STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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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, ... Petitioner.

PETITION FOR CERTIORARI

J. Falkner Wilkes (SC Bar #12893)
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STATEMENT OF THE CASE

The Petitioner, Andrew Looper, was charged with driving under the influence. At trial in the magistrate's court Looper moved to suppress evidence resulting from a traffic stop. After a suppression hearing the magistrate granted Looper's motion to suppress evidence and dismissed the charge. A written order was entered by the magistrate setting forth his findings of facts and law. (App. p. 34-36). The State appealed to the circuit court. The circuit court heard the appeal, reversed the magistrate, and remanded the case for further proceedings in the magistrate's court. (App. p. 32-33). Looper timely appealed the reversal and remand by the circuit court. The State moved to dismiss the appeal in the Court of Appeals and the Petitioner timely filed a return. The Court of Appeals dismissed the appeal by written order dated May 7, 2012. Pursuant to Rule 260 Looper moved to reinstate the appeal. The Court of Appeals reinstated the appeal. Pursuant to Rule 221 the Court of Appeals entered an opinion (No. 5301) on March 4, 2015, dismissing the appeal. A petition for rehearing and suggestion for rehearing in banc was timely filed. On March 19, 2015 the Court of Appeals denied the petition for rehearing. This petition follows.

QUESTIONS PRESENTED FOR REVIEW

1. Does Looper, as a defendant in a magistrate's court DUI case that has been dismissed, have standing to appeal the circuit court's reversal of the dismissal?

2. In its review as an appellate court, did the circuit court apply the appropriate standard of review?

ARGUMENT

I. APPELLATE JURISDICTION IS PROPER IN THIS CASE.

Looper was tried in the magistrate's court on the charge of DUI. The magistrate held a suppression hearing after which the evidence essential to the state's case was suppressed. Based on the lack of other competent evidence to support the case going to the jury, the magistrate subsequently dismissed the charge against Looper. The magistrate issued a written order detailing his findings of fact, analysis of the law, and dismissal of the charge. It is from that order that the State appealed to the circuit court. (App. p. 37).

Although a defendant may generally not immediately appeal from an adverse evidentiary ruling at trial, the decision of the magistrate to suppress evidence and consequently to dismiss a charge, are both issues that are appealable by the State to the circuit court. *See* State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985), (concluding a pretrial order granting the suppression of evidence that significantly impaired the prosecution of the State's case could be directly appealed by the State under section 14-3-330(2)(a)). In Looper's case the *State* appealed from the evidentiary ruling and order of dismissal by the trial magistrate. The State was therefore the appellant in the circuit court appeal. Procedurally, this fact is important since the State's appeal properly vested appellate jurisdiction in

the circuit court. Once jurisdiction for the appeal has been established in the circuit court, the general rule as stated in Miller no longer applies, and the right for either party to appeal further is controlled by Gregorie. State v. Gregorie, 339 S.E.2d 77 (2000). Under Gregorie, once the circuit court makes its final ruling on the issues under appeal, further appeal is specifically governed by Sections 18-1-30 and 18-9-10.

In Gregorie, the defendant appealed his magistrate convictions to the circuit court. The circuit court reversed and remanded the charges to the magistrate's court. The defendant appealed the decision of the circuit court to the court of appeals, and subsequently to the Supreme Court. In Gregorie this Court specifically clarified the appealability issue when appeal is taken from the circuit court.

In Gregorie this Court held that Gregorie's right to appeal from an order reversing and remanding by the circuit court was a statutory right: "Any aggrieved party may appeal the circuit court's final judgment." Gregory, 399 S.C. 2, at 4, *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 appeal, the operative question is simply whether the party bringing the appeal is *aggrieved.* As was the case in Gregorie, Looper is an aggrieved party by the reversal and new trial remedy ordered by the

circuit court. Looper therefore has standing to appeal from the circuit court. As in Gregorie, the State appealed to the circuit court. In both cases, appellate jurisdiction was properly vested in the circuit court by the State's initial appeal from the magistrate's court. Applying the rationale of Gregorie, once an appeal is properly before the circuit court, the circuit court's final judgment becomes appealable by *any aggrieved party*. In this case, as in Gregorie, the appeal was properly before the circuit court, as a result, the circuit court's decision reversing and remanding Looper's charge constitutes an appealable order under Sections 18-1-30 and 18-9-10.

