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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Appellant,

vs.

JOSHUA KENNETH BROOKINS,

Respondent.

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

COURT’S EXHIBITS # 1 (DVD)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
CASE NO. 2023-GS-46-06159

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-vs-)
)
JOSHUA KENNETH BROOKINS,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

July 15, 16, 2024
York, South Carolina

B E F O R E:

Honorable Debra R. McCaslin, Judge.

A P P E A R A N C E S:

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Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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E X H I B I T S

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ID/AD</u>
C-1	DVD	
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(REPORTER'S NOTES: The referenced Court's Exhibits were not marked during the proceeding on the record, therefore is not page referenced. All exhibits admitted into evidence during this proceeding were duly filed with the York County Clerk of Court's Office.)

1 THE COURT: All right. Y'all ready to go forward on
2 these motions?

3 MS. SMITH: Yes, ma'am.

4 THE COURT: All right. I'm assuming we need a *Denno*
5 hearing?

6 MS. SMITH: Yes, Your Honor. He did give a statement
7 to police in this case. The other confessions were made to
8 lay people, so I would not think that that would require a
9 *Denno* hearing, but the statement to Joey Wallace would
10 require one.

11 THE COURT: Are you in agreement, Ms. Cloud?

12 MS. CLOUD: Yes, Your Honor.

13 THE COURT: Y'all want to go ahead and start with the
14 *Denno* hearing?

15 MS. SMITH: Yes, Your Honor.

16 THE COURT: Okay. You can call your witness.

17 MS. SMITH: The State would call Joey Wallace.

18 (JOE MICKEY WALLACE, JUNIOR, being first duly sworn,
19 was examined and testified as follows):

20 MS. SMITH: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 JOE MICKEY WALLACE, JUNIOR BY MS. SMITH:

23 Q. Can you please state your name for the record?

24 A. Joe Mickey Wallace, Junior.

25 Q. And where do you work?

- 1 A. York County Sheriff's Office.
- 2 Q. How long have you been in law enforcement?
- 3 A. Twenty years.
- 4 Q. Has that always been with the Sheriff's Office?
- 5 A. Yes, ma'am.
- 6 Q. What do you do for the Sheriff's Office?
- 7 A. I am the lieutenant over the Violent Crimes Unit.
- 8 Q. And how long have you been assigned to that?
- 9 A. Been assigned to the Violent Crime Unit since 2017.
- 10 Q. And can you tell us what you do in that role?
- 11 A. In that role, I manage several units, not just violent
- 12 crimes, but special victims, cold case and the Sex Offender
- 13 Registry. We -- as a lieutenant, I review and assign cases
- 14 that come into the agency that are investigated by
- 15 detectives. We -- our CID is broken up into several
- 16 divisions, but all of the guys in CID do an on-call status,
- 17 so they may have to pick up different cases that may not
- 18 pertain to what they work every day. So those cases come to
- 19 us and then we review those cases, myself and my sergeant,
- 20 and then we assign those out to the proper people.
- 21 Q. Were you working as a detective on an investigation on
- 22 May 2nd of 2023, that arose out of an incident at 663
- 23 Mandarin Road in York County?
- 24 A. Yes, ma'am.
- 25 Q. How did you become involved in that case?

1 A. So, as I said, we have detectives that are on call.
2 Detective Frame was on call that night. He responded to an
3 investigation at that residence. Once that case came in,
4 once we came back into work the next day and we reviewed
5 that case, that case was assigned to me, spoke with
6 Detective Frame, got a synopsis from him and then started
7 trying to put information together from that.

8 Q. Did you develop a suspect in that case?

9 A. We did.

10 Q. Was that suspect Joshua Brookins?

11 A. It was.

12 Q. At some point was he housed in the York County
13 Detention Center?

14 A. Yes, ma'am.

15 Q. Did you go and speak to him in this case?

16 A. I did, multiple times.

17 Q. During those times, was the defendant read Miranda when
18 he was in custody?

19 A. Both times. Yes, ma'am.

20 Q. Did he appear to understand that advisement?

21 A. Yes, ma'am.

22 Q. Was he intoxicated to the point where he could not
23 understand your questions?

24 A. No, ma'am.

25 Q. Was there any mental disability that was apparent?

- 1 A. No, ma'am.
- 2 Q. Did he ever invoke his right to remain silent?
- 3 A. No, ma'am.
- 4 Q. Did he ever invoke his right to an attorney?
- 5 A. No, ma'am.
- 6 Q. During this time, were your weapons drawn?
- 7 A. No, ma'am.
- 8 Q. Were any promises made to the defendant?
- 9 A. No, ma'am.
- 10 Q. Were any threats made?
- 11 A. No, ma'am.
- 12 Q. Did the defendant make any statements to you those
- 13 days?
- 14 A. He did.
- 15 Q. And those statements were made after he was read
- 16 Miranda?
- 17 A. Yes, ma'am.
- 18 Q. Were you wearing a body cam during those interviews?
- 19 A. Yes, ma'am.
- 20 Q. Did that body cam record the Miranda?
- 21 A. It does.
- 22 MS. SMITH: Thank you, Your Honor. That's all I have
- 23 for Mr. Wallace.
- 24 THE COURT: Okay. Ms. Cloud.
- 25 MS. CLOUD: Thank you, Your Honor.

CROSS-EXAMINATION

JOE MICKEY WALLACE, JUNIOR BY MS. CLOUD:

Q. Mr. Wallace, when you were -- I'm sorry. How many times did you interview with him?

A. Two times, ma'am.

Q. Both of them Miranda rights were read?

A. Say -- I apologize. I can't hear you.

Q. I'm sorry. Both of those times Miranda rights were read?

A. Yes, ma'am.

Q. Was any confession based upon you gaining access into any of his personal effects?

A. What -- are you referring to something specific? I don't know.

Q. No. Just were any of those statements made pursuant to you finding evidence based upon his personal effects?

A. So during this investigation we determined that Mr. Brookins was in our detention center. After the first interview, Mr. Brookins denied any involvement in the case itself. He knew the victim in the case, but he didn't have any information that he could provide us. So we came back and, as part of the investigation, determined that Mr. Brookins had some items in his property in the jail that were brought in the day that he was arrested. So we did go over to the jail at that point. There was a cell phone in

1 his property. We did seize that cell phone. That cell
2 phone was brought back and a search warrant was obtained for
3 that cell phone and it was downloaded. So we did get
4 information from that cell phone that we provided to Mr.
5 Brookins during the interview, which he confirmed.

6 Q. And did you use any other incriminating or allegedly
7 incriminating evidence to gain any testimony from him in
8 either of those interviews?

9 A. Not to my -- not to my recollection. We talked about
10 the information that came from the cell phone and asked him
11 specific, you know, questions about the incident and what
12 took place and just asked him to be truthful.

13 MS. CLOUD: Your Honor, I don't have anything further.

14 THE COURT: Any redirect?

15 MS. SMITH: No, Your Honor.

16 THE COURT: Okay. Can I let Lieutenant Wallace step
17 down then?

18 MS. SMITH: For this portion. There may become other
19 testimony for other portions of pretrial.

20 THE COURT: Okay. For this portion, you can step down.
21 Don't go nowhere.

22 THE WITNESS: No, I'm not, ma'am. Thank you.

23 THE COURT: All right. Is that all the testimony for
24 the *Denno* hearing?

25 MS. SMITH: Yes, Your Honor.

1 THE COURT: Okay. I'll be glad to hear from you.

2 MS. SMITH: Your Honor, all these statements that the
3 defendant made, he was read Miranda, he never exercised his
4 right to counsel or to remain silent. He was not
5 intimidated in any way, so we would say that these would
6 come in under *Jackson v. Denno* because he waived those
7 rights to counsel and to remain silent and provided those
8 statements.

9 THE COURT: Be glad to hear from you.

10 MS. CLOUD: Your Honor, we don't have an objection
11 under this hearing. We will argue later that the testimony
12 against should be excluded, but not under *Denno*.

13 THE COURT: Not under *Denno*?

14 MS. CLOUD: (Shakes head negatively)

15 THE COURT: Okay. I got it. All right. I'm going to
16 -- under *Denno*, I'm finding that the two statements were
17 voluntary. He was interviewed two times. He was at the
18 detention center. He was read Miranda on both occasions.
19 Lieutenant Wallace testified that he didn't appear to be
20 intoxicated. He appeared to understand all the
21 conversations. There were no weapons present. There were
22 no threats. There's no promises. All of this is on a body
23 cam. I'm going to find that these two statements all were
24 made voluntarily.

25 Okay. So let's move on. Anything else from the State?

1 MS. SMITH: Nothing from the State, Your Honor. We
2 would just have responses to the defense motion.

3 THE COURT: Okay. All right. I worked on this during
4 the break, so let me just kind of go through these real
5 quickly.

6 This -- I'm going to go over your motions in limine,
7 Ms. Cloud, specifically, to exclude the use of prior
8 convictions. I'd like to hear from you on that.

9 MS. CLOUD: Yes, Your Honor. So, Your Honor, we would
10 argue that the use of prior convictions would need to be
11 excluded in this case as it would be -- as the probative
12 value would be substantially outweighed by its prejudicial
13 effect.

14 Mr. Brookins was charged with -- charged and
15 convicted with four counts of manufacturing and distributing
16 methamphetamine and then one conviction for trafficking ice,
17 crank and crack, along with another conviction for
18 contraband, possession or furnishing, and these charges did
19 -- the dispositions took place in December 4th, 2014, except
20 for the last possession, which was disposed in 2022 and we
21 would argue that this would be prejudicial to -- to Mr.
22 Brookins because he has already been convicted of
23 distributing a narcotic. We believe that there would be an
24 impermissible inference made that because he has distributed
25 drugs in the past, that he has distributed drugs in this

1 case.

