

RECEIVED

Aug 07 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Debra R. McCaslin, Circuit Court Judge
Appellate Case No. 2024-001212

THE STATE,

Appellant,

vs.

JOSHUA KENNETH BROOKINS,

Respondent.

**MEMORANDUM
REGARDING APPEALABILITY**

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

I.

In January of 2024, Respondent Joshua Kenneth Brookins was indicted by the York County Grand Jury for one count of distribution of fentanyl. Significantly, Brookins’s distribution of fentanyl charge arose from his distribution of fentanyl to an individual named Jonathan Tedder, who subsequently died as the result of a fentanyl overdose. Prior to Brookins’s trial on that charge, he submitted a motion in limine seeking the exclusion of any testimony or evidence concerning the death of Tedder and the circumstances surrounding or leading up to

Tedder's death.¹ Following a hearing on the matter, the Honorable Debra R. McCaslin, circuit court judge, granted Brookins's motion in limine and ruled the State would be precluded during trial from presenting any testimony about Tedder's death. The State then timely served and filed a notice of appeal in an effort to challenge the circuit court judge's exclusionary ruling. On July 30, 2024, this Court requested a memorandum addressing the question of appealability under the circumstances involved.

II.

In South Carolina, the right to appeal is conferred by Section 14-3-330 of the South Carolina Code of Laws. State v. Miller, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986); see S.C. Code Ann. § 14-3-330 (indicating the Supreme Court has appellate jurisdiction to correct errors of law and identifying the different rulings and judgments that can properly be appealed). Ordinarily, an appeal may only be pursued after a party has obtained a final judgment or has otherwise satisfied the terms of Section 14-3-330. State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010); see State v. Rearick, 417 S.C. 391, 398-399, 790 S.E.2d 192, 196 (2016) (“To appeal, a defendant must be ‘aggrieved’ by a decision that is statutorily classified as one that is appealable, which generally involves a final judgment.” (footnote omitted)); Miller, 289 S.C. at 426, 346 S.E.2d at 705 (“In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute.”).

Section 14-3-330 provides, in pertinent part, that an immediate appeal may be taken in a law case from:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common

¹ A copy of the relevant portion of Brookins's motion in limine has been included with the State's memorandum as Attachment “A.”

pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

[and]

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

S.C. Code Ann. § 14-3-330. Importantly, Section 14-3-330 is applicable to the State, and the State may appeal a pre-trial ruling if the ruling is appealable pursuant to the section's statutory language. State v. Hill, 314 S.C. 330, 331, 444 S.E.2d 255, 256 (1994).

With that in mind, limited situations have been recognized where the State may appeal in a criminal case in South Carolina. State v. Pichardo, 367 S.C. 57, 96, 623 S.E.2d 840, 847 (Ct. App. 2005). Significantly, a “pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case” has long been recognized as being directly appealable by the State. State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985); see State v. Belviso, 360 S.C. 112, 115, 600 S.E.2d 68, 70 (Ct. App. 2004) (recognizing “the settled principle that a pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable” (citation and internal quotations omitted)).

III.

In the case sub judice, the State is now attempting to appeal a pre-trial ruling suppressing any testimony about or evidence of the death of Tedder and the circumstances surrounding

Tedder's death. Under the specific circumstances involved, that ruling does substantially impair the State's ability to prosecute Brookins's case and, thus, is properly appealable pursuant to South Carolina law. McKnight, 287 S.C. at 168, 337 S.E.2d at 209.

Looking to those circumstances, the investigation that led to Brookins's pending distribution of fentanyl charge began when officers responded to a particular address in York County in reference to the fentanyl overdose death of *Tedder*, who is the focus of the circuit court judge's suppression ruling now being challenged on appeal. The coroner responded and collected fentanyl from Tedder's mother, who had located the fentanyl related to Brookins's pending charge in Tedder's bedroom. Significantly, if the State is unable to mention Tedder's death, the jury will be confused as to why a *coroner* was involved in the case and was collecting evidence that is necessary to prove Brookins's distribution of fentanyl charge. See, e.g., Old Chief v. United States, 519 U.S. 172, 189 (1997) ("The use of witnesses to describe a train of events naturally related can raise the prospect of learning about every ingredient of that natural sequence the same way. If suddenly the prosecution presents some occurrence in the series differently, as by announcing a stipulation or admission, the effect may be like saying, 'never mind what's behind the door,' and jurors may well wonder what they are being kept from knowing. A party seemingly responsible for cloaking something has reason for apprehension, and the prosecution with its burden of proof may prudently demur at a defense request to interrupt the flow of evidence telling the story in the usual way. In sum, the accepted rule that the prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away rests on good sense. A syllogism is not a story, and a naked proposition in a courtroom may be no match for the robust evidence that would be used to prove it. People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors

asked to rest a momentous decision on the story's truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard. A convincing tale can be told with economy, but when economy becomes a break in the natural sequence of narrative evidence, an assurance that the missing link is really there is never more than second best.”).

Additionally, the distribution of a controlled substance—which is what Brookins is accused of—necessarily involves two parties to the transaction. If the State is unable to tell the jury why the recipient of the distribution involved in Brookins's case is not testifying, the State's ability to try the case will be significantly impaired because the jury will be left to speculate as to the reason why that individual—who is now deceased—was not called.

Moreover, evidence of the fentanyl distribution comes directly from text messages Brookins sent to Tedder's brother, Tedder's mother, and a third party.² Notably, in those messages sent just days after Tedder's death, Brookins explicitly referenced distributing fentanyl to someone who died. Beyond that, Brookins apologized to Tedder's mother and brother for Tedder's death, which constituted critical evidence from Brookins's himself of his guilt for the charged offense of distribution of fentanyl. And, without the context provided by the evidence of Tedder's death, those text messages will lose all evidentiary value, which will substantially impair the State to ability to prove to whom Brookins distributed the fentanyl for which he was charged. Thus, the State in effect has no viable means of proving its case if evidence of Tedder's death is suppressed because the death gives context to the critically-important text messages and lets the reader know to whom Brookins is referring in those incriminating messages.

² Copies of incriminating text messages sent by Brookins have been included with the State's memorandum as Attachment “B.”

Lastly, while at the detention center, officers conducted an interview with Brookins during which he voluntarily confessed to distributing fentanyl to Tedder before Tedder's death. Significantly, the discussion of the death is so intertwined with the confession that redacting it would cause substantial confusion for the jury.

Under such circumstances, the information related to the death of Tedder—the very person to whom Brookins distributed the fentanyl that has given rise to Brookins's pending distribution of fentanyl charge—is necessary to present a complete and unfragmented presentation of the State's case, and its suppression will substantially impair the prosecution of the case. See State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996) (“One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its environment that its proof is appropriate in order to complete the story of the crime on trial by proving its immediate context or the *res gestae* or the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other and is thus part of the *res gestae* of the crime charged. And where evidence is admissible to provide this full presentation of the offense, there is no reason to fragmentize the event under inquiry by suppressing parts of the *res gestae*.” (citations, internal quotations, brackets, and ellipses omitted)), overruled other grounds by State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014). Accordingly, the circuit court judge's ruling is directly appealable pursuant to South Carolina law, and this Court should permit the appeal to proceed. McKnight, 287 S.C. at 168, 337 S.E.2d at 209.

WHEREFORE, Appellant prays the Court will rule this appeal is a proper interlocutory appeal of the circuit court judge's pre-trial ruling excluding any testimony or evidence of the death of Jonathan Tedder and the circumstances of Tedder's death because that ruling substantially impairs the State's ability to prosecute the case unless an immediate appeal is allowed pursuant to Section 14-3-330; allow the appeal to proceed; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

AUSTIN SMITH
Assistant Solicitor, Sixteenth Judicial Circuit



By: _____

Mark R. Farthing
S.C. Bar Number 76901

August 8, 2024

ATTACHMENT "A"

III. MOTION IN LIMINE TO EXCLUDE ANY TESTIMONY OR EVIDENCE OF THE DEATH OF JONATHAN TEDDER AND THE CIRCUMSTANCES OF JONATHAN TEDDER'S DEATH.

Brookins moves to exclude any testimony, evidence, photographs, videos, or reference to the death of Jonathan Tedder and the circumstances surrounding and/or leading to his death. The admission of any evidence, direct or indirect, concerning the death of Jonathan Tedder is not relevant to the crime charged; any probative value is outweighed by the prejudicial effect; and Jonathan Tedder's death will raise collateral causation issues, as well as confuse the jury and create a substantial possibility the jury would be unduly prejudiced against Brookins and draw impermissible inferences therefrom.