In this case the court of appeals erred in resting its decision on the definition of "aggrieved" as set forth in Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970). Cisson involved the question of whether or not a mortgagor had standing to appeal the sale of property due to foreclosure on a mechanic's lien. In Cisson the mechanic's lien and foreclosure were all subject to the appellant's mortgage. As the mortgage primed the mechanic's lien, the record failed to show any potential harm to the mortgagor by the foreclosure. On this basis, this Court in Cisson found that the mortgagor could suffer no harm from the legal action, and therefore was not in any way "aggrieved" by the lower court's decision. There the Court held: "There can be no benefit or improvement in the

appellant's position should we reverse the judgment of the lower court." Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970). On that basis this Court held that Cisson was not an aggrieved party.

Here, although not a civil standing question, even under Cisson's analysis there is a benefit or improvement of the Petitioner's position if the erroneous decision of the circuit court were to be reversed. Reversal of the circuit court would end the case and the Petitioner suffer no further prosecution. Also, as discussed more fully below, dismissal of this appeal will result in a detrimental change in Looper's position and rights in any subsequent challenge to the admission of the same evidence. Cisson's rationale therefore requires that Looper be allowed this appeal on the merits. Because the appellate process would effect the rights and legal position of the Petitioner, Cisson does not act as a bar to Looper's appeal.

The application of Cisson in this case by the court of appeals is further flawed in the failure to recognize that Cisson's definition of "aggrieved" is derived from a case involving a completely different application of the term. Cisson derives its definition of aggrieved from Parker v. Brown, 195 S.C. 35, 52, 10 S.E.2d 625, 632 (1940). Parker, which was a civil case, involved the question of whether the county tax collector had standing to sue the county treasurer for

failing to collect certain taxes from which the tax collector would have otherwise been able to collect a fee. The question as to whether the tax collector was an "aggrieved" party was a question of standing to sue, not whether he had the statutory right to appeal. The Court in Parker interpreted the term "aggrieved" as it applied to Section 3054 of the 1932 Code of laws, which provided:

> Section 3054 of our 1932 Code provides that bonds of public officers may be sued on, reads as follows: "The bond of any public officer in this State may at all times be sued on by the public, any corporation, or private person, ***aggrieved*** by any misconduct of any such public officer; for which purpose the officer or officers, for the time being, with whom such bond may be filed, or recorded upon application at his or their office, shall deliver to any person applying therefor and paying the fees for doing the same an exact andcertified copy of the bond of such public officer there deposited, or recorded; which copy so certified shall be good and sufficient evidence in all suits to be instituted in any Court of this State."

Parker v. Brown, 195 S.C. 35, 44, 10 S.E.2d 625 (1940) ***Emphasis added.***

Parker's inapplicability to the present issue is further evident in its reliance on another civil case Bowles v. Dannin, 62 R.I. 36, 2 A.2d 892 (1938). Bowles interpreted a Rhode Island statute finding that a probate judge who had no personal or official interest in appealing a case in which he presided. The Bowles Court held that having no personal interest in the case, the judge was not "aggrieved" so as to justify an appeal of what would be essentially of his own

decision. The Bowles rationale would not apply here to a criminal case where the defendant is the appellant. Clearly the defendant in a criminal case has a personal interest in the case, and therefore the appeal.

Parker, and the court of appeals opinion in this case, each cite Bivens v. Knight, 254 S.C. 10, 173 S.E.2d 150 (1970) . Bivens is equally unsupportive of this Court's decision. In Bivens the Court addressed the same issue as the Rhode Island Court in Bowles. Bivens appealed from a decision that did not in any way effect him. The decision effected only Biven's wife, but did not have any impact on Bivens whatsoever. It was on this basis that the Court held that Bivens could not appeal the civil judgement stating: "A party, therefore, cannot appeal from a decision *which does not affect his interest,* however erroneous and prejudicial it may be to the rights and interests of some other person." Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) *emphasis added.* Here, Looper clearly has an interest in the case and is effected by the decision of the lower court, as well any subsequent appeal.

