

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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ORIGINAL

Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

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RECEIVED  
MAR 14 2018  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTWON PIERRE BAKER,

APPELLANT

APPELLATE CASE NO. 2017-001089

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ANDERS BRIEF OF APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the court erred by excluding evidence, as irrelevant, that the decedent was on cocaine at the time he was shot, since this evidence was relevant to provide context for the fatal altercation that occurred over a small amount of money, in the bizarre fashion described by appellant, where voluntary manslaughter and self-defense were jury options?

## STATEMENT OF THE CASE

Appellant was indicted by the Richland County Grand Jury for the offense of murder, and possession of a weapon during a violent crime. This case was called to trial on June 24, 2017, before the Honorable R. Knox McMahon, and a jury. J. Rhodes Bailey, Jonathan Comish, and Emily Kuchar represented appellant. Richard Cathcart and Carter Potts were the assistant solicitors. R. 1.

On June 27, 2017, the jury found appellant guilty of voluntary manslaughter and the possession of a deadly weapon during the commission of a violent crime. R. 722, l. 21 – 723, l. 1. Judge McMahon sentenced appellant to thirty years' imprisonment for voluntary manslaughter and five years concurrent for possession of a weapon during a violent crime. R. 735, l. 20 – 736, l. 4.

This appeal follows.

## ARGUMENT

The court erred by excluding evidence, as irrelevant, that the decedent was on cocaine at the time he was shot, since this evidence was relevant to provide context for the fatal altercation that occurred over a small amount of money, in the bizarre fashion described by appellant, where voluntary manslaughter and self-defense were jury options.

### **Relevant Facts**

The jury was given the verdict options of murder, voluntary manslaughter, not guilty by reason of self-defense, or not guilty. R. 700, l. 13 – 708, l. 17. Appellant took the stand in his own defense and he admitted that an altercation took place with the sixty-four-year-old decedent. The decedent was a “mechanic” who worked on fixing cars in his yard. Appellant had taken a vehicle to the decedent on June 19, 2015, to have the brakes fixed. Appellant testified the agreed on price was sixty dollars. R. 520, l. 18 – 635, l. 23.

However, when the work was finished, appellant told the jurors that the decedent tried to get him to pay more than the sixty dollars they had agreed on earlier. An altercation ensued in which the decedent picked up a tire iron, and appellant thought the decedent was going for a knife. Further, the decedent said “I’m going to cut you.” A gang member, known as B. Hall, intervened in the altercation. B. Hall shot the decedent, killing him. R. 520, l. 18 – 635, l. 23.

Lessie Brown lived with the decedent, who was known as “Bo.” Brown cared for her daughter’s three children during the day, and the decedent worked on cars in their yard. R. 223, l. 18 – 228, l. 24.

When Brown arrived home that fatal day, and she was asked to get appellant and the decedent a cold glass of water. “It was hot.” R. 229, ll. 6-21. The decedent’s DNA -- not from

blood -- was found on this glass. Appellant was known in the area as "Kilo." R. 226, l. 25 – 225, l. 20.

Brown remembered that a short time later she heard appellant and the decedent arguing in the yard. A dispute had developed over the exact amount of money due for the brake repairs. The state's theory of the case was that the decedent was not going to return appellant's car keys until he paid him what the decedent demanded. Appellant allegedly demanded that the decedent give him back his car keys. R. 238, l. 16 – 240, l. 12.

Brown went outside "and I was telling Bo, give the man his keys." Brown said she saw that appellant had a gun "in the back of his pants." "And Bo was telling me no, he's going to pay me. I said Bo, give the man his keys." R. 257, l. 1 – 258, l. 3.

Brown testified that appellant fired a single shot into the ground "just like a warning shot ..." Brown went inside the house and called 911, but she said no one answered the 911 call. R. 258, ll. 1-25.

While still inside the house, Brown heard two gunshots and she looked outside. She did not see appellant or the decedent in the yard. R. 258, l. 5 – 259, l. 15. When Brown went outside to inspect, she saw the decedent lying on the ground. Appellant was gone. R. 259, l. 20 – 268, l. 15.

Defense counsel would remind the jury during his closing argument that no witnesses saw appellant shoot the decedent, and, as seen, appellant testified that a man, B. Hall, was actually the shooter.<sup>1</sup> R. 635, ll. 1-25.

The decedent was shot twice. He was shot once in his back on the left-hand side, and once in his leg. R. 433, l. 14 – 443, l. 21. The pathologist, Dr. Amy Durso, said the sixty-four

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<sup>1</sup> The judge allowed hearsay testimony that Brown allegedly told her daughter that appellant was the shooter. R. 213, l. 14 – 214, l. 16.

year old decedent's heart was enlarged from probable high blood pressure, but she also stated that long-term cocaine use was also a possible contributor to that condition. R. 445, l. 15 – 447, l. 6.

Appellant was arrested in Mississippi days later. Detective Chris Truluck went to Pascagoula, Mississippi to interview appellant. Truluck said appellant did not admit to shooting the decedent. Truluck speculated that the reason appellant was crying during the interview witnessed by the jury was that appellant was remorseful because he knew that he had killed the decedent. R. 471, l. 10 – 481, l. 23. That tape is on file with this Court for viewing.

### **Toxicology**

The trial judge requested that the defense proffer the testimony of Carmen Tucker, a toxicologist from SLED, outside the presence of the jury. She was going to testify that the decedent had cocaine in his system when he was shot. R. 525, l. 20 – 526, l. 7. Defense counsel Bailey told the judge he did not know why the state was not calling Tucker, which was normal procedure for the toxicologist in this type of case. R. 526, ll. 1-10.

