

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

Court of Appeals Appellate Case No. 2017-001585

The State, Appellant,

v.

Dwayne Cameron Tallent, Respondents.

PETITION FOR CERTIORARI

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
jfalknerwilkes@gmail.com

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

Counsel for Appellant

September 3, 2020.

PETITION

The decision of the Court of Appeals exceeds the scope of all precedence and opens the door for the State to join cases as a means of introducing evidence at trial that would otherwise be inadmissible.

Based on allegations of sexual acts committed against the prosecutrix over an period of approximately eleven years the Appellant was indicted and tried on charges of CSC1st, CSC 2nd, and Lewd Act. The Appellant was also tried for contributing to the delinquency of a minor involving the prosecutrix and one of her two brothers under a fourth indictment. At the onset of the trial the Appellant moved to sever the contributing charge on the ground that it would cause undue prejudice by allowing in evidence that would be highly prejudicial and otherwise inadmissible on the far more serious charges involving criminal sexual conduct. Of particular concern was the potential for the state to introduce highly inflammatory evidence of the Appellant's bad character through based on allegations of his involvement in the manufacture, sales and use of cocaine, crack cocaine, and methamphetamine, as well as other acts that had no substantial connection to the CSC or lewd act charges. The trial court denied the Appellant's motion *in limine* to sever the contributing charge and allowed the State to proceed at trial on all charges. Prior to its admission before the jury the defense again objected and argued against the introduction of the Appellant's drug related activity. The trial court again conducted an analysis but focused only on whether the drug related evidence would be admissible to support the elements of the contributing charge, rather than its admissibility and prejudicial impact as to the CSC and lewd act charges.

The majority of the evidence offered under the contributing charge related to the

Appellant's manufacture, sales, and use of cocaine, crack cocaine and methamphetamine. Although arguably relevant to the contributing charge, this evidence was unrelated and overly prejudicial in regards to the CSC and lewd act charges. Pursuant to the defense's motion to sever the trial court was required to conduct an analysis of the evidence in relation to the CSC and lewd act charges separate and apart from contributing charge. Yet rather than determining whether the Appellant's drug related activity would be admissible if the CSC or lewd act charges were tried alone, both the trial court and the court of appeals focused on whether the drug related evidence would be admissible to establish elements of the contributing to the delinquency of a minor charge. As a result, despite it having little or no relevance to the CSC and lewd act charges, both courts held that all of the evidence proving the Appellant's drug related activity, including the manufacture, sales, and use of cocaine, crack cocaine, and methamphetamine, was admissible simply because it proved the elements of contributing to the delinquency of a minor. This was clear error.

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, the court of appeals 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 of appeals' 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 of appeals further likened this case to that of State v. Davis, 422 S.C. 472, 812 S.E.2d 423 (Ct. App. 2018). 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 of appeals 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 opinion of the court of appeals in the Appellant's case essentially does away with the requirement 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 of appeals 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. The court of appeals 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 the court of appeals' loose interpretation of "interconnected" opens the door for the admission of evidence that would be inadmissible but for joinder of dissimilar charges. The opinion of the court of appeals 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 and should therefore be reversed.

Conclusion

Based on the foregoing the Appellant moves this Court to grant the petition and review the case on full briefing.

Respectfully submitted,

s/J. Falkner Wilkes
J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
jfalknerwilkes@gmail.com

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Greenville, SC 29601
(864) 467-9595

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