

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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, ... Appellant.

Petitioner

APPENDIX

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S.C. Supreme Court

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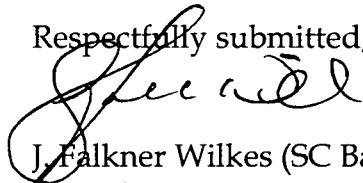
S.C. Supreme Court

State of South Carolina, ... Respondent,
v.
Andrew T. Looper, ... Appellant.

CERTIFICATE

I certify that the Appendix has been redacted in accordance with the Supreme Court Order dated August 13, 2007.

Respectfully submitted,



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July 10, 2015.

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The South Carolina Court of Appeals

The State, Respondent,

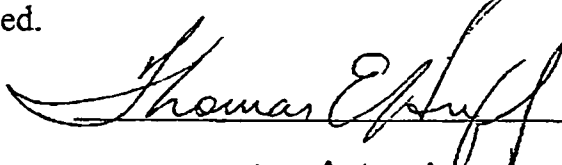
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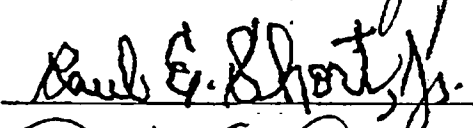
Andrew T. Looper, Appellant.

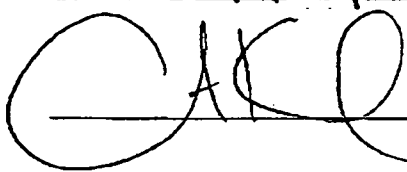
Appellate Case No. 2012-208627

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____. J.


_____. J.


_____. J.

Columbia, South Carolina

cc:

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FILED

June 22, 2015 14

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Andrew T. Looper, Appellant.

Appellate Case No. 2012-208627

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Opinion No. 5301
Heard December 8, 2014 – Filed March 4, 2015

DISMISSED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson and Jennifer
Ellis Roberts, both of Columbia, for Respondent.

SHORT, J.: Andrew T. Looper appeals the circuit court's order, which reversed the magistrate court's order dismissing a charge of driving under the influence (DUI). Because we find the order is not immediately appealable, we dismiss the appeal.

Looper moved to dismiss the DUI charge prior to his trial in the magistrate court, arguing evidence, including a videotape of his traffic stop, should be suppressed. The magistrate court suppressed the evidence and dismissed the charge. The State appealed the magistrate court's order to the circuit court. In a Form Four order, the circuit court reversed the magistrate court's order, stating, "Magistrate's Order

second trial in magistrate's court would violate his Double Jeopardy rights.

Id. (citation omitted). Thus, because a new trial would have violated Gregorie's double jeopardy rights, he was aggrieved. *Id.*

Looper has not been convicted and is not similarly aggrieved; therefore, we examine the definition of "aggrieved." In *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970)(quoting *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970)), our supreme court stated:

The issue of who is a party aggrieved is not one of first impression for our court "[W]e [have] held that an aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property. A good definition of an aggrieved party is contained in the case of *Bowles v. Dannin*, 62 R.I. 36, 2 A.2d 892 [(1938)]. It is there stated that an aggrieved party within [the] statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation."

We do not find Looper has suffered an injury; therefore, we find Looper is not aggrieved. We analogize the order in this case to an order denying a motion to suppress evidence, which is an interlocutory order that is not immediately appealable. See *State v. Hubbard*, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (finding the appeal from the denial of a motion to suppress evidence is interlocutory); see also *State v. Isaac*, 405 S.C. 177, 184, 747 S.E.2d 677, 680 (2013) (analogizing the denial of a request for immunity under the Protection of Persons and Property Act to the denial of a motion to dismiss a criminal case on the ground of double jeopardy and finding it not immediately appealable). Accordingly, Looper's appeal is

DISMISSED.

HUFF and KONDUROS, JJ., concur.

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, ... Appellant.

PETITION FOR REHEARING, *and*
SUGGESTION FOR REHEARING *EN BANC* (Rule 219(b) SCACR)

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PETITION

Petitioner respectfully submits that the Court's decision in this case overlooked or misapprehended points that are essential to the determination of the issues. Accordingly, Petitioner moves for a rehearing based on the following arguments.

SUGGESTION FOR REHEARING EN BANC

Petitioner further submits that the panel's dismissal of the appeal will effectively bind the trial magistrate and prevent independent fact finding and determinations by the magistrate in any further trial proceedings. It will further reverse the application of the standard of review and deference due the trial magistrate in any appeal from further trial proceedings. The panel's decision will irreparably injure the Petitioner's position in any subsequent appeal. Therefore, based on the arguments as more fully set forth below, the Petitioner suggests that he be granted a rehearing *en banc* pursuant to Rule 219(b) SCACR.

I APPELLATE JURISDICTION IS PROPER IN THIS CASE.

The Court's decision rests on the definition of "aggrieved" as defined 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, the 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 the court held that Cisson was not an aggrieved party. Here, although this is not a civil standing question, even under Cisson's analysis there is clearly 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.

This Court's application of Cisson in this case 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.B.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 have 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 and certified 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. 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 this Court's opinion, 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).

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 was 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 statute. See 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 to this Court 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 this Court, and subsequently to the Supreme Court. In Gregorie the Supreme Court specifically clarified the appealability issue when appeal is taken from the circuit court.

The Court in Gregorie 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* by the circuit's court's appellate ruling. Even applying the rationale underlying the cases cited by this Court, 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.

The initial disposition of the charges by the magistrate court in Looper's favor is essential to the question of appealability of Looper's case under the rationale in Gregorie. In Gregorie the appellant had been convicted, and therefore, could rightfully appeal to the circuit court. Upon appeal by Gregorie, jurisdiction vested with the circuit court. There, where the appeal was then properly before the circuit court sitting in an appellate capacity. The resulting order by the circuit court reversing and remanding the charges to the magistrate was held to be

immediately appealable to the appellate court.

In Looper's case the charge was dismissed by the magistrate, and it was the State that appealed to the circuit court. In both cases, appellate jurisdiction was properly vested in the circuit court by the initial appeal from the magistrate's court. *See (State v. Wees, 138 Idaho 119, 58 P.3d 103 (Ct.App.2002) Appeal heard by the court of appeals from the district court's reversal of a magistrate court order dismissing the criminal complaint.); (State v. George, 127 Idaho 693, 905 P.2d 626 (1995) Appeal heard by Supreme Court of Idaho from the district court's reversal of a magistrate's dismissal of traffic infraction citations.)* Applying the rationale of Gregorie, once an appeal is properly before the circuit court, the circuit court's appellate decision becomes appealable by *any aggrieved party*. The adverse ruling by the circuit court as a court of appeals is a sufficient basis for the appeal where the reversal will place a greater burden on Looper in any subsequent appeal.¹ More so where the circuit court has failed to apply the proper appellate standard of review or make specific findings to support its decision. In this case, as in Gregorie, the appeal was properly before the circuit court, and as a result, the circuit court's decision reversing and remanding Looper's charge constitutes an

¹The argument on the detrimental impact is more fully set forth below and is incorporated herein.

appealable order under Sections 18-1-30 and 18-9-10.

