

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG 10 2015

RESPONDENT,
S.C. Supreme Court

THE STATE,

v.

RUSHAN COUNTS,

PETITIONER.

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

Opinion No. 2012-UP-585

RETURN TO PETITION FOR REHEARING

Petitioner responds to Respondent's Petition for Rehearing of the case decided in the Court's Published Opinion No. 27546.

I. Respondent is not an aggrieved party entitled to file a petition for rehearing. Respondent prevailed in this case when this Court issued the Opinion affirming appellant's conviction. In the case of *In the Matter of the Care and Treatment of Vincent Neal Way v. State of South Carolina*, Op. No. 27444, Shearouse's Adv. Sh. #35 at 46-54 (filed September 3, 2014), the State filed a cross appeal even though Way had been found a sexually violent predator by the jury and was committed for SVP long term commitment and care. This Court held:

“Any party aggrieved may appeal in the cases prescribed in this title.” S.C. Code Ann. § 18-1-30 (1985); see also Rule 201(b), SCACR (“Only a party aggrieved by an order, judgment, or sentence may appeal.”) An “aggrieved party” as contemplated by this section is one who is injured in a legal sense, i.e., one who has been denied a personal or property right, or where a burden or obligation has been imposed. *Dunson v. Dunson*, 276 S.C. 210, 294 S.E.2d 39 (1982); *Bivens v. Knight*, 254 S.C. 10, 173 S.E.2d 150 (1970). Thus, a party ordinarily may not appeal from a judgment, order, or decree in his own favor. *Wilson v. S. Ry, Carolina Div.*, 123 S.C. 399, 114 S.E. 764 (1923).

The statutory requirement rests on the principle that a reviewing court is concerned with correcting errors **that have practically wronged the appealing party**. *Cisson v. McWhorter*, 255 S.C. 174, 177 S.E.2d 603 (1970). When an appellant has not been prejudicially or injuriously affected by the judgment, the party has no standing to appeal. *Id.* at 178, 177 S.E.2d at 605; see also *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998). It is this Court's duty to reject an appeal by a party who is not aggrieved in the legal sense by the judgment of the trial court. *Cisson*, 255 S.C. at 178, 177 S.E.2d at 605.

In this case, although the State disputes some findings made by the circuit court, it has prevailed on the ultimate issues that were decided, i.e., Way's status as an SVP and his involuntary civil commitment have been upheld. Consequently, the State is not an aggrieved party in the legal sense, so we dismiss certiorari as improvidently granted as to the State.

(emphasis added).

There is no meaningful distinction between a cross-appeal where the state is the prevailing party at trial, and a petition for rehearing where the state has been the prevailing party on appeal. Further, allowing the winning party to petition for rehearing invites the losing aggrieved party to petition for rehearing in cases where it otherwise would not because it knows the prevailing agency – here the Office of the Attorney General -- will request this Court to reconsider parts of its opinion even though it has prevailed in the case. If the winning party is

going to petition for rehearing, it will become difficult for the entity representing the aggrieved party to explain why it did not also challenge this Court's opinion by petitioning for rehearing.

Undersigned counsel is aware that the opinion cited above was replaced in this case with *In the Matter of the Care and Treatment of Vincent Neal Way v. The State of South Carolina*, Op. No. 27444, Shearouse's Adv. Sh. #45 at 12-20 (filed November 12, 2014). Regardless, the cases, statute, and Rule cited above from this Court's first opinion in the case of *In the Matter of the Care and Treatment of Vincent Neal Way v. The State of South Carolina*, Op. No. 27444, Shearouse's Adv. Sh. #35 at 46-54 (filed September 3, 2014) for the proposition that only an aggrieved party may appeal remain good law. In fact, *Cisson v. McWhorter*, 255 S.C. 174, 177 S.E.2d 603 (1970), cited above, and in this Court's initial opinion, was cited in the opinion of the Court of Appeals filed in *State v. Andrew T. Looper*, Op. No. 5301 (filed March 4, 2015).

