

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case Tracking No.: 2018-001236

The State

Respondent,

v.

Larry Edward Adger, III,

Appellant.

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JUL 23 2018
SC Court of Appeals

MEMORANDUM REGARDING APPEALABILITY

In accordance with your directions of July 11, 2018, directing a memorandum to be presented on the issue of appealability of the captioned appeal this memorandum is provided:

I.

The primary issue on appeal is the failure of the General Sessions Court to hear the evidence of appellant's Defense of a violation of his civil rights under Federal Statute 42 USC §1983. Other issues also arose during the two day trial.

Prior to the convening of the jury, a Motion was presented to the Court for a stay of the trial pending a decision by the Federal Court as to evidence supporting Defendant's allegations of a violation of his civil rights under the fourth, fifth and fourteenth amendments to the U. S. Constitution.

II.

A motion to quash the indictments based on the issue of a violation of Defendant's civil rights regarding the three Amendments set forth above was also filed and served prior to the call of the case and prior to the jury being sworn and seated.

The trial Judge refused to hear evidence on both motions.

The civil rights issue before the federal court alleges that (1) the Secretary of State for South Carolina by failing to affix the Great Seal of South Carolina to the Bill under which the Defendant was charged violated the State Constitution requiring the seal; and (2) The Sheriff of Anderson County and the deputy arresting the Defendant violated the civil rights of Defendant by racial profiling during a traffic stop setting Defendant's arrest in motion.

Should the federal court find either or both of these allegations viable, the findings of a civil rights violation arising out of the same facts and circumstances of the charges in the Court of General Sessions would serve as a defense to the charges against Defendant.

The appeal of the findings of Defendant's case addresses the decision of the trial court to proceed with the trial though the violation of Defendant's civil rights was left undecided.

After findings in the case pursuant to an Allen charge by the trial judge, the judge deferred sentencing pending the decision by the federal court on the civil rights issues presented to the federal court.

This appeal was filed and served to preserve any defenses or jurisdictional issues to be decided on the violation of civil rights that affect Defendant's defense in the Court of General Sessions.

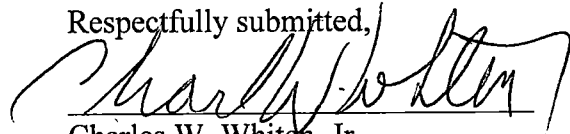
I have requested a transcript from the Court Reporter as required.

However, on behalf of the Defendant, I have no objection to this appeal being suspended (although jurisdiction of the Court of General Sessions is still in doubt) and a finding as to jurisdiction would be appealable as a final decision. My concern is that the state trial court may act on sentencing before the federal court's determination on the civil rights issue and Defendant will have no immediate remedies. Dismissal of the appeal should be denied and suspension of the appeal granted with rights of the Defendant to be protected.

Meanwhile, the court reporter will be notified of the pending issues before she proceeds to complete the transcript of trial.

July 19, 2018

Respectfully submitted,



Charles W. Whiten, Jr.

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Attorney for Appellant

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PROOF OF SERVICE

I certify that I have served the Memorandum Regarding Appealability on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on July 19, 2018, addressed to:

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

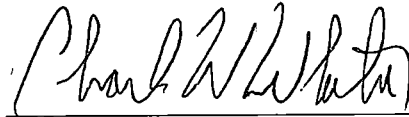
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I further certify that all parties required by Rule to be served have been served this 19th day of July 2018.



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July 19, 2018

The Honorable Jenny A. Kitchings
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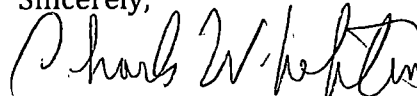
Re: State v. Larry Edward Adger, III
Appellant Case No.: 2018-001236

Dear Ms. Kitchings:

Enclosed please find the original and a copy of a Memorandum Regarding Appealability along with proof of service for filing in the above-referenced appeal.

Thank you for your courtesies.

Sincerely,



Charles W. Whiten, Jr.
Attorney at Law

CWW/crw
w/enclosures

cc: Robert M. Dudek, Esquire
Kristin W. Reeves, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire