RECEIVED
Dec 17 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

APPELLANT,

V.

JOSHUA KENNETH BROOKINS,

RESPONDENT

APPELLATE CASE NO. 2024-001212

FINAL BRIEF OF RESPONDENT

LARA M. CAUDY
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

1.

"Whether the circuit court abused its discretion in excluding evidence of Tedder's death from a fentanyl overdose after being provided with fentanyl by Appellant [sic].

2.

"Whether the suppression of evidence of a third party's death due to a fentanyl overdose is immediately appealable."

COUNTER STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court correctly exercise its discretion by excluding any evidence of the death of Jonathan Tedder, who the state alleged Respondent distributed fentanyl to, from a fentanyl overdose where the evidence is not relevant pursuant to Rule 401, SCRE, is not part of the *res gestae*, and any probative value of the evidence is substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE?

2.

Is the trial court's exclusion of evidence of the death of Jonathan Tedder, who the state alleged Respondent distributed fentanyl to, from a fentanyl overdose immediately appealable when exclusion of the evidence does not directly or significantly impair the state's ability to prosecute Respondent for distribution of fentanyl?

STATEMENT OF THE CASE[1]

A York County grand jury indicted Respondent on January 25, 2024, for distribution of fentanyl. R. 64-65. On July 15, 2024, Respondent's case was called to trial before the Honorable Debra R. McCaslin, and a jury. R. 1. Assistant Solicitors Austin Smith and Alex Harper represented the state. Jennifer Cloud represented Respondent. R. 1.

Respondent moved pretrial to exclude any evidence of the death of Jonathan Tedder, the individual Respondent allegedly distributed fentanyl to, pursuant to Rule 401, SCRE; Rule 402, SCRE; and Rule 403, SCRE. R. 66 – 69. After a pretrial hearing, Judge McCaslin granted Respondent's motion to exclude any evidence of the death. R. 21, ll. 16-25; R. 56, l. 22 – 57, l. 13.

The state immediately appealed Judge McCaslin's ruling arguing the exclusion of evidence of Tedder's death is immediately appealable because exclusion of the evidence directly and significantly impairs the state's ability to prosecute Respondent for distribution of fentanyl.

This Brief of Respondent follows.

[1] The Statement of the Case in the state's Brief of Appellant is not limited to a "concise history of the proceedings" as required by Rule 208(b)(1)(C), SCACR. Moreover, the state's Statement of the Case contains contested matters, which is not permitted by Rule 208(b)(1)(C), SCACR, and are not even supported by the record. For example, there is no evidence in the record that Jonanthan Tedder died from a fentanyl overdose as alleged by the state or that Tedder died after ingesting fentanyl distributed by Respondent. See Brief of Appellant at 2.

STATEMENT OF FACTS

Jonathan Tedder allegedly died from a fentanyl overdose on May 2, 2023. Notably, the state did not proffer or otherwise present any evidence during the pretrial hearing that Tedder died from a fentanyl overdose. The state alleged that Respondent distributed the fentanyl to Tedder that caused his death. Again, the state did not proffer any evidence during the pretrial hearing that the fentanyl allegedly distributed by Respondent was the fentanyl that caused Tedder's death. Respondent was ultimately indicted for distribution of fentanyl pursuant to S.C. Code Ann. § 44-53-370 based on these allegations. See R. 64 – 65.

Respondent filed a motion pretrial to suppress any evidence of Tedder's death and the circumstances surrounding his death. R. 66 – 69. Respondent argued the evidence was not relevant pursuant to Rule 401, SCRE, and thus should be excluded pursuant to Rule 402, SCRE. Moreover, Respondent argued that any probative value of the evidence was substantially outweighed by the danger of unfair prejudice and confusion of the issues and thus should be excluded pursuant to Rule 403, SCRE. R. 66 – 69.

During the pretrial hearing, defense counsel argued that any evidence of Tedder's death, specifically that he died from a fentanyl overdose, would be "substantially prejudicial." R. 16, ll. 1-5. She contended that if the jury were to learn of Tedder's death, it would be "human nature" for the jury to want to right that wrong and "get justice" even though the charge for which Respondent was being tried "has nothing to do with the death." Counsel emphasized that Respondent was charged with distribution of fentanyl and none of the elements of the offense concern "liability" or "responsibility" for a death. Lastly, she argued that the fentanyl "crisis is very publicized and . . . any mention of a death from fentanyl automatically could get a conviction." R. 16, ll. 5-18.