In Looper's case the magistrate conducted an evidentiary hearing. As a result of that hearing the magistrate suppressed evidence obtained as a result of a traffic stop. Based on the lack of other competent evidence to support the case going to the jury, the magistrate subsequently dismissed the charge against

Looper. The magistrate issued a written order detailing his findings of fact, analysis of the law, and dismissal of the charge. It is from that order that the State appealed to the circuit court. (R. p. 6).

In appeals involving the circuit court's ruling on a magistrate court appeal, the operative question is simply whether the party bringing the appeal is aggrieved by the circuit's court's appellate ruling. Even applying the rational underlying the cases cited by the court of appeals, to be aggrieved, Looper simply must have a personal interest in the outcome of the case that could be effected by the appeal. Because his case involved an evidentiary ruling and dismissal, as more fully discussed below, he is effected by the circuit court's reversal of the magistrate. He is likewise effected by any subsequent decision on appeal for the same reason. Even though double jeopardy did not attach in Looper's case as it had in Gregorie, Looper nonetheless is detrimentally effected by the circuit court's appellate reversal of the trial court's ruling, as well as this Court's dismissal of his appeal. Looper is therefore an "aggrieved party" for the purposes of Sections 18-1-30 and 18-9-10.

II. THE CIRCUIT COURT'S REVERSAL OF THE MAGISTRATE WAS ERRONEOUS.

In this case the circuit court reversed the magistrate's ruling without

identifying any specific error of law on the part of the trial magistrate. Nor did the circuit court identify the standard by which it reviewed the magistrate's ruling. A review of the record shows that the circuit court failed to apply the proper standard of review for evidentiary rulings by a trial court: "In criminal cases, an appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous." State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001).

In this case, the magistrate court is the trial court, and review of its evidentiary rulings are subject to the same standard of review by the circuit court on appeal as are the circuit court's evidentiary rulings on appeal to this Court. Sitting as an appellate court, the circuit court is required to give proper deference to the findings of fact by the magistrate and only reverse where findings are clearly erroneous or there is an error of law. In Looper's case the trial magistrate's ruling turned on his findings of fact after hearing testimony and evidence regarding the suppression issue. The written order of the magistrate shows that the trial magistrate considered the evidence carefully and made specific findings of fact.

The evidence before the magistrate in this case showed that 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 this extended detention and continued questioning, Looper was subsequently arrested for driving under the influence.

At trial the defense moved to suppress evidence obtained through the continued detention and questioning of Looper past the point where the traffic stop should have ended under the Fourth Amendment. The deputy testified as to the details of the traffic stop and his continued detention of Looper. After hearing

the deputy's testimony, and reviewing the tape from the stop, the court granted the defense motion to suppress evidence obtained subsequent to what the magistrate held 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 and 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. As an inherent part of any evidentiary hearing, Looper's case involved the trial magistrate's determination as to credibility of the testimony and evidence. After a through review of all of the evidence, the trial magistrate found that the facts did not establish the requisite reasonable suspicion.

In deciding the appeal, a review of the circuit court's order shows that the circuit court failed to apply the appropriate appellate standard of review: "The admission of evidence is within the sound discretion of the trial court." State v. McLeod, 303 S.C. 420, 401 S.E.2d 175 (1991); State v. Groome, 274 S.C. 189, 262 S.E.2d 31 (1980). In Fourth Amendment cases, the circuit court's factual rulings are reviewed under the "clear error" standard. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). Under the "clear error" standard, an appellate court will not reverse a circuit court's findings of fact simply because it would

have decided the case differently. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct.App. 2005). In the present case the circuit court was required to affirm if there was any evidence to support the trial magistrate's ruling. *See* State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 459-60 (2002). Here, the circuit court failed to apply the proper standard of review in Looper's case. And as is evident in the record, the magistrate had ample evidence to support his ruling.

In addition to there be being a factual basis supporting the magistrate's ruling in this case, the magistrate clearly applied the proper law to his findings of fact. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." U.S. Const. amend. IV. "[T]he Fourth Amendment protects against unreasonable searches and seizures, including seizures that involve only a brief detention." Pichardo, 367 S.C. at 97, 623 S.E.2d at 847 (*citing* United States v. Mendenhall, 446 U.S. 544, 551, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)).