2 THE COURT: Let me ask you, Ms. Cloud, this conviction
3 for contraband or possession or furnishing, is that a
4 narcotic? I certainly got the four convictions and the
5 conviction for trafficking.

6 MS. CLOUD: Yes, Your Honor.

7 THE COURT: But when I was looking at the contraband, I
8 didn't know whether that concerned -- you know, that could
9 concern all sorts of stuff, cell phone, narcotics. I'm just
10 curious.

11 MS. SMITH: Your Honor, it appears from our case
12 management system that it was tobacco.

13 THE COURT: Tobacco?

14 MS. SMITH: Yes, ma'am.

15 THE COURT: Okay. Is that a felony?

16 MS. SMITH: I do believe it carries over a year, but I
17 believe it is a misdemeanor that carries over -- he ended up
18 pleading to, not possession of contraband, but furnishing
19 prisoner with alcohol or drugs, which is a misdemeanor.

20 THE COURT: Which carries what? I mean, is it even
21 eligible to be brought up in his testimony? I guess is what
22 I'm asking.

23 MS. SMITH: He was originally charged with possession
24 of contraband, but in our case management system it says
25 providing to -- it's a different CDR code. I'm going to

1 look up the CDR code, Your Honor. According to this, the
2 one he pled to is a six-month misdemeanor, so it would not
3 be eligible for us to bring up.

4 THE COURT: Not eligible. Okay. All right. Anything
5 else, Ms. Cloud?

6 MS. CLOUD: Not on that topic, Your Honor.

7 THE COURT: All right. I'll be happy to hear from you,
8 Ms. Smith.

9 MS. SMITH: Your Honor, we would seek to enter these
10 under 404 just as crimes that carry over a year. We do
11 understand that the nature of the crimes is prejudicial. We
12 only intend to ask the defendant, if he testified, if he has
13 been convicted of, I believe it's, five crimes that carry
14 over a year, all in 2014.

15 THE COURT: All right. I've had this issue come up
16 before in a case and so I stopped to do a little research
17 and went through my computer over the break. You know, the
18 Goff factors is what determines whether or not prior conduct
19 can come in and in this case I read several cases,
20 specifically the *Goff* case, *State v. Elmore*, and I'm not
21 going to let it in and this is why: I think the danger of
22 unfair prejudice to the defendant from impeachment by that
23 prior offense weighs against its admission. I think it's a
24 prejudicial effect. It appears that these -- they are so
25 similar. If he had done one distribution, he certainly had

1 done, especially four, that it's so prejudicial, I believe
2 that the jury would think he must be guilty of this one. I
3 think the similarity of the prior crimes, considering to the
4 crime charged, heightens the prejudicial value of the crime.

5 Moreover, there is a case, the *Dunlap* case. Prior
6 similar convictions involving violations of narcotics laws,
7 the prejudicial value is further increased as such
8 violations are generally not probative of truthfulness and
9 this relative lack of probative value should figure
10 prominently in the weighing of prejudice and I went back and
11 forth. Impeachment value is not probative of truthfulness.

12 The point in time of the conviction is another factor
13 to look at and it's five months short of the ten-year
14 statute. The similarity of the past crime versus the crime
15 that he's on trial for is another factor. I've looked at
16 that. I find it to be very similar and has a greater
17 prejudicial effect. The importance of the defendant's
18 testimony, you know, I'm not -- from what I've heard from
19 the lawyers is that there's several statements, one that he
20 might have supplied drugs, one that he might not have, so I
21 would think the importance of the defendant's testimony is
22 crucial, along with his credibility issue; therefore, I
23 am not going to -- I'm going to grant your motion and not
24 allow the four convictions for meth and the conviction for
25 trafficking ice. I've balanced it and weighed it. I find

1 that it's more prejudicial than probative.

2 All right. I'd like to move on to the next motion. Be
3 glad to -- if anybody needs to put something on the record.
4 If the State does, I'll be glad to hear from you.

5 MS. SMITH: Your Honor, I would just ask if your ruling
6 applies to the witnesses in this case, too? They are -- I
7 assume the defense is going to ask them about their prior
8 records as well. There are multiple defendants or multiple
9 witnesses in this case that do have drug offenses.

10 THE COURT: The witnesses are not on trial here.

11 MS. SMITH: Correct.

12 THE COURT: The defendant is.

13 MS. SMITH: Yes, Your Honor. We would argue that
14 404(B) just allows them to ask if there's any crime that
15 carries over a year.

16 THE COURT: Well, I think we'll take that up when they
17 take the stand.

18 MS. SMITH: Okay.

19 THE COURT: I think it's kind of early for me to
20 decide. I don't know who you're going to call. She
21 probably doesn't, either. I'll take it up when you call
22 them.

23 Now, a motion in limine to exclude any testimony or
24 evidence of the death of Jonathan Tedder. Let me ask --
25 well, let me hear from you on that, Ms. Cloud.

1 MS. CLOUD: Yes, Your Honor. Again, we believe that
2 any probative value even bring- -- bringing up his death and
3 especially, specifically bringing that he has died of a
4 Fentanyl overdose would be substantially prejudicial against
5 Brookins. If there's an allegation that he has distributed
6 Fentanyl and a victim has died of Fentanyl toxicity, it's
7 human nature to want to wrong that right (sic) and to
8 potentially get justice for somebody even though the charge
9 itself has nothing to do with the death. It has nothing to
10 do with responsibility for the death. There is no liability
11 being put on my client for the death and I think that
12 fentanyl is such a --

13 THE COURT: And there's no element for what he's
14 charged with in the distribution of fentanyl, is it?

15 MS. CLOUD: There is not. And I think that the crisis
16 is very publicized and I think that any mention of a death
17 from Fentanyl automatically could get a conviction against
18 my client.

19 THE COURT: All right. Let me hear from the State.

20 MS. SMITH: Your Honor, I have case law that I would
21 like to pass to you and the defense. It's three cases,
22 *State v. Wood*, *State v. Dickerson*, and *State v. Dennis*.
23 *Dickerson* is decided by the Supreme Court and the other two
24 are the Court of Appeals. They, basically, deal with res
25 gestae.

1 In this case, we would argue that the death goes to the
2 res gestae of this case. *Wood* mentions a shooting of two
3 troopers two hours prior to the defendant getting charges.
4 I would argue that a defendant shooting two troopers is also
5 highly prejudicial, but the Court found that one of the
6 excepted bases for the admissibility of evidence of other
7 crimes, when such evidence furnishes part of the context of
8 the crime or is necessary for full presentation of the case,
9 or is so intimately connected with and explanatory of the
10 crime
11 charged against the defendant and is so much a part of the
12 setting of the case and its environment, that its proof is
13 appropriate in order to complete the story of the crime on
14 trial by proving its immediate context of the res gestae or
15 the charged offense is so linked together in point of time
16 and circumstances of the crime charged that one cannot be
17 fully shown without proving the other and that's part of the
18 res gestae of the crime charged and where evidence is
19 admissible to provide this full presentation of the offense,
20 there is no reason to fragmentize the event under inquiry by
21 suppressing parts of the res gestae.

22 All three of these cases deal with that. The other two
23 -- they both come to the same conclusion. The second one is
24 about a defendant's admitted drug use was contemporaneous
25 with the murder and the robbery and then *State v. Dennis* is

1 very similar.

2 We would argue that in this case you do not get to any
3 of the investigation without the death. There's no
4 explanation as to why officers are even in this household
5 without the death. The coroner is the one that takes the
6 evidence in this case, that without the death there is no
7 reason why a coroner is there, so it would not make sense to
8 the jury in this case. Also, Mr. Tedder is not here to
9 testify because of the death. That would -- the jury would
10 get confused as to why we have a distribution without one
11 party here to testify.

12 In addition, the defendant makes what we would consider
13 four different admissions in this case. Without the mention
14 of the death, these admissions do not make any sense at all.
15 It would be incredibly difficult to redact these admissions,
16 to exclude the death and have them make any kind of sense to
17 the jury.

18 The State is also entitled to a fair case in this
19 trial. We would argue that if those things are taken out,
20 we do not get that. We do understand that just the mention
21 of the death is highly prejudicial, but in this case it is
22 highly probative as well. We would understand a direction
23 of not to blame this defendant for the death, but to not be
24 able to talk about the death at all would substantially
25 impair our ability to try this case.

1 MS. CLOUD: Yes, Your Honor. The State, in any of the
2 evidence in the case file, has not alleged that he took
3 Fentanyl and then died. So the claim is that he distributed
4 Fentanyl. So did he have possession of it? Did he
5 distribute it and was it actually Fentanyl? Whether that
6 happened three days before the death, whether it happened --
7 you know, there's actually no time alleged for when the
8 distribution happened and so if it comes out that he had
9 distributed a week ago, then the death -- there's no
10 correlation whatsoever and now we've brought in a death of
11 someone that has died with no correlation that what may have
12 been distributed was what was actually distributed from my
13 client and so, therefore, now we've got the jury
14 automatically assuming that my client has supplied Fentanyl
15 that has killed the victim.

16 Also, in other cases I do believe that the jury
17 confusion could be argued; however, there are many cases in
18 which someone who is distributed illegal narcotics is not
19 going to come into the court and say, Yes, Your Honor, I
20 accepted the narcotics and he gave them to me and everything
21 was great. I don't believe the unavailability of the
22 witness is confusing in this case and, again, the death does
23 not go whatsoever to any element of the charged crime and
24 there's no evidence of the proximity of when the
25 distribution even occurred and so, therefore, the

1 investigation started as an overdose and at a later date
2 became a criminal investigation and so the -- if you need to
3 talk about the overdose to prove the case, there's just no
4 correlation there that -- that would -- and so we argue that
5 it's irrelevant to proving the elements of the element
6 charged -- of the crime charged.

