STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Greenville County
The Honorable Robin B. Stillwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

DWAYNE CAMERON TALLENT,

Petitioner.

Appellate Case No. 2017-001585

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Greenville County grand jury indicted Petitioner Tallent for criminal sexual conduct with a minor in the first degree, criminal sexual conduct with a minor in the second degree, lewd act on a child, and contributing to the delinquency of a minor. A jury convicted Tallent of all charges following trial on July 17-19, 2017, before the Honorable Robin B. Stillwell. Judge Stillwell sentenced Tallent to thirty years imprisonment for CSC 1st, and concurrent sentences of twenty years imprisonment for CSC 2nd, fifteen years imprisonment for lewd act, and three years for contributing to the delinquency of a minor.

Tallent appealed and the Court of Appeals affirmed the conviction and sentence. State v. Tallent, 430 S.C. 438, 845 S.E.2d 508 (Ct. App. 2020). Tallent filed a petition for rehearing that was denied on August 6, 2020. Thereafter, Tallent filed a petition for writ of certiorari to this Court. The State's return to the petition follows.

STATEMENT OF FACTS

Victim was twenty-nine years old at the time of trial. Tallent was her father figure from when she was eighteen months old until she would finally move away at fourteen years old. R. pp. 133-34. She was around five years old when Tallent began sexually abusing her and lasted until at fourteen years old, she moved in with her biological father. R. pp. 146-47; p. 168. Victim testified it began when she plopped down on Tallent while he laid in bed. Tallent had an erection and began to rub up against Victim through the blanket. R. p. 147. This occurred in a trailer in Deer Road Run. R. pp. 134-35. The family later moved to Seneca, where Tallent continued to abuse her. Although hard for her to recall the precise details, she remembered him masturbating while Victim was in the room. R. pp. 149-50.

The family moved to Tallent's mother's farmhouse when she was eight or nine years old; they lived in an attachment to the house. Tr. pp. 138-39. Subsequently, when by her estimate she was ten or eleven years old, Tallent, Victim, and her mother moved to a doublewide trailer on the same property. R. pp. 138-39.

Victim testified she was nine years old when Tallent masturbated while touching, but not penetrating, Victim's vagina. R. p. 150. It became a normal thing that he would massage her vagina while he masturbated. R. p. 151. Eventually, he began to rub his penis between Victim's legs without entering her body. He used her thighs against her genitals to ejaculate. R. pp. 151-52. He started putting either his fingers or the tip of his penis in her rectum. He kissed Victim's breasts and perform oral sex on Victim while masturbating. Tallent started making Victim perform oral sex on him. All this conduct began before Victim turned eleven years old and continued thereafter, escalating even further. R. pp. 152-53. She specifically recalled the first time he made her perform

oral sex on him, he told her to "just suck on it like a sucker." R. p. 159. She recounted an incident at nine years old in which she lay face down and Tallent rubbed his penis between her legs and it brushed up against her vagina. It slipped and went in her vagina to the extent it hurt and she bled. R. pp. 160-61.

She testified at this age, she did not know any better. She loved and cared for Tallent. Tallent wasn't always bad. He was caring and took the family camping and fishing. R. pp. 153-54. Tallent told her the conduct was their secret. R. p. 155, lines 9-11. Victim told Tallent's sister about the abuse once. The sister ran after Tallent. Tallent later told her people would not understand and it was their secret. It was something special they had. R. pp. 155-56.

When she was about eleven years old, her two brothers, Christopher and Joseph, moved into the doublewide. Her brothers were not in her life much before then. R. p. 136; pp. 140-41. After her brothers moved in, the sexual abuse continued at least once a week despite the challenges for Tallent to find opportunities to continue the illicit relationship. R. pp. 157-58.

As Victim was older, she began to realize what was happening was wrong, but explained, "I didn't know how to stop it because the older I got, the more of a girlfriend to him is the relationship that was created. And I would – I was scared to tell him that I didn't want that, so I played along." R. p. 162, lines 10-13.

