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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2024-001212

THE STATE,

Appellant,

v.

JOSHUA KENNETH BROOKINS,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the circuit court abused its discretion in excluding evidence of Tedder's death from a fentanyl overdose after being provided with fentanyl by Appellant.
- II. Whether the suppression of evidence of a third party's death due to a fentanyl overdose is immediately appealable.

STATEMENT OF THE CASE

In January 2024, a York County grand jury indicted Respondent for distribution of fentanyl. (Indictment No. 2023-GS-46-06159). Respondent's charge arose from a distribution of fentanyl to Jonathan Tedder, who subsequently died from a fentanyl overdose. Prior to his trial, Respondent filed a motion in limine seeking exclusion of any testimony or evidence concerning Tedder's death and the circumstances surrounding or leading up to Tedder's death. (Def. Omnibus Motion). On July 15 and 16, 2024, Respondent proceeded to pretrial motions before the Honorable Debra R. McCaslin. (Tr. 1).

At the pretrial hearing, Respondent argued that any evidence of Tedder's death, specifically that he died of a fentanyl overdose, would be "substantially prejudicial." (Tr. 16). He asserted that because the State charged him with fentanyl distribution and Tedder died from a fentanyl overdose, the jury would want to "potentially get justice" for Tedder even though distribution does not involve death. (Tr. 16). Respondent argued that any mention of a death from fentanyl "automatically could get a conviction" for distribution of fentanyl. (Tr. 16).

The State, citing three cases,¹ argued that evidence of Tedder's death was unavoidable res gestae evidence. (Tr. 16). The State asserted that this evidence was necessary for a full presentation of the case and was so intimately connected with and explanatory of the crime charged that its proof was needed to complete the story of the crime. (Tr. 17). According to the State,

¹ *State v. Dickerson*, 341 S.C. 391, 535 S.E.2d 119 (2000) (holding that prior bad acts evidence of the defendant's drug use during the time period of the murder was admissible under *Lyle* and under a res gestae theory); *State v. Wood*, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004) (holding that evidence that the defendant killed a state trooper was admissible as part of res gestae of later crimes for which defendant was on trial); *State v. Dennis*, 402 S.C. 627, 742 S.E.2d 21 (Ct. App. 2013) (holding that testimony that defendant offered to sell a stolen gun to buy crack cocaine shortly before a shooting was admissible under a res gestae theory).

fentanyl distribution could not be fully shown in this case without also showing that Tedder died from a fentanyl overdose. (Tr. 17).

The State argued that without evidence of Tedder's death, the State could offer no explanation as to why law enforcement was present at Tedder's house, why the coroner would be testifying, and why Tedder would not be present to testify about a distribution of fentanyl from Respondent. (Tr. 18). The State asserted that without evidence of Tedder's death, the four different admissions of guilt made by Respondent would not make any sense because those admissions were so intertwined with Tedder's death that redaction would make it near impossible for the jury to make sense of them. (Tr. 18; Court's Ex. 1, 2, 3, & 4). The State acknowledged that any mention of Tedder's death was highly prejudicial but, in this instance, argued that prejudice did not substantially outweigh the high probative value of the evidence. (Tr. 18).

The State requested an instruction for the jury to not blame Respondent for Tedder's death and reiterated that preventing the State from discussing Tedder's death would substantially impair the State's ability to try the case. (Tr. 18).

Respondent argued that the State had failed to allege that Tedder died from fentanyl received from Respondent. (Tr. 19). Therefore, according to Respondent, there was no correlation between what Respondent allegedly distributed to Tedder, when the alleged distribution occurred, and Tedder's death from a fentanyl overdose. (Tr. 19). He asserted that if evidence of Tedder's death was admitted, the jury would "automatically assum[e] that [he] supplied Fentanyl that has killed [Tedder.]" (Tr. 19). Respondent contended that Tedder being unavailable to testify would not cause confusion to the jury because a person who receives illegal drugs during a distribution does not always testify at trial. (Tr. 19). Further, Respondent reiterated both that Tedder's death did not go toward any element of the crime charged and that the State did not provide any proximity

of when the alleged distribution occurred, meaning a correlation between Respondent's alleged distribution and Tedder's death did not exist. (Tr. 19-20).

