

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO THE COURT OF APPEALS

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

Opinion No. 5301 (S.C. Ct. App. filed March 4, 2015)

Appellate Case No: 2015-001493

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S.C. SUPREME COURT

THE STATE,RESPONDENT,

v.

ANDREW T. LOOPER, PETITIONER.

BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON CERTIORARI

1. The Court of Appeals properly found Petitioner was not an aggrieved party and, thus, the order of the circuit court reversing the magistrate's dismissal was not immediately appealable and appellate jurisdiction is not proper in this case.
2. 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.

STATEMENT OF THE CASE

Petitioner was charged with driving under the influence (DUI) and proceeded to trial on May 2, 2011, before the Honorable Charles R. Garrett, Greenville County Magistrate Court Judge. (App. p.34.) 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.)¹ 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 Respondent (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. Following oral arguments, the Court of Appeals dismissed the appeal in a published opinion dated March 4, 2015. *See State v. Looper*, 412 S.C. 363, 772 S.E.2d 516 (Ct. App. 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.)

On April 25, 2016, Petitioner filed a petition for a writ of certiorari to this Court and on May 23, 2016, the State submitted a return. In an order dated October 20, 2016, this Court granted the petition and directed the parties to serve and file the appendix and briefs as provided by Rule 242(i), SCACR. On April 3, 2017, Petitioner submitted a brief in support of his appeal. This Brief of Respondent now follows.

¹ Unfortunately, no transcript from this hearing is available due to an equipment malfunction, but Judge Verdin subsequently filed a Form 4 reflecting her decision.

STATEMENT OF FACTS

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's 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 field sobriety tests and subsequently arrested Petitioner for DUI. (App. p.35.)

ARGUMENT

I.

The Court of Appeals properly found Petitioner was not an aggrieved party and, thus, the order of the circuit court reversing the magistrate's dismissal was not immediately appealable and appellate jurisdiction is not proper in this case.

Petitioner first contends appellate jurisdiction is proper in this case 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 argument, 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 then 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. Gregorie*² 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 resumption of 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.

² 339 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 properly recognized, Petitioner has not suffered any injury. He has not been convicted or sentenced. Therefore, the Court of Appeals correctly found Petitioner did 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 and its decision should stand.

II.

Because the Court of Appeals dismissed Petitioner's appeal as interlocutory, the underlying 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 Court of Appeals erred in failing to find 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 and should be dismissed without consideration. To the extent this Court finds outright dismissal is not appropriate, the only proper remedy is remand to the Court of Appeals to address the merits of the claim. In the event this Court finds neither dismissal nor remand is appropriate, and that the substantive underlying issue is somehow properly before it, Issue II of the Final Brief of Respondent is hereby incorporated by reference in response.

CONCLUSION

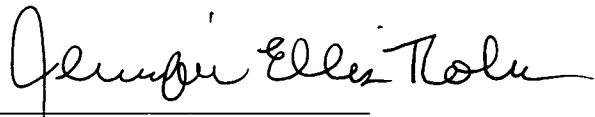
For all of the foregoing reasons, Respondent respectfully requests that this Court affirm the decision of the Court of Appeals affirming the circuit court's decision to reverse the magistrate's dismissal.

Respectfully submitted,

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PROOF OF SERVICE

I, Angela Bennett, Administrative Coordinator, hereby certify that I have served the within *Brief of Respondent* dated April 17, 2017, on Petitioner by depositing two copies of the brief in the United States mail, postage prepaid, addressed to his attorney of record:

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601

I further certified that all parties required by Rule to be served have been served. This 17th day of April, 2017.



Angela Bennett
Administrative Coordinator

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