The trial magistrate clearly recognized reasonable suspicion as the proper standard for continued detention in Looper's case. "[R]easonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity." State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct.App. 2001). "In determining whether reasonable suspicion exists, the [circuit]

court must consider the totality of the circumstances." State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct.App. 2007). Generally stated, reasonable suspicion is a standard that requires more than a "hunch" but less than probable cause. *Id.* A review of the trial magistrate's order shows that the magistrate considered the evidence and applied the proper law to his findings of the facts. The magistrate expressly recognized the application of the Fourth Amendment, and specifically considered in his analysis the cases of State v. Williams, 571 S.E.2d 703 (SC Ct App. 2002) and State v. Rivera, 682 S.E.2d 307 (SC Ct App. 2009). The record therefore shows that there was evidence supporting the trial magistrate's factual findings and, that the trial magistrate applied the proper law to those findings of fact. It was therefore error for the circuit court, sitting as an appellate court, to reverse the ruling of the magistrate.

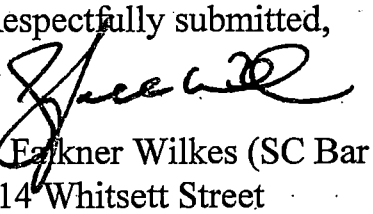
Subsequent to the trial and appeal of this case the Supreme Court has held that without reasonable suspicion, police may not extend an otherwise-completed traffic stop. Rodriguez v. United States, No. 13-9972 (U.S.S. Ct. April 21, 2015). As in Rodriguez, Looper's traffic stop had concluded. He had been given his tickets and all of the relevant information. Rather than let Looper leave after the purpose of the stop had concluded, the officer questioned Looper as to whether he had had anything to drink that day. As in Rodriguez, the officer extended Looper's

detention without reasonable suspicion. In Rodriguez the Court specifically held that a traffic stop may last no longer than necessary to address the traffic violation that warranted the stop. In the absence of reasonable suspicion, the Fourth Amendment tolerates unrelated investigations only to the extent that they do not lengthen the roadside detention. In Looper's case the investigation clearly occurred after the purpose of the stop was concluded and lengthened the detention without reasonable suspicion. The magistrate's ruling was therefore in accord with the existing law as well as the Supreme Court's subsequent ruling in Rodriguez. The circuit court therefore erred in reversing the magistrate's evidentiary ruling.

CONCLUSION

The decision of the Court of Appeals and Circuit Court should be reversed.

Respectfully submitted,



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Counsel for Petitioner

July 10, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Case No. 2011-CP-23-03563
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State of South Carolina, ... Respondent,

v.

Andrew T. Looper, ... Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the Petition for Certiorari and Certificate of Counsel on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 13th day of July, 2015, addressed as follows:

Salley W. Elliott
Jennifer Ellis Roberts
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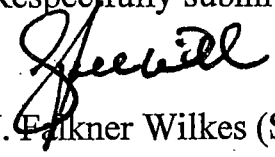
Respectfully submitted,



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July 11, 2015

Daniel Shearouse, Clerk
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Re: State of South Carolina, Respondent v. Andrew T. Looper, Appellant
Case No.: 2011-CP-23-03563
Appellate Case No.: 2012-208627

Dear Mr. Shearouse,

Enclosed please find Mr. Looper's Petition for Certiorari, Appendix and certificates.

Respectfully submitted,

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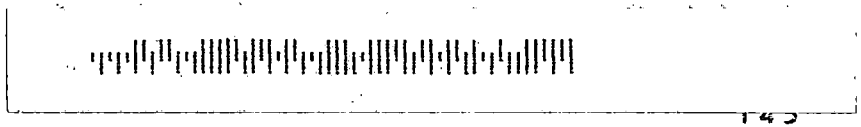

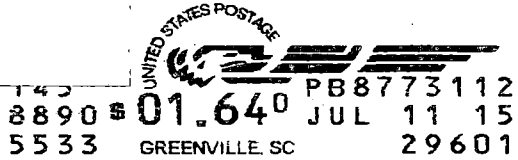

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