The State argued that Respondent's text messages concerning a distribution of fentanyl to Tedder and Tedder's subsequent death from a fentanyl overdose provided a correlation between the distribution and Tedder's death. (Tr. 20). The State reiterated that without being able to discuss Tedder's death, the rest of the investigation in this case would not make sense to the jury. (Tr. 21).

After a bench conference outside the hearing of the court reporter, the circuit court stated that Respondent and the State would come up with a stipulation regarding evidence of Tedder's death because the court was "not going to let them mention an overdose or have any inference that this distribution caused [Tedder's] death, because there's no correlation that I've seen or been presented [with.]" (Tr. 21). The circuit court noted that it asked the parties to see what they could redact from a video regarding this incident and that it would look over the video and text messages overnight before deciding on admissibility. (Tr. 22).

On July 16, 2024 (the following morning), the circuit court stated that it was not going to allow anything about Tedder's death into evidence. (Tr. 56). It found that death was not an element of distribution and that the court could not see any correlation between the crime charged and Tedder's death. (Tr. 56). The circuit court determined that evidence of Tedder's death was "highly prejudicial." (Tr. 57). The circuit court also noted that the video contained an admissible statement made by Respondent in which he admits to distributing fentanyl. (Tr. 57).

Immediately after the circuit court made its ruling, the State informed the court that the ruling substantially impaired its ability to prosecute this case and that the State would need to immediately appeal the ruling before the case was tried. (Tr. 57). The State asserted that when a death occurs in a distribution case, it is difficult to not have that information involved in the State's

presentation of the case because it is part of the res gestae of the case. (Tr. 58). The State would be unable to make its case without explaining to the jury why the investigation was initiated. (Tr. 58). The State did not contest that the evidence was prejudicial. (Tr. 60). The State reiterated that it was not seeking introduction of the evidence to show that Respondent was criminally responsible for Tedder's death. (Tr. 61). Rather, the State sought introduction to prove that what Respondent distributed was in fact fentanyl because Tedder died from a fentanyl overdose after receiving drugs from Respondent. (Tr. 61). The circuit court reaffirmed its ruling to exclude evidence of Tedder's death. (Tr. 61).

This appeal followed.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

In criminal cases, the appellate court sits to review errors of law only. *State v. Butler*, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). Appellate courts are bound by the trial court's factual findings unless they are clearly erroneous. *Id.* at 388, 577 S.E.2d at 500-01. This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. *State v. Wilson*, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001).

ARGUMENT

- I. The circuit court abused its discretion in excluding evidence of Tedder's death from an overdose of fentanyl because (a) this evidence is unavoidable res gestae, making it admissible to provide a full presentation of the case and (b) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.**

"Evidence is relevant and admissible if it tends to establish or make more or less probable the matter in controversy." *State v. Wiles*, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rules 401 & 402, SCRE). "The res gestae theory recognizes evidence of other bad acts . . . may be needed to aid the fact finder in understanding the context in which the crime occurred." *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999). "The evidence admitted must logically relate to the crime with which the defendant has been charged." *Wiles*, 383 S.C. at 158, 679 S.E.2d at 176. Our Supreme Court adopted the following reasoning set forth by the U.S. Court of Appeals for the Fourth Circuit:

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, [t]here is no reason to fragmentize the event under inquiry by suppressing parts of the res gestae.

State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996) (alterations in original) (internal quotation marks omitted), *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014).

"When 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." *State v.*

Preslar, 364 S.C. 466, 474, 613 S.E.2d 381, 385 (Ct. App. 2005). Under this theory, the temporal proximity of the prior bad act should be closely related to the charged crime. *State v. Owens*, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Further, "evidence considered for admission under the *res gestae* theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence." *State v. Dennis*, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013). Rule 403 provides that even if evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Appellate courts review Rule 403 findings "pursuant to the abuse of discretion standard, and gives great deference to the trial judge's decision." *State v. Myers*, 359 S.C. 40, 48, 596 S.E.2d 488, 492 (2004).