7 THE COURT: Didn't I read somewhere or am I just not
8 remembering correctly that the way it came to the police
9 attention was the mom of the victim gave his name, gave the
10 defendant's name? Is that not right?

11 MS. CLOUD: At a later date. Yes, Your Honor. On May
12 9th and so that would have been a week after the
13 investigation into the death. The overdose occurred on May
14 2nd.

15 THE COURT: I'm glad to hear from you.

16 MS. SMITH: Yes, Your Honor. The defendant is actually
17 the one that gives us the time line in his -- he sends a
18 text message on May the 4th, so the death happened on May
19 2nd. He says, But my boy got some raw ass fentanyl, though.
20 Hell, I served one of my home boys the other day. He fucked
21 around and died. I feel bad as hell about that. So his
22 statements alone correlate the distribution with the death
23 of his friend. He, specifically, is speaking about
24 Fentanyl. He's specifically saying he served him this
25 Fentanyl and he's specifically saying that he died and that

1 he feels bad about it.

2 THE COURT: Well, what is the -- what is the point in
3 making sure the jury knows that he died--

4 MS. SMITH: Because the --

5 THE COURT: ---in the distribution case?

6 MS. SMITH: The investigation does not make any sense
7 without that. So --

8 THE COURT: I mean, you two can't stipulate the victim
9 is deceased?

10 MS. CLOUD: Your Honor, because it's dealing with
11 Fentanyl, I think that any mention of death would be
12 prejudicial in this case.

13 THE COURT: Let me see the lawyers.

14 (Whereupon, a Bench conference was held off the record
15 and out of the hearing of the court reporter.)

16 THE COURT: All right. We just had a sidebar in which
17 we discussed a stipulation because the victim in this case
18 has passed away. The lawyers are going to come up with a
19 stipulation, because I am not going to let them mention an
20 overdose or have any inference that this distribution caused
21 his death, because there's no correlation that I've seen or
22 been presented to me that that is the case. He has not been
23 charged with that. He's been charged with distribution of
24 Fentanyl and death is certainly not an element, as sad as it
25 is.

1 I've asked the lawyers to look over the videotape, see
2 if they can't decide what to redact out of the statement,
3 that they can agree upon. They're sending me the videotape
4 tonight, along with the text message that mentions the death
5 that they want to get in. I'll look at that tonight and let
6 me look at the law on that and then I will decide.

7 Did I miss anything, Ms. Smith?

8 MS. SMITH: Not from that argument, Your Honor, and I
9 do have three messages that -- there are three sets of
10 messages, if you want me to bring them to you now.

11 THE COURT: Yes, if you would, please.

12 MS. SMITH: There is one portion redacted because I
13 planned to present this to the jury. It just talks about
14 that Mr. Brookins just got out of jail. It wouldn't go back
15 to the jury room.

16 (Whereupon, Ms. Smith passed documents up to the
17 Court.)

18 THE COURT: Okay. Yeah. I don't want anything
19 mentioned about jails, 'cause I've already had that ruling
20 on his prior history.

21 Now, I've got a motion in limine regarding equally
22 available witnesses. Do you want to explain that one to me,
23 Ms. Cloud?

24 MS. CLOUD: Your Honor, we are just asking that the
25 State does not reference the fact that we may not call one

1 of their witnesses even though they are equally available.

2 THE COURT: Are y'all planning on doing that?

3 MS. SMITH: No, ma'am, Your Honor.

4 THE COURT: Okay. If it comes up, please object--

5 MS. CLOUD: Yes, Your Honor.

6 THE COURT: ---and I'll rule on it. How about this
7 motion in limine regarding the defense's motion in limine?

8 MS. CLOUD: Yes, Your Honor. So we are just asking
9 that there's no reference that the defense did ask for
10 certain items to be suppressed or not mentioned in this
11 case.

12 THE COURT: Do you have any intentions of doing that?

13 MS. SMITH: No, ma'am.

14 THE COURT: All right. If it comes up and you think it
15 needs my attention, please object.

16 Now, I've got a motion to quash the indictment. Be
17 glad to hear that.

18 MS. CLOUD: Yes, Your Honor. So for this motion we are
19 arguing that the indictment is insufficient on its face. I
20 believe you have the indictment in front of you there and so
21 ---

22 THE COURT: I do.

23 MS. CLOUD: ---it reads, The Defendant, Joshua Kenneth
24 Brookins, did on or about May 2nd in York County, and then
25 it lists -- it lists the statute, statutory language, listed

1 under 44-53-370(B)(1) and we are arguing that the
2 sufficiency -- it's insufficient because there are zero
3 identifying facts, other than his name and York County to
4 put the defendant on notice of what he is actually being
5 charged with and so according to *Gentry*, which I do not have
6 the full thing right here, but I can get it. The Court
7 states that the indictment is a notice document required by
8 our State Constitution and Statutes and that the primary
9 purpose of the indictment is to put the defendant on notice
10 of what he is called upon to answer, i.e., to apprise him of
11 the elements of the offense and to allow him to decide
12 whether to plead guilty or stand trial and to enable the
13 Circuit Court to know what judgment to pronounce if the
14 defendant is convicted, and so going to the defendant being
15 put on notice of what he's called upon to answer, this is
16 where no sufficient facts are listed underneath the
17 indictment. There is not a location and so there is no
18 location as to where he may have distributed the -- the
19 Fentanyl. There is no weight listed and there's nothing to
20 put him on notice as to the actual charge that he is being
21 asked to defend against.

22 Even further, and normally courts have held that if a
23 date is incorrect, that the State may amend it so long as it
24 does not change the sentencing of what is on the indictment.
25 However, taken as a whole, of no specific facts being

1 listed, the date is incorrect as the victim in this case
2 passed away at 3:00 A.M. on May 2nd, 2023 and so this would
3 allege then that he distributed from twelve to 3:00 A.M. on
4 the day of the death and so based upon, again, there's no
5 facts whatsoever that shows where he distributed,
6 how much, to whom he distributed and going to support this,
7 the arrest warrant provided states that on May 2nd, 2023,
8 The defendant did unlawfully distribute fentanyl, and then
9 it lists the Mandarin address as to where the distribution
10 occurred. And so we would argue that had the State
11 mentioned the address as to where the distribution occurred,
12 then sufficient facts would have been supported via the
13 indictment; however, with the lack of that, this -- this
14 indictment just says that Mr. Brookins did something with
15 fentanyl on or around May 2nd.

16 And then, second, as to allowing the Court to know what
17 judgment to pronounce if a defendant is convicted, the
18 Courts have regularly held that you should look at the body
19 of the indictment, however, you can use titles to
20 incorporate the meaning of the indictment if need be,
21 however the main information should be looked at through the
22 body and so, obviously, the title says, Distributing
23 fentanyl, however, the language says that he either did
24 indeed distribute fentanyl, conspired to distribute
25 fentanyl, or -- well, or possessed with the intent to

1 distribute fentanyl and the State has referenced section 44-
2 53-370, which is a particularly large statute. If you were
3 to pull that statute up, it has subsection A through, I
4 believe, F with a whole bunch of stuff that's under that.

5 THE COURT: I'm very familiar with it.

6 MS. CLOUD: And we would argue that in this case the
7 Court would not necessarily know whether, if he were to
8 plead guilty, right, just by the indictment, whether he
9 should be pleading guilty of distributing fentanyl or
10 possessing with intent to distribute fentanyl.

11 Further, based upon South Carolina Law, The sufficiency
12 of an indictment is examined objectively from the viewpoint
13 of a reasonable person and not of that of a particular
14 defendant, so not meaning necessarily that the defendant's
15 understanding of the indictment be relevant, however, that
16 understanding or lack thereof is just a factor for the Court
17 to consider. And so in considering, in the totality of
18 looking at this, looking at the failure to state any
19 subsection, we find that it would be nearly impossible for a
20 reasonable person to understand, just from the language
21 alone, as to what charge -- what crime is being charged.

22 To further this, throughout the charging document, Mr.
23 Brookins was arrested under 44-53-370(B)(2) and that is what
24 the arrest warrant says, along with other charging
25 documents, booking reports; however, his indictment was then

1 turned under this, which we believe they're attempting to
2 indictment him under 44-53-370(B)(1), both of which
3 sections, (B)(1) and (B)(2), both reference a schedule II
4 controlled substance and so (B)(1) states schedule I DMC
5 (ph) and a schedule II narcotic drug and then it lists the
6 -- the punishment for first, second, third. (B)(2) lists
7 any schedule I, II, and III, that is, I believe, LSD and a
8 narcotic drug analogues and so, again, from a reasonable
9 standpoint, even if the defendant said, okay, I see my
10 indictment, I'm going to look up this subsection. I'm going
11 to search for schedule II, Fentanyl, you still have (B)(1)
12 and(B)(2) listing out both of those. There is no reference
13 to the definition section, which again, I don't know that if
14 I read the definition section I would understand this
15 really, the Fentanyl breakdown and whatnot or what an analog
16 is compared to a narcotic drug and so I would -- I would say
17 that a reasonable person, looking at just the information
18 that is based on this indictment, would not be able to
19 actually know the crime being charged and that from the lack
20 of any specific details whatsoever, Mr. Brookins was not
21 properly noticed about the actual crime that he's being
22 charged.

23 THE COURT: Okay. Let me hear from the State.

24 MS. SMITH: Thank you, Your Honor. In South Carolina
25 Code Section 17-19-20, it says, An indictment is sufficient

1 if it charges the crime substantially in the language of the
2 common law or of the statute prohibiting the crime or show
3 plainly that the nature of the offense charged may be
4 equally understood. That's also done in case law in *State*
5 *v. Gonzalez*, which says, An indictment phrased substantially
6 in the language of the statute, which creates and defines
7 the offense is ordinarily sufficient. That is what we have
8 in this case.

