

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable William P. Keesley, Circuit Court Judge
Appellate Case No. 2014-001798

RECEIVED
MAR 11 2015
SC Court of Appeals

THE STATE,

Appellant,

vs.

BRYAN FERGUSON,

Respondent.

MOTION TO DISMISS APPEAL

Appellant (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In December of 2012, Respondent Bryan Ferguson was indicted by the Greenwood County Grand Jury for two counts of second-degree criminal sexual conduct with a minor for sexually assaulting one of his minor stepdaughters along with one count of committing or attempting to commit a lewd act upon a minor child for sexually assaulting another of his minor stepdaughters. On August 11, 2014, Ferguson’s case was called for trial in the Greenwood County Court of General Sessions with the Honorable William P. Keesley, circuit court judge, presiding. At the outset of trial, Ferguson moved for the charges related to the two victims to be severed for trial, and the trial judge granted the motion. In response, the prosecutor elected to proceed forward with trial on the second-degree criminal sexual conduct with a minor

indictments and moved for the trial judge to conduct an in limine hearing to determine whether Ferguson's other victim would be permitted to testify pursuant to Rule 404(b), SCRE. The trial judge then conducted an in limine hearing on the issue and, at the conclusion of the hearing, determined Ferguson's other victim's testimony satisfied the requirements for admission pursuant to Rule 401, SCRE, and Rule 404(b), SCRE, but was **not** admissible pursuant to Rule 403, SCRE. Immediately after that, the prosecutor indicated she intended to appeal the trial judge's ruling and timely filed and served a notice of appeal on August 14, 2014.

II.

Currently, the State's appeal is pending before this Court. The State's Initial Brief of Appellant and Designation of Matter are due to be served and filed on March 23, 2015. However, after further review, the State has decided not to pursue the appeal of the trial judge's ruling and, instead, to proceed forward with trial in this case. Accordingly, the State respectfully asks this Court to dismiss the State's appeal and issue remittitur in this case.

WHEREFORE, Appellant prays that this Court will dismiss the appeal in this case; issue remittitur; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
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March 11, 2015

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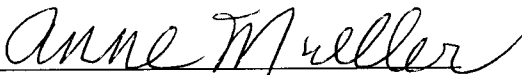
PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Motion to Dismiss Appeal on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Billy J. Garrett, Jr., Esquire
The Garrett Law Firm, PC
109 Oak Avenue
Greenwood, South Carolina 29646

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

I further certify that all parties required by Rule to be served have been served.
This 11th day of March, 2015.


ANNE A. MUELLER
Legal Assistant
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Columbia, SC 29211
(803) 734-3727



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ALAN WILSON
ATTORNEY GENERAL

March 11, 2015

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

RE: State v. Bryan Ferguson – Appellate Case No. 2014-001798

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion to Dismiss Appeal, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Billy J. Garrett, Jr., Esquire
C. Rauch Wise, Esquire
Victim Services