

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUL 23 2015

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

S.C. Supreme Court

Opinion No. 5301 (S.C. Ct. App. filed March 4, 2015)
Appellate Case No. 2015-001493

State of South Carolina, Respondent,

v.

Andrew T. Looper, Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325
Greenville County Courthouse
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

Other Counsel of Record:
J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Attorney for Petitioner

INDEX

INDEX	1
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
ARGUMENT	
I. The Court of Appeals properly found Petitioner did not have standing to appeal the circuit court's reversal of the magistrate's dismissal of his DUI charge	5
II. Because the Court of Appeals dismissed Petitioner's appeal as interlocutory, the issue of whether the circuit court applied the appropriate standard of review in reversing the magistrate's dismissal of Petitioner's DUI charge is not properly before this Court	7
CONCLUSION	8

QUESTIONS PRESENTED

1. Did the Court of Appeals properly find Petitioner did not have standing to appeal the circuit court's reversal of the dismissal?
2. Is the issue of whether the circuit court applied the appropriate standard of review in reversing the magistrate's dismissal of Petitioner's DUI charge properly before this Court when the Court of Appeals did not decide that issue when it dismissed the appeal?

STATEMENT OF THE CASE

Procedural History

Petitioner was charged with driving under the influence and proceeded to trial before a magistrate. Pretrial, Petitioner moved to suppress evidence resulting from the traffic stop. After a suppression hearing, the magistrate granted Petitioner's motion to suppress the evidence and subsequently dismissed the charge. (App. p.34.) The magistrate filed a written order, which the State appealed to the circuit court. After a hearing, the Honorable Letitia H. Verdin reversed and remanded the case for further proceedings. (App. p.33.) (Unfortunately, no transcript from this hearing is available due to an equipment malfunction, according to a letter from the court reporter dated June 27, 2013.) Petitioner filed a motion to reconsider, which the circuit court denied. (App. p.32.) Petitioner then filed an appeal in the Court of Appeals, and the State moved to dismiss the appeal. Initially, the Court of Appeals dismissed the appeal, but after Petitioner filed a motion to reinstate, the Court reinstated the appeal.

On March 4, 2015, the South Carolina Court of Appeals dismissed Petitioner's appeal in a published opinion. See State v. Looper, Op. No. 5301 (S.C. Ct. App. filed March 4, 2015). Petitioner filed a petition for rehearing and suggestion for rehearing en banc on March 18, 2015, which was denied on June 22, 2015. (App. pp.4-24.) Petitioner submitted a Petition for Writ of Certiorari to the Court of Appeals on July 13, 2015, and this Return follows.

Factual Background

Petitioner was travelling 78 miles per hour in a 45-miles-per-hour zone on Rutherford Road in Greenville County. (App. p.40, lines 9-14; App. p.34.) Deputy Matthew Smith conducted a traffic stop. (App. p.40, lines 12-14.) During the deputy's initial contact with Petitioner to collect his license and registration, Petitioner denied consuming alcohol when asked

by the officer. (App. p.34-35; Exhibit Video Tape from Magistrate Court.) Deputy Smith issued two citations for Petitioner, one for speeding and one for an expired tag. (App. p.35.) Deputy Smith explained each ticket in detail and informed Petitioner he could pay in advance to avoid appearing in court. (App. p.35.) At that point, Deputy Smith asked Petitioner why he had gone downtown and whether he had consumed alcohol. (App. p.35.) Petitioner told the deputy, "Yes, sir, I did." (App. p.35.) Deputy Smith then asked Petitioner to perform three sobriety tests and subsequently arrested Petitioner for driving under the influence (DUI). (App. p.35.)

Petitioner proceeded to trial before the Honorable Charles R. Garrett, Greenville County Magistrate Court Judge, on May 2, 2011. (App. p.34.) Pretrial, Petitioner asked for a hearing to determine whether the actions of the arresting officer and the arrest of Petitioner were constitutional. (App. p.34.) The magistrate court viewed a videotape of the incident, marked Exhibit 1. (App. p.43, line 25-App. p.45, line 5.) The magistrate court took a break and afterward, defense counsel referred to a ruling to suppress everything beyond the tickets that were written for speeding and an expired tag. (App. p.45, lines 5-15.) Although the record does not contain the ruling itself, the magistrate court affirmed that was its ruling, and defense counsel moved for dismissal of the DUI charge. (App. p.45, lines 16-25.) The State then asked the magistrate's court to specify which cases its ruling was based on, and defense counsel offered to prepare a written order. (App. p.46, lines 1-22.) The magistrate's court then dismissed the case. (App. p.47, line 4.)

The State appealed to the circuit court. After a hearing, the Honorable Letitia H. Verdin reversed and remanded the case for further proceedings. (App. p.33.)

ARGUMENT

I.

The Court of Appeals properly found Petitioner did not have standing to appeal the circuit court's reversal of the dismissal.

Petitioner first contends he has standing to appeal the circuit court's ruling and that the Court of Appeals erred in dismissing his appeal because he was an aggrieved party for the purposes of sections 18-1-30 and 18-9-10 of the South Carolina Code. In support of that contention, Petitioner maintains that because the State appealed the magistrate's decision to the circuit court, appellate jurisdiction was properly vested in the circuit court and its decision was appealable by any aggrieved party. Contrary to Petitioner's contentions, Petitioner could not appeal the circuit court's ruling without first being convicted and thus becoming aggrieved. Accordingly, the Court of Appeals' decision to dismiss the appeal was correct.

Petitioner argues appellate jurisdiction is proper in this case because once the State appealed the magistrate's ruling and that appeal was properly before the circuit court, State v. Gregorie¹ allowed Petitioner to appeal to this Court as a statutory right pursuant to sections 18-1-30 and 18-9-10 of the South Carolina Code. Specifically, Petitioner argues he was made an aggrieved party by the reversal and new trial remedy ordered by the circuit court and, thus, he fit the rule clarified in Gregorie that "[a]ny aggrieved party may appeal the circuit court's final judgment." However, this was not a final judgment because Petitioner cannot appeal the circuit court's ruling without first being convicted and sentenced. Accordingly, the Court of Appeals' decision to dismiss the appeal was correct. Appellate jurisdiction is not proper in this case.

¹ 339 S.C. 2, 528 S.E.2d 77 (2000).

In its opinion, the Court of Appeals correctly distinguished Gregorie from Petitioner's case. The Court noted a new trial would have violated Gregorie's double jeopardy rights and, thus, made him aggrieved. However, the Court found Petitioner "has not been convicted and is not similarly aggrieved." The Court then went on to examine the definition of "aggrieved," basing it on Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970), in which this Court held that "an aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property."

As the Court of Appeals noted, Petitioner has not suffered any injury. He has not been convicted or sentenced. Therefore, the Court correctly found Petitioner does not fit the definition of "aggrieved party" and did not have the right to appeal the circuit court's decision. The Court of Appeals analogized the order to an order denying a motion to suppress evidence, finding it is undoubtedly an interlocutory order and, thus, not appealable. Furthermore, this Court has recognized: "Avoidance of trial is not a 'substantial right' entitling a party to immediate appeal of an interlocutory order." Shields v. Martin Marietta Corp., 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991).

Therefore, the Court of Appeals was correct in dismissing the appeal. Accordingly, Petitioner's petition for certiorari should be denied.

II.

Because the Court of Appeals dismissed Petitioner's appeal as interlocutory, the issue of whether the circuit court applied the appropriate standard of review in reversing the magistrate's dismissal of Petitioner's DUI charge is not properly before this Court.

Petitioner next contends the circuit court's reversal of the magistrate was erroneous because it failed to apply the proper standard of review for evidentiary rulings by a trial court. However, the Court of Appeals dismissed the appeal based on its finding that the order was not immediately appealable and did not address the issue of whether the circuit court substantively erred. Consequently, whether the circuit court applied the appropriate standard of review was not considered by the Court of Appeals.

Therefore, this issue is not properly before this Court. To the extent this Court finds the issue is properly before it, Issue II of the Final Brief of Respondent is hereby incorporated by reference.

CONCLUSION

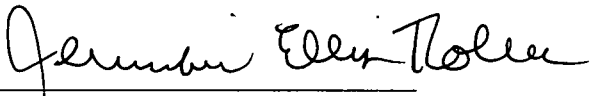
Respondent submits that this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent asks permission under the rules to fully brief the issues.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 23, 2015

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Opinion No. 5301 (S.C. Ct. App. filed March 4, 2015)
Appellate Case No. 2015-001493

State of South Carolina, Respondent,

v.

Andrew T. Looper, Petitioner.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Petition for Writ of Certiorari on petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney J. Falkner Wilkes, Esquire, 114 Whitsett Street, Greenville, South Carolina 29601.

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

This 23rd day of July, 2015.



ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727