"Unfair prejudice means an undue tendency to suggest decision on an improper basis." *Wiles*, 383 S.C. at 158, 679 S.E.2d at 176. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." *Dennis*, 402 S.C. at 636, 742 S.E.2d at 26. "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001). "All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided." *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting *United States v. Rodriguez-Estrada*, 877 F.2d 153, 156 (1st Cir. 1989)).

Here, evidence of Tedder's death is "needed to aid the fact finder in understanding the context in which the crime occurred." *Dennis*, 402 S.C. at 636, 742 S.E.2d at 26 (quoting *Owens*,

346 S.C. at 652, 552 S.E.2d at 753). At the pretrial hearing, Respondent argued that proving Tedder's death was not an element of the charge of distribution of fentanyl. (Tr. 19-20). However, evidence of Tedder's death *from a fentanyl overdose* is necessary to provide context to the State's case, without which the jury's understanding of the case would be confused and partial. *See State v. McGee*, 408 S.C. 278, 289, 758 S.E.2d 730, 736 (Ct. App. 2014) (holding that evidence of related crime committed the day before the crime in question was admissible as *res gestae* evidence and needed to show the story of the crime in question).

To be clear, the State was not offering evidence of Tedder's death to show that Respondent was responsible for Tedder's death. Rather, the State was offering the evidence to give a full presentation of the case as well as to show that what Respondent gave to Tedder was fentanyl. (Tr. 61). Moreover, the State specifically requested that the circuit court provide a limiting instruction regarding evidence of Tedder's death so the jury would not blame Respondent for Tedder's untimely demise. (Tr. 18).

However, without evidence of Tedder's death, the State would be unable to explain its case. The State would not be able to explain how an investigation in this case began because the investigation began due to Tedder's death. The State would not be able to explain why the county coroner—the official charged with conducting autopsies on deceased individuals—would be testifying in a case about distribution of fentanyl, which does not involve any deceased individuals without evidence of Tedder's death. The State would not be able to explain why Tedder would not be present to testify about the distribution he received from Respondent. Most importantly, the State would be precluded from providing any context to the four different admissions of guilt that were so intertwined with Respondent's feelings about Tedder's death that redaction of every mention of Tedder's death would make it difficult for the jury to make sense of the confessions.

(Court's Ex. 1, 2, 3, & 4). *See State v. Wood*, 362 S.C. 520, 528-29, 608 S.E.2d 435, 439-40 (Ct. App. 2004) (holding the prior acts were admissible because the prior acts and the crime in question were "so concatenated as to be inextricably intertwined").

Without evidence of Tedder's death, the State's case would be unnecessarily fragmented and would not make sense because the jury would not know how law enforcement became involved, why an autopsy official would be testifying, why Respondent sent messages in the days after Tedder's death to Tedder's family about his distribution to Tedder, and why Tedder himself was not present to provide testimony but members of his family would be. Further, the evidence tends to prove that what Respondent gave to Tedder was, in fact, fentanyl. The evidence also puts Respondent's confessions into context, as well as the crime of distribution, because those confessions are so intermingled with Respondent's discussion of his feelings about Tedder's death at the time he made his various confessions that there is no reason to fragmentize them.

Further, the circuit court abused its discretion in finding that evidence of Tedder's death was not admissible under Rule 403. The circuit court merely found that the evidence was "highly prejudicial" without weighing that prejudice against the probative value of the evidence. (Tr. 57). However, Rule 403 provides for a balancing test in which relevant evidence is kept out only if, *inter alia*, the danger of unfair prejudice *substantially outweighs* the probative value.

There can be no doubt that an admission of Tedder's death from a fentanyl overdose allegedly caused by fentanyl distributed to Tedder by Respondent would be prejudicial. *See Gilchrist*, 329 S.C. at 630, 496 S.E.2d at 429 ("All evidence is meant to be prejudicial; it is only *unfair* prejudice which must be avoided." (quoting *Rodriguez-Estrada*, 877 F.2d at 156)). Here, the State conceded that the evidence was prejudicial; however, the State did not concede that the evidence was *unfairly* prejudicial. (Tr. 18, 60).

But a finding of prejudice is not the end of a 403 analysis. The probative value of the evidence is also high because of the context the evidence of Tedder's death provides to the entire case. The context of why law enforcement became involved. The context of Respondent's confessions to Tedder's family that he distributed fentanyl to Tedder. The context of why the county coroner would be testifying. The context of Tedder's conspicuous absence from trial. Further, the evidence of Tedder's death is probative of Respondent's knowing distribution of fentanyl, especially given that Respondent provided NARCAN—a medication used to reverse the effects of narcotics—to Tedder when he gave Tedder the drugs. (Court's Ex. 2).

Coupled with the limiting instruction that the State requested, the admittedly prejudicial value of this evidence cannot significantly outweigh the probative value of the evidence and preclude its admission. *See generally State v. Johnson*, 439 S.C. 331, 343, 887 S.E.2d 127, 133 (2023) ("The general rule is that when evidence of other [acts] is admitted for a specific purpose, the judge is required to instruct the jury to limit their consideration of this evidence for the particular purpose for which it is offered." (quoting *State v. Johnson*, 306 S.C. 119, 126, 410 S.E.2d 547, 552 (1991))).

Therefore, the circuit court erred in excluding evidence of Tedder's death because the evidence was admissible under Rule 403 and as *res gestae* evidence.

II. The circuit court's suppression of evidence of Tedder's death from an overdose of fentanyl is immediately appealable because suppression of this evidence directly and significantly impairs the State's ability to prosecute this case.

In South Carolina, the right to appeal is conferred by section 14-3-330 of the South Carolina Code. *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 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.

Importantly, Section 14-3-330 is applicable to the State, and the State may appeal a pretrial 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).

Our appellate courts have determined that the State may, in limited circumstances, appeal a criminal case. *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 also 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)).

Here, the State appealed a pretrial ruling excluding any testimony about or evidence of Tedder's death and the circumstances surrounding it. Under the specific circumstances involved, the circuit court's ruling substantially impairs the State's ability to prosecute Respondent's case. Therefore, the State can properly appeal this matter pursuant to South Carolina law. *McKnight*, 287 S.C. at 168, 337 S.E.2d at 209.

Looking to the specific circumstances of this case, the State's investigation that led to Respondent's distribution charge began when law enforcement responded to a particular address in York County in reference to the fentanyl overdose death of Tedder. 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.

If the State is unable to mention Tedder's death, the jury will be confused as to why a coroner—a county official responsible for autopsies—was involved in the case and was collecting evidence that is necessary to prove Respondent'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."); *id.* ("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."); *id.* ("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."); *id.* ("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.").

Further, the distribution of a controlled substance—for which Respondent is accused—necessarily involves two parties to the transaction. If the State is unable to tell the jury why the recipient of the distribution involved in Respondent's case is not testifying, then 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 Respondent sent to Tedder's brother, Tedder's mother, and a third party. (Court's Exhibits 2, 3, & 4). Notably, in those messages, which were sent just days after Tedder's death, Respondent explicitly referenced distributing fentanyl to someone who died. Beyond that, Respondent apologized to Tedder's mother and brother for Tedder's death, which constituted critical evidence from Respondent himself of his guilt of distribution of fentanyl. Without the context provided by the evidence of Tedder's death, those text messages will lose all evidentiary value, substantially impairing the State's ability to prove to whom Respondent distributed the fentanyl. Thus, the State

would have no viable means of proving its case if evidence of Tedder's death is excluded because the death gives context to the critically-important text messages and lets the reader know to whom Respondent is referring in those incriminating messages.

Last, while at the detention center, officers conducted an interview with Respondent, during which he voluntarily confessed to distributing fentanyl to Tedder before Tedder's death. (Court's Exhibit 1). The discussion of Tedder's 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 Respondent distributed the fentanyl that has given rise to Respondent'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 Adams*, 322 S.C. at 122, 470 S.E.2d at 370-371 ("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 Giles*, 407 S.C. 14, 754 S.E.2d 261.

Therefore, the circuit court's determination that evidence of Tedder's death is not admissible is directly appealable under South Carolina law. *McKnight*, 287 S.C. at 168, 337 S.E.2d at 209.


CONCLUSION

Based on the foregoing, the State requests that this Court find the circuit court's order excluding any testimony or evidence of Tedder's death and surrounding events immediately appealable under section 14-3-330 and reverse the circuit court's order excluding the evidence.

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