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. SCRE 401; see also *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible. SCRE 402; see also *Levy v. Outdoor Resorts of South Carolina*, 304 S.C. 427, 405 S.E.2d 387 (1991) *State v. Petit*, 144 S.C. 452, 142 S.E. 725 (1928).

Despite allegations that Brookins distributed fentanyl to Jonathan Tedder, his subsequent death is not relevant to the charged crime. The charged crime is only that of distribution of fentanyl, and no charges were filed against Brookins alleging any liability or responsibility for Jonathan Tedder's death. To date, the State has not proffered any evidence related to Jonathan Tedder's action, relations, or communications with others after Brookins allegedly distributed fentanyl to Jonathan Tedder. As such, his subsequent death, and the circumstances surrounding it, does not have any tendency to make the existence of any facts of consequence more probable or less probable. His death cannot provide any relevant facts as to whether Brookins possessed fentanyl and/or distributed fentanyl.

Under SCRE 403, the Court may exclude otherwise relevant evidence if its probative value is substantially outweighed by the probability its admission will create danger of undue prejudice, confuse the issues, or mislead the jury. SCRE 403.

The admission of evidence that Jonathan Tedder died from an overdose of fentanyl toxicity would **undoubtedly** create undue prejudice against Brookins. Said admission of evidence would also create a significant possibility that the jury would confuse the issue(s) at hand. In order for the State to prove the charged crime, the State, in sum, needs to prove: (1) Brookins knowingly possessed fentanyl; (2) the substance he knowingly possessed was indeed fentanyl; and (3) Brookins distributed the fentanyl. The death of Jonathan Tedder, or the circumstances surrounding the death, do not provide any relevant information to any of the three listed elements to prove Brookins committed the charged crime. The ONLY effects that will come from the introduction of this evidence is undue prejudice against Brookins by the jury; confusion of the actual issue and crime being charged; and the substantial risk of the jury feeling the need to get justice for Jonathan

Tedder and/or punish Brookins for his death, even though that is not their job in this particular case.

Upon learning that Brookins could have provided the fentanyl that caused Jonathan Tedder's overdose, the likelihood of the jury staying focused on only the distribution charge and whether the State proved its burden thereunder, is near zero. As lawyers and judges, we understand the need to take each element of a crime and analysis whether all elements were met with sufficient facts to prove the actions occurred. We were taught how to separately analyze each issue and disregard irrelevant information, however, the same is not true with a typical jury. A reasonable person could easily deduce that because the State is alleging that Brookins distributed fentanyl to Jonathan Tedder, then Jonathan Tedder fatally overdoses on fentanyl, that the death itself is conclusive evidence of the charged crime. Such an inference would be impermissible.

There is no probative value in mentioning that Jonathan Tedder died, and/or the circumstances of Jonathan Tedder's death. Even if there is some probative value in admitting this evidence, the prejudicial effect of introducing such evidence would dramatically outweigh its probative value. The introduction of Jonathan Tedder's death and the circumstances surrounding it is inadmissible under Rules 401 and 403, SCRE.

ATTACHMENT "B"

3:17 PM



Josh

Active 53 minutes ago

Tell your mom she's in my prayers and I love you all. I served em a couple blues. He had fent and I told him to be careful bc he said he been clean for a year. Shit I even gave him narcan bc I was worried about him man. talk to your mom. She has know me since I was a kid man. She knows I love y'all like family. Tell her to please don't press the issue. I just came home from prison bro. I feel guilty about all this . You already know I do. I'm sorry bro. From me to you and your family I'm so sorry this happened. Hell Jon Jon wasy baby brother too. Always has been

Please do what you you can to help me with this situation bro.