II. THIS COURT ERRED IN FAILING TO ADDRESS THE APPEAL ON THE MERITS.

This Court's decision to dismiss the case rather than address the merits deprives Looper of due process leaving no recourse where the circuit court, sitting as an appellate court that has failed to apply the proper standard of review or make any findings of fact or otherwise state a sufficient basis for its appellate decision. This is also inconsistent with prior cases reversing the circuit court where it engaged in fact finding sitting in an appellate capacity: "The circuit court, sitting in its appellate capacity, may not engage in fact finding." City of Greer v. Humble, 402 S.C. 609, 618, 742 S.E.2d 15, 20 (Ct.App.2013) (quoting Rogers v. State, 358 S.C. 266, 270, 594 S.E.2d 278, 280 (Ct.App.2004)). Here, the circuit court has acted outside of its appellate jurisdiction. This Court's decision provides no recourse for Looper and leaves the circuit court's actions without recourse or meaningful review by any court.

The dismissal of this appeal means that the circuit court's appellate decision will never be effectively subject to review. Additionally, any later appeal will leave Looper in a more burdensome position due to the standard of review and practical effect of this Court's dismissal. This Court has analogized the circuit court's appellate decision to an interlocutory order as in State v. Hubbard, 277

S.C. 568, 290 S.E.2d 817 (1982). This analogy is inaccurate. In Hubbard the appeal was from the *denial* of a motion to suppress. Hubbard held that no final judgment had occurred in the case and therefore, was not appealable. State v. Hubbard, 277 S.C. 568, 290 S.E.2d 817 (1982). But this was based on the underlying premise that the denial of the motion could be preserved for later appeal subsequent to Hubbard's trial. Looper appeals not from the denial of an evidentiary motion, but from the appellate order of the circuit court reversing the suppression of evidence and dismissal of the charge. A final judgment had occurred by way of the dismissal of the charges. Similarly, in Isaac the appeal was from the *denial* of the trial court to grant relief to the defendant. As the supreme court indicated in Isaac, the *denial* of a motion to suppress evidence is not immediately appealable. That rationale however, does not apply here where the granting of the motion and subsequent dismissal was by statute immediately appealable by State. Jurisdiction and standing for the appeal process to begin was properly engaged by the State's appeal from the magistrate. There is no authority for the proposition that the appellate process, properly initiated, could then suddenly terminate without further review.

The question presented here is whether Looper should have recourse to challenge what he contends is an erroneous ruling of an appellate decision by the

circuit court. Under this Court's opinion a lower appellate court may act unchecked by further appellate review. This is not the intent or holding of Hubbard or Isaac. In Isaac the Court gave the reasoning behind disallowing appeals from a trial court's *denial* of a defendant's motion:

It is a bad practice, and generally condemned, to hear appeals by piecemeal, especially in criminal cases; for it is destructive of the prompt administration of justice, which is so essential to the peace of society. To allow appeals to be heard from such preliminary rulings would enable a party charged with the most serious crime always to secure a continuance, when otherwise not entitled to it, by simply moving to quash the indictment, and, when his motion is overruled, give notice of appeal from such ruling, and thereby stop the trial. . . .

Isaac, *supra*, quoting State v. Hughes, 56 S.C. 540, 35 S.E. 214, 215 (1900).

The underlying rationale behind Hubbard, Isaac, and other cases disallowing appeal from the denial of the defendant's motion simply do not apply here where Looper's motion was granted, the charges dismissed, and the State engaging the appellate process.

Appellate review is especially important here where circuit court reversed the magistrate's ruling without identifying any specific error of law or in the factual findings 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).

This Court overlooks the impact its termination of the appeal process, the practical effect of which only further shows the interlocutory order analogy to be flawed. The denial of a defendant's motion to suppress or dismiss in most cases will ultimately be reviewable in the exact same posture upon appeal from any subsequent trial and conviction. The magistrate's decision in Looper's case however, would not be reviewable in the same posture. This is a critical distinction this Court has overlooked, and is precisely why Looper's case does not involve a traditional interlocutory appeal. On the remand of this case the circuit court's reversal of the evidentiary ruling will be seen by the magistrate as binding. There will be no further hearing, findings or ruling by the magistrate. Even more likely, despite his initial findings as to credibility and facts, the magistrate may feel compelled to expressly change those findings and ruling on remand simply to be in accord with the circuit court's ruling. Either way, in the event of a subsequent appeal, Looper will be in a completely different position. Rather than defending an appeal under the "any evidence" standard of review in his favor, he will then be

appealing under an "any evidence" standard of review held against him. All presumptions and deference would then be against him, rather than in his favor, as they should be in the present appeal. As a clear practical matter, unlike the case with interlocutory orders, or orders that denied a defendant relief at trial, because Looper was granted relief by the magistrate, he will be harmed by the dismissal of this appeal.

This Court's refusal to address the merits under the now existing standard of review, requiring deference to the magistrate's ruling in Looper's favor, will place Looper in a far more burdensome position than he otherwise would be now. Without any stated basis for the reversal of the magistrate's evidentiary ruling, the circuit court has negated the magistrate's credibility determination and factual findings. The circuit court did not enter any clear alternative findings, it has simply negated and erased the magistrate's findings and determinations. In a retrial, the magistrate court will be forced to presume that it is unable to make any factual findings or credibility determinations that would require suppression of the evidence. The circuit court has thereby precluded further factual findings, especially those contrary to its decision. The circuit court has therefore impermissibly made findings of fact and determinations of credibility sitting in an appellate capacity.

If there are no further factual findings at trial on remand, and the magistrate is bound by the circuit court's implicit ruling on credibility and evidence, then any subsequent appeal by Looper will be against the standard of review and deference to the lower court. He will suffer a burden of proof he would not otherwise have in the present appeal. He is therefore clearly injured by the failure of this Court to address the case on its merits under the appropriate burden of proof and required deference to the magistrate as the case now sits.

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. Looper loses that position by this Court's dismissal of his action at this time.

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)).

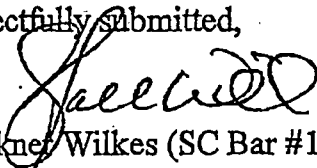
The trial magistrate clearly recognized reasonable suspicion as the proper standard for continued detention in Looper's case. "[R]easonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity." State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 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. Dismissal of Looper’s appeal will improperly reverse the standard of review and deference to which Looper is presently entitled. Looper is clearly “aggrieved” by the circuit court’s decision as well as this Court’s dismissal of his action.