### **The proffer**

Tucker testified that blood was taken from the decedent when he was admitted to the hospital. R. 527, ll. 18-25. The decedent was negative for alcohol but “we got a positive screen for cocaine.” R. 528, ll. 3-15. Tucker opined, “It takes .7 to 1.5 hours for half of that drug to metabolize in the body.” R. 528, ll. 13-21. On examination by the defense attorneys and the solicitor, Tucker said she did not know exactly when the decedent ingested the cocaine. R. 528, l. 13 – 535, l. 14.

## **Arguments**

The assistant solicitor argued that Tucker could not testify the decedent was intoxicated on cocaine and he claimed the defense wanted to admit this evidence “to sully the name of the victim.” The assistant solicitor claimed the testimony was not relevant.

The defense argued that the evidence was relevant to show that the decedent had been “a long-term cocaine user or at least a cocaine user.” The defense also noted that investigator Truluck described the neighborhood as “the biggest dope hole in the area.” Further, the evidence was relevant to provide context for the jury, given the unusual facts of this altercation, and shooting. R. 537, l. 6 – 538, l. 25.

## **Ruling**

The judge ruled the evidence was not relevant, was not admissible, and he reasoned there was no evidence “as to what cocaine does to you.” The judge also maintained that there was not anything in this record to show the decedent was acting in “an odd” or unusual manner. Further, and strangely, the judge reasoned that the decedent’s “wife of fifteen years” did not testify about drug use. The judge ruled the evidence was not relevant under Rule 401 “and I don’t even address the 403 issue.” R. 539, l. 10 – 540, l. 8.

## **Appellant testifies**

Appellant then took the stand, and he offered the testimony above about the bizarre encounter with the decedent, and how a gang member became involved and killed the decedent.

## **Motion renewed**

After appellant’s testimony, defense counsel renewed the request that Carmen Tucker be allowed to testify the toxicology report showed the decedent was on cocaine since the jury

needed to understand the context of what occurred, particularly given appellant's testimony of the bizarre altercation and shooting. R. 643, l. 17 – 644, l. 9.

## **Discussion**

The jury had the verdict options of murder, voluntary manslaughter, not guilty by reason of self-defense, and not guilty. The judge abused his discretion by not admitting the toxicologist's testimony that the decedent had cocaine in his system. This was indeed an odd and bizarre fact scenario, particularly given appellant's testimony about the altercation, and Detective Truluck's admission that this was a notoriously bad drug area.

The state's attempt *to sanitize the record* to keep the jury from learning that the decedent was also a "product" of the drug area in which he lived was misguided. Toxicology evidence is routinely admitted in murder cases, particularly where voluntary manslaughter and self-defense are issues.

The standard of what is "relevant evidence" is low. Under Rule 401, SCRE, "'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." See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986).

"The right to offer the testimony of witnesses . . . is in plain terms a right to present a defense, the right to present the defendant's version of facts as well as prosecutor's to the jury so it may decide where the truth lies." Washington v. Texas, 388 U.S. 14, 19 (1967).

In State v. Page, 406 S.C. 272, 750 S.E.2d 623 (Ct. App. 2013), this Court found reversible error in the trial judge excluding testimony that would have furthered the defendant's version of what occurred. The defense theory was that the victim's criminal allegations were in

retaliation for the defendant and another person not providing drugs in exchange for sex. That “sanitized” the record in a manner very similar to what the judge did in this case.

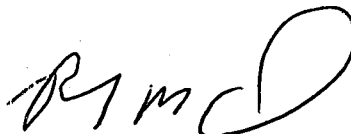
The judge’s ruling here that undisputed evidence from a toxicologist that the decedent had cocaine in his system was not relevant in a murder case where voluntary manslaughter and self-defense were issues for the jury was an abuse of discretion. The judge ruled he would not even conduct a Rule 403, SCRE analysis because he did not find any evidence the decedent was acting in an odd manner, and because of his strong opinion this evidence was not relevant.

The record in this case does not provide any support for the judge’s conclusion on relevance, particularly given appellant’s testimony of the bizarre nature of the shooting. Further, as seen, after appellant’s testimony regarding the bizarre nature of the shooting, defense counsel renewed their motion that the toxicologist be allowed to testify. Defense counsel noted that the defense was “hamstrung” without the toxicologist’s evidence that the decedent was on cocaine. R. 643, l. 17 – 644, l. 11. Appellant had the right to present a defense consistent with his testimony about the bizarre nature of the shooting, and the decedent’s behavior. State v. Page, supra.

Appellant should be granted a new trial.

**CONCLUSION**

By reason of the foregoing argument, appellant's conviction should be reversed, and this case remanded to the Richland County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'R M D', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of March, 2018.

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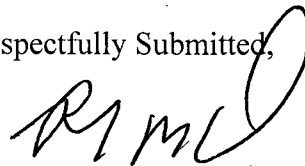
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Antwon Pierre Baker states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Knox McMahon, which was held on June 24 - 27, 2017, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Antwon Pierre Baker.

Respectfully Submitted,



Robert M. Dudek  
Chief Appellate Defender  
ATTORNEY FOR APPELLANT

This 14th day of March, 2018.

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

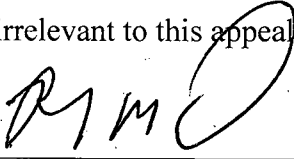
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Entire Trial transcript
- (3) State's Exhibit No. 35 (Defendant's statement on DVD)

I certify that this designation contains no matter which is irrelevant to this appeal.

March 14, 2018

  
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Robert M. Dudek  
Chief Appellate Defender

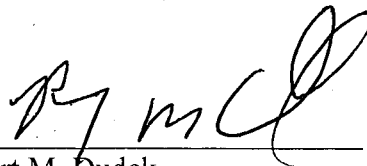
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**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

March 14, 2018.



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