR. SUMNER:

17 Q. You are Deputy Matt Smith?

18 A. Yes.

19 Q. Okay. And you were -- I'm going to lead this
20 witness, Your Honor, in the interest of time. You
21 were the arresting officer on the case that is now
22 before the court; is that correct, on Andrew
23 Talmadge Looper?

24 A. That's correct.

25 Q. And you were actually the one -- this is your video

1 tape of the incident that has been marked as Exhibit
2 1?

3 A. Correct.

4 Q. It is a fair and accurate and true representation of
5 what occurred; is that correct?

6 A. (Affirmative response).

7 Q. Okay. And that would be a yes; is that right?

8 A. That's correct.

9 Q. Your Honor, at this point under the Best Evidence
10 rule I think I'm just going to since it's already
11 been marked as an exhibit I am going to press play
12 on the tape. The material that I want to bring to
13 the court's attention is really within the first few

14 minutes so it won't take us very long. And so what
15 we're going to do and what I'm going to ask us to do
16 is just adjourn over here if we could in front of
17 the screen and I'm just going to press play and we
18 will go from there. Brian which one -- thank you,
19 Judge. I'm going to let you do this because I don't
20 know which one it is.

21 SOLICITOR:

22 There's play right there and there's pause right
23 there.

24 EXAMINATION CONTINUES BY MR. SUMNER:

25 Q. Now this is Mr. Looper in his vehicle; is that

1 correct?

2 A. His father's vehicle.

3 Q. Okay, well -- and that's the vehicle he's driving;
4 is that right? Okay.

5 (BREAK)

6 THE COURT:

7 The court is back on record at 4:12. Mr. Sumner?

8 MR. SUMNER:

9 Your Honor, may it please the court. Just to -- we
10 have had a little bit of a break here but the
11 court's ruling based on the totality of everything
12 that came out of the pre-trial including a -- was to
13 suppress everything beyond the tickets that were

14 written for speeding and expired tag; is that
15 correct?

16 THE COURT:

17 That's correct.

18 MR. SUMNER:

19 Your Honor, at this point in time the defendant
20 would make a motion for a dismissal as the State
21 will not be able to move forward there will be no
22 probable cause for the DUI, there would be no need
23 for a jury to hear this but at this point in time
24 the court -- the defendant would move for a
25 dismissal of the DUI charge, thank you.

1 THE COURT:

2 Solicitor (inaudible) statement?

3 SOLICITOR:

4 Yes, sir, Your Honor. The State would ask that the
5 Court's ruling that it specify which cases it's
6 using in order to suppress the evidence that's been
7 mentioned and of course pursuant to the Fruit of the
8 Poisonous Tree doctrine I guess that's what the
9 basis is (inaudible)?

10 MR. SUMNER:

11 Yes, sir.

12 SOLICITOR:

13 If the court would specify on the record exactly
14 what cases it's decided to found its ruling.

15 MR. SUMNER:

16 Well, Your Honor, I will be glad to prepare a
17 written order I think I probably need to do that,
18 Judge Garrett. And I will copy that to Mr. Hollaway
19 and also may need to get us a transcript at some
20 point in time of the court ruling if there's going
21 to be a return. And I'll circulate an order, Your
22 Honor, and I'll copy by colleague on that.

23 THE COURT:

24 Based on the motion by the defense the court based
25 on the law as I read it and also as I -- as the two

1 cases passed up to me, also as part of the grounds
2 for my decision this court upholds the motion
3 therefore anything past the speeding tickets is
4 suppressed and so therefore this case is dismissed.
5 Thank you gentlemen, have a good day.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COMMON PLEAS COURT
Letitia H. Verdin, Circuit Court Judge

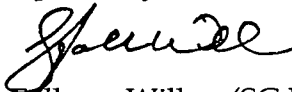
Case No. 2011-CP-23-03563
Appellate Case No.: 2012-208627

State of South Carolina, ... Respondent,
v.
Andrew T. Looper, ... Appellant.

CERTIFICATE

I certify that the Record on Appeal contains all of the matter designated by the parties and no irrelevant matter. I further certify that the Record on Appeal has been redacted in compliance with the Supreme Court Order dated August 13, 2007.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Counsel for Appellant

September 16, 2013.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COMMON PLEAS COURT
Letitia H. Verdin, Circuit Court Judge

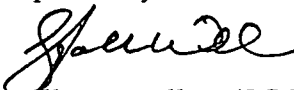
Case No. 2011-CP-23-03563
Appellate Case No.: 2012-208627

State of South Carolina, ... Respondent,
v.
Andrew T. Looper, ... Appellant.

CERTIFICATE

I certify that the Record on Appeal contains all of the matter designated by the parties and no irrelevant matter. I further certify that the Record on Appeal has been redacted in compliance with the Supreme Court Order dated August 13, 2007.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Counsel for Appellant

September 16, 2013.

RECEIVED
SEP 18 2013
SC Court of Appeals