

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 18 2017

On Writ of Certiorari to the Court of Appeals
Appeal from Dorchester County
Honorable Edgar W. Dickson, Circuit Court Judge
Appellate Case No. 2017-001392

S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

JOHN DODGE HAYNES, JR.,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

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

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
Conway, SC 29526
(843) 915-5460

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON CERTIORARI..... 1

STATEMENT OF THE CASE.....2

ARGUMENT3

The Court of Appeals correctly dismissed Haynes’s appeal from
the circuit court judge’s pre-trial in limine ruling on an evidentiary
matter because Haynes’s appeal constituted an improper
interlocutory appeal pursuant to South Carolina law in light of the
fact Haynes has not yet been tried, convicted, or sentenced.3

CONCLUSION.....10

TABLE OF AUTHORITIES

South Carolina Cases:

<u>Edwards v. State</u> , 383 S.C. 82, 678 S.E.2d 412 (2009).	7
<u>Ex parte Jones</u> , 160 S.C. 63, 158 S.E. 134 (1931).	7
<u>Ex parte Murray</u> , 261 S.C. 255, 199 S.E.2d 718 (1973).	8
<u>Ex parte Capital U-Drive-It, Inc.</u> , 369 S.C. 1, 630 S.E.2d 464 (2006).	8
<u>Henning v. Kaye</u> , 307 S.C. 436, 415 S.E.2d 794 (1992).	5
<u>McManus v. Bank of Greenwood</u> , 171 S.C. 84, 171 S.E. 473 (1933).	5
<u>Mid-State Distribs., Inc. v. Century Imps., Inc.</u> , 310 S.C. 330, 426 S.E.2d 777 (1993).	8
<u>Morris v. Tidewater Land & Timber, Inc.</u> , 388 S.C. 317, 696 S.E.2d 599 (Ct. App. 2010).	5
<u>North Carolina Fed. Sav. & Loan Ass’n v. Twin States Dev. Corp.</u> , 289 S.C. 480, 347 S.E.2d 97 (1986).	8
<u>Parsons v. State</u> , 289 S.C. 542, 347 S.E.2d 504 (1986).	4
<u>South Carolina State Highway Dep’t v. Meredith</u> , 241 S.C. 306, 128 S.E.2d 179 (1962).	5
<u>State v. Atieh</u> , 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012).	4
<u>State v. Branham</u> , 392 S.C. 225, 708 S.E.2d 806 (Ct. App. 2011).	6
<u>State v. Dunbar</u> , 356 S.C. 138, 587 S.E.2d 691 (2003).	6
<u>State v. Griffin</u> , 339 S.C. 74, 528 S.E.2d 668 (2000).	5
<u>State v. Hubbard</u> , 277 S.C. 568, 290 S.E.2d 817 (1982).	5
<u>State v. Isaac</u> , 405 S.C. 177, 747 S.E.2d 677 (2013).	8, 9
<u>State v. Miller</u> , 289 S.C. 426, 346 S.E.2d 705 (1986).	3, 4, 8, 9
<u>State v. Rearick</u> , 417 S.C. 391, 790 S.E.2d 192 (2016).	3
<u>State v. Robinson</u> , 287 S.C. 173, 337 S.E.2d 204 (1985).	4, 5
<u>State v. Simpson</u> , 325 S.C. 37, 479 S.E.2d 57 (1996).	4

<u>State v. Smith</u> , 337 S.C. 27, 522 S.E.2d 598 (1999).	4, 6
<u>State v. Stokes</u> , 339 S.C. 154, 528 S.E.2d 430 (Ct. App. 2000).	5
<u>State v. Wilson</u> , 387 S.C. 597, 693 S.E.2d 923 (2010).	3, 4
<u>Tatnall v. Gardner</u> , 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002).	6, 9
<u>Wigfall v. Tideland Utils., Inc.</u> , 354 S.C. 100, 580 S.E.2d 100 (2003).	8
<u>United States Supreme Court Cases:</u>	
<u>Berman v. United States</u> , 302 U.S. 211 (1937).	4
<u>Will v. United States</u> , 389 U.S. 90 (1967).	6
<u>Other Authorities:</u>	
S.C. Code Ann. § 14-3-330.	3, 7
Rule 242, SCACR.	2
Rule 245, SCACR.	6
Appellate Records for <u>State v. John Dodge Haynes</u> , South Carolina Appellate Court Public Index, http://ctrack.sccourts.org/public/caseView.do?csIID=59167	2

STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals correctly dismissed Haynes's appeal from the circuit court judge's pre-trial in limine ruling on an evidentiary matter because Haynes's appeal constituted an improper interlocutory appeal pursuant to South Carolina law in light of the fact Haynes has not yet been tried, convicted, or sentenced.

STATEMENT OF THE CASE

On July 11, 2014, Petitioner John Dodge Haynes, Jr. was arrested following an investigation into an automobile collision that resulted in a fatality. In October of 2014, the Dorchester County Grand Jury indicted Haynes for one count of felony driving under the influence resulting in a death. In June of 2015, the Dorchester County Grand Jury additionally indicted Haynes for one count of reckless homicide. Prior to trial, Haynes moved for the suppression of any evidence related to an analysis of his blood conducted after the collision along with other evidence connected to the collision. On March 29, 2017, a pre-trial hearing was conducted on Haynes's motion in the Orangeburg County Court of General Sessions before the Honorable Edgar W. Dickson, circuit court judge. At the conclusion of the hearing, the circuit court judge preliminarily denied Haynes's motion. Haynes then filed a notice of appeal, and the solicitor filed a response asserting Haynes could not yet properly appeal in his case.

Subsequently, on appeal, the Court of Appeals promptly issued an order dismissing Haynes's appeal as an improper interlocutory appeal. Thereafter, Haynes petitioned the Court of Appeals to reconsider the dismissal, the State filed a return, and Haynes filed a reply to the State's return. Additionally, Haynes filed a motion titled, "Motion to Toll Steps in Appeal." Ultimately, the Court of Appeals denied Haynes's petition and declined to rule on his motion due to fact the appeal had been dismissed. Haynes then filed a petition for a writ of certiorari in the Supreme Court along with an appendix titled, "Record on Appeal."¹

¹ Notably, Haynes's appendix does not contain the State's response to the notice of appeal or the State's return to the petition for reconsideration. See Rule 242(e)(2), SCACR ("If the matter was dismissed by the Court of Appeals for procedural or other reasons, the Appendix shall include any documents relevant to the dismissal including any motion to dismiss and any return or reply that may have been filed."). However, those documents are currently available through the South Carolina Appellate Court Public Index. Appellate Records for State v. John Dodge Haynes, South Carolina Appellate Court Public Index, <http://ctrack.sccourts.org/public/caseView.do?csIID=59167>.

ARGUMENT

The Court of Appeals correctly dismissed Haynes’s appeal from the circuit court judge’s pre-trial in limine ruling on an evidentiary matter because Haynes’s appeal constituted an improper interlocutory appeal pursuant to South Carolina law in light of the fact Haynes has not yet been tried, convicted, or sentenced.

On certiorari, Haynes does not expressly contend the Court of Appeals erred by dismissing his appeal as an improper interlocutory appeal and does not dispute the fact his appeal is from a pre-trial in limine ruling. Instead, Haynes asserts he is seeking for this Court to “grant the petition for writ [of] certiorari and upon a final adjudication issue a writ to the Lower Court enforcing the Mandates of Crawford and setting out the mandates of this Honorable Court under *State v. Rearick*.” Importantly, because Haynes’s appeal is from a pre-trial preliminary evidentiary ruling, no final judgment has been rendered or obtained in Haynes’s case. Therefore, Haynes could not yet properly appeal the circuit court judge’s in limine ruling pursuant to South Carolina law, and the Court of Appeals correctly dismissed Haynes’s appeal as an improper interlocutory appeal. Accordingly, there is no legitimate basis upon which to disturb the Court of Appeals’s decision on certiorari. Haynes’s petition for a writ of certiorari should be denied.