Citing to State v. Dickerson, 341 S.C. 391, 535 S.E.2d 119 (2000), State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004), and State v. Dennis, 402 S.C. 627, 742 S.E.2d 21 (Ct. App. 2013), the assistant solicitor argued Tedder's death was part of the *res gestae* of the case. She explained that the investigation started with the death and that the coroner is the one who collected the evidence. The solicitor argued the jury would need to know why the coroner participated in the investigation. Additionally, she maintained that the jury would be "confused as to why we have a distribution without one party [Tedder] here to testify." R. 16, l. 20 – 18, l. 11.

The assistant solicitor also argued that Respondent made "what we [the state] would consider four different admissions in this case" and without evidence of Tedder's death, the admissions would not make any sense to the jury. She asserted, "It would be incredibly difficult to redact these admissions to exclude the death and have them make any kind of sense to the jury." R. 18, ll. 12-17.

The assistant solicitor conceded "that just the mention of the death is highly prejudicial," but argued the evidence is "highly probative as well." She suggested the court could give the jury a limiting instruction "not to blame this defendant for the death," but maintained that not being able to present evidence about Tedder's death "would substantially impair" the state's ability to try the case. R. 18, ll. 12-25.

Defense counsel explained that the state never alleged "in any of the evidence in the case file" that Tedder ingested fentanyl he received from Respondent and died as a result. She further emphasized that there is "no time alleged for when the distribution happened." Accordingly, counsel asserted that there is "no correlation whatsoever" between Respondent's alleged distribution and Tedder's death. If evidence of the death was admitted, however, counsel argued

the jury would automatically assume that Respondent supplied the fentanyl that killed Tedder. R. 19, ll. 1-15.

In response to the state's argument that excluding Tedder's death would confuse the jury since one party to the alleged distribution did not testify, defense counsel argued that in many distribution trials the receiver of illegal narcotics does not testify. Specifically, she asserted, "There are many cases in which someone who is distributed illegal narcotics is not going to come into the court and say, Yes, Your Honor, I accepted the narcotics and he gave them to me and everything was great." R. 19, ll. 16-22.

Finally, defense counsel reiterated that Respondent was charged with distribution of fentanyl and the state only has to show: (1) Respondent possessed fentanyl, (2) he distributed fentanyl, and (3) the substance actually was fentanyl. She asserted, "The death does not go whatsoever to any element of the charged crime and there is no evidence of the proximity of when the distribution even occurred." She concluded the death was not relevant or probative. R. 19, l. 22 – 20, l. 6.

The court found evidence of Tedder's death was not admissible. It ruled, "I am not going to let them [the state] mention an overdose or have any inference that this distribution caused his [Tedder's] death, because there is no correlation that I've seen or been presented to me that that is the case. He [Respondent] has not been charged with that. He's been charged with distribution of fentanyl and death is certainly not an element, as sad as it is." The court requested the parties draft a stipulation stating Jonathan Tedder is deceased. R. 21, ll. 8-25. It also asked the parties to review the recording of Respondent's interviews with law enforcement and the text messages Respondent allegedly sent to see if the parties could agree on what to redact

concerning the death. The court requested copies of the recorded interviews and text messages so it would be prepared to discuss the redactions the following morning.[2] R. 22, ll. 1-6.

The following morning, the court again stated it was not going to admit any evidence of Tedder's death reasoning the evidence was "too prejudicial." The court further reasoned that the death was not an element of the charged offense and no correlation between Respondent's alleged distribution and Tedder's death had been presented to the court. The court noted that the Legislature was working on passing a statute addressing fentanyl induced homicide, but that Respondent was "not charged with any kind of death" so the admission of any evidence of Tedder's death would be "highly prejudicial." R. 56, l. 17 – 57, l. 5.

The assistant solicitor told the court that not being able to present evidence of Tedder's death would substantially impair the state's ability to try the case. Accordingly, she maintained that the state would have to immediately appeal the court's ruling. R. 57, ll. 14-17. The assistant solicitor informed the court that she had discussed the matter with Kevin Brackett, the circuit solicitor, and Brackett agreed with her position that the state would have to immediately appeal. R. 57, l. 20 – 58, l. 2.