9 In all our indictments in York County and I believe in
10 the State, we follow the statute and its wording entirely.
11 That's what we've done here. None of our indictments allege
12 facts. Indictments just allege who is being charged, the
13 charge, which here is distribution of Fentanyl on or about
14 the date, which it does here, and in York County.

15 If we were to start listing facts in our indictments,
16 they would be several pages long. That is meant for the
17 other discovery in this case, which was provided, of
18 incident reports, statements, things like that, which the
19 defense has and it's my understanding has gone over. So he
20 is well aware of the facts that we are going to be alleging
21 in this case and he is aware of the fact that we are
22 charging him with distribution of Fentanyl.

23 As far as the schedules, those statutes, one includes
24 other schedule IIs and one includes schedule II narcotic.
25 In our indictment language we were very specific about

1 schedule II narcotic.

2 In addition, she brought up the wording of the date.
3 As far as that's concerned, in *State v. Rallo*, which is 304
4 S.C. 258, it says, An indictment is sufficient if it states
5 a crime occurred on or about a certain date, but as the
6 solicitor states at trial that he, or she in this case, will
7 provide the crime occurred on a specific date and the
8 defendant puts up an alibi for that date, the trial Court
9 should not instruct the jury that the State does not have to
10 prove an actual date.

11 We do not intend to allege that it occurred on an
12 actual date. We are talking about on or about. As far as
13 the date that we are alleging, that is only the date that we
14 are alleging that he passed away. An alibi would not be
15 necessary in that case unless we were saying that he
16 specifically went and murdered him, which is not the facts
17 of this case.

18 THE COURT: Okay. Anything else?

19 MS. CLOUD: Yes, Your Honor, just briefly. I actually
20 went back and reviewed some pending cases and cases that I
21 completed in York County and looked at the indictments and
22 each indictment has at least one fact alleging where, what,
23 giving something. Having such a plain -- having such plain
24 language in an indictment potentially opens up to double
25 jeopardy issues as you can read this and not know what he

1 was charged with and get charged again, again, because
2 there's nothing to specify what happened or specifying the
3 crime charged. So we would argue that, yes, you don't need
4 a concise statement, doesn't need to be a whole complaint,
5 but if you're distributing narcotic, where did we distribute
6 it? How much did we distribute? Anything like that just to
7 put on notice of what he needs to defend against.

8 THE COURT: Okay. Thank you. Anything else?

9 MS. SMITH: No, Your Honor.

10 THE COURT: All right. I'm going to deny your motion.
11 I find that the indictment is sufficient. The true test of
12 the sufficiency of an indictment is not whether it could be
13 made more definite or certain, but whether it contains the
14 necessary elements of the offense intended to be charged and
15 sufficiently apprises the defendant of what he must be
16 prepared to meet. It doesn't have to detail an overt act.

17 In this case, it clearly states May 2nd, on or about,
18 place, York County. I think it's got distribute in here I
19 can't tell you how many times, one, two, purchase, deliver,
20 dispense, distribute and we know the type of drug, it's
21 Fentanyl, all in violation of South Carolina Law.
22 Therefore, that -- the indictment stands and your motion is
23 denied.

24 Let me move to the next motion is -- I am -- I'm not
25 real sure I need to go to this search warrant for the cell

1 phone. She's not bringing up the cell phone, the drugs that
2 were found in the cell phone.

3 Is that not right, Ms. Smith?

4 MS. SMITH: Your Honor, I believe there are two
5 different arguments that she's making about that. The --
6 there are two different searches. There's the search of the
7 outer case of the phone, which we have discussed he has not
8 on trial for that here.

9 THE COURT: For that. So that is not being brought up
10 at all?

11 MS. SMITH: Correct. I think the other one--

12 THE COURT: Okay. So the next search warrant --

13 MS. SMITH: ---that she's challenging is the search
14 warrant of the contents of the phone,---

15 THE COURT: Okay.

16 MS. SMITH: ---which we do plan on bringing in. That
17 is one of those text messages that you were provided. It
18 also led the defendant's confession.

19 THE COURT: Okay. So are we going to need testimony on
20 that?

21 MS. SMITH: Your Honor, --

22 THE COURT: I mean, proffered testimony on the phone
23 contents?

24 MS. SMITH: I can argue it without testimony, but I do
25 have Joey here if you would like to hear testimony, but I

1 believe we can get to the substantive argument without
2 testimony.

3 THE COURT: Okay. Well, let me hear -- what is the
4 basis for the search warrant for the contents of the phone,
5 the data that they took off the phone?

6 MS. CLOUD: What is the basis for the search warrant or
7 the basis for my argument?

8 THE COURT: Your argument.

9 MS. CLOUD: So my argument is that the affidavit that
10 was with the search warrant lacked probable cause, so there
11 was not sufficient facts that any reasonable magistrate
12 could find probable cause.

13 THE COURT: Okay. I think we probably need to have
14 testimony on it. Let's proffer that testimony. Let's hear
15 it.

16 MS. SMITH: Yes, Your Honor. The State would call
17 Detective Joey Wallace to the stand again.

18 THE COURT: Does anybody have a copy of the search
19 warrant that I can go along with?

20 MS. SMITH: I do.

21 (Whereupon, the referenced document was handed up to
22 the Court.)

23 DETECTIVE WALLACE: Your Honor, am I still under oath?

24 THE COURT: Yes. I'm going to tell you you are still
25 under oath.

1 MS. SMITH: Your Honor, may I approach?

2 THE COURT: You may.

3 MS. SMITH: Your Honor, do you want me to go over his
4 qualifications again?

5 THE COURT: No.

6 MS. SMITH: Okay. I didn't think so.

7 THE COURT: Not unless -- Ms. Cloud, did you want her
8 to go over all his qualifications again?

9 MS. CLOUD: No.

10 THE COURT: Okay. No. For the purposes of this
11 hearing, you can go forward.

12 DIRECT EXAMINATION

13 JOE MICKEY WALLACE, JUNIOR BY MS. SMITH:

14 Q. Mr. Wallace, you previously stated that you were a
15 detective in this case and you became involved in it around
16 the time of May 2nd, 2023. Did you apply for a search
17 warrant in this case in October of 2023?

18 A. I did.

19 Q. And were you -- prior to applying for that search
20 warrant, were you approached with any evidence in this case?

21 A. Yes. So Ms. Settlemyer, mother of Ms. Tedder, came in
22 and spoke with myself and Captain Neely at the Sheriff's
23 Office to provide us information from Facebook and messages
24 that were communicated from Mr. Brookins to her and as well
25 as her other son, Jacob.

1 Q. Did she do -- did she obtain those messages at your
2 direction?

3 A. No. She had those -- she brought those messages to us.
4 We didn't ask her to do that. She brought those to us.

5 Q. So she was not acting as an actor for the State?

6 A. No. Not at all.

7 Q. Those messages did -- what did they include? What did
8 -- the substantive?

9 A. I don't -- obviously don't have them in front of me so
10 I can't tell you word for word, but it was information,
11 first off, between Mr. Brookins and Jacob Tedder, basically,
12 asking Jacob to talk to his mom and not have her go forward
13 or call law enforcement and that he was sorry, that he loved
14 -- that he loved Jonathan and he didn't, you know, want
15 these things to happen. The messages back and forth with
16 Ms. Settlemyer were basically the same content, asking to
17 please, you know, talk to him and she told him that he could
18 talk to the police, at which point, my understanding from
19 the Settlemyers, that he blocked her at that point and
20 wouldn't talk to her anymore.

21 Q. So there were discussions in these text messages about
22 distribution of narcotics, at least to the text messages
23 with Jacob Tedder?

24 A. Yes. And, again, I don't have in front of me to tell
25 you word for word, but there was mention of Fentanyl in

1 those text messages.

2 Q. If you were to see that -- those text messages, would
3 it remind you of what was in them?

4 A. Absolutely.

5 MS. SMITH: Your Honor, unfortunately, I have to get
6 the copies from you to show him if you're okay with that.

7 THE COURT: Yes.

8 (Whereupon, Ms. Smith retrieved documents from the
9 Bench.)

10 MS. SMITH: It's not that last -- let's see. Not that
11 first page.

12 Q. Specifically, as to his conversations with Jacob
13 Tedder, could you read that, please?

14 A. Yes, ma'am. It says, Tell your mom she is in my
15 prayers and I love you all. I served him a couple blues, he
16 had fent and I told him to be careful because he said he had
17 been clean for a year. Shit. I even gave him Narcan
18 because I was worried about him, man. Talk to your mom.
19 She has known me since I was a kid, man. She knows I love
20 y'all like family. Tell her to please don't press the
21 issue. I feel guilty about all this. You already know I
22 do. I'm sorry, Bro, from me to you and your family, I'm so
23 sorry this happened. Hell. Jon-Jon was -- was a baby
24 brother, too, always has been. Please do what you can to
25 help me with this situation, Bro. God knows I would only --

1 God knows I would for you at any minute regardless of
2 circumstances. To be real, I feel like -- I feel like his
3 -- and it says, "BM", is one that pushed him to this point.
4 I'm assuming he's talking about baby's mama. And then, I
5 really need to talk to Christina because I know she knows
6 how I feel about you-all. I didn't mean -- and it's
7 blocked, so I can't see what it says, something involved
8 with this and sure as hell didn't mean for, and then that's
9 the bottom of the message on the first one.

10 Q. Detective Wallace, in your experience at the Sheriff's
11 Office, have you had a time in your career when you worked
12 narcotics?

13 A. So we all, as Sheriff's Deputies and Detectives, we all
14 come in contact with narcotics at some point or another. So
15 I made numerous narcotics cases from when I was on patrol
16 and to a detective and as a lieutenant.

17 Q. Did you work for the Drug Enforcement Unit at any time?

18 A. I did not.

19 Q. From your experience working narcotics cases, what does
20 the term blues mean to you?

21 A. My understanding, and as this has become an issue in
22 our community, the term blues means Fentanyl. It's a
23 pressed pill that includes some type of binder along with
24 raw Fentanyl.