In South Carolina, a criminal defendant does not have a constitutional right to appeal. *State v. Rearick*, 417 S.C. 391, 398, 790 S.E.2d 192, 196 (2016). Instead, the right to appeal is conferred by Section 14-3-330 of the South Carolina Code of Laws. *State v. Miller*, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986); see S.C. Code Ann. § 14-3-330 (indicating the Supreme Court has appellate jurisdiction to correct errors of law and identifying the different rulings and judgments that can properly be appealed). Ordinarily, an appeal may only be pursued after a party has obtained a final judgment or has otherwise satisfied the terms of Section 14-3-330. *State v. Wilson*, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010); see *Rearick*, 417 S.C. at 398-399, 790 S.E.2d at 196 (“To appeal, a defendant must be ‘aggrieved’ by a decision that is

statutorily classified as one that is appealable, which generally involves a final judgment.” (footnote omitted)); Miller, 289 S.C. at 426, 346 S.E.2d at 705 (“In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute.”). In criminal cases, judgment for a criminal defendant is not final until a sentence is imposed. State v. Robinson, 287 S.C. 173, 174, 337 S.E.2d 204, 204 (1985); see Berman v. United States, 302 U.S. 211, 212 (1937) (“Final judgment in a criminal case means sentence. The sentence is the judgment.”). Thus, a criminal defendant may **not** appeal until **after** he or she has actually been sentenced. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986).

In the case sub judice, Haynes’s appeal is from a circuit court judge’s in limine order preliminarily denying a pre-trial request for evidence that potentially might be offered during trial to be suppressed. At the stage of the proceedings in which Haynes has filed his appeal, no evidence has been ruled admissible or inadmissible with finality, and no evidence has actually been introduced against Haynes. See State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999) (instructing a ruling on a motion in limine is preliminary, subject to change based on developments during trial, and not a final ruling on the admissibility of challenged evidence); State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) (“A ruling in limine is not a final ruling on the admissibility of evidence.”); State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) (“A ruling in limine is not final[.]”). Furthermore, Haynes has not yet been tried for the charged offenses, convicted, or sentenced. See Wilson, 387 S.C. at 603, 693 S.E.2d at 926 (recognizing the general rule is a criminal defendant cannot appeal until he has been convicted and sentenced). Thus, no final judgment has been reached or obtained in Haynes’s case, and, notably, the pre-trial objection Haynes has raised would not even be sufficient to preserve his evidentiary objections for appellate review assuming he actually had been tried,

convicted, and sentenced. See Robinson, 287 S.C. at 174, 337 S.E.2d at 204 (“Judgment in a criminal case is not final until sentence is imposed.”); see also State v. Griffin, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) (“[A]n in limine ruling is not final and does not preserve the issue for appeal.”); State v. Stokes, 339 S.C. 154, 163, 528 S.E.2d 430, 434 (Ct. App. 2000) (“[T]he record reflects that this issue was only raised and ruled on in limine. . . . Merely raising an argument in limine does not preserve the issue for appellate review.”). Accordingly, Haynes’s appeal constitutes an improper interlocutory appeal, and the Court of Appeals correctly dismissed it as such. See State v. Hubbard, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (“No final judgment has occurred in this case and the order appealed from is interlocutory. Therefore, we dismiss the appeal and remand the case for trial.” (citation omitted)).