Brackett, who was present in the courtroom, likewise argued that Tedder's death was part of the res gestae and the state would not be able to try the case "without explaining to the jury why this investigation was launched in the first place." He discussed how he had worked with the Legislature to pass a statute addressing fentanyl induced homicide since the circumstances of

[2] There are four Court's Exhibits. The Court Reporter noted that none of the exhibits were marked during the proceeding on the record. See R. 3. Accordingly, there is no explanation regarding what the exhibits contain. Court's Exhibit No. 1 is marked as a DVD. It appears to contain graphic and highly emotional body camera footage from the responding officers after Tedder's body was discovered in the kitchen of his mother's home. The exhibit also appears to contain Respondent's two interviews with law enforcement while he was in custody at the local detention center. Court's Exhibit Nos. 2-4 appear to be Facebook messages or text messages. No foundation was laid for any of the exhibits.

such deaths do not fit the offenses of murder, voluntary manslaughter, or involuntary manslaughter. The court commented that such deaths do not fall under the crime of distribution either. The court again reiterated that death is not an element of distribution and evidence of Tedder's death would be "highly prejudicial" to Respondent. It asserted, "I think this [evidence of the death] goes over and beyond in a - - when he's charged with distribution and I haven't heard any correlation as to what he - - that, even time wise, that he's responsible for it [Tedder's death]. I just haven't." R. 58, l. 3 – 60, l. 21.

The Solicitor stated he hoped the state's appeal in Respondent's case would lead to some guidance as to how to prosecute such cases since evidence of the death is necessary to "successfully and completely explain to a jury" what caused law enforcement to open an investigation. However, he acknowledged that by the time an appellate court rules on the issue, the Legislature may have already passed a statute addressing fentanyl induced homicide and "it might be a moot point."[3] R. 59, l. 17 – 60, l. 7.

[3] Fentanyl-Induced Homicide is now codified in S.C. Code Ann. § 16-3-80, which came into effect on May 22, 2025. The statute reads in part: "A person who knowingly and unlawfully delivers, dispenses, or otherwise provides fentanyl or a fentanyl-related substance as defined in Section 44-53-190(B) and Section 44-53-210(c)(6) to another person, in violation of the provisions of Section 44-53-370, commits the felony offense of fentanyl-induced homicide if the proximate cause of the death of any other person is the injection, inhalation, absorption, or ingestion of any amount of the fentanyl or fentanyl-related substance that was unlawfully delivered, dispensed, or otherwise provided." Notably, Respondent cannot be charged pursuant to this statute in relation to Tedder's death as it would be an *ex post facto* violation. See Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) (an *ex post facto* violation occurs when a change in the law retroactively alters definition of a crime or increases punishment for a crime).

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Collins, 409 S.C. 524, 529-530, 763 S.E.2d 22, 25 (2014) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)) (internal quotation marks omitted). "This Court is bound by the trial court's factual findings unless they are clearly erroneous." Id. at 530, 763 S.E.2d at 25 (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220) (internal quotation marks omitted). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." Id. (quoting State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)) (internal quotation marks omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. (quoting Wise, 359 S.C. at 21, 596 S.E.2d at 478) (internal quotation marks omitted).

ARGUMENT

1.

The trial court correctly exercised its discretion by excluding any evidence of the death of Jonathan Tedder, who the state alleged Respondent distributed fentanyl to, from an alleged fentanyl overdose because the evidence was not relevant pursuant to Rule 401, SCRE, was not part of the res gestae, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

The trial court correctly exercised its discretion by excluding any evidence of the death of Jonathan Tedder, who the state alleged Respondent distributed fentanyl to, from a fentanyl overdose because the evidence was not relevant pursuant to Rule 401, SCRE, was not part of the res gestae, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE.

"All relevant evidence is admissible, except as otherwise provided by . . . these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." Rule 402, SCRE. "Evidence is relevant if it has '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.'" State v. Perry, 430 S.C. 24, 29, 842 S.E.2d 654, 656 (2020) (quoting Rule 401, SCRE).

Respondent was indicted for distribution of fentanyl pursuant to S.C. Code Ann. § 44-53-370. The indictment alleged Respondent did "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." R. 64-65. Whether Jonathan Tedder died from a fentanyl overdose

does not make it more or less probable that Respondent distributed fentanyl to Tedder, particularly where the state did not proffer, or otherwise present, any evidence that Tedder died after ingesting fentanyl he received from Respondent. As the trial court emphasized, the state did not present any evidence as to when the alleged distribution occurred in relation to Tedder's death. Accordingly, the state did not establish any correlation or connection between Respondent's alleged distribution and Tedder's death. For these reasons, evidence of Tedder's death allegedly from a fentanyl overdose was not relevant.

The res gestae theory "recognizes evidence of *other bad acts* may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred." State v. King, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) (citing State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996), *overruled on other grounds by* State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014)) (emphasis added). Our Supreme Court explained the theory of res gestae in Adams:

> One of the accepted bases for the admissibility of evidence of *other crimes* arises when such evidence "furnishes part of the context of the crime" or is necessary to a "full presentation" of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its "environment" that its proof is appropriate in order "to complete the story of the crime on trial by proving its immediate context or the 'res gestae'" or the "*uncharged offense* is 'so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ...' [and is thus] part of the res gestae of the crime charged." And where evidence is admissible to provide this "full presentation" of the offense, "[t]here is no reason to fragmentize the event under inquiry" by suppressing parts of the "res gestae."

Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir. 1980)) (alterations in original) (emphasis added). "Under this theory, it is important that the temporal proximity of the *prior bad act* be closely related to the charged crime." State v.

Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001) (citing State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997)) (emphasis added).

The res gestae theory applies to evidence of a defendant's *prior bad acts or crimes*. This is why an analysis pursuant to State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), and Rule 404(b), SCRE, addressing the admission of evidence of other crimes, wrongs, or acts to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent, frequently accompanies an analysis of whether evidence is admissible pursuant to the res gestae theory. See e.g., State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999); State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004); and State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009). In this case, the death of Jonathan Tedder allegedly from a fentanyl overdose is not a prior bad act. It is not an act committed by Respondent. It is not an act at all. The death is a completely separate event that occurred at some point *after* Respondent allegedly distributed fentanyl to Tedder. For this reason alone, evidence of Tedder's death is not admissible pursuant to the res gestae theory and the trial court correctly excluded it.

Assuming for the sake of argument that evidence of Tedder's death from an alleged fentanyl overdose is the type of evidence that could be admitted pursuant to the res gestae theory, it was not admissible pursuant to the theory in this case. The admission of evidence that Tedder allegedly died from a fentanyl overdose on May 2, 2023, was not necessary for a full presentation of the case, particularly where the state did not proffer or otherwise present any evidence that Tedder died after ingesting fentanyl distributed by Respondent. The trial court correctly found the state failed to establish any correlation or connection between the alleged distribution by Respondent and

Tedder's death. Moreover, Respondent's alleged act of distributing fentanyl was completed *before* Tedder's death and therefore Tedder's death did not provide any context to the alleged crime.

In State v. Sweat, 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004), this Court affirmed the admission of evidence of a prior bad act of domestic violence pursuant to Rule 404(b), and as part of the res gestae. Sweat was charged with first degree burglary, assault and battery with intent to kill, and three counts of assault of a high and aggravated nature after he invaded a home occupied by his estranged wife, her boyfriend, and several others on December 11, 2001. Sweat, 362 S.C. at 121-22, 606 S.E.2d at 510-11. The state introduced testimony from Sweat's estranged wife about a domestic violence incident that took place two months earlier in October 2001. Id. at 122, 606 S.E.2d at 511. Sweat's wife reported the prior incident to law enforcement and Sweat spent forty-five days in jail. Id. While he was in jail, Sweat's wife ended their relationship and became romantically involved with another man. Id. This Court held the prior episode of domestic violence was admissible under Rule 404(b) as evidence of motive and intent. Id. at 124, 606 S.E.2d at 512. The Court held the evidence was relevant because it tended to make the state's version of the case more probable and was logically related to why Sweat went to the house that night and to his intentions once there. Id. at 127, 606 S.E.2d at 514. Additionally, this Court held the evidence was admissible as part of the res gestae and was properly admitted to "complete the story of the crime on trial." Id. at 133, 606 S.E.2d at 517. The Court concluded that the October incident, and the events that followed, including Sweat's estranged wife moving out and ending their relationship, provided the jury with "an appropriate context in which to place the December 11 attack." Id.

