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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

RECEIVED

JUN 29 2020

SC Court of Appeals

Appellate Case No. 2017-001585

The State, Appellant,

v.

Dwayne Cameron Tallent, Respondents.

PETITION FOR REHEARING

J. Falkner Wilkes (SC Bar #12893)
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Counsel for Appellant

June 25, 2020.

PETITION FOR REHEARING

The Court's opinion exceeds the scope of all prior cases and essentially opens the door for the State to join cases to introduce evidence at trial that would otherwise be inadmissible.

Criminal charges can be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). To make this case fit the "are of the same general nature" requirement of Tucker, this Court relied on State v. Rice: "Offenses are considered to be of the same general nature where they are interconnected." *See Rice*, 368 S.C. at 614, 629 S.E.2d at 395. A review of Rice and other relevant decisions shows that the Appellant's case lacks the necessary level of interconnection between Appellant's sex offense charges involving the step-sister and the contributing charge involving the brothers that the State used to bring in evidence that the Appellant manufactured and sold crack cocaine and methamphetamine. The Court's opinion overlooks the fact that as to the CSC and lewd act charges against the step-daughter evidence of the Appellant's manufacturing and sale of crack and methamphetamine with the brothers would be inadmissible character evidence.

In Rice the court found that joinder of a murder and trafficking cocaine charge into a single trial was appropriate where the trafficking charge arose out of a traffic stop the police set up because they suspected defendant of the victim's murder. There the police found a gun believed to be the murder weapon in the same search of the car that produced the cocaine and money that formed the basis of the cocaine trafficking charge. The State sought to prove that Rice murdered the victim to retrieve cocaine and money the victim previously stole from Rice.

Moreover, the trial testimony was that the relationship between defendant and the victim was based on selling drugs. In Rice the court found that the defendant suffered no prejudice from the joinder of charges because, without the evidence of cocaine trafficking, the jury would not have received an accurate portrayal of the case. State v. Rice, 368 S.C. 610, 611, 629 S.E.2d 393, 394 (Ct. App. 2006). As a result, the evidence relating to Rice's drug charge would have been admissible in Rice's burglary trial if the charges were tried separately. Rice is therefore clearly distinguishable.

Unlike the case in Rice, the Appellant's charges could have been tried separately without damaging the State's ability to fairly present each charge to separate juries. Also unlike Rice, evidence of the Appellant's manufacturing and sale of crack and methamphetamine would not have been admissible in a separate trial on the sexual offense charges involving the step-daughter. The record is devoid of evidence showing that the manufacture and sale of crack cocaine and methamphetamine was used in the commission of the CSC or Lewd Act offenses involving the step-daughter. While there was some evidence that the Appellant allowed the step-daughter to drink alcohol and use marijuana, that was completely unconnected to the allegations involving the Appellant's manufacturing and sale of crack and methamphetamine with the brothers. The contributing charge was simply used as a vehicle by the State to admit highly prejudicial evidence of the Appellant's drug manufacturing not otherwise admissible in the CSC or lewd act cases had the charges been tried separately. Unlike Rice, evidence of Appellant's manufacturing and sale of crack and methamphetamine does not show motive, it does not establish any of the elements of the CSC or lewd act charges, and its admission was not necessary to allow the jury to receive an accurate portrayal of the case on the sex offenses

involving the step-daughter. In relation to the sexual offense charges it is simply evidence of bad character.

The court further likened this case to that of State v. Davis. Davis is also easily distinguishable. Davis involved the joinder of first degree burglary and PWITD methamphetamine, charges clearly not of the same general nature. To meet the requirements for joinder in a single trial the Davis court relied on what it perceived as an interconnection between the charges. Although the term “interconnected” is used frequently in case law, it is not defined or quantified. Although not expressly quantified, a review of the facts of relevant cases show that there must be a significant level of interdependence between the evidence proving the elements of each charge if the cases are to be joined. As in Rice, the facts of Davis show that Davis' charges for burglary and PWITD were inextricably intertwined. The temporal aspect was so close that it was clear that the charges were not only interconnected, but intertwined in such a way that one could not be prosecuted without evidence of the other. Davis was caught in the commission of a burglary with the getaway car in the driveway. The unfamiliar car in the driveway lead to the discovery of the burglary and the police being called. Drugs were found in the car along with Davis' driver's license and other personal effects. Davis had drug paraphernalia on her when she was caught on the roof of the house and admitted to possession of the drugs in the car. Davis' PWITD charge could not have been proven without the facts of where the drugs were found in relation to Davis, or that the drugs were discovered as the result of the burglary, or that the confession of Davis as to the drugs occurred during the burglary investigation. Likewise, the jury could not have an accurate understanding of the events relating to the burglary without evidence of the drugs, especially where the drug charge could establish motive for the burglary.