In his petition for a writ of certiorari, Haynes does **not** actually assert the Court of Appeals erred by dismissing his appeal as an improper interlocutory appeal. Instead, Haynes initially makes several unsupported factual assertions, which cannot appropriately be considered on appeal, before contending he should be permitted to seek review of the circuit court judge’s in limine ruling through an extraordinary writ in light of the fact he raised an unsuccessful constitutional challenge to certain evidence during a pre-trial hearing.² See McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (“This Court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”). Importantly though, Haynes has not actually sought review of the circuit court judge’s ruling through a

² Notably, at this stage of the proceedings, the State does not agree with Haynes’s stated version of facts but has not included a counter statement of facts as no record of the circuit court proceedings has yet been introduced on appeal. See South Carolina State Highway Dep’t v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) (“[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record.”); Morris v. Tidewater Land & Timber, Inc., 388 S.C. 317, 333, n. 16, 696 S.E.2d 599, 608 (Ct. App. 2010) (“Under our appellate court rules, we may not consider any fact that does not appear in the record.”); see generally Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”).

petition for an extraordinary writ. Instead, Haynes has filed a direct appeal and a petition for a writ of certiorari seeking review of the Court of Appeals's order dismissing his appeal as an improper interlocutory one. As a result, the question of whether an extraordinary writ should be issued in Haynes's case is not currently or appropriately before this Court. See Tatnall v. Gardner, 350 S.C. 135, 137-138, 564 S.E.2d 377, 378-379 (Ct. App. 2002) (instructing the appellate court did not have proper jurisdiction over an appeal that was interlocutory); see also State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (explaining an appellate court cannot address an issue that is not properly before it); State v. Branham, 392 S.C. 225, 228, 708 S.E.2d 806, 808 (Ct. App. 2011) ("The appellate court's review in criminal cases is limited to correcting the order of the circuit court for errors of law."). However, even if that question was somehow appropriately before this Court, an extraordinary writ should nonetheless not be issued to permit a piecemeal interlocutory appeal from a non-final pre-trial evidentiary ruling regardless of whether that ruling addressed a constitutional claim because such an appeal will always necessarily involve a non-final ruling that can first be decided by a circuit court judge with finality without material prejudice resulting to the rights of any party. See Rule 245(a), SCACR ("The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties."); see also Smith, 337 S.C. at 32, 522 S.E.2d at 600 ("A pretrial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial."); see generally Will v. United States, 389 U.S. 90, 96-97 (1967) ("All our jurisprudence is strongly colored by the notion that appellate review should be postponed, except in certain narrowly defined circumstances, until after final judgment has been rendered by the trial court. This general policy against piecemeal appeals takes on added weight in criminal cases, where the

defendant is entitled to a speedy resolution of the charges against him. . . . Mandamus, of course, may never be employed as a substitute for appeal in derogation of these clear policies.” (citations omitted); Edwards v. State, 383 S.C. 82, 96, 678 S.E.2d 412, 419 (2009) (explaining a writ of mandamus will only be issued to coerce the performance of a purely ministerial act that involves the exercise of no discretion whatsoever); Ex parte Jones, 160 S.C. 63, ___, 158 S.E. 134, 137 (1931) (“[I]f the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ [of prohibition] will not lie to correct errors and irregularities in procedure, or **to prevent an erroneous decision** or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or the improper assumption of jurisdiction, where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available.” (emphasis added)).

Beyond that, Haynes maintains the rule prohibiting a criminal defendant from appealing until after a final judgment is obtained is an improper “de facto” procedural rule that has not yet been approved by our legislature and should not be applied to cases involving constitutional issues. To the contrary, the rule prohibiting a criminal defendant from filing an interlocutory appeal has been codified by our legislature in Section 14-3-330. Specifically, Section 14-3-330(1) only permits the filing of an appeal of an interlocutory order “involving the merits.” See S.C. Code Ann. § 14-3-330(1) (permitting an appeal from “[a]ny intermediate judgment, order or decree in a law case **involving the merits** in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from”