CONCLUSION

Based on the foregoing, the Petitioner moves this Court for a rehearing in this case.

Respectfully submitted,



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March 18, 2015.

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

Case No. 2011-CP-23-03563

State of South Carolina, ... Respondent,

v.

Andrew T. Looper, ... Appellant.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc*, and Certificate of Counsel on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 18th day of March, 2015, addressed as follows, and by facsimile:

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Counsel for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2012-208627

THE STATE,

Respondent,

v.

ANDREW T. LOOPER,

Appellant.

RETURN TO PETITION FOR REHEARING

On March 4, 2015, this Court issued a published opinion in which it dismissed Appellant's appeal of the circuit court's order reversing the magistrate's order dismissing his charge of driving under the influence (DUI). State v. Looper, Op. No. 5301 (S.C. Ct. App. filed March 4, 2015). Pursuant to Rule 221(a), SCACR, Appellant petitioned this Court for rehearing, and this Court requested that Respondent ("the State") file a return to Appellant's petition. For the following reasons, Appellant's petition for rehearing should be denied.

Appealability Issue

In his petition for rehearing, Appellant first contends that this Court erred in dismissing Appellant's 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, Appellant 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.

(Pet. for Reh. p. 8). Contrary to Appellant's contentions, Appellant cannot appeal the circuit court's ruling without first being convicted and thus becoming aggrieved. Accordingly, this Court's decision to dismiss the appeal was correct.

Appellant 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 Appellant 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, Appellant argues he was made an aggrieved party by the reversal and new trial remedy ordered by the circuit court and, thus, fit the rule clarified in Gregorie that "[a]ny aggrieved party may appeal the circuit court's final judgment." However, because this was not a final judgment, Appellant cannot appeal the circuit court's ruling without first being convicted and sentenced. Accordingly, this Court's decision to dismiss the appeal was correct because appellate jurisdiction is not proper in this case.

In its opinion, this Court correctly distinguished Gregorie from Appellant's case. This Court noted a new trial would have violated Gregorie's double jeopardy rights and, thus, made him aggrieved. However, this Court found Appellant "has not been convicted and is not similarly aggrieved." This 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 the Supreme 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 this Court noted, Appellant has not suffered any injury. He has not been convicted or sentenced. Therefore, this Court correctly found Appellant does not fit the definition of "aggrieved party" and did not have the right to appeal the circuit court's decision to this Court.

¹ 339 S.C. 2, 528 S.E.2d 77 (2000).

This Court analogized the order to an order denying a motion to suppress evidence, finding it is undoubtedly an interlocutory order and, thus, not appealable. Furthermore, "[o]ur supreme court has recognized: 'Avoidance of trial is not a "substantial right" entitling a party to immediate appeal of an interlocutory order.'" Pocisk v. Sea Coast Const. of Beaufort, 380 S.C. 584, 588-89, 671 S.E.2d 98, 101 (Ct. App. 2008) (quoting Shields v. Martin Marietta Corp., 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991)).

Therefore, this Court was correct in dismissing the appeal. Accordingly, Appellant's petition for rehearing should be denied.

Merits Issue

In his petition for rehearing, Appellant next contends this Court's decision to dismiss the case rather than address the merits deprives Appellant of due process. In support of that contention, Appellant submits the dismissal of the appeal means that the circuit court's appellate decision will never be effectively subject to review. Additionally, he contends any later appeal will leave Appellant in a more burdensome position due to the standard of review and practical effect of this Court's dismissal.

This Court was correct not to address the merits based on its determination that the issue before the Court was not appealable. To the extent this Court considers the merits in this Petition for Rehearing, the arguments in the State's Brief are hereby incorporated by reference.

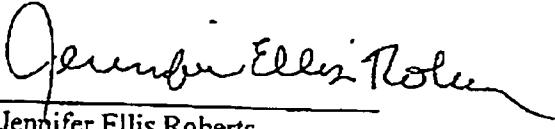
Conclusion

Based on the foregoing, coupled with the arguments raised in the Final Brief of Respondent, the State respectfully requests that Appellant's petition for rehearing be denied.

Respectfully submitted,

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Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

By: 
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March 25, 2015

THE STATE OF SOUTH CAROLINA
IN THE 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, ... Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

State of South Carolina

Plaintiff,

v.

Andrew T. Looper

Defendant

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

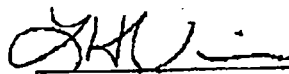
Case No.: 2011-CP-23-03563

ORDER DENYING RESPONDENT'S
MOTION TO RECONSIDER UNDER SCRCF
RULE 59(e)

This matter comes before the Court on Respondent's Motion to Reconsider under SCRCF Rule 59(e). This Court has considered the motion therein and the applicable law and finds that it's order of September 13, 2011 is appropriate. Therefore, Respondent's Motion to Reconsider is Denied.

IT IS SO ORDERED.

January 13, 2012



Letitia H. Verdin
Circuit Judge

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP2303563

SEP 13 AM 11: 54

South Carolina State Of vs. Andrew T Looper

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
FILED & RECORDED

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court:

Magistrate's Order granting Defendant's Motion to Suppress was in error and accordingly Defendant's Motion to Suppress was in error. This decision is reversed and remanded for further proceedings.

Dated at Greenville, South Carolina, this September 7, 2011.

Court Reporter:



PRESIDING JUDGE - LETITIA H. VERDIN

This judgment was entered on the 9/13/11, and a copy mailed first class this 9/13/11 to attorneys of record or to parties (when appearing pro se) as follows:

Denton Matthews Assistant Solicitor 305 E. North Street,
Ste 325 Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Steve W. Sumner Attorney At Law 1088 N. Church Street
Greenville, SC 296011539

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
State of South Carolina,	)	Ticket No: 54668ET
vs	)	
Andrew T. Looper,	)	ORDER
Defendant.	)	

RECEIVED
JUL 20 2011
Chick Springs
Summery Court

THIS MATTER CAME BEFORE THE COURT as a jury trial set for May 2, 2011. Present for the Defendant was his counsel of record, Steve W. Sumner, of the Greenville County Bar. Present and representing the Solicitor's office was attorney William Ryan Holloway, also of the Greenville County Bar. The Defendant and arresting officer were also present.

Prior to the beginning of the trial the Court inquired as to whether or not the Defendant had any pretrial motions. Defendant's counsel answered in the affirmative. Defendant's counsel proceeded to request a "Jackson vs. Denno" hearing in terms of the voluntariness of any statements from the Defendant and; second, the Defendant asked for a hearing to determine whether or not the actions of the arresting officer and the arrest of the Defendant were constitutional. Accordingly, Greenville County deputy Matthew Smith (the arresting officer) was sworn and his testimony taken. Additionally, the "road tape" was marked as evidence and received by the Court as "Defendant's Exhibit 1."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The testimony and exhibit established that the Defendant was stopped in Greenville County for travelling 78 mph in a 45 mph zone.
2. Deputy Smith approached the driver's side window of the Defendant and inquired of the Defendant for his driver's license, registration and insurance card. The Defendant denied

CRS

consuming any alcoholic beverages earlier. The officer received the requested documents from the Defendant. The total time for this interaction was approximately one minute and fifteen seconds (1:15).