In State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009), our Supreme Court held that evidence Wiles escaped from prison a week before he engaged in a high speed chase with law

enforcement and ultimately crashed into a deputy's patrol vehicle was admissible during his trial for failure to stop for a blue light and assault and battery of a high and aggravated nature pursuant to Rule 404(b), SCRE, because it showed his motive for fleeing from the police and his intent, and pursuant to the res gestae theory because his "escape was 'the *first* link in a chain of circumstances' which led to the criminal charges in the instant case." Id. at 158-59, 679 S.E.2d at 176 (emphasis added).

In State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014), this Court held the trial court did not abuse its discretion by admitting evidence that McGee stole a tractor trailer truck from a business the night *before* the murder and burglary pursuant to the res gestae theory because the theft allowed McGee access to a winch rod like the one used to commit the murder and also placed him in the area around the time of the attack because the truck was found about a mile from the decedent's home. Id. at 289, 758 S.E.2d at 736. This Court emphasized that the trial court determined there was a sufficient nexus between the theft and the murder and concluded evidence of the theft of the truck was needed to show the story of the attack. Id.

As shown, in Sweat, Wiles, and McGee, there was *conclusive* evidence the defendants committed a *prior bad act* and the court found there was a sufficient logical connection between the prior bad act and the crimes for which each defendant was being tried. Here, again, Tedder's death allegedly from a fentanyl overdose was not a prior bad act committed by Respondent (it was not an act at all), and as the trial court correctly found, there was no logical connection (or correlation) between Respondent's alleged distribution and Tedder's subsequent death. The state did not proffer any evidence that Tedder died from a fentanyl overdose or that he died after ingesting fentanyl received from Respondent. Accordingly, evidence of Tedder's death and the

circumstances surrounding his death was not admissible pursuant to the res gestae theory during Respondent's trial for distribution.

"Evidence considered for admission under the res gestae theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence." State v. McGee, 408 S.C. 278, 288, 758 S.E.2d 730, 736 (Ct. App. 2014) (quoting State v. Dennis, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013). Rule 403 provides that even if evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." Id. (quoting Rule 403, SCRE).

The starting point for analyzing evidence under Rule 403 is determining the probative value of the evidence offered. "Probative means tending to prove or disprove." State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014) (quoting Black's Law Dictionary 1323 (9th ed.2009) (internal quotation marks omitted). "Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." Id. at 610, 759 S.E.2d at 165. The probative value of evidence is directly related to how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

After determining the probative value of the evidence, the court must next evaluate the danger of unfair prejudice presented by the evidence. State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001). "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429

(Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)) (internal quotation marks omitted). According to the United States Supreme Court, "the term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." Old Chief v. United States, 519 U.S. 172, 180 (1997). "Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion." United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003); See also State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001).

The state sought to admit not only evidence that Jonathan Tedder was deceased, but evidence that Jonathan Tedder allegedly died from a fentanyl overdose. Notably, again, the state did not proffer or otherwise present any evidence that Tedder died from a fentanyl overdose. Assuming Tedder did in fact die from a fentanyl overdose, the trial court correctly found the state failed to proffer, or otherwise present, any evidence during the pretrial hearing that Tedder died after ingesting fentanyl distributed by Respondent. For this reason, evidence that Tedder died from a fentanyl overdose had zero probative value. It did not tend to prove or disprove that Respondent distributed fentanyl since the state did not (and could not) connect Tedder's death to Respondent's alleged distribution. As the trial court correctly found, the state did not proffer any evidence as to when the alleged distribution occurred in relation to Tedder's death on May 2, 2023.

The state argued on appeal that the prosecution sought to admit evidence that Tedder died from a fentanyl overdose "to show that what Respondent gave to Tedder was fentanyl."[4] Brief of

[4] The state also claimed on appeal that "the coroner responded ["to an address in York County in reference to the fentanyl overdose death of Tedder"] and collected fentanyl from Tedder's mother, who had located the fentanyl related to Brookins's [Respondent's] pending charge in

Appellant at 9. However, as the trial court found, the state failed to proffer any evidence establishing a connection between Respondent's alleged distribution and Tedder's death allegedly from a fentanyl overdose. The trial court emphasized during its ruling that it did not "know what the cause [of Tedder's death] was and if it was his [Respondent's] fentanyl that did it [caused Tedder's death]." R. 61, ll. 13-18. Simply put, the state failed to meet its burden to establish a sufficient connection between Tedder's death from an alleged fentanyl overdose and Respondent's alleged distribution of fentanyl to Tedder. Consequently, not only was evidence of Tedder's death and the circumstances surrounding his death not relevant, it also was not probative. Again, the challenged evidence did not tend to prove or disprove that Respondent distributed fentanyl since the state could not connect Tedder's death to Respondent's alleged distribution.