In the present case the manufacturing and sale of crack and methamphetamine involving the brothers is not relevant, much less necessary, to the CSC and Lewd Act charges involving the stepdaughter. The facts of the present case therefore fail to rise to the level of connectivity seen in Davis, Rice, or any other case affirming the denial of a motion to sever. The record fails to show the manufacturing and sale of crack and methamphetamine facilitated, furthered, or used to aid in the concealment of the sexual offenses against the step-daughter. While there was evidence that the Appellant allowed the step-daughter to use marijuana or alcohol that has no meaningful connection to allegations that Appellant was making and dealing crack and methamphetamine with the brothers or third parties. The record simply fails to show sufficient interconnection between evidence portraying the Appellant as a dealer of crack and methamphetamine and the sexual offense charges. Unlike Rice, Davis or other cases, the drug dealer evidence is not necessary to the sexual offense charges and can be excluded without diminishing the state's ability to present its case as to the sexual offense charges. Each charge could be tried independently of the other. As to the sexual offense charges the only purpose served by evidence that the Appellant was a drug dealer was to prove that the Appellant was of bad character.

The Court has applied the analysis of Rice and Davis so loosely in this case that it opens the door for joinder of dissimilar charges virtually without limitation. The Court's opinion in the Appellant's case has essentially done away with the rule that the charges must be interconnected in some meaningful way and sets the stage through joinder of charges for the unbridled admission of evidence that would be otherwise inadmissible. An examination of the origin of the language used in Rice and Davis shows how far the Court's opinion has deviated from the original scope of the rule. In State v. Harry the court stated: "In this case, the charges arose out of

a single chain of circumstances beginning with the arson and continuing to the false insurance claim. Furthermore, much of the same evidence would have been admissible at both trials. The charges are of the same general nature because they are interconnected." State v. Harry, 321 S.C. 273, 278, 468 S.E.2d 76, 79 (Ct. App. 1996). In Harry the defendant burned down a house and then made an insurance claim for the damage. He was charged with arson and the making a false insurance claim. Factually, burning down a house and making a false claim for the house that was burned down are obviously so intertwined that the false claim charge couldn't be prosecuted without the evidence of the arson. This Court's opinion has taken an often repeated phrase completely out of context with the facts of each case that gave it definition. When the Court in Harry, and later Davis and Rice, found that charges were of the same general nature because they were interconnected, the holdings were based on charges with facts that were intertwined in such a way that one or more of the charges could not be effectively prosecuted without evidence of the other. The Appellant's case lacks that level of interconnection and this Court's loose interpretation of "interconnected" opens the door for the admission of evidence that would be inadmissible but for joinder of dissimilar charges. The Court's opinion in this case substantially changes the long standing application of the law on joinder and severance of charges and erodes the protections previously afforded defendants in criminal cases.

Conclusion

Based on the foregoing the Appellant moves this Court to grant a rehearing.

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Respectfully submitted,

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CERTIFICATE OF COUNSEL

I certify that on June 25, 2020, I served the Appellant's Petition for Rehearing 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:

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and to:

Jenny Abbott Kitchings
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Respectfully submitted,

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Re: State, Respondent v. Dwayne Cameron Tallent, Appellant
Appellate Case No.: 2017-001585

Dear Ms. Kitchings,

Enclosed please find the Appellant's petition for rehearing, certificate of service and check for the filing fee. I am filing and serving the documents via email.

Sincerely,

s/J. Falkner Wilkes
J. Falkner Wilkes

c:

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