Victim was not allowed to be alone with the brothers unless Tallent was present: "He kept me around him." R. p. 163, lines 9-17. Victim recalled being around marijuana in the household as early as five years old. Victim was curious and Tallent let her try marijuana when she was twelve years old. From that point on, she continued to smoke marijuana provided by Tallent. He also let her drink alcohol. R. pp. 76-79. Crack cocaine and other kinds of drugs were present in the

household. She described what she saw:

> I seen them make little white rocks out of little glass vials. I remember them making stuff in the kitchen. They were scraping it out of a bowl, a white substance. And they would snort stuff, too. They would walk around with the little tin foils and smoke it.

R. p. 179, lines 7-11. Tallent made crack cocaine and showed her brothers how to make crack too. Strangers came into the house to use crack cocaine. Tallent used the drugs in front of Victim. R. p. 179, lines 13-24; p. 180, lines 2-9.

One day, Tallent was masturbating and rubbing Victim's vagina in the bedroom when her brother walked in the room. He asked, "[H]ow long has this been going on?" Then Tallent chased him out of the room. Later officers came to the house and Victim told them nothing happened. R. pp. 163-65. She explained why:

> I was scared of any and all consequences that could – I didn't want people to know. I feared what people would have thought of me. I feared at what if they didn't believe me, and whether or not if I said something and they didn't believe, he would try to hurt people I cared about.

R. p. 165, lines 13-18. She also admitted, at the time, she felt some blame for what was happening. R. p. 165, lines 19-22.

Victim and mother moved to a house on Painter Road when she was fourteen years old. One day, Tallent came to their home after she stayed home from school. Tallent "fully put himself, his penis, in [Victim's] rectum." R. p. 162, line 24 – p. 163, line 3. Several months later Tallent also moved in and he continued sexually abusing Victim. R. pp. 167-68. The abuse ended when she moved in with her biological father. It was the last time she saw Tallent until trial. R. p. 168.

Victim reported the abuse when she was twenty-six years old. R. p. 180, line 25 – p. 181,

line 4. She explained the reason she reported: "It got to a point where, really, it was over-willing me. I was having nightmares. I just – I couldn't put it behind me and I couldn't keep it closed." R. p. 182, lines 1-3.

Joseph Greco, Victim's oldest brother, testified he moved in with his mother and Tallent in tenth grade. R. pp. 230-33. Joseph noticed Tallent hugged Victim alot and always had "skin" contact. "He'd always have his hands on her." R. p. 234. He would pat her on the butt. Tallent spent a lot of time in the bedroom with Victim and always called for her. Tr. pp. 234-35. Joseph told the jury all Tallent did was lay in bed. R. p. 238, lines 10-11. He might call Joseph and his brother in the bedroom to smoke a cigarette or marijuana. Joseph testified everyone smoked marijuana around Victim. R. pp. 235-36. Victim usually wore a nightgown-type of tee-shirt. R. p. 237.

One time he walked into the bedroom and Tallent "shot up like a deer in the headlights, you know, wide-eyed, like didn't know I was there." R. p. 236, lines 20-24. Joseph explained before Tallent shot up, Victim was on the bed and Tallent was on top of her, towards her feet. R. pp. 236-37. He also recalled on another occasion seeing them both under the covers and Tallent moving his hand "pretty funny" around his crotch area, which "weirded" Joseph out. R. p. 238.

Joseph's brother was in a car wreck and came into a lot of money. Another friend also came into the house with a lot of money. They started using the money to buy cocaine and methamphetamine. They gave Tallent the money and he would buy the drugs. Tr. p. 243. They started to freebase cocaine but their noses started bleeding, so Tallent taught them how to make crack cocaine, which they made right in the kitchen. R. pp. 243-45. Vicitm was there while it was made and while it was used. R. p. 245.