Moreover, any probative value of evidence of Tedder's death from an alleged fentanyl overdose was substantially outweighed by the danger of unfair prejudice to Respondent. As the trial court found and as the assistant solicitor conceded, such evidence is "highly prejudicial." If the jury were to learn that Respondent *could have* provided the fentanyl that led to Tedder's death from a fentanyl overdose, the likelihood of the jury staying focused only on whether the state proved Respondent's guilt beyond a reasonable doubt is near zero. The admission of such evidence would improperly lure the jury into finding Respondent guilty of distribution of fentanyl on a ground

---

Tedder's bedroom." Brief of Appellant at 13. There is absolutely no evidence in the record to support this statement. The state did not proffer any evidence that Tedder's mother discovered a substance in Tedder's bedroom, that Tedder's mother gave the substance to the coroner, and that the substance was in fact fentanyl. Respectfully, pursuant to Rule 210(h), SCACR, this Court should not consider this allegation on appeal because no evidence supporting the claim appears in the record. The state had the burden of proffering any evidence it wished the trial court and this Court to consider in ruling on whether the evidence of Tedder's death and the circumstances surrounding his death should be admitted during Respondent's trial for distribution of fentanyl. Even if the state's claim is true, that Tedder's mother discovered a substance in Tedder's bedroom, gave the substance to the coroner, and the substance tested positive for fentanyl, there is absolutely no evidence that Respondent distributed this fentanyl to Tedder as the state alleged.

different from proof specific to the offense charged. Stated differently, evidence that Tedder died from a fentanyl overdose would appeal to the jurors' emotions and lead the jury to convict Respondent of distribution on an improper basis, even if the state did not meet its burden of proof. There is a substantial risk the jury would find Respondent guilty regardless of the evidence in order to obtain justice for Tedder and his family. Thus, the trial court correctly excluded the evidence pursuant to Rule 403.

Accordingly, the trial court did not abuse its discretion by excluding evidence that Jonathan Tedder died from a fentanyl overdose and the circumstances surrounding his death. Respectfully, this Court should affirm the decision of the trial court.

2.

The trial court's exclusion of evidence of the death of Jonathan Tedder, who the state alleged Respondent distributed fentanyl to, from an alleged fentanyl overdose is not immediately appealable since exclusion of the evidence does not directly or significantly impair the state's ability to prosecute Respondent for distribution of fentanyl.

The trial court's exclusion of evidence of the death of Jonathan Tedder from an alleged fentanyl overdose and the circumstances surrounding his death is not immediately appealable since exclusion of the evidence does not directly or significantly impair the state's ability to prosecute Respondent for distribution of fentanyl.

The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330. State v. Wilson, 387 S.C. 597, 600, 693 S.E.2d 923, 924 (2010) (quoting Hagood v. Sommerville, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005)) (internal quotation marks omitted). "An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable." Id. (quoting Hagood, 362 S.C. at 195, 607 S.E.2d at 708) (internal quotation marks omitted).

Section 14-3-330 provides the following types of judgments, decrees, and orders are directly appealable:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal

might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

"The State may appeal a pretrial order if the order is appealable under S.C. Code Ann. § 14-3-330." State v. Hill, 314 S.C. 330, 331, 444 S.E.2d 255 (1994). In State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 208-09 (1985), our Supreme Court held the state may appeal a pretrial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case pursuant to S.C. Code Ann. § 14-3-330(2)(a). In McKnight, the state appealed a pretrial order granting the defendants' motion to suppress evidence that was seized pursuant to a defective search warrant. Id. Section 14-3-330, as held in McKnight, permits an interlocutory appeal when the order "in effect determines the action . . . or discontinues the action." State v. Belviso, 360 S.C. 112, 116, 600 S.E.2d 68, 70 (Ct. App. 2004).

