



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

MAR 20 2012

SC Court of Appeals

Case No. 2011-CP-23-03563

State of South Carolina, Respondent,

v.

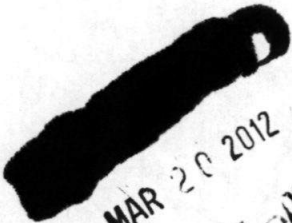
Andrew T. Looper, Appellant.

RETURN TO STATE'S MOTION TO DISMISS

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Counsel for Appellant



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Appellant, by and through his undersigned counsel, would respectfully show unto this Court the following:

I.

The State's argument misconstrues the holding of State v. Gregorie, 339 S.E.2d 77 (2000). In Gregorie, the defendant was convicted in the magistrate's court. Gregorie appealed to the circuit court. Although his conviction was reversed, Gregorie's case was remanded to the magistrate court for further proceedings. This Court upheld the remand but the supreme court reversed, holding that double jeopardy prevented further prosecution. In doing so the supreme court specifically clarified the appealability issue through its holding in the Gregorie case. Contrary to the State's argument, the supreme court in Gregorie specifically held that a defendant may appeal from an order of remand by the circuit court: "Any aggrieved party may appeal the circuit court's final judgment." *citing* S.C. Code Ann. Sections 18-1-30 and 18-9-10. In appeals involving the circuit court's ruling on a magistrate court case, the operative question is simply whether the party bringing the appeal is *aggrieved*. As was the case in Gregorie, Loper is aggrieved by the new trial remedy ordered by the

circuit court. Appeal is therefore proper.

II.

Appellant, Looper, was stopped by a Greenville County deputy for speeding. The deputy asked for Looper's driver's license and vehicle information. He also asked Looper if he had had anything to drink, which Looper indicated that he had not. The deputy took Looper's driver's license and vehicle information and returned to his patrol vehicle where he stayed from approximately twelve minutes before returning to Looper's car. The deputy issued two citations to Looper, one for speeding and one for an expired vehicle tag. The deputy then explained in great detail the maximum fines for each ticket and how Looper could remedy the expired vehicle tag citation. The deputy also advised Looper of the court date for the tickets and that Looper could pay the fines in advance to avoid appearing in court. It took approximately fifteen minutes for the deputy to conclude all of the foregoing and return Looper's license and paperwork. Instead of terminating the traffic stop, and allowing Looper to leave after issuing the tickets and returning all of his paperwork, the deputy continued Looper's detention and questioned him further. As a result of

the continued detention and questioning, Looper was arrested for driving under the influence.

At trial the defense moved to suppress evidence obtained through the continued detention of Looper past the point where the traffic stop should have ended. The deputy testified as to the details of the traffic stop and continued detention of Looper. After hearing the deputy's testimony the court granted the defense's motion to suppress evidence obtained subsequent to the what should have been the legitimate end of the traffic stop. The magistrate court's ruling was based on its finding that the evidence failed to establish reasonable suspicion for a continuation of the traffic stop or the detention of Looper past the point that the deputy had issued the tickets, explained all of the things related to the tickets, and returned all of Looper's paperwork. The court's ruling required a determination as to credibility and finding of facts as to whether reasonable suspicion existed to continue Looper's detention. The court found that the facts did not establish reasonable suspicion. In applying the law, and in particular, the Fourth Amendment to its findings of fact the magistrate explicitly relied on State v. Williams, 571 S.E.2d 703 (Ct. App.

2002) and State v. Rivera, 682 S.E.2d 307 (Ct. App. 2009). As a result of the ruling on the suppression issue the charge for driving under the influence was subsequently dismissed.

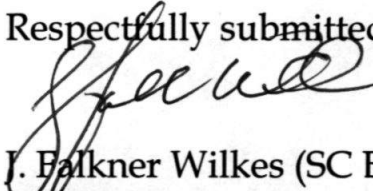
The State appealed the magistrate's ruling to the circuit court. In his appeal, the Solicitor admitted that the deputy had elongated the traffic stop "beyond its original scope". (Pg. 3. State Circuit Court Appeal Brief). In its argument, the State alleged that the deputy had objective reasons for exceeding the initial traffic stop. The State's argument however, fails to recognize that the magistrate heard the testimony of the deputy and made his rulings based on the credibility of that testimony. Based on his findings of fact, the magistrate determined that scope of the initial stop had been exceeded without reasonable suspicion. The court held that Looper's detention had therefore become illegal. As a result, any evidence gathered past the point of legal detention, was held inadmissible. Absent any credible evidence to support the offense of driving under the influence, the magistrate properly granted the defense's motion to dismiss the charge.

III.

Based on the facts of this case, Looper's argument is well founded in

both law and in fact. He prevailed in the magistrate's court. The subsequent order of the circuit court which overturned the magistrate's ruling and remanded the case to the magistrate's court for further proceedings, leaves Looper as an aggrieved party. The issue in this case is controlled by the holding of State v. Gregorie, 339 S.E.2d 77 (2000), which entitles Looper to an appeal pursuant to S.C. Code Ann. Sections 18-1-30 and 18-9-10. As appeal is proper in the present case, the State's Motion to Dismiss should be denied.

Respectfully submitted,



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CERTIFICATE

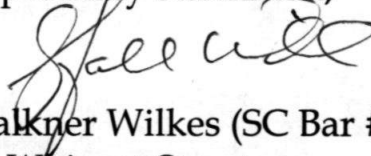
I certify that on March 19, 2012, I served the Appellant's Reply to the State's Motion to Dismiss on the Respondent and others by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record and others as indicated below, and by facsimile:

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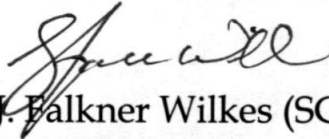
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