3. The deputy then went back to his patrol car and stayed for approximately twelve (12) minutes. He then issued the Defendant two citations: one for speeding and one for an expired vehicle tag. The deputy then went on to explain in significant detail the maximum fine for each ticket, how to remedy the expired vehicle tag citation, then advised the Defendant as to the court date, time and address of the court. The deputy then went on to tell the Defendant he could pay these tickets in advance and not appear personally in court.

This interaction lasted approximately one minute and thirty seconds (1:30). At the conclusion of this interaction with the Defendant, and after giving the Defendant these two tickets, the officer inquired of the Defendant as to why he had gone downtown earlier, and if he had consumed "beers or liquor or what." The Defendant responded, "Yes, sir, I did."

4. After this interaction, the officer asked the Defendant to perform three field sobriety tests; and ultimately, the Defendant was placed under arrest and charged with driving under the influence.

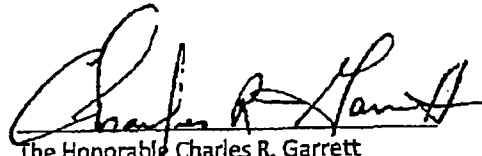
The Defendant argued that based upon the testimony and exhibit, along with the testimony as outlined herein, that the officer lacked articulable reasonable suspicion of further criminal activity to continue the Defendant's detention beyond the point where he had issued him the two citations for speeding and expired vehicle tag. The Court heard extensive arguments from both counsel on this point. The Court also received and gave close examination to the cases of State v Williams, 571 S.E.2d 703 (SCCA2002) and State v Rivera 682 S.E.2d 307 (S.C.App. 2009). After giving full consideration to the testimony of the arresting officer, the videotape of the incident in question (Defendant's Exhibit 1), the applicable case law and arguments of counsel the Court hereby grants the Defendant's motion to

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dismiss the DUI charge on the grounds that the continued investigative detention of the Defendant as discussed above violated his rights under the 4th Amendment of the US Constitution.

THEREFORE, in accordance with this Order Ticket Number 54668ET issued to Andrew T. Looper is hereby dismissed.



The Honorable Charles R. Garrett
Greenville County Magistrate Court Judge

Date 7/20/11

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM GREENVILLE COUNTY
Summary Court

Charles R. Garrett, Magistrate Court Judge

Case No. 54667ET

The State, ...Appellant

v.

Andrew T. Looper, ...Respondent

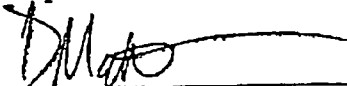
NOTICE OF APPEAL

The State of South Carolina hereby appeals the pretrial order of the Honorable Charles R. Garrett granting the Respondent's Motion to Dismiss due to lack of probable cause.

This Appeal is made on the following grounds:

1. The Respondent did not prove that there was a lack of reasonable suspicion as required by State v. Williams, 571 S.E.2d 703 (S.C. Ct. App. 2002) and State v. Rivera, 682 S.E.2d 307 (S.C. Ct. App. 2009), to continue detention. The officer had the smell of alcohol coming from the defendant's vehicle and the fact that the defendant lied about having had anything to drink that night. These facts combined more than meet the reasonable suspicion standard which was established in Williams and Rivera.
2. The evidence, including the field sobriety tests, the breath test results (a.20%), and breath test video, should not have been suppressed under the "fruit of the poisonous tree" doctrine since the officer had the reasonable suspicion necessary to elongate the traffic detention once the initial purpose had been completed.

Dated: May 9, 2011


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(864) 467-8647
Attorney for the State

Other Counsel of Record:
Steve Sumner, Esquire
114 Manly St.
Greenville, SC 29601

RECEIVED
MAY 10 2011
Chick Springs
Summary Court

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

RECEIVED

MAY 10 2011

Chick Springs
Summary Court

APPEAL FROM GREENVILLE COUNTY
Summary Court

Charles R. Garrett Magistrate Court Judge

Case No. 54667ET

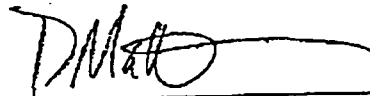
The State, ...Appellant

v.

Andrew T. Looper, ...Respondent

PROOF OF SERVICE

I certify that I have served Notice of Appeal in the above-captioned matter by mailing the same addressed to Steve Summer, Esquire, 114 Manly St., Greenville, SC 29601.



Denton Matthews
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Greenville, SC 29601
(864) 467-8647
Attorney for the State

May 9, 2011

ROA 7

MOTION HEARING - STATE VS. ANDREW LOOPER

 ORIGINAL

STATE

VS.

ANDREW TALMADGE LOOPER

MOTION HEARING

MAY 2, 2011

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MOTION HEARING - STATE VS. ANDREW LOOPER

Page 2

1 JUDGE:

2 This is the motion hearing before the court on a DUI
3 case of Andrew Looper. State of South Carolina
4 versus Andrew Looper. There is a motion to be made
5 before the court. Mr. Sumner is representing Andrew
6 Looper. Mr. Sumner, do you have some motions?

7 MR. SUMNER:

8 I do, Your Honor. May it please the court.
9 Briefly, the facts of Mr. Looper's case as I
10 understand them are as follows. Mr. Looper was
11 travelling around 75 to 80 miles an hour on
12 Rutherford Road, Deputy Smith was working. He
13 turned around on Mr. Looper, turned his blue lights
14 on him and subsequently a stop occurred. Your
15 Honor, I'm going to ask for a Denno hearing at this
16 point in terms of the voluntariness of what was said
17 and whether or not the actions of Deputy Smith will
18 pass constitutional muster. So at this point in
19 time I want to call Deputy Smith to the stand and be
20 sworn and ask him do you have the road tape with
21 you?

22 DEPUTY SMITH:

23 It's in your --

24 MR. SUMNER:

25 Okay. And do you have it cued up to the stop? Or,

ROA 9

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MOTION HEARING - STATE VS. ANDREW LOOPER

Page 3

1 you know, he's finding it.

2 DEPUTY SMITH:

3 Yeah.

4 MR. SUMNER:

5 Okay. Is that only of this stop?

6 DEPUTY SMITH:

7 Yeah.

8 MR. SUMNER:

9 Okay. That's fine. And Your Honor, why don't we
10 just go ahead and mark for purposes of this motion
11 we'll mark Deputy Smith's road tape as Defense
12 Exhibit 1 for purposes of this so that way we can
13 keep the record clean.

14 DEPUTY SMITH:

15 Steve, I'm way too short you're going to have to --

16 MR. SUMNER:

17 In the spirit of us working together I don't mind.

18 How about that, I don't mind.

19 DEPUTY SMITH:

20 I appreciate that.

21 THE COURT:

22 (Inaudible) because I can't -- I'd have to get up in
23 my chair.

24 MR. SUMNER:

25 Well I think Matt and I can figure it out.

ROA 10

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MOTION HEARING - STATE VS. ANDREW LOOPER

Page 4

1 THE COURT:

2 Well Matthew can do it (inaudible).

3 MR. SUMNER:

4 There we are.

5 THE COURT:

6 You just all work together, somebody will get it
7 right.

8 MR. SUMNER:

9 We can get it right. We can get it right. Close --
10 you got the (inaudible). Brian, have you got the
11 controller?

12 DEPUTY SMITH:

13 Yeah.

14 MR. SUMNER:

15 Okay. And Judge, just for the record we're now
16 cuing up the field tape that's been identified by
17 Deputy Smith as to this case and we're now getting
18 it cued up in order to begin this hearing. Let's
19 back it up just a little bit if you don't mind.
20 Let's back it up a little bit, just a little bit.
21 Is that the beginning (inaudible)? Is that the
22 beginning of (inaudible)? Can we pause it here?
23 Okay, now we -- Your Honor, I think we've got the
24 field tape cued up to this point. And you've
25 administered the oath; is that correct, Sir? You

ROA 11

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MOTION HEARING - STATE VS. ANDREW LOOPER

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1 have not, okay.

2 THE COURT:

3 Do you solemnly -- raise your right hand. Do you
4 solemnly swear the testimony you give to this court
5 is the truth, the whole truth, and nothing but the
6 truth so help you God?

7 DEPUTY SMITH:

8 I do.

9 THE COURT:

10 Your name and your occupation, please, sir.

11 DEPUTY SMITH:

12 It's Deputy Smith with the Greenville County
13 Sheriff's office.

14 MR. SUMNER:

15 Okay. Your Honor, may it please the court.

16 EXAMINATION BY MR. SUMNER:

17 Q. You are Deputy Matt Smith?

18 A. Yes.

19 Q. Okay. And you were -- I'm going to lead this
20 witness, Your Honor, in the interest of time. You
21 were the arresting officer on the case that is now
22 before the court; is that correct, on Andrew
23 Talmadge Looper?

24 A. That's correct.

25 Q. And you were actually the one -- this is your video

ROA 12

1 tape of the incident that has been marked as Exhibit
2 1?

3 A. Correct.

4 Q. It is a fair and accurate and true representation of
5 what occurred; is that correct?

6 A. (Affirmative response).

7 Q. Okay. And that would be a yes; is that right?

8 A. That's correct.

9 Q. Your Honor, at this point under the Best Evidence
10 rule I think I'm just going to since it's already
11 been marked as an exhibit I am going to press play
12 on the tape. The material that I want to bring to
13 the court's attention is really within the first few

14 minutes so it won't take us very long. And so what
15 we're going to do and what I'm going to ask us to do
16 is just adjourn over here if we could in front of
17 the screen and I'm just going to press play and we
18 will go from there. Brian which one -- thank you,
19 Judge. I'm going to let you do this because I don't
20 know which one it is.

21 SOLICITOR:

22 There's play right there and there's pause right
23 there.

24 EXAMINATION CONTINUES BY MR. SUMNER:

25 Q. Now this is Mr. Looper in his vehicle; is that

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MOTION HEARING - STATE VS. ANDREW LOOPER

Page 7

1 correct?

2 A. His father's vehicle.

3 Q. Okay, well -- and that's the vehicle he's driving;
4 is that right? Okay.

5 (BREAK)

6 THE COURT:

7 The court is back on record at 4:12. Mr. Sumner?

8 MR. SUMNER:

9 Your Honor, may it please the court. Just to -- we
10 have had a little bit of a break here but the
11 court's ruling based on the totality of everything
12 that came out of the pre-trial including a -- was to
13 suppress everything beyond the tickets that were

14 written for speeding and expired tag; is that
15 correct?

16 THE COURT:

17 That's correct.

18 MR. SUMNER:

19 Your Honor, at this point in time the defendant
20 would make a motion for a dismissal as the State
21 will not be able to move forward there will be no
22 probable cause for the DUI, there would be no need
23 for a jury to hear this but at this point in time
24 the court -- the defendant would move for a
25 dismissal of the DUI charge, thank you.

ROA 14

1 THE COURT:

2 Solicitor (inaudible) statement?

3 SOLICITOR:

4 Yes, sir, Your Honor. The State would ask that the
5 Court's ruling that it specify which cases it's
6 using in order to suppress the evidence that's been
7 mentioned and of course pursuant to the Fruit of the
8 Poisonous Tree doctrine I guess that's what the
9 basis is (inaudible)?

10 MR. SUMNER:

11 Yes, sir.

12 SOLICITOR:

13 If the court would specify on the record exactly
14 what cases it's decided to found its ruling.

15 MR. SUMNER:

16 Well, Your Honor, I will be glad to prepare a
17 written order I think I probably need to do that,
18 Judge Garrett. And I will copy that to Mr. Hollaway
19 and also may need to get us a transcript at some
20 point in time of the court ruling if there's going
21 to be a return. And I'll circulate an order, Your
22 Honor, and I'll copy by colleague on that.

23 THE COURT:

24 Based on the motion by the defense the court based
25 on the law as I read it and also as I -- as the two

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MOTION HEARING - STATE VS. ANDREW LOOPER

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1 cases passed up to me, also as part of the grounds
2 for my decision this court upholds the motion
3 therefore anything past the speeding tickets is
4 suppressed and so therefore this case is dismissed.
5 Thank you gentlemen, have a good day.

ROA 16

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, ... Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Does this Court have appellate jurisdiction?
- II. Did the Circuit Court err in reversing the decision of the magistrate?
- III. Did the Circuit Court apply the proper standard of review in this case?
- IV. Did the Circuit Court err in failing to articulate its standard of review or findings?
- V. Should the decision of the Circuit Court be reversed?

STATEMENT OF THE CASE

The Appellant, 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. (R. p. 3-5). 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. (Order - R. p. 2; Order on rehearing - R. p. 1). Looper timely appealed the reversal and remand by the circuit court. The State moved to dismiss the appeal in this Court and the Appellant timely filed a return. This Court dismissed the appeal by written order dated May 7, 2012. Pursuant to Rule 260 Looper moved to reinstate the appeal. This Court reinstated the appeal and this brief follows:

ARGUMENT

I. APPELLATE JURISDICTION IS PROPER IN THIS CASE.

In Looper's case the magistrate conducted an evidentiary hearing and, as a result of that hearing, 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).