Things changed the day Joseph's brother walked into Tallent's bedroom and Joseph heard him shout while Tallent chased him out of the house. R. p. 239. On the way out he said, "Dude, Dwayne's molesting [Victim]." R. p. 240, lines 12-13. The brothers moved out of the house afterwards. Joseph and his brother told their father about the incident. Their father reported it to law enforcement, and the brothers told law enforcement what they saw. Joseph did not see Tallent again for another fifteen years. R. pp. 240-41.

Christopher Greco testified he and his brother moved in with Tallent around the time he turned eleven years old. Christopher noticed Tallent always touched Victim, rubbing her inner thigh. He found it awkward and inappropriate. R. pp. 256-57. He testified it was not uncommon for Victim to be in bed with Tallent. R. p. 258.

The only time Christopher was invited into the bedroom was to use drugs. R. p. 259. Christopher described the marijuana use in the household as all day, every day. R. p. 263. He saw Tallent give Victim and her friend marijuana one time. R. p. 264. Tallent also gave marijuana to Christopher from the time he was eleven. He confirmed they consumed other drugs and converted cocaine to crack cocaine. They were using cocaine when he was seventeen years old, but they did not start making crack cocaine until he was eighteen. R. pp. 264-66.

Christopher was headed to the bathroom one day when he heard a slight moaning. He looked into Tallent's bedroom and saw Tallent and Victim under the covers. Tallent was touching himself and touching Victim with his other hand. He told her "that is how you do it." Christopher kicked open the door and demanded to know how long it had been going on. He called Tallent sick. Tallent "freaked out" and jumped out of bed. Tallent chased Christopher outside, threw coolers at him, and told Christopher that Christopher could ruin his whole world. R. p. 260; p. 274, lines 18-24 (direct

quote). When asked if they were clothed, Christopher testified Tallent wore boxers, but he could not tell whether or not Victim was dressed. R. p. 262. They told their father and Christopher later told DSS about what happened. Christopher and his brother moved out. R. p. 261.

CR provided testimony under Rule 404(b), SCRE. She was fifteen years old when she testified at trial. Her and her mother moved in with Tallent, who was a father figure in CR's life. R. p. 331. She lived at both Tallent's mother's farmhouse and Tallent's doublewide trailer. Tallent started touching CR when she was around five years old, and she did not know it was wrong. As she later realized the abuse was wrong, she kept it to herself because she was scared. R. pp. 336-38. She explained she still loved Tallent and even told the jury Tallent is a good person. Nonetheless, she explained Tallent would touch around her vagina. Tallent also touched CR's chest and kissed her on the lips. The abuse continued until Tallent moved away when CR was eleven years old. R. pp. 339-41. Tallent told her not to tell because nobody would understand it and that nobody would understand his love for her. R. p. 343, lines 7-9. She explained she did not want to tell anyone because she was worried she would lose the only family she had, which she noted is exactly what happened, she lost her family after she disclosed and was living with her sister's grandfather. R. p. 343.

The prosecutor asked if her life was easier or harder since she disclosed the abuse, and she replied, "It was so much harder on me." Tr. p. 349, lines 9-11. She explained why:

> Because knowing that I came out, I knew that right then and there, the place that I was at was not a safe environment. I knew that I would be [taken] from my home. I knew that I would be [taken] away from my family, which I, basically, have been.

R. p. 349, lines 13-23. CR explained she was afraid she would lose her family, and in the end, it was

worse than she feared. She admitted Tallent's family put pressure on her to change her story. R. p. 350, lines 1-15.

The first defense witness, Selena Brunson, and her future husband lived with Tallent for four months in 1991 when she was seventeen or eighteen. She said she never saw anything wrong. R. pp. 364-75. Lenore Brissey, Tallent's mother, testified. She used to go horseback riding with Victim. She testified when Victim and her mother left Tallent, Victim told her she did not want to leave and hugged her. Tr. pp. 383-88. Victim never told her Tallent was doing anything. Brissey claimed if she did, Brissey would have called the police. R. p. 389. She also had a close relationship with CR. R. pp. 390-91; p. 398. Tallent's sister, Diana Rogers, testified Victim never disclosed any abuse to her. R. p. 404. Likewise, Tallent's other sister, Debbie Seymore, testified she did not see any inappropriate touching and Victim never disclosed abuse to her. R. p. 411.