25 Q. And as far as serving someone, would that mean a

1 distribution?

2 A. Absolutely.

3 Q. So from your experience doing narcotics cases, would
4 you expect to find text messages related to the distribution
5 of drugs on a defendant's phone?

6 A. Absolutely. Phones are the way of the world now, so
7 all the information that people deal with on a day-to-day
8 basis, that information is on a cell phone. In our past
9 investigations, anything from financial crimes to drugs,
10 people use telephone, they use cell phones, they use
11 messages, they use Facebook to communicate about their
12 criminal activities and criminal business.

13 Q. So the purpose of you going to the magistrate and
14 applying for a search warrant was to determine if there were
15 other messages, or including these messages, in the
16 defendant's phone. Is that correct?

17 A. Correct.

18 Q. And when you went to the magistrate, did you have these
19 messages in particular from the victim's mother?

20 A. I had seen these messages, but I did not have them in
21 hand.

22 Q. Did you convey the contents of these messages to the
23 magistrate?

24 A. I did.

25 MS. SMITH: Thank you, Your Honor. That's all we would

1 have for this witness. We do have an argument at the
2 appropriate time.

3 THE COURT: Okay. Any cross?

4 CROSS-EXAMINATION

5 JOE MICKEY WALLACE, JUNIOR BY MS. CLOUD:

6 Q. Do you remember the date that Ms. Settlemyer brought
7 you these messages?

8 A. Not right off. I believe in June, possibly.

9 Q. Okay. And did you do any type of independent
10 verification into any of the messages provided to you?

11 A. No, ma'am. I don't do the phone download type stuff.
12 No. I'm not -- I'm not the person that does that. We have
13 a division that handles that.

14 Q. Okay. And when Ms. Settlemyer came in to provide this
15 information, how was it provided? And what I mean was it a
16 screen shot? Was it the actual thread? How were the
17 messages provided?

18 A. Just the way you see here, the screen shots that she
19 had on her phone and she provided them to us.

20 Q. Okay. And did you ask to see the full conversation for
21 any of the text messages?

22 A. So the -- what she had was the initial -- the one that
23 you see here, which I believe is Jacob.

24 Q. Uh-huh.

25 A. It was from Josh to Jacob, and then the other messages

1 were screen shotted as this as she had screen shot them her
2 phone. So I didn't ask to go into her phone to look at the
3 messages. She provided what she had and that's what we
4 reviewed.

5 Q. And did Jacob or Jake, did he ever verify that the text
6 thread allegedly from him was to him?

7 A. I believe in the actual -- in the un-printed photo I
8 believe you can see Jacob's name at the top of that thread.
9 I would have to see it, but I think you can actually see
10 Jacob's name at the top. I didn't speak to Jacob
11 personally. That information came -- that we have here came
12 from Ms. Settlemyer.

13 Q. Was any information provided regarding the profile that
14 allegedly sent the messages?

15 A. No. I mean, we do a open-source search on Facebook on
16 anybody we deal with, whether it's victims, suspects, what
17 have you. I do believe that the picture that shows Mr.
18 Brookins here at the top, he has multiple Facebook profiles
19 and that's one of the pictures on one of his profiles.

20 Q. Okay. And so if someone has multiple Facebook
21 profiles, could that mean, in your experience, that might
22 have been hacked and someone else opened an account under
23 his name with his --

24 A. Typically, -- typically, what we see in our line of
25 work is that if there's multiple profiles, they're talking

1 to different groups of people. So they have multiple
2 profiles set up, same person, maybe a different photo, maybe
3 not a different photo, but the same information with
4 different groups of friends. So it's not necessarily that
5 somebody hacked his Facebook, it's just that he has multiple
6 profiles that he works off of. A lot of times we also see
7 that in criminal activities a lot of people will lose or a
8 phone or they'll drop a phone or the police will seize a
9 phone and then at that point they have to start a new
10 Facebook or new social media with a new phone, so there's
11 where you end up multiple profiles.

12 Q. And both of the messages, the one to Jacob and to Ms.
13 Settlemyer, they were on Facebook. Is that correct?

14 A. That's what it appears. Yes, ma'am.

15 Q. Okay. And so you weren't ever shown any actual SMS
16 text messages from a cell phone?

17 A. It appeared that the message that Mr. Brookins'
18 Facebook page -- when we got these pictures and we
19 downloaded his phone, it appeared that his Facebook account
20 had been cleared. His messages had also been cleared from
21 his phone and that's when we seized his phone from the jail.

22 Q. Okay. And then going back to your testimony regarding,
23 I served him a couple blues; he had fent and I told him to
24 be careful. Wouldn't -- wouldn't there be a distinction
25 between, I served him a couple blues; he had fent? Would he

1 not make that distinction in that --

2 A. I -- again, blue -- we understand -- law enforcement
3 understands blues to be Fentanyl. It's a pressed pill, it
4 has Fentanyl and some type of binder in it. So I would, as
5 a law enforcement officer, I would assume that he -- if he
6 says blues, that he is talking about Fentanyl.

7 Q. And when he said --

8 A. And I think it would be the difference in weed or
9 marijuana, you know. It could be called one or the other,
10 but it's the same thing.

11 Q. Okay. And so when he says, Fent, just means Fentanyl
12 as well?

13 A. Yes.

14 Q. And so was any information provided about the date and
15 time that the messages were sent other than what is shown on
16 the screen shot?

17 A. No, ma'am.

18 Q. Okay. And then you stated that Ms. Settlemyer came in
19 with this information in around June. Why did you wait so
20 long to apply for a search warrant?

21 A. So we tried to locate Mr. Brookins and the information
22 that were receiving is that he was homeless, that he
23 didn't have a place to lay his head. Again, people in that
24 particular capacity are not that easy to find. So we
25 continued to work on the case. Once we found out that he

1 was in our jail and that he had a phone in his property,
2 then we seized that phone and obtained that search warrant
3 at that point.

4 Q. Was --

5 A. Without the physical phone in my hand, there would have
6 been no reason for me to get a search warrant.

7 Q. Okay. Was Mr. Brookins on probation to where he had to
8 check in with the -- with the probation office?

9 A. I can't tell you the terms of his probation. I found
10 out from Mr. Brookins during an interview that he was on
11 probation.

12 Q. Did you check with the probation office at all to see
13 whether --

14 A. At that point, ma'am, it didn't make any difference to
15 me.

16 Q. And did --

17 A. We don't have the -- we don't have the same system, I
18 guess. Let me rephrase. We don't have the same system as
19 probation, so when we check our system, it doesn't show us
20 if somebody is on probation or not.

21 Q. And so what action did you take to try to find Mr.
22 Brookins?

23 A. I mean, we -- obviously, like I said, we do a open-
24 source search of the Facebook. We check contacts. We have
25 a daily record that comes in from all the agencies in the

1 county that provide if they've had contact with anyone.

2 Spoke with other officers, spoke with our road guys, Hey,
3 has anybody had contact with Mr. Brookins, and at that point
4 nobody had.

5 Q. And it's your testimony that you physically went to get
6 Mr. Brookins' phone?

7 A. I did.

8 Q. Is there a reason why there's contradicting statements
9 in some of your summaries in the case file, one saying that
10 you went to inventory the property and got his cell phone;
11 however, another statement says that you called detention
12 staff and they brought you his cell phone?

13 A. So the detention staff, when they -- when somebody
14 comes in as a inmate, they take the -- take all of their
15 property when they come into booking and that stuff is
16 stored in a separate place that I do not have access to. So
17 I had to contact the booking clerk to have them bring the
18 property out to me. They brought it out to booking, put it
19 on the table and then they stood there as I went through
20 each item.

21 Q. And what was your point of going through each item?

22 A. Just to see what he had in his property. So we were
23 looking for -- so, and I don't know if this is the
24 appropriate time to talk about this or not. Part of the
25 investigation, we came across his jail mail and in his jail

1 mail he talked about specific items that he wanted his
2 girlfriend to come and pick up; one of those items was dog
3 food. We, as investigators, see drugs called different
4 things all the time, the blue, the Fent. We see it called
5 different things and if people are in jail and they're
6 putting it out there and they know this stuff is recorded,
7 they're going to use different terms. So I went to look at
8 his property. When I was searching his property to see what
9 was there, we obviously discovered a cell phone was there,
10 but there was no dog food there. At that point in time we
11 took the cell phone, opened the cell phone to check it
12 because I didn't want to be -- like I do with every phone, I
13 check everything, I check behind the cases, everything and
14 that's when I checked behind the case and found the Fentanyl
15 in the back of the case. At that point in time in our
16 investigation, we determined that the dog food that Mr.
17 Brookins was talking about in the jail mail was going to be
18 the Fentanyl that was in the phone. There was no dog food
19 in his property. There was no dog food brought in with him.
20 There was no dog food logged into his property in his
21 inventory, so we looked at everything that was there to see
22 if there was anything that would be relevant to our case.
23 The only thing we could find was a cell phone.

24 Q. And would it be surprising to you to know that he did
25 have dog food when he was arrested?

1 A. It'd be very surprising to me, considering we spoke
2 with the jail staff. They do not accept dog food in the
3 booking area. Twenty years of taking people to jail, they
4 don't accept those type things and they wouldn't put it in
5 his property. So that's not something that he would have
6 there for somebody to come and pick up. We went to Chief
7 Hicks, who is over our detention center, just to confirm
8 that and then also asked for video that would have shown him
9 coming in. At that point in time the video was not
10 available due to the time frame that had passed, but he
11 didn't -- the officer that brought him in didn't log
12 anything in the report. He arrested him at a church in Rock
13 Hill. There was no dog food in his property. There was no
14 dog food listed and there was no dog food in the detention
15 center.

