

FILED

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IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellant,

)

Filed December 21, 1978

vs.

)

ESTELL (NMN) WALTON,

)

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Defendant-Appellee.

)

Appeal from Black Hawk District Court - Roger F. Peterson, Judge.

State appeals from final judgment in defendant's trial for second-degree murder wherein defendant convicted of manslaughter. APPEAL DISMISSED.

Richard C. Turner, Attorney General of Iowa, William R. Armstrong, Assistant Attorney General, and David H. Correll, Black Hawk County Attorney, counsel for appellant.

C. A. Frericks, of Fulton, Frericks, Nutting & Martin, of Waterloo, counsel for appellee.

Heard by Oxberger, C. J., Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

The State seeks to appeal an adverse trial court ruling denying a motion in limine. The motion was made prior to defendant's trial on a charge of second degree murder. The jury found defendant guilty of manslaughter and sentence was imposed accordingly.

The defendant has not appealed. An appeal by the State cannot affect the judgment. Section 814.12, Supplement to the Code 1977; State v. Prybil, 211 N.W.2d 308, 314 (Iowa 1973). For this reason and others, a State appeal is permitted in criminal cases only when it involves questions of law, either substantive or procedural, whose determination will be beneficial to the bench and bar as a guide in the future. State v. Kessler, 213 N.W.2d 671, 672 (Iowa 1973); State v. Kriens, 255 Iowa 1130, 1131, 125 N.W.2d 263, 264 (1963).

The issue which the State seeks to resolve on this appeal involves availability of the defense of diminished responsibility on a charge of second degree murder. As the State concedes, this issue was determined in State v. Gramenz, 256 Iowa 134, 126 N.W.2d 285 (1964). A decision in this case would add nothing to what was said there. Consequently, an opinion would serve no useful purpose.

APPEAL DISMISSED.