(emphasis added)). Critically, the statutory phrase “involving the merits” means **finally** determining some substantial matter. Mid-State Distribs., Inc. v. Century Imps., Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993); see Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 7, 630 S.E.2d 464, 467-468 (2006) (“The phrase ‘involving the merits’ is narrowly construed in modern precedent. An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.”). In the context of a criminal case, no substantial matter for a criminal defendant has finally been determined until the defendant has been sentenced. See Ex parte Murray, 261 S.C. 255, 256, 199 S.E.2d 718, 719 (1973) (“To create finality in criminal cases for purpose of appeal, it is necessary that conviction should be followed by sentence.”); cf. State v. Isaac, 405 S.C. 177, 183, 747 S.E.2d 677, 679 (2013) (“An order denying an immunity request is not an order involving the merits in that it does not finally determine a substantial cause of action or defense. Accordingly, it is not immediately appealable under section 14-3-330(1).”). Therefore, criminal defendants in South Carolina are, in fact, statutorily precluded from pursuing interlocutory appeals through legislative enactment. See Miller, 289 S.C. at 426, 346 S.E.2d at 705 (“In South Carolina, a criminal defendant may not appeal until sentence has been imposed.”); see also Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) (“The Legislature is presumed to be aware of this Court’s interpretation of its statutes. When the Legislature fails over a forty-year period to alter a statute, its inaction is evidence the Legislature agrees with this Court’s interpretation.” (citation omitted)).

In conclusion, Haynes’s appeal from the circuit court judge’s in limine evidentiary ruling, which was in no way final, constituted an improper interlocutory appeal. See North Carolina Fed. Sav. & Loan Ass’n v. Twin States Dev. Corp., 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986)

(“The right of appeal arises from and is controlled by statutory law. The jurisdiction of appellate courts is prescribed by S.C. Code Ann. § 14-3-330.”); see also Miller, 289 S.C. at 426, 346 S.E.2d at 705 (instructing a criminal defendant is only entitled to appeal if he meets the statutory requirements for an appeal). As a result, the Court of Appeals correctly dismissed the appeal as it had no actual appellate jurisdiction over the matter, and there is no proper basis upon which to disturb the dismissal of Haynes’s appeal on certiorari. See Tatnall, 350 S.C. at 137-138, 564 S.E.2d at 378-379 (recognizing there is no appellate jurisdiction in cases involving improper interlocutory appeals); cf. Isaac, 405 S.C. at 187, 747 S.E.2d at 682 (“[B]ecause the denial of a defendant’s request for immunity under the [South Carolina Protection of Persons and Property] Act is an interlocutory order not subject to immediate appeal, this appeal is dismissed and the matter is remanded for trial.”). Haynes’s petition for a writ of certiorari should be denied.

<

CONCLUSION

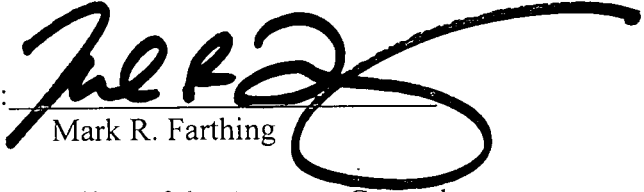
For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY: 
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

July 18, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Dorchester County
Honorable Edgar W. Dickson, Circuit Court Judge
Appellate Case No. 2017-001392

RECEIVED
JUL 18 2017
S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

JOHN DODGE HAYNES, JR.,

Petitioner.

PROOF OF SERVICE

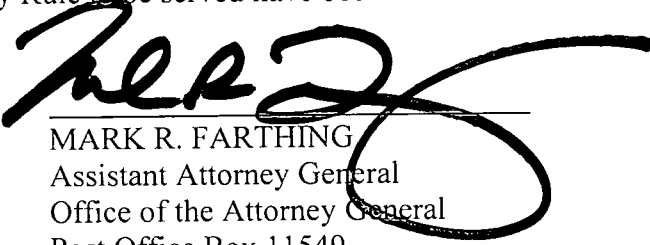
I, Mark R. Farthing, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by sending a copy of the same to:

William L. Runyon, Jr., Esquire
#3 Gamecock Ave., Ste. 303
Charleston, SC 29407

Eric B. Laquiere, Esquire
3674 Old Charleston Hwy.
Johns Island, SC 29455

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 18th day of July, 2017.


MARK R. FARTHING
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727