16 Q. What happens if you get arrested with an item that
17 can't be inventoried with your property?

18 A. If we come into the detention center with it,
19 typically, the detention center either throws it into the
20 trash right in the booking area or they have the deputy try
21 to return it to a family member or somebody that -- you
22 know, depending on what the item is, to try to do that. In
23 the past, you know, we've had people come in with alcohol.
24 We've had people come in with cigarettes. Cigarettes, they
25 put in their property, but alcohol they're not going to, so

1 that alcohol is destroyed.

2 Q. Okay. And did based your search warrant at all off of
3 the basis of the term dog food?

4 A. Again, that -- no. Our search warrant was based off of
5 the messages, possible text messages, locations, GPS
6 locations, calls, pictures, anything that could relate back
7 to this particular case.

8 Q. And so going to -- how long have you been with York
9 County Sheriff's Office?

10 A. The Sheriff's Office, twenty years.

11 Q. Are you or do you know the Settlemyer family?

12 A. I, in the past, when I was a patrol officer on the
13 road, I had dealt with them at different points in time.
14 Yes, ma'am.

15 Q. And when you say dealt with them, I'm assuming just
16 various odds and ends?

17 A. It could be anything, traffic violations, could be
18 cases. Again, Rock Hill's a small town. I'd ran into them
19 in town at different points in time, so I am familiar with
20 them. Yes, ma'am.

21 Q. At any point during any of those, we'll say incidents,
22 was there -- we'll just say Christina. Was Christina's
23 truthfulness ever doubted by you?

24 A. No. She's always been very outspoken.

25 Q. So you've never seen her try to lie or hide anything?

1 A. No. She -- again, she's always been very outspoken
2 with us. She doesn't have anything to hide to my knowledge.

3 Q. And so going to the specific language that you put in
4 your -- in your affidavit for the search warrant, you said
5 the family brought in the photo. When you said, the
6 family, who were you referring to?

7 A. Ms. Settlemyer and there was another female with her.
8 I don't know her name or what her relationship is, but I do
9 remember her face, but I -- again, I don't know exactly who
10 she was.

11 Q. And then you say, During the investigation, the family
12 advised that Mr. Brookins began reaching out through social
13 media to Tedder's family members. So what -- was it just
14 Christina and Jacob who --

15 A. Yes.

16 Q. And then you have that he reached out apologizing and
17 even stating that he gave him Narcan when he sold him the
18 Fent, and you used that specifically. What text message
19 said that he sold him Fent?

20 A. It says that he gave him blues, which blues would be
21 Fentanyl.

22 Q. Is there a reason why you didn't put blues?

23 A. Again, Fentanyl and blues are the same thing to me.

24 Q. Is it the same thing to everyone? Is that general
25 knowledge?

1 A. I would think it would be very general knowledge. In
2 the people that we've dealt with in the cases that I've had
3 in the past, I think everybody knows that if they're talking
4 about blues, they're talking about Fentanyl.

5 Q. And so did you put verbatim, even stating that he gave
6 him Narcan when he sold him Fent, was that a verbatim
7 allegation from Brookins or statement from Brookins or were
8 you summarizing?

9 A. He -- Mr. Brookins did tell us in his -- one of his
10 interviews, the second interview, I believe, that we did
11 with him, that he did give him Fentanyl.

12 Q. Right. But the second interview was after you applied
13 for the search warrant.

14 A. It says -- it does say right here (indicating), I even
15 gave him Narcan, 'cause I was worried about him, and that's
16 in the messages.

17 Q. Uh-huh. Right. So --

18 A. So when I -- I saw these messages from Ms. Settlemyer.
19 It's in the messages and then again in the interview Mr.
20 Brookins did confirm that he gave him Narcan and then when
21 Mr. Tedder was located at the residence, he still had the
22 Narcan in his waistband of his pants.

23 Q. Okay. But, specifically, did you put, even stating
24 gave him -- so gave him -- he gave him Narcan when he sold
25 him the Fent. Is that a direct line from a message that you

1 saw?

2 A. It -- I mean, it says here in the messages from Jacob
3 -- from Josh and Jacob back and forth about Narcan and Fent;
4 says that he even gave him Narcan. I -- you -- if you want
5 to give me a copy and let me see what you're talking about,
6 I'll be more than happy to look at it and try to --

7 Q. No. I'm just asking if it was a verbatim statement?

8 A. Again, I -- I mean, it's obviously not verbatim because
9 of the way it's put in the text message here.

10 Q. And so were you ever shown any messages between Chelsea
11 Manus and Joshua Brookins?

12 A. No.

13 Q. Do you know who a Chelsea Manus is?

14 A. I don't -- I know the name. I don't necessarily know
15 the relation. I believe that Chelsea probably has a kid
16 with Jonathan, but I'm not a hundred percent sure of that.

17 Q. But you were never provided with screen shots of a
18 conversation between Chelsea and --

19 A. These are -- the ones that we have right here in front
20 of us are the ones that I have.

21 THE COURT: All right. Let's stay focused on the
22 probable cause for the search warrant.

23 MS. CLOUD: Yes, Your Honor.

24 THE COURT: 'Cause that's what this motion's about.

25 Q. Okay. And then so also your probable cause language

1 says that the family provided copies of the messages at the
2 time when they came to talk to you. Did they provide
3 copies?

4 A. She showed me the copies on her phone and then the --
5 when we got the cell phone, I contacted Ms. Settlemyer and
6 she sent us text messages from her phone to my work cell
7 phone of those particular messages.

8 Q. Those are the screen shots?

9 A. Yes.

10 Q. Did you have any independent knowledge regarding
11 whether Josh sent these messages?

12 A. Other than what was provided to us, I wouldn't have any
13 other knowledge of it.

14 Q. Did you have any independent knowledge about Joshua
15 being or Joshua committing criminal acts?

16 A. I did. I was familiar with Mr. Brookins from the 2014
17 cases. One of my partners that works in the criminal
18 investigation division with me at that time was the charging
19 officer for that case, so I was familiar with him from that
20 particular case, but outside of that, I've not -- I am
21 personally not on the street, so I didn't have any contact
22 with Mr. Brookins.

23 Q. And so in this cause, you had no independent knowledge
24 that Joshua was committing any criminal act, it was just
25 information that was given to you by Christina?

1 A. Yes.

2 Q. And, again, there was no independent verification as to
3 any other messages that were provided to you?

4 A. Other -- like I said, other than the open source social
5 media stuff showing the same pictures on his social media
6 and, again, he had multiple accounts.

7 Q. Showing the same picture, you mean profile picture?

8 A. Yes, ma'am.

9 MS. CLOUD: Your Honor, I do not have anything further
10 for this witness.

11 THE COURT: All right. Any redirect?

12 MS. SMITH: No, Your Honor.

13 THE COURT: May I let the Lieutenant step back down?
14 And you can't leave.

15 THE WITNESS: Do you want these back or should I --

16 MS. SMITH: Yes.

17 THE COURT: I'm going to see if I can't get copies of
18 these made so I can give them back to you.

19 MS. SMITH: I can -- I have other versions of it, so I
20 don't need any copies. I have --

21 THE COURT: You sure?

22 MS. SMITH: Yes, ma'am.

23 THE COURT: Okay.

24 MS. SMITH: I can just print them out again.

25 THE COURT: All right. Anything else to the argument

1 on suppressing the search warrant?

2 MS. SMITH: Your Honor, would you like me to address
3 her argument, 'cause I do have --

4 THE COURT: Yes.

5 MS. SMITH: Okay. I have some more case law as far as
6 authenticating Facebook messages, which is what we have
7 here. It's two cases. They basically say the same thing.
8 It's the *State v. Green* and the *State v. Benton*.

9 (Whereupon, Ms. Smith handed documents to Ms. Cloud and
10 to the Court.)

11 MS. SMITH: It shows the standard for authenticating
12 those messages. Specifically, *State v. Green* talks about
13 the standard to authenticate evidence is not high and a
14 party may not rule out any possibility that the evidence is
15 not authentic and also goes on to say the Court decides
16 whether a reasonable jury could find evidence authentic.
17 Therefore, the proponent need only make a prima facie
18 showing that the true author is who the proponent claims it
19 to be.

20 In this case, there is a showing of the picture of the
21 defendant at the top. There's also the name. The contents
22 of the messages can be read. The jury will have those. You
23 have those. The officer, when he saw them, the contents of
24 this case goes along with the contents of those messages.
25 It is very clear that this individual knew these people for

1 a long period of time. He included details in these
2 messages that only he could know and so we would use those
3 to authenticate it.

4 In addition, these cases, drug cases, there's always
5 the possibility of there being messages about distribution
6 in a defendant's cell phone. That is why they apply for
7 these search warrants, because it is highly probable that
8 there are messages talking about distributions. That is
9 what Mr. Wallace was looking for in this case. That's what
10 he articulated to the judge. He had the added benefit of
11 actually having messages that described that. That message,
12 especially with Mr. Tedder, talks about serving blues. A
13 reasonable person could believe that if he sent those
14 messages, that he could be sending Facebook messages off of
15 his phone. Most of us these days, that is how we send
16 Facebook messages, off of our phone. It's reasonable to
17 believe that should he get into that phone, there could --
18 it could contain those messages as well as others to back up
19 the distribution in this case.

20 We think this is a valid search warrant and he
21 articulated everything that he needed to in the affidavit to
22 be able to search this phone.

23 THE COURT: All right. Anything else, Ms. Cloud?

24 MS. CLOUD: We just argue that he did not state
25 sufficient facts to support a probable cause finding based

1 upon the information that was listed in the affidavit.

2 THE COURT: All right. This is an ongoing criminal
3 investigation. I think -- I'll leave his attachment. I
4 think it's probable cause to justify this search warrant.

5 Now, whether she can authenticate the text messages
6 that he had, if she's going to introduce them for evidence,
7 that's something totally different. We'll take that up at
8 trial, but as far as the search warrant and probable cause,
9 I'm allowing it. I do believe that there's probable cause.
10 It's outlined in the search warrant; search warrant's good.

11 As far as any authenticity of any messages, I'll let
12 y'all take that up when you see if they're introduced as
13 evidence. I'll deal with that as we go on through the
14 trial.

15 All right. Do I have any other motions? I think I
16 have -- I'm hoping I hit them all.

17 MS. CLOUD: Nothing further from the defense.

18 THE COURT: Anything from the State?

19 MS. SMITH: Your Honor, we have not touched on
20 sequestration. I don't know if she's requesting it or not,
21 but --

22 THE COURT: Are you?

23 MS. SMITH: If she's requesting it, then I'm requesting
24 it, but if not, I am fine with it.

25 THE COURT: Okay. How about it, Ms. Cloud? You

1 requesting it?

2 MS. CLOUD: No, Your Honor.

3 THE COURT: Okay. So everybody gets to stay in.
4 That's good. All right. We're going to start at nine
5 o'clock in the morning and when I say nine o'clock, I
6 promise you I am starting at nine o'clock, so we're going to
7 do that. I don't keep a jury waiting.

8 (Whereupon, discussion was held off the record.)

9 THE COURT: What we'll do in the morning, I'll give
10 them my opening, we'll swear them in. Y'all be prepared to
11 start with openings and call your first witness. I'd like
12 to go straight through. You got witnesses lined up and
13 ready to go?

14 MS. SMITH: Yes, ma'am.

15 MR. HARPER: Your Honor, one last housekeeping thing:
16 would you like the video that we were discussing before you
17 leave today or would you like that in the morning?

18 THE COURT: Well, y'all are going to look at and redact
19 anything you need to; right?

20 MS. SMITH: Yes, ma'am, other than your determinations
21 on the redaction of the death, but we will redact everything
22 else that we can agree on.

23 THE COURT: I need to see the part that you're talking
24 about. Do you have a written --

25 MS. SMITH: I do not. They summarized it, but not word

1 for word so I would have to get you a copy of the video, but
2 it should not take long. I already have it downloaded on my
3 computer. We would just need to put it on a disk.

4 THE COURT: Yeah. Let me look at it.

5 MS. SMITH: Okay.

6 THE COURT: You know, I'm just telling you, I'm just
7 thinking it's so highly prejudicial when we start talking
8 about death in a distribution case, but I will look at it
9 and I'll have a ruling for you in the morning.

10 MS. SMITH: Thank you, Your Honor. I'll do that right
11 now.

12 MR. HARPER: Thank you, Your Honor.

13 THE COURT: Along with these text messages that I'm
14 going to look at so I can somewhat be prepared.

15 (Whereupon, the proceeding was adjourned at 4:10 P.M.
16 and reconvened on July 16, 2024 at 9:16 A.M.)

17 THE COURT: All right. Let me ask the lawyers, did
18 y'all go over the video last night as far as redactions? I
19 listed to that video. There's a lot of redaction that needs
20 to be done in that video, probation, time that he spent in
21 jail, all of it. I've -- I looked over everything, also did
22 a little research. I am not going to allow anything about
23 the death in this case, at all. I think it's too
24 prejudicial. It's not an element of the crime. It's not
25 anything that I see some kind of correlation to. You know,

1 our legislature's been working trying to do just that and
2 until they pass a law or statute or something, some kind of
3 legislation doing that, he's not charged with any kind of
4 death. I just think -- while I certainly understand where
5 you want to go with it, it is just highly prejudicial, I
6 believe, so I would like for that to be redacted also. I
7 didn't see a whole lot of that in there. It seems like when
8 it got to, like, 15 -- I forgot what it was, 15 and
9 maybe 38 or 32 seconds or whatever, he starts talking about
10 all of this and selling and the blues and all that and I
11 think all of that is free game, all of it. He admits to it,
12 but I'm not going to allow anything about his spending time
13 in jail, his probation violation, this death or any of that.

14 MS. SMITH: Your Honor, I believe that not being able
15 to talk about the death substantially impairs our ability to
16 try this case, so we would respectfully have to appeal that
17 decision at this time before we go forward with the case.

18 THE COURT: Whatever you need to do.

19 MS. SMITH: Yes, ma'am.

20 THE COURT: Is that an appealable issue right now or
21 are you just saving it for appeal?

22 MS. SMITH: We would have to appeal it before the jury
23 gets sworn in, because it substantially impairs our ability
24 to try this case at all, so we would have to do it right now
25 and I -- Kevin Brackett is here. I've discussed it with

1 him. He is in agreement with that and our position as an
2 office about that decision.

3 MR. BRACKETT: And just to be clear, Your Honor, I want
4 to make sure you understand, I respect your --

5 THE COURT: I know there's -- and somebody's waiting on
6 a test case on this.

7 MR. BRACKETT: Well, I mean, we have these cases
8 regularly and the investigations go, on these particular
9 cases, because of the death and it's very difficult not to
10 have that information involved in our presentation of the
11 evidence. It's part of the res gestae in our opinion and we
12 can't make our case without explaining to the jury why this
13 investigation was launched in the first place and this
14 happens too often and I know we got to the one-yard line on
15 a Fentanyl homicide bill this year, one meeting away.

16 THE COURT: I know they're working so hard on it.

17 M. BRACKETT: And I was involved in that effort and
18 remain involved in that effort and I've looked at the
19 possibility of -- it certainly does not fit murder. I mean,
20 malice is not -- voluntary manslaughter doesn't fit because
21 there's no heat of passion that can't be said that -- you
22 know, there's nothing there. So involuntary but reckless
23 indifference to human life under these circumstances, we
24 don't think that fits either and, of course, I'm ethically
25 obligated not to bring charges when I'm not convinced that I

1 can even survive a directed verdict, so --

2 THE COURT: You know, the distribution, Solicitor,
3 doesn't meet it either.

4 MR. BRACKETT: Well, and our problem is is that in
5 these specific cases, as a prosecutor and for public safety,
6 you know, it's particularly important to the family of the
7 deceased in these circumstances to --

8 THE COURT: I understand.

9 MR. BRACKETT: -- to focus on this because Fentanyl is
10 such a huge issue. We have five people dying every day in
11 South Carolina from Fentanyl overdoses and it's --

12 THE COURT: I give a lecture, I can't tell you how many
13 times, about Fentanyl--

14 MR. BRACKETT: Yes, ma'am.

15 THE COURT: ---every time I have somebody in front of
16 me. It's a horrible, horrible drug, horrible.

17 MR. BRACKETT: Yeah, and we -- and I completely
18 understand the position the Court's in. It is a novel issue
19 and, hopefully, we can get some clarity on this so that
20 other jurisdictions throughout the state can figure out how
21 to move forward, because it is very, very hard to imagine
22 how we could successfully and completely explain to a jury
23 that they wouldn't be -- a big chunk of the story is missing
24 if they don't hear what is it that caused law enforcement to
25 get involved in this in the first place? How does that

1 work? So our position is we've got to -- we've got to try
2 and maybe by the time--

3 THE COURT: I understand.

4 MR. BRACKETT: ---the opinion comes out, there might be
5 a statute and --

6 THE COURT: It might be a moot point.

7 MR. BRACKETT: It might be a moot point.

8 THE COURT: I know they've been working on it and, you
9 know, I thought about it last night. I just don't believe
10 -- it's not an element of distribution. I think it's just
11 highly prejudicial for him and I just --

12 MR. BRACKETT: We can't dispute that it's prejudicial,
13 but evidence sometimes is and that's just the nature of the
14 business, but --

15 THE COURT: And I understand that, but I think this
16 goes over--

17 MR. BRACKETT: Yes, ma'am.

18 THE COURT: ---and beyond in a -- when he's charged
19 with distribution and I haven't heard any correlation as to
20 what he -- that, even time wise, that he's responsible for
21 it. I just haven't.

22 MR. BRACKETT: So time wise he's responsible for the
23 death?

24 THE COURT: Right.

25 MR. BRACKETT: Well, he distributed the drugs. Then

1 it's not that we're proving that he's criminally responsible
2 for the death. We're establishing the distribution by
3 virtue of the fact that this man died and his blood
4 toxicology report indicates he had Fentanyl in his system
5 and working backwards through the evidence, we established
6 that this is the individual that distributed that to him.
7 So it's not admitted, we're not seeking to have it admitted
8 that he killed the decedent. We're asking that it be
9 admitted to prove that he distributed, that it -- that this
10 was in fact a distribution of Fentanyl because Fentanyl was
11 present in his blood toxicology, but we can't explain all
12 that without having --

13 THE COURT: I understand. I also understand---

14 MR. BRACKET: I'm sure it's been --

15 THE COURT: ---that he had some blues and they were
16 traded and, you know, I really don't know what the cause was
17 and if it was his Fentanyl that did it. I mean, I just
18 don't know.

19 MR. BRACKETT: Yes, ma'am.

20 THE COURT: I just find it, under the distribution
21 statute, to be highly prejudicial to him to allow that
22 testimony in. So --

23 MR. BRACKETT: We certainly respect the Court's ruling.

24 THE COURT: All right. Well, then, I think this
25 probably needs to be done and probably settled -- needs to

1 settle -- the law needs to be settled on how they're going
2 to -- what they're going to let in and what they're not
3 going to let in or maybe they'll change the law. I don't
4 know.

5 MR. BRACKETT: Certainly give us clarity so we can move
6 forward,---

7 THE COURT: Right.

8 MR. BRACKETT: ---both in the investigative phase as
9 well as the prosecution.

10 THE COURT: Okay. All right. Let me see the lawyers
11 just for one second. You too, Mr. Solicitor.

12 (Whereupon, a Bench conference was held off the record,
13 out of the hearing of the court reporter.)