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 was 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 to this Court 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 this Court, and subsequently to the Supreme Court. In Gregorie the Supreme Court specifically clarified the appealability issue when appeal is taken from the circuit court.

The Court in Gregorie 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. Appeal in Looper's case is therefore proper and this Court is properly

vested with jurisdiction.

The initial disposition of the charges by the magistrate court is not critical to the question of appealability in Looper's case under the rationale of Gregorie. In Gregorie the appellant had been convicted and therefore could rightfully appeal to the circuit court. Upon appeal by Gregorie, jurisdiction vested with the circuit court. There, where the appeal was then properly before the circuit court, the order by the circuit court reversing and remanding the charges to the magistrate was held to be immediately appealable to the appellate court.

In Looper's case the charge was dismissed by the magistrate, and it was the State that appealed to the circuit court. In both cases, appellate jurisdiction was properly vested in the circuit court by the 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.

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

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.

CONCLUSION

The decision of the Circuit Court should be reversed.

Respectfully submitted,



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September 16, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Circuit Court
of the County of Greenville

Appeal Case No. 2012-20867

THE STATE OF SOUTH CAROLINA, by and through
its Attorney General, Respondent,

VERSUS

Appellant,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Appellate jurisdiction is not proper in this case because the circuit court's ruling was not a final order and, thus, this Court's initial dismissal of the appeal was correct.

II.

The circuit court properly reversed and remanded the case for a new trial because the magistrate court's ruling suppressing the evidence and dismissing the case was in error.

STATEMENT OF THE CASE

Appellant was charged with driving under the influence and proceeded to trial before a magistrate. Pretrial, Appellant moved to suppress evidence resulting from the traffic stop. After a suppression hearing, the magistrate granted Appellant's motion to suppress the evidence and subsequently dismissed the charge. (R. p.3.) 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. (R. p.2.) (Unfortunately, no transcript from this hearing is available due to an equipment malfunction, according to the court reporter.) Appellant filed a motion to reconsider, which the circuit court denied. (R. p.1.) Appellant then filed an appeal in this Court, and the State moved to dismiss the appeal. Initially, this Court dismissed the appeal, but after Appellant filed a motion to reinstate, this Court ultimately reinstated the appeal.

STATEMENT OF FACTS

Appellant was travelling 78 miles per hour in a 40-miles-per-hour zone on Rutherford Road in Greenville County. (R. p.9, lines 9-14; R. p.3.) Deputy Matthew Smith conducted a traffic stop. (R. p.9, lines 12-14.) During the deputy's initial confrontation with Appellant to collect his license and registration, Appellant denied consuming alcohol. (R. p. 3-4.) Deputy Smith issued two citations for Appellant, one for speeding and one for an expired tag. (R. p.4.) Deputy Smith explained each ticket in detail and informed Appellant he could pay in advance to avoid appearing in court. (R. p.4.) At that point, Deputy Smith asked Appellant why he had gone downtown and whether he had consumed alcohol. (R.p.4.) Appellant told the deputy, "Yes, sir, I did." (R.p.4.) Deputy Smith then asked Appellant to perform three sobriety tests and subsequently arrested Appellant for driving under the influence (DUI). (R.p.4.)

Appellant proceeded to trial before the Honorable Charles R. Garrett, Greenville County Magistrate Court Judge, on May 2, 2011. (R.p.3.) Pretrial, Appellant asked for a hearing to determine whether the actions of the arresting officer and the arrest of Appellant were constitutional. (R.p.3.) The magistrate court viewed a videotape of the incident, marked Exhibit 1. (R. p.12, lines 25-R. p.14, 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. (R. p.14, 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. (R. p.14, 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. (R. p.15, lines 1-22.) The magistrate's court then dismissed the case. (R. p.16, line 4.)

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The State appealed to the circuit court. After a hearing, the Honorable Letitia H. Verdin reversed and remanded the case for further proceedings. (R.p.2.)

ARGUMENT

I.

Appellate jurisdiction is not proper in this case because the circuit court's ruling was not a final order and, thus, this Court's initial dismissal of the appeal was correct.

Appellant 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 Appellant 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, Appellant argues he was made an aggrieved party by the reversal and new trial remedy ordered by the circuit court and, thus, fit the rule clarified in Gregorie that "[a]ny aggrieved party may appeal the circuit court's final judgment." However, because this was not a final judgment, Appellant cannot appeal the circuit court's ruling without first being convicted and sentenced. Accordingly, this Court's initial decision to dismiss the appeal was correct because appellate jurisdiction is not proper in this case.

"In a criminal appeal from the magistrate's court, the circuit court does not review the matter de novo; rather, the court reviews the case for preserved errors raised by appropriate exception. The circuit court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial. The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law." State v. Hoyle, 397 S.C. 622, 625, 725 S.E.2d 720, 722 (Ct. App. 2012) (internal citations and quotation marks omitted).

"In South Carolina, a criminal defendant may not appeal until sentence has been imposed." State v. Miller, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986); Parsons v.

¹ 339 S.C. 2, 528 S.E.2d 77 (2000).

State, 289 S.C. 542, 347 S.E.2d 504 (1986); State v. Washington, 285 S.C. 457, 330 S.E.2d 289 (1985).

Appellant argues that while Miller is the general rule, once jurisdiction has been established in the circuit court, in this case by the State's appeal, Gregorie controls rather than Miller. Specifically, Appellant argues Gregorie stands for the proposition that "once the circuit court makes its final ruling on the issues under appeal, further appeal to this Court is specifically governed by Sections 18-1-30 and 18-9-10." (App. Br. 3.) However, Appellant misconstrues Gregorie in this sense. In Gregorie, the petitioner was convicted in a magistrate's court and then the petitioner appealed to the circuit court, which reversed and remanded for a new trial. 339 S.C. at 3, 528 S.E.2d at 78. He then appealed to this Court, which initially dismissed the appeal and then reinstated it, ultimately affirming the circuit court. Id. The Supreme Court granted the petitioner's request for a writ of certiorari and reversed this Court. Id. The Supreme Court pointed out, "The general rule is that a criminal defendant may not appeal 'except from the final sentence imposed by the court.'" Id. (quoting State v. Timmons, 68 S.C. 258, 47 S.E. 140 (1904)). The Supreme Court found this Court created an exception to the general rule if further proceedings would violate double jeopardy, permitting a defendant to appeal the circuit court order in that situation. Id. at 3, 528 S.E.2d at 78. The Supreme Court took the opportunity to clarify the appealability rule, noting that a defendant must have first been convicted and sentenced in magistrate's court as a prerequisite to the right to file an appeal to the circuit court. Id. at 3-4, 528 S.E.2d at 78. "Once that court renders its final judgment, the right to further appellate review is controlled by statute: Any aggrieved party may appeal the circuit court's final judgment." Id. at 4, 528 S.E.2d at 78 (citing S.C. Code Ann. §§ 18-1-30 (1985); 18-9-10 (Supp. 2012)). The Supreme

Court determined, "The test is not whether the appeal involves a double jeopardy claim as held by the Court of Appeals, but whether the party bringing the appeal is aggrieved." Id. at 4, 528 S.E.2d at 78. The Supreme Court found the "petitioner was aggrieved by the new trial remedy ordered by the circuit court, and thus his appeal was proper." Id. Ultimately, the Supreme Court determined that a second trial in magistrate's court would violate his Double Jeopardy rights and reversed this Court's decision. Id.