For example, in Belviso, this Court held the circuit court had jurisdiction to entertain the state's appeal from the magistrate court's pretrial ruling suppressing "critical evidence" relating to Belviso's charge of driving with an unlawful alcohol concentration since the pretrial ruling would "significantly impair the state's ability to proceed with the prosecution." 360 S.C. at 114-15, 600 S.E.2d at 69-70.

In this case, the trial court's exclusion of evidence of Jonathan Tedder's death from an alleged fentanyl overdose and the circumstances surrounding his death does not significantly impair the state's prosecution of Respondent for distribution of fentanyl. Accordingly, the trial court's pretrial ruling is not immediately appealable.

Respondent was indicted for distribution of fentanyl pursuant to S.C. Code Ann. § 44-53-370. The indictment alleged Respondent did "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." R. 64 – 65. In order to prove Respondent guilty of distribution of fentanyl, the state must establish three elements: (1) Respondent knowingly possessed fentanyl; (2) he knowingly distributed or delivered fentanyl; and (3) the substance upon analysis was, in fact, fentanyl.

Exclusion of evidence of Tedder's death from a fentanyl overdose after Respondent allegedly distributed fentanyl to Tedder does not substantially impair the state's ability to prosecute Respondent for distribution, particularly where, as argued above, *such evidence is not even competent, admissible evidence*. Evidence of Tedder's subsequent death and the circumstances surrounding his death is not relevant or probative as to whether Respondent distributed fentanyl.

In State v. Pichardo, 367 S.C. 84, 623 S.E.2d 840 (Ct. App. 2005), the state appealed the trial court's suppression of heroin discovered in the vehicle Pichardo was driving ruling the evidence was obtained as a result of an unlawful search in violation of the Fourth Amendment. This Court held the state could immediately appeal the trial court's suppression of the drug evidence because if this Court affirmed the ruling of the trial court, the prosecution of the case against Pichardo would be "eviscerated and annihilated." Id. at 97, 623 S.E.2d at 847. The same is not true here. The state could still prosecute Respondent for distribution of fentanyl without presenting evidence of Tedder's death from an alleged fentanyl overdose. As the trial court suggested, the parties could stipulate that Tedder is deceased, without providing any further explanation and the state could redact the video of Respondent's interview with police to remove any mention of

Tedder's death. If redaction of Respondent's interview was unsatisfactory to the state, the assistant solicitor could simply have the investigator who interviewed Respondent testify as to Respondent's alleged admission, which would avoid any potential confusion redaction of the statement could cause. With respect to the messages Respondent allegedly sent to Tedder's mother and brother, if the trial court found the messages were admissible, the state could redact the messages to remove any mention of Tedder's death or simply have the receiver of the messages testify as to what the messages stated without mentioning Tedder's death or admitting the actual messages.

Respectfully, this Court should hold the trial court's pretrial ruling excluding evidence of Tedder's death from an alleged fentanyl overdose and the circumstance surrounding his death is not immediately appealable because exclusion of the evidence does not substantially impair the state's ability to prosecute Respondent for distribution of fentanyl.

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests this Court hold the trial court's exclusion of evidence of Jonthan Tedder's death from an alleged fentanyl overdose and the circumstances surrounding his death is not immediately appealable. In the alternative, Respondent respectfully requests this Court affirm the ruling of the trial court excluding this evidence.

Respectfully submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR RESPONDENT

This 17th day of December, 2025.

RECEIVED
Dec 17 2025
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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."

December 17, 2025.

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

RECEIVED
Dec 17 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Debra R. McCaslin, Circuit Court Judge

THE STATE,

APPELLANT,

V.

JOSHUA KENNETH BROOKINS,

RESPONDENT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Respondent in the above referenced case have been served upon Brian H. Gibbs, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 17th day of December, 2025.

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR RESPONDENT

From: Mcinnis, Sara
To: Brian Gibbs
Cc: Grace Sommer; Caudy, Lara
Subject: 2024-001212 The State v. Joshua K. Brookins Final Brief of Respondent
Date: Wednesday, December 17, 2025 12:23:00 PM
Attachments: 2024-001212 The State v. Joshua K. Brookins Final Brief of Respondent.pdf

---

Good Afternoon Mr. Gibbs,

Attached for service in the above-referenced case is the final brief of respondent, which will be filed with the Court of Appeals today, December 17, 2025, via email filing.

Thank you!

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330