14 (END OF REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA)

) C E R T I F I C A T E

COUNTY OF YORK)

I, the undersigned Shannon E. McGilberry, official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the General Sessions Court for York County, South Carolina, on the July 15th and 16th, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

In witness whereof, I have hereunto subscribed my name, this 25th day of October, 2024.

Shannon E. McGilberry, CVR-M

My Commission Expires:

April 26, 2027

WITNESSES

YCSO

Witnessing Officer:

Casey

ARREST WARRANT NUMBER

2023A4610100598

ACTION OF GRAND JURY

TRUE BILL

Ben Hammond

Foreperson of Grand Jury

Date: 1-25-24

VERDICT

DOCKET NO. 2023-GS-46-06159

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 25, TERM 2024

THE STATE

VS.

JOSHUA KENNETH BROOKINS

INDICTMENT FOR

DISTRIBUTION OF FENTANYL

SC Code: § 44-53-370

CDR Code: 0185

Foreperson of Petit Jury

Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on January 25, 2024, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF FENTANYL

The defendant, Joshua Kenneth Brookins, did on or about May 2, 2023, in York County, South Carolina, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase fentanyl, a schedule II controlled substance narcotic, all in violation of Section 44-53-370, Code of Laws South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



AUSTIN N. SMITH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2023A4610100598
2023-GS-46-06159

STATE OF SOUTH CAROLINA)

v.)

JOSHUA KENNETH BROOKINS)
Defendant.)

**DEFENDANT'S OMNIBUS
MOTION *IN LIMINE***

PLEASE TAKE NOTICE that Defendant, JOSHUA KENNETH BROOKINS ("Brookins"), by and through his undersigned counsel, hereby files this Omnibus Motion *in Limine* to exclude certain evidence, questioning, or comments at the trial for the above-captioned case.

I. MOTION *IN LIMINE* TO EXCLUDE USE OF PRIOR CONVICTIONS

Brookins anticipates that the State will attempt to introduce evidence of Brookins' prior convictions under South Carolina Rules of Evidence (SCRE), Rule 609, and objects to the admission of these convictions. Brookins moves to exclude any testimony or evidence regarding Brookins prior criminal history, should Brookins choose to testify.

Although Rule 609, SCRE, permits attacking a witness's character for truthfulness through prior convictions where the crime was punishable by death or imprisonment in excess of one year, Rule 609 is subject to Rule 403, SCRE to determine if the probative value of admitting this evidence outweighs its prejudicial effect.

Brookins prior convictions consist of:

- Four convictions for Man./Dist. Methamphetamine 1st;
- One conviction for Trafficking Ice, Crank, Crack > 10g but < 28g 1st; and
- One conviction for Contraband, Poss. Or Furnishing.

The four convictions for man./dist. methamphetamine and the conviction for trafficking ice, crank, or crack were all disposed in one proceeding on or about December 4, 2014. The contraband conviction was plead to on or about July 13, 2022.

For the very reason that Brookins' convictions lack probity, they would prove to be highly prejudicial. The above convictions lend no bearing as to Brookins' truthfulness during testimony, and the only purpose for the State to bring up the convictions is to prejudice the jury against Brookins. Because the current charged crime of distributing fentanyl shares a number of similar characteristics with prior convictions, admission of the prior convictions would be highly prejudicial to Brookins. With an admission of Brookins' prior convictions, there exists a substantial possibility the jury would draw an impermissible inference if allowed to hear evidence concerning the prior convictions.

Under SCRE 609(a)(1), the probative value of admitting Brookins' prior convictions would not outweigh its prejudicial effect to the accused. Further, pursuant to Rule 609(a)(2), SCRE, Brookins' prior convictions did not involve dishonesty or false statements.

.In this case, if Brookins' prior convictions are brought up, there exists a substantial possibility the jury would be unduly prejudiced against Brookins and may find against him even if they feel the State failed to prove Brookins' guilt beyond a reasonable doubt.

II. MOTION IN LIMINE TO EXCLUDE PRIOR BAD ACTS AND PROPENSITY EVIDENCE

Brookins moves to exclude any introduction of prior bad acts or wrongs pursuant to SCRE 401, 404(b) and 403. Brookins specifically seeks to exclude any prior convictions (discussed above) and any reference to his current pending charge for possession of fentanyl.

"Proof that a defendant has been guilty of another crime equally heinous prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty of the crime charged. Its effect is to predispose the mind of the juror to believe the prisoner guilty, and thus effectually to strip him of the presumption of innocence." *State v. Lyle*, 125 S.C. 406 (1923). "The State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes 'reasonably tends to prove a material fact in issue.'" *State v. Perry*, 430 S.C. 24 (2020). It is not enough that the two acts are similar.. *See Id.* If the prior bad act was a crime that the defendant was not convicted of, then there must be clear and convincing evidence of the act. *See also State v. Cope*, 405 S.C. 317 (2013).

"[R]elevant evidence may be excluded from the jury if the prejudice from its admission outweighs the probative value of the evidence. Unfair prejudice from the introduction of evidence occurs when it has an undue tendency to induce a decision on an improper basis." *State v. Bright*, 323 S.C. 221, 473 S.E.2d 851, 853-54 (Ct. App. 1996). "Evidence that may otherwise be relevant may lose its probative value when it becomes too far removed from the event in question. There is no set rule as to what lapse of time will make particular evidence too remote to be probative. The determination of remoteness is usually a matter of discretion with the trial court whose discretion will not be disturbed absent an abuse of discretion." *State v. Bright*, 323 S.C. 221, 473 S.E.2d 851, 853 (Ct. App. 1996).

Any admission of evidence concerning Brookins' pending charge, or prior convictions, are not relevant to the issues in this cause. Further, the current pending crime allegedly occurred nearly five months after the incident alleged herein, and thus, even if generally relevant, the crimes are too remote to stay relevant. Even further, pursuant to the forensics turned over in this case, the fentanyl allegedly found at Jonathan Tedder's residence and the fentanyl allegedly found in Brookins' possession are two different strains of fentanyl.

Should the Court find this evidence relevant, the evidence's probative value is substantially outweighed by its prejudicial effect.

The admission of any evidence referencing Brookins' current pending charges, or his prior convictions, are not admissible to prove his character, nor do the prior crimes provide any probative evidence concerning motive, identify, existence of a common scheme, or intent.

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.

IV. MOTION *IN LIMINE* REGARDING EQUALLY AVAILABLE WITNESSES

Brookins moves to exclude any reference or suggestion that the defense have not called to testify any witness who was equally available to both parties in this case. Such testimony is wholly irrelevant and highly prejudicial and should be barred pursuant to Rules 401 and 403, SCRE. *See also United States v. Brooks*, 928 F.2d 1403, 1412 (4th Cir.1991) (a party is not entitled to argue to the jury that inferences adverse to the opposition should be drawn for failure to call a witness when said witness was available to both parties).

V. MOTION *IN LIMINE* REGARDING DEFENSE'S MOTIONS *IN LIMINE*

Brookins moves to exclude any reference or suggestion that this Motion has been presented to or ruled upon by the Court. Brookins moves that the States' solicitor is instructed not to suggest to the jury, directly or indirectly, that Brookins has sought to exclude any matters to this suit. Such testimony or comments would circumvent the very purpose of motions *in limine* and would be wholly irrelevant and highly prejudicial and should be barred pursuant to Rules 401 and 403, SCRE.

THE CLOUD LAW FIRM, LLC

/s/ Jennifer M. Cloud

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SC Bar: 103939

Attorney for Defendant

July 12, 2024
Rock Hill, South Carolina

CERTIFICATE OF SERVICE

I, Jennifer M. Cloud, do hereby certify that a true and accurate copy of the foregoing Defense's Requested Jury Charges was duly served upon the Solicitor's Office for the Sixteenth Judicial Circuit via email to Austin.smith@yorkcountygov.com on July 12, 2024.

THE CLOUD LAW FIRM, LLC

/s/ Jennifer M. Cloud, Esq.

Jennifer M. Cloud, Esq.
Attorney for Defendant

3:17 PM



Josh



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 narkan 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 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



COURT'S *sun*

EXHIBIT NO. *2*

IDENTIFICATION/EVIDENCE

DKT. #

DATE: *7/16/2024*



Josh



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



Mess





Josh



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



Mess





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



**Josh**

Active 2...



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



SAT AT 2:05 PM

Wow really



You can now message and

Replying to Josh

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



Mess



**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
PAIN...

Replying to Josh

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



Mess



**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



**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

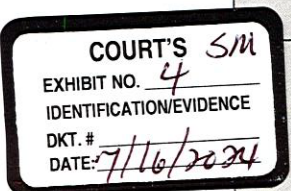
Hey Cristina. I can't tell you ...



Mess



3063	Phone	+ [REDACTED] Labrian *	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 Participants: Participant Delivered Read Played + [REDACTED] Labrian Source Extraction: Advanced Logical Service Identifier: Status: Sent Message Type: SMS Folder: Sent
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RECEIVED

Dec 05 2025

CERTIFICATE OF COUNSEL

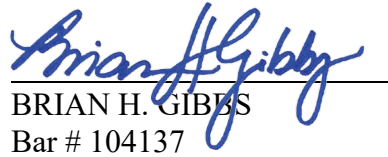
SC Court of Appeals

Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

BRIAN H. GIBBS
Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit


BRIAN H. GIBBS
Bar # 104137

ATTORNEYS FOR APPELLANT

December 5, 2025

RECEIVED

Dec 05 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Appellant,

vs.

JOSHUA KENNETH BROOKINS,

Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Record on Appeal on Lara M. Caudy, Esquire, counsel of record for the Respondent by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 5th day of December, 2025.



Grace Sommer
Legal Assistant

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