II. The arguments in the State's Petition for Rehearing that a police officer without reasonable suspicion has an implied license to enter a resident's curtilage to criminally investigate him are unavailing. The United States Supreme Court opinion in *Florida v. Jardines*, 133 S. Ct. 1409 (2013), provides a context for this Court's analysis in the Opinion, but *Jardines* does not control the ultimate issue. *Jardines* discussed an implied license to attempt uninvited contact with the resident of a home under the Fourth Amendment. Based on the "habits of the country," an "implicit license typically permits [a] visitor [such as a police officer] to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave." *Id.* at 1415 (emphasis added). The South Carolina Constitution similarly protects against unreasonable searches and seizures. However, it goes further by expressly prohibiting "unreasonable invasions of privacy." The Opinion of this Court, which is the ultimate authority on the South Carolina Constitution, explained that this additional

prohibition means that a South Carolina resident has a particular, protectable privacy interest that is violated when a police officer approaches him at his home *for the purpose of investigating him for the commission of a crime*. Therefore, aside from the protections of the federal constitution under *Jardines*, our state constitution circumscribes the license such that a resident does not impliedly permit a police officer to accost him at his own home solely for the purpose of criminally investigating him.

Respondent argues that this circumscription violates a controlling principle under *Jardines* that a police officer's purpose for approaching a residence is immaterial under the federal constitution. Petition for Rehearing p. 1 (citing *Jardines* at 1417 n.4). Notably, no such principle exists under *Jardines*. *Jardines* explains that its analysis focuses on a "typical" license in the country but acknowledges that residents often communicate circumscription or even abrogation of the license, for example through a door fronting to a public thoroughfare; a door with a knocker, bell, or letterbox; or a "no trespassing" sign or closed gate blocking ingress to the curtilage. See *id.* at 1415 ("[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbor's close without his leave.' . . . [T]he only question is whether he ha[s] given his leave (even implicitly) for them to do so," and "the knocker on the front door is treated as an invitation or license to attempt an entry" (citations omitted). Thus, as explained above, the Opinion merely recognizes that the South Carolina Constitution provides an additional, default circumscription of the implicit license that is not a feature of the typical license under the federal constitution.

Respondent's argument that the Court's Opinion requires an evidentiary basis to knock on a homeowner's door under any circumstances is unsupported. Petition for Rehearing p. 5; pp. 8-9. The Opinion specifically explains that a police officer may approach to conduct a welfare

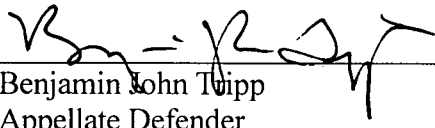
check, to learn of potential witnesses to a crime, or solicit funds for the policemen's ball. The Opinion elucidates that limitation on the license to attempt uninvited contact is only meant to elevate a resident's individual privacy rights over a police officer's use of a "knock and talk" as a pretext to subvert the warrant requirement.

Respondent argues that South Carolina citizens have deemed a knock at the door a reasonable and acceptable intrusion into privacy. State's petition for rehearing at 4. As explained above, the circumscription at issue only comes into effect when a police officer attempts uninvited contact solely to criminally investigate the resident. Similarly, Respondent argues no "recourse to restore the license" exists that would allow a resident to communicate to a police officer permission to attempt uninvited contact for the purpose of criminally investigating him at his home. State's Petition for Rehearing at 5. The argument is unconvincing because a concern that a resident would want to permit a police officer without any evidence supporting a reasonable suspicion to accost him at his home to criminally investigate him is speculative at best.

CONCLUSION

For the foregoing reasons, this Court should deny Respondent's petition for rehearing.

Respectfully submitted,



Benjamin John Tipp
Appellate Defender

This 10th day of August, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

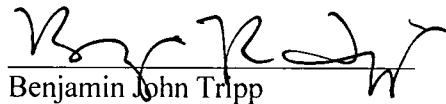
V.

RUSHAN COUNTS,

PETITIONER.

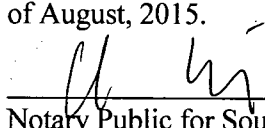
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, this 10th day of August, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 10th day
of August, 2015.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.