THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 25 2018
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Robin B. Stilwell

Appellate Case No. 2017-001585

The State, ... Appellant,

v.

Dwayne Cameron Tallent, ... Respondents.

INITIAL REPLY OF APPELLANT

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
(864) 467-9595

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF THE ISSUES IN REPLY

1. Does proof Appellant's manufacturing, distribution, and sales of crack cocaine and methamphetamine prove CSC charge sufficiently to justify joinder of charges.

ARGUMENT

I. EVIDENCE OF APPELLANT'S MANUFACTURING AND DISTRIBUTION OF DRUGS, OFFERED TO PROVE CONTRIBUTING TO THE DELINQUENCY OF BROTHERS, FAILS TO PROVE THE CSC ALLEGATIONS AGAINST SISTER SUFFICIENTLY FOR JOINDER OF CHARGES.

Separate offenses may be joined and tried together if the offenses arise out of a single chain of circumstances, are proved by the same evidence, and are of the same general nature, and if no real right of the defendant will be jeopardized by trying the offenses together. State v. Deal, 319 S.C. 49, 52, 459 S.E.2d 93, 95 (Ct. App. 1995). Here, the evidence of the Appellant's manufacture, distribution, and use of crack cocaine, offered to prove contributing to the delinquency of the brothers failed to prove any element of the CSC allegations as to the sister.

The cases relied on by the State are easily distinguished. In Tucker the court found that the defendant had committed subsequent burglaries solely to avoid capture by police for the prior crimes. Evidence of the subsequent break-ins was therefore admissible to prove the prior crimes as evidence of flight and identity. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). In Tucker the proof of one charge tended to prove the others. Similarly, in Anderson the court held that charges could be tried together where all arose out of the same traffic stop. Evidence obtained as a result of a single traffic stop showed that the defendant was driving under the influence, driving with a suspended license, and driving while his license was suspended under the Habitual Traffic Offender Act. State v. Anderson, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). In Anderson the evidence as to one charge tended to prove the other charges. The same was true in Deal. There the defendant sought to sever a charge of exposing another to HIV from a CSC involving the same assault on the same victim. While the defendant admitted the sexual

encounter he claimed that it was consensual. Because the victim knew prior to the incident that the defendant was HIV positive the court found the defendant's HIV status would have been relevant to the issue of consent, and therefore would have been admissible in a trial on the assault and criminal sexual conduct. State v. Deal, 319 S.C. 49, 459 S.E.2d 93 (Ct. App. 1995). Again, one charge tended to prove the other. The same was true in McGaha where charges against two victims occurred under almost identical circumstances. There the court found that "[a] substantial portion of the testimony the State presented at trial to prove the crimes against one child was the same evidence it would have used to prove the crimes against the other." State v. McGaha, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013). Again, proof of one proved the other. Similarly, in Davis the joinder of a first-degree burglary and PWID methamphetamine offenses was held proper where the arrest for PWID methamphetamine arose out of the police's inventory of the car at the scene of the burglary investigation. Therefore, Davis's offenses originated from the same chain of events and required the same witnesses. State v. Davis, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018), *reh'g denied* (Apr. 26, 2018), *cert. denied* (Aug. 21, 2018). Again, proof of one tended to prove the other.

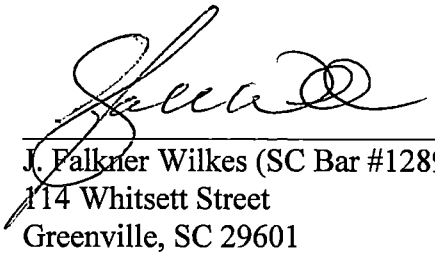
Here the record fails to meet the requirement that evidence of one tends to prove the other. While there was testimony that the Appellant allowed the victim to smoke marijuana, there was no evidence that she was involved in the manufacturing, distribution or sale of crack cocaine or methamphetamine. While the state has argued that drugs were used in the "grooming" of the victim, there was no evidence that she was ever given, offered, or participated in the manufacturing, distribution or sale or crack or meth. Other than to prove the bad character of the defendant all of the evidence offered under the contributing charges establish nothing as to the

CSC allegations. It was therefore error for the court to deny the Appellant's motion to sever.

CONCLUSION

Based on the foregoing the convictions and sentences of the Appellant should be reversed and set aside.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Matthew J. Kappel
114 Whitsett Street
Greenville, SC 29601
(864) 467-9595

Counsel for Appellant

October 22, 2018.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
OCT 25 2018
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
The Honorable Robin B. Stilwell

Appellate Case No. 2017-001585

The State, ... Appellant,

v.

Dwayne Cameron Tallent, ... Respondents.

CERTIFICATE OF COUNSEL

I certify that on October 22, 2018, I served the Initial Reply of Appellant on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below, and to others if so indicated:

J. Benjamin Aplin, Asst. Atty. General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

and to:

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Respectfully submitted,

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellant

October 22, 2018.

J. Falkner Wilkes
Attorney at Law
114 Whitsett Street
Greenville, SC 29601

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

2920183768 0076