Appellant misinterprets the Supreme Court's ruling by focusing only on whether the party was aggrieved. While Gregorie was aggrieved by the decision to remand his case for a new trial, it was because he had already been convicted. Therefore, a second trial would violate his Double Jeopardy rights. Here, Appellant has not been convicted yet and, thus, a new trial would not violate his Double Jeopardy rights and make him an aggrieved party. Furthermore, Appellant was not the party who brought the appeal in the circuit court from which appellate jurisdiction stemmed. Indeed, Appellant could not have brought an appeal from the magistrate court's decision because section 18-3-10 of the South Carolina Code provides, "Every person convicted before a magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county." (emphasis added.) Because Appellant was neither convicted nor sentenced, he was never in a position to appeal and was not transformed into an aggrieved party simply because the State appealed.

"[A]ppellate review is limited to parties aggrieved by a judgment, order, or sentence below . . . and an aggrieved party is one who is injured in a legal sense or has suffered an injury to person or property." State v. Cox, 328 S.C. 371, 373, 492 S.E.2d 399, 400 (Ct. App. 1997) (citing Rule 201(b), SCACR; Ex parte Whetstone, 289 S.C. 580, 581, 347 S.E.2d 881, 882 (1986)). In the case sub judice, Appellant has not suffered

any injury. He has not been convicted or sentenced. The circuit court's order remanding to the magistrate for further proceedings could result in an acquittal or a conviction. Either way, Appellant will not have been injured in any legal sense by going to trial for the first time. Therefore, Appellant does not fit the definition of "aggrieved party" and did not have the right to appeal the circuit court's decision to this Court. Accordingly, this Court was correct in initially dismissing the appeal.

In Bone v. U.S. Food Serv., the Supreme Court considered the meaning of a "final decision:"

If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory. A judgment which determines the applicable law, but leaves open questions of fact, is not a final judgment. Rather, [a] final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.

399 S.C. 566, 573, 733 S.E.2d 200, 203 (2012) (citations and quotation marks omitted).

Similarly, in Lewis v. State, 368 S.C. 630, 631, 630 S.E.2d 464 (2006), the Court considered final judgments in the context of post-conviction relief cases. "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final." Id.

When a judgment grants a new trial, as in this case, the new trial is the "further act" that must be done. It is undoubtedly an interlocutory order and, thus, not appealable. For the above reasons, this Court's initial dismissal of the appeal was proper.

II.

The circuit court properly reversed and remanded the case for a new trial.

Appellant argues the circuit court erred in reversing the magistrate court's ruling without identifying any specific error of law on the part of the magistrate. He also argues the circuit court did not identify the standard by which it reviewed the magistrate's ruling. He argues the magistrate determined that the facts presented during the suppression hearing did not establish the requisite reasonable suspicion. Further, Appellant argues a factual basis supported the magistrate's ruling and the circuit court erred in reversing it. On the contrary, the circuit court considered the totality of the circumstances and found no evidence supported the magistrate's conclusion that no reasonable suspicion existed. Therefore, the circuit court properly reversed the magistrate's ruling.

In criminal cases, the appellate court sits to review errors of law only. State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); (see also State v. Bowman, 366 S.C. 485, 501, 623 S.E.2d 378, 386 (2005). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). The appellate court must affirm the trial court if there is any

evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005).

The Fourth Amendment protects “[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. However, “[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’” United States v. Mendenhall, 446 U.S. 544, 553-54 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)). The Fourth Amendment’s exclusionary rule prohibits unreasonable searches and seizures. U.S. Const. amend. IV; see also S.C. Const. art. I, § 10. Any evidence seized as the result of an unreasonable search and seizure must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007).

For Fourth Amendment purposes, a traffic stop of a vehicle, along with the detention of individuals during the stop, constitutes a seizure. State v. Maybank, 352 S.C. 310, 315, 573 S.E.2d 851, 854 (Ct. App. 2002). While the Fourth Amendment requires a stop to be reasonable under the circumstances, a traffic stop is reasonable per se when probable cause exists to believe a traffic violation has occurred. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002). The reasonableness of a stop or detention “is measured in objective terms by examining the totality of the circumstances.” Ohio v. Robinette, 519 U.S. 33, 39 (1996). “Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” Whren v. United States, 517 U.S. 806, 813 (1996).

Once a lawful traffic stop is initiated, an officer may order the driver out of the vehicle and “may request a driver’s license and vehicle registration, run a computer check, and issue a citation.” Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). Such an investigatory stop must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848; see also United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008) (“The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose.”)

Even if a traffic stop is initially lawful, the detention “can become unlawful if it is prolonged beyond the time reasonably required to complete [its] mission.” Illinois v. Caballes, 543 U.S. 405, 407 (2005); see Pichardo, 367 S.C. at 98, 623 S.E.2d at 848 (“Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention.”). However, a further detention extending the scope of a traffic stop beyond its original purpose is not automatically unconstitutional. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848. Instead, continued questioning beyond the duration of an initial traffic stop is lawful and permissible where: (1) the officer has a reasonable articulable suspicion of other illegal activity; or (2) the traffic stop becomes a consensual encounter. Id.

Reasonable suspicion consists of “a particularized and objective basis’ that would lead one to suspect another of criminal activity.” State v. Lesley, 326 S.C. 641,

644, 486 S.E.2d 276, 277 (Ct. App. 1997) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)). "Reasonable suspicion 'is not readily, or even usefully, reduced to a neat set of legal rules, but, rather, entails common sense, nontechnical conceptions that deal with factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.'" State v. Provet, 391 S.C. 494, 500, 706 S.E.2d 513, 516 (Ct. App. 2011) (quoting United States v. Foreman, 369 F.3d 776, 781 (4th Cir. 2004)). "In this highly fact-specific inquiry, reasonable suspicion 'is a fluid concept which takes its substantive content from the particular context in which the standard is being assessed.'" State v. Wallace, 392 S.C. 47, 51-52, 707 S.E.2d 451, 453 (Ct. App. 2011) (certiorari granted April 5, 2012, and dismissed as improvidently granted December 19, 2012) (quoting Foreman, 369 F.3d at 781).

The reasonable suspicion standard "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence[.]" Illinois v. Wardlow, 528 U.S. 119, 123 (2000). "Reasonable suspicion is more than a general hunch but less than what is required for probable cause." State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) ("Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch.").