God knows I would for you at any min. Regardless the circumstances. Tbr I feel like his BM is the one that pushed him to this point

MAY 6 AT 5:11 AM

I really need to talk to Christina. Bc I know she knows how I feel about you all. I didn't mean t ↓ involved with this and sure as he.. didn't mean for

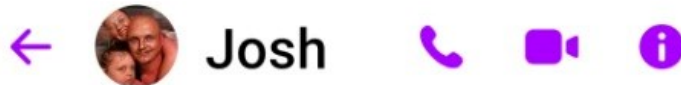


Message



3063	Phone		<div data-bbox="581 205 727 241" style="background-color: black; width: 80px; height: 17px; margin-bottom: 5px;"></div> <div data-bbox="581 247 665 268" style="color: blue; font-size: small;">Labrian </div>	Timestamp: 5/4/2023 5:13:43 PM(UTC-4)	Direction: Outgoing Body: But my boy got some raw ass fentanyl though. Hell I serve one of my homeboys the other day he f***** around and died I feel bad as hell about that <hr/> Participants: <table border="0" style="width: 100%;"><tr><td style="text-align: left;">Participant</td><td style="text-align: right;">Delivered Read Played</td></tr></table> <div data-bbox="917 552 1063 583" style="background-color: black; width: 80px; height: 15px; margin: 5px 0;"></div> <div data-bbox="917 590 987 611" style="font-size: small;">Labrian</div> <hr/> Source Extraction: Advanced Logical Service Identifier: Status: Sent Message Type: SMS Folder: Sent	Participant	Delivered Read Played
Participant	Delivered Read Played						

Hey Cristina. I can't tell you how sorry I am About Jon Jon. You know he was like my little brother. I know you feel some type of way about everything but before you press the issue would you please give me the chance to sit down and talk to you about some stuff I feel you need and deserve to know . I talked to take a



talked to Jake a little bit yesterday. But I haven't been able to sleep since all this happened . I want you to know every one of y'all I consider family and I'm beyond sorry . But I'm begging you to give me a chance to sit down and talk to you about everything me and Jon Jon talked about. I love you Christina. Just please givee the chance to speak to





Josh



Jon Jon talked about. I love you Christina. Just please givee the chance to speak to you in person so you can hear me out. Please. I'm praying for you and the family and will continue to until the pain and heartbreak eases. Please think about it . God bless you



2:05 PM

Replying to Josh

Hey Cristina. I can't tell you ...








Mess



11:49

68%



Josh
 Active 2...
 



please give the
 chance to speak to
 you in person so
 you can hear me
 out. Please. I'm
 praying for you
 and the family and
 will continue to
 until the pain and
 heartbreak eases.
 Please think about
 it . God bless you




SAT AT 2:05 PM

Wow really



You can now message and

Replying to Josh 
 Hey Cristina. I can't tell you ...









11:49

68%



Josh

Active 2...



you've read messages.

I really want to talk to you if you get the time

Whenever you get the time



You replied to Josh

Hey Cristina. I can't tell you how sorry I am ...

There's NOTHING YOU CAN SAY THAT WILL STOP THIS

Replying to Josh

Hey Cristina. I can't tell you ...



Mess



11:49

68%



Josh

Active 2...



I know. I couldn't imagine. I still wanna come talk to you when the time is right if that's ok

Plz

You've known me since we were in elementary school together.i just want to talk

When the time is right



Replying to Josh

Hey Cristina. I can't tell you ...




Mess



11:49

68%

←  **Josh**
Active 2...

to you when the
time is right if
that's ok

Plz

You've known me
since we were in
elementary school
together.i just
want to talk

When the time is
right



Just talk to
police and I'll be
there



Replying to Josh

Hey Cristina. I can't tell you ...



Mess



RECEIVED

Aug 07 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Debra R. McCaslin, Circuit Court Judge
Appellate Case No. 2024-001212

THE STATE,

Appellant,

vs.

JOSHUA KENNETH BROOKINS,

Respondent.

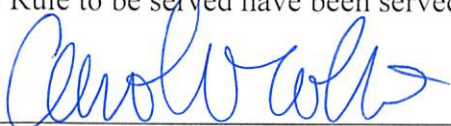
PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Memorandum Regarding Appealability on Respondent by sending an electronic copy via email to the addresses listed in AIS for the following individuals:

Robert M. Dudek, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

Jennifer Michelle Cloud, Esq.
The Cloud Law Firm, LLC
Post Office Box 12257
Rock Hill, SC 29731

I further certify all parties required by Rule to be served have been served.
This 8th day of August, 2024.



CAROLINE COLLINS
Administrative Support Manager
Office of the Attorney General