

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

2011-CP-23-3563

RECEIVED
MAR 26 2012
SC Court of Appeals

THE STATE,

Respondent,

vs.

ANDREW T. LOOPER,

Appellant.

REPLY TO APPELLANT'S RETURN OPPOSING DISMISSAL OF APPEAL

The State, through its undersigned counsel, replying to Appellant's Return to the State's Motion to Dismiss Appeal would additionally reply as follows:

I.

Appellant opposes dismissal of this appeal arguing that State v. Gregorie, 339 S.C. 2, 528 S.E.2d 77 (2000), clarifies that any aggrieved party may appeal from the appellate ruling of a circuit court to this Court. The State submits that Gregorie cannot be relied upon by Appellant as authority permitting his appeal before conviction and sentence.

II.

Respondent reiterates that the order of the circuit court reversing the magistrate's court pre-trial order suppressing evidence and remanding the matter for trial is premature and not immediately appealable. It has been the longstanding rule of law governing appeals in South Carolina that a criminal defendant may not appeal until the judgment of conviction is final. State v. Williams, 321 S.C. 381, 468 S.E.2d 656 (1996); State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986); Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986). The judgment of conviction is not final until a criminal defendant is convicted and sentenced. State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986).

The State submits that Appellant misconstrues Gregorie when he argues that it permits him to appeal from an appellate decision of the circuit court as an aggrieved party. The distinction between the decision in Gregorie and this appeal is that the defendant in Gregorie had been convicted and sentenced in the magistrate's court before the appeal was pursued to the circuit court and, therefore, the appeal in Gregorie was from a final judgment in a criminal case. Appellant has not yet proceeded to trial or been convicted and sentenced. The State submits that Gregorie makes it clear that a conviction and sentence are necessary for a defendant to appeal to the circuit court and thereafter to this Court. There is no final judgment from which Appellant may appeal at this time.

Moreover, even construing Gregorie in the manner Appellant advocates, Appellant may not appeal because he is not an aggrieved party. Appellate review is limited to parties aggrieved by a judgment, order or sentence below. State v. Cox, 328 S.C. 371, 492 S.E.2d 399 (1997). Appellant is seeking review by this Court of an evidentiary ruling so that he may possibly avoid

trial. However, avoidance of trial is not a substantial right entitling a party to an immediate appeal of an intermediate order. Sheilds v. Martin Marietta Corp., 303 S.C. 469, 402 S.E.2d 482 (1991). As is the normal course of action in a criminal case when a motion to suppress evidence is denied, Appellant must proceed to trial, renew his objection to the evidence when it is offered during trial and thereafter present the issue on appeal to this Court if he is later convicted and sentenced. Respondent submits that Appellant's appeal must be dismissed as premature.

III.

Respondent moves this Court to dismiss Appellant's appeal because the order is not immediately appealable.

WHEREFORE, Respondent respectfully prays that this Court dismiss the above-captioned appeal for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

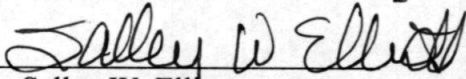
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ATTORNEYS FOR RESPONDENT

March 26, 2012

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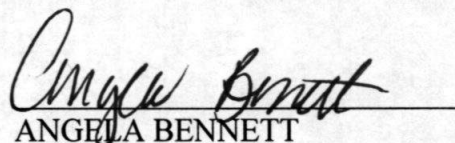
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Reply to Appellant's Return Opposing Dismissal of Appeal on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to Steve W. Sumner, Esquire, 1088 N. Church Street, Greenville, South Carolina 29601 and J. Falkner Wilkes, Esquire, 114 Whitsett Street, Greenville, South Carolina 29601.

I further certify that all parties required by Rule to be served have been served.

This 26th day of March, 2012.



ANGELA BENNETT
Administrative Assistant
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ALAN WILSON
ATTORNEY GENERAL

March 26, 2012

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State of South Carolina v. Andrew T. Looper
2011-CP-23-3563

Dear Ms. Gee:

Enclosed for filing are the original and six copies of the Respondent's Reply to Appellant's Return Opposing Dismissal of Appeal in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General

SWE/ab
Enclosures

cc: Steve W. Sumner, Esquire
J. Falkner Wilkes, Esquire
Ms. Trisha Allen

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