In determining the existence of reasonable suspicion, the totality of the circumstances must be considered. Pichardo, 367 S.C. at 104, 623 S.E.2d at 85. In reviewing the totality of the circumstances, the individual factors of the traffic stop must not be considered piecemeal or in isolation. See Branch, 537 F.3d at 337 ("Courts must look at the 'cumulative information available' to the officer . . . and not find a stop unjustified based merely on a 'piecemeal refutation of each individual' fact and

inference[.]” (citations omitted)). Instead, all of the circumstances of the stop must be considered as a whole to determine whether the officer’s actions were reasonable in light of all of the information available to him at the time. See United States v. Mason, 628 F.3d 123, 129 (4th Cir. 2010) (“[J]ust as one corner of a picture might not reveal the picture’s subject or nature, each component that contributes to reasonable suspicion might not alone give rise to reasonable suspicion.”). “In applying the concept of reasonable suspicion to the various facts of a case, ‘[i]t is the entire mosaic that counts, not single tiles.’” Wallace, 392 S.C. at 52, 707 S.E.2d at 453 (quoting United States v. Whitehead, 849 F.2d 849, 858 (4th Cir. 1988)).

This Court has addressed what constitutes reasonable suspicion of criminal activity in the context of a traffic stop in State v. Tindall, 379 S.C. 304, 665 S.E.2d 188 (Ct. App. 2008). Tindall was stopped by law enforcement for speeding, swerving, and driving too closely. Id. at 307, 665 S.E.2d at 190. Shortly thereafter, Tindall was given a warning ticket, but the officers continued to question him. Id. Approximately fifteen to twenty minutes into the stop, Tindall consented to a search of the vehicle and cocaine was discovered. Id. Subsequently, the trial court denied Tindall’s motion to suppress the narcotics as the product of an illegal detention and search, and the Court of Appeals affirmed. Id. at 311, 665 S.E.2d at 192.

While no transcript from the circuit court appeal is available due to an equipment malfunction, the decision of the circuit court was filed in a Form 4. On the Form 4, the circuit court judge stated: “Magistrate’s Order granting Defendant’s Motion to Suppress was in error and accordingly Defendant’s Motion to Suppress was in error. This decision is reversed and remanded for further proceedings.” Thus, it is clear the basis for the

circuit court's reversal was the magistrate's error in granting Appellant's motion to suppress.

In the magistrate's order, he set forth specific findings of fact and conclusions of law. (R.pp.3-4.) One of his findings was that at the conclusion of an interaction between the deputy and Appellant during which he explained each ticket, the deputy inquired whether Appellant had consumed alcohol, to which Appellant responded, "Yes, sir, I did." (R.p.4.) The next listed finding was that following that interaction, the deputy asked Appellant to perform three field sobriety tests and ultimately placed Appellant under arrest and charged him with DUI. (R.p.4.) Appellant argued in his motion to dismiss the DUI charge that the officer lacked articulable reasonable suspicion of further criminal activity to continue Appellant's detention beyond the point where he had issued him two citations for speeding and an expired tag. (R.pp.8-16.) In his order, the magistrate stated he "heard extensive arguments from both counsel on this point." (R.p.4.) However, the transcript of the motion hearing lacks any record of these arguments. Ultimately, the magistrate found the continued investigative detention of Appellant violated his rights under the Fourth Amendment and granted Appellant's motion to dismiss the DUI charge.

The magistrate's dismissal of the charge was based on an error of law. After stopping Appellant for speeding, the deputy returned to his vehicle to write one ticket for speeding and another for an expired tag. The deputy stayed in his vehicle for approximately twelve minutes. He then issued the two tickets to Appellant and explained what they were for and how to pay the tickets or appear in court. All of this was well within the parameters of a lawful detainment during a traffic stop and, according to the magistrate's findings of fact, only lasted one minute and thirty seconds. The traffic stop

itself was lawfully initiated based on Appellant's driving 78 mph in a 45 mph zone. After that initial lawful stop, an officer may order the driver out of the vehicle and "may request a driver's license and vehicle registration, run a computer check, and issue a citation." Pichardo, 367 S.C. at 98, 623 S.E.2d at 847 (citing United States v. Sullivan, 138 F.3d 126 (4th Cir. 1998)); see also Muehler v. Mena, 544 U.S. 93, 100-101 (2005) (instructing additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation). The only restriction on such an investigatory stop is that it must be temporary and last no longer than necessary to effectuate its purpose. Pichardo, 367 S.C. at 98, 623 S.E.2d at 848. However, as United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008), points out, "The maximum acceptable length of a routine traffic stop cannot be stated with mathematical precision. Instead, the appropriate constitutional inquiry is whether the detention lasted longer than was necessary, given its purpose." Here, the purpose of the stop was to issue a citation for speeding. And, as Muehler points out, additional questioning during a detention unrelated to the original purpose of the detention does not constitute an additional seizure or independent Fourth Amendment violation. Therefore, the deputy did not violate the Fourth Amendment by inquiring into whether Appellant had consumed alcohol when he went downtown. Subsequently, Appellant's admission that he drank was certainly sufficient to establish reasonable suspicion of DUI. It was perfectly reasonable for the deputy to then ask Appellant to perform field sobriety tests in light of his response that he had been drinking.

Based on the above reasons, the magistrate court erred in determining the officer lacked articulable reasonable suspicion to continue Appellant's detention and charge him

with DUI. Consequently, the circuit court correctly reversed and remanded the magistrate's decision to dismiss the DUI charge.

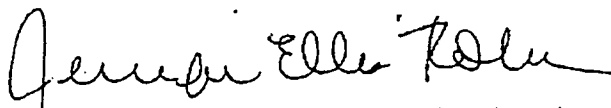
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the circuit court's decision to reverse the magistrate court's dismissal be affirmed.

Respectfully submitted,

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September 5, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No: 2012-208627

THE STATE,

Respondent,

v.

ANDREW T. LOOPER,

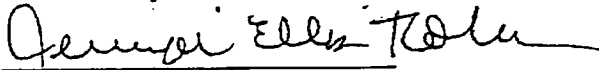
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM GREENVILLE COUNTY
COMMON PLEAS COURT
Letitia H. Verdin, Circuit Court Judge

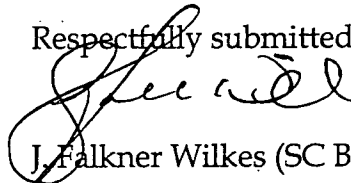
Case No. 2011-CP-23-03563
Appellate Case No.: 2012-208627

State of South Carolina, ... Respondent,
v.
Andrew T. Looper, ... Appellant.

CERTIFICATE

I certify that the Appendix has been redacted in accordance with the Supreme Court Order dated August 13, 2007.

Respectfully submitted,



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July 10, 2015.