

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)).

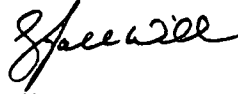
The trial magistrate clearly recognized reasonable suspicion as the proper standard for continued detention in Looper's case. "[R]easonable suspicion

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.

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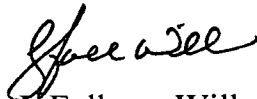
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CERTIFICATE

I certify that the Brief of Appellant is in compliance with Rule 211(b).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have served a copy of the Brief of Appellant and Certificate of Counsel on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 16th day of September, 2013, addressed as follows:

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