ARGUMENT

Because the offenses were offenses against minors and therefore of the same nature, and evidence for the offenses relied primarily on the same three witnesses, and mostly occurred during the same time period in the same household, the trial court did not abuse its discretion by denying the motion for severance.

Tallent complains the trial court erred in denying his motion for severance. However, Victim was a victim in all four charges, and her brother was also a victim for the contributing charge. Victim and her brothers were the three fact witnesses for all four charges. The evidence comprising the contributing charge occurred while Tallent was still sexually abusing Victim and occurred in the same household. The offenses were proved by the same evidence. The offenses, all against minors, were of the same general nature and no real right of Tallent's was infringed upon. Therefore, the trial court did not abuse its discretion.

Standard of Review

The Court of Appeals rightly observed, "Decisions on severance and joinder are reviewed under a deferential standard. There rulings "should not be disturbed unless an abuse of discretion is shown." State v. Tallent, 430 S.C. 438, 445, 845 S.E.2d 508, 512 (Ct. App. 2020) (citation and internal quotation marks omitted). A motion for severance is addressed to the sound discretion of the trial court. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); McCrary v. State, 249 S.C. 14, 152 S.E.2d 235 (1967); State v. Carter, 324 S.C. 383, 478 S.E.2d 86 (Ct. App. 1996); State v. Anderson, 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). The court's ruling will not be disturbed on appeal absent an abuse of that discretion. Tucker, 324 S.C. at 164, 478 S.E.2d at 265; State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); State v. Deal, 319 S.C. 49, 459 S.E.2d 93 (Ct. App. 1995); see also State v. Harris, 351 S.C. 643, 572 S.E.2d 267 (2002) (stating a motion for severance is

addressed to the trial court and should not be disturbed unless abuse of discretion is shown). An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005).

Pre-trial and in camera arguments

Prior to trial, defense counsel moved to sever the charge of contributing to the delinquency of a minor, explaining to the trial court defense counsel's understanding that evidence of various drug activity was going to presented as evidence to support the charge for contributing to the delinquency of a minor. R. pp. 36-37.

The prosecutor explained that some of the conduct for the contributing to the delinquency of the minor came from the sexual abuse directed at Victim, and some of the conduct was the use of drugs in front of Victim and her brother, manufacturing drugs in the home, and sales of drugs in the home. Additionally, Tallent gave drugs and alcohol to Victim and her brothers. R. p. 40. As discussed later, the only testimony before the jury as to any sale of drugs occurring in the house (crack cocaine) was struck by the trial court with the explicit instruction to ignore the testimony. The only manufacturing was testimony about the conversion of cocaine to crack cocaine. To be clear, there was no testimony that Tallent and the sons manufactured or sold marijuana, cocaine, or methamphetamine.

Based on the proffer, the trial court found because the charges were connected and interrelated that severance was not appropriate, but the trial court further explained as follows:

> Now, that doesn't necessarily address the issue of whether some of the specific testimony about alleged drug transaction, manufacture, things of that sort are admissible under a Rule 403 analysis or a relevance analysis. I don't know, and I'm not commenting on any of those things.

> I do find that given what I know as I sit here that it was all part of a continuing relationship between the Defendant and all these other persons. And they are all interconnected and interwoven that it is appropriate to try them together. **But again I am sensitive to the introduction of specific items of testimony or specific items of evidence that may be unduly prejudicial. I'm not prejudging any of that, I just haven't heard any of it yet.**

R. p. 41, line 18 – p. 42, line 14 (emphasis added).

During trial, in the middle of Victim's direct-examination, the prosecution requested in-camera clarification of the trial court's ruling regarding testimony about illegal drugs. The prosecution noted the evidence concerning the illegal drugs included testimony Tallent provided her with marijuana, drugs were used in her presence, drugs were shared with other people visiting the house, and crack cocaine was made in the home. R. pp. 169-70.

In response, Tallent's counsel argued the drug evidence was too prejudicial under Rule 403, SCRE, and his client would not have a fair trial. R. pp. 170-71. However, the prosecution noted some of the drug activity was relevant to the grooming process and it was all relevant to the charge of contributing to the delinquency of a minor for both Victim and Christopher. R. p. 171. The trial court found, based on the proffer, the evidence was admissible to prove contributing to the delinquency of a minor. He advised defense counsel that defense counsel would need to make specific objections to any evidence he believed was too prejudicial. R. p. 174, lines 3-8. Trial counsel indicated he would object to whatever comes in, and argued evidence of providing marijuana and alcohol should be sufficient to prove the elements of contributing to the delinquency of a minor without evidence of the other drugs. R. p. 174, lines 9-18.

When Victim subsequently testified about marijuana being present in the house as early as five years old, defense counsel objected and asked for a continuing objection, to which the trial court

indicated "was fine by me." R. p. 176, lines 15- 25. When counsel objected to testimony about drug deals in the house, the trial court sustained the objected and provided a curative instruction, advising the jury, "[A]ny evidence of any alleged drug deals are not relevant to our consideration in this matter. You should disregard it. We'll strike the record of that comment." R. p. 180, lines 17-23.[1] Therefore, Tallent's complaint in his petition that the trial court only focused on whether drug-related evidence was probative to prove the contributing charge without considering its prejudicial impact is simply incorrect. Although the drug sales were certainly substantive evidence of the contributing charge, the trial court excluded this testimony based on its prejudicial impact.

Discussion

Criminal charges may 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, 478 S.E.2d 260 (1996). Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the discretionary power to order the indictments tried together if the defendant's substantive rights would not be prejudiced. State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005); State v. Sullivan, 277 S.C. 35, 43-44, 282 S.E.2d 838, 843 (1981) (where offenses charged in separate indictments are of same general nature, involving connected transactions closely related in kind, place and character, the trial judge has authority, in his discretion, to order indictments tried together over the objection of the defendant absent a showing that the defendant's substantive rights were violated); McCrary v.

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[1] See State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (noting the jury is presumed to follow the law as instructed to them in the trial court's jury charge).

State, 249 S.C. 14, 36, 152 S.E.2d 235, 246 (1967) (stating "[t]he two offenses were of the same general nature, involving connected transactions closely related in time, place and character; and the trial judge had power, in his discretion, to order them tried together over objection by the defendant in the absence of a showing that the latter's substantive rights would have been thereby prejudiced.").

In Tucker, this Court found the charges of murder and burglary were interconnected because the reason Tucker burglarized a church was to avoid capture for the murder charge. The Court found severance was not warranted because the crimes arose out of a single chain of circumstances, evidence of the break-ins were admissible as evidence of flight and identity for the murder, and the crimes were of the same general nature. Tucker, 324 S.C. at 164, 478 S.E.2d at 265.

The Court of Appeals found joinder of charges for first-degree burglary and possession with intent to distribute methamphetamine proper because the burglar's vehicle was parked on the burglarized property and during an inventory search of the vehicle, officers found methamphetamine in the vehicle and the burglar in the house. State v. Davis, 422 S.C. 472, 482, 812 S.E.2d 423, 429 (Ct. App. 2018). The court noted the offenses originated from the same chain of events and required the same witnesses. Id.

In State v. McGaha, 404 S.C. 289, 297, 744 S.E.2d 602, 606 (Ct. App. 2013), the Court of Appeals found, "Thus 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. Even though some of the evidence related only to one child, we find the evidence described above supports the trial court's determination that the separate charges would be proven by the same evidence."

In State v. Beekman, 415 S.C. 632, 785 S.E.2d 202 (2016), Beekman was charged with

criminal sexual conduct with a minor of his stepson and lewd act with a minor as to his stepdaughter. The stepdaughter disclosed that while she was watching television, Beekman touched her "private area" beneath her clothes. Stepson testified, on another occasion, while he was watching television, Beekman touched his penis. He also testified Beekman anally penetrated him on yet another occasion while the stepson was watching the news. Id. at 635, 785 S.E.2d at 204.

This Court affirmed the denial of Beekman's motion for severance, first disagreeing with his argument that the transactions did not arise out of the same set of circumstances, and rejecting "Beekman's restrictive reading of the phrase, 'a single set of circumstances'" Id. at 636-37, 785 S.E.2d at 204. This Court found "[W]e agree with the court of appeals that 'the two charges against Beekman arose from in substance, a single course of conduct or connected transactions." Id. (citation omitted). "In other cases, even though the charges did not arise out of a single, isolated incident, this court and the court of appeals have allowed joinder when the crimes 'involv[ed] connected transactions closely related in kind, place, and character.'" Id. at 637, 785 S.E.2d at 205 (citations and internal quotation marks omitted).

This Court also rejected Beekman's argument that the charges were not proved by the same evidence, opining: "Of course they are distinct crimes, but that in no manner diminishes the glaring similarities in Beekman molesting both of his stepchildren in the same place, over the same time period, and in a similar manner." Id. at 638, 785 S.E.2d at 205. This Court noted, "For joinder of related offenses, our appellate courts have recognized that there may be evidence that is relevant to one or more, but not all, of the charges." Id. This Court referenced Tucker and noted Beekman ignored "the fact that the evidence needed to prove Tucker committed the murder was necessarily different than the evidence needed to prove Tucker broke into the church and mobile home." Id. at

639, 785 S.E.2d at 206.

In the instant case, referencing Beekman, the Court of Appeals found "Although the charges did not arise out of a single isolated incident, the CSC, lewd act, and contributing to the delinquency of a minor charges 'arouse from, in substance, a single course of conduct or connected transactions.'" Tallent, at 446, 845 S.E.2d at 512 (quoting Beekman, 415 S.C. at 636-37, 785 S.E.2d at 204). The Court of Appeals noted the charges were proved by the same evidence, Victim and her brothers. Id. Additionally, the Court of Appeals found the charges were of the same general nature:

> The State presented evidence showing Tallent abused stepdaughter in the same locations and during the same time periods that he supplied her and her younger brother . . . with drugs and alcohol.
>
> The State's witnesses also testified Tallent's providing stepdaughter with marijuana and alcohol was evidence of Tallent "grooming" stepdaughter so he could abuse her. Although the charges in in this case technically differ from each other in that some were sexual in nature and the contributing to the delinquency charge was drug-related, all are more broadly of the same general nature and could be fairly characterized as involving abusive conduct toward minors.

Id. at 446, 845 S.E.2d at 512-13.

The Court of Appeals did not err in finding the trial court acted within its discretion. In the instant case, the offenses are of the same general nature: they are offenses against children -- children in Tallent's care. Further, all the offenses rely on the same three principle witnesses, Victim and her brothers. The brothers were witnesses to sexual abuse and provided probative evidence of the nature of the relationship between Tallent and Victim. They also witnessed a portion of the evidence constituting the contributing to delinquency of a minor charge as to Victim. Victim was a witness to the evidence constituting contributing to the delinquency of a minor against Christopher. Further,

the offenses were closely related in time. The sexual abuse and the drug use occurred concomitantly together while the brothers lived in the home, they were simultaneous crimes.

Additionally, the drug evidence was admissible as res gestae. Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. 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). Under the res gestae theory, 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. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004).

This evidence of other crimes is admissible:

> 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) (citations omitted)).

Tallent concedes the probative worth of Vicitm's marijuana and alcohol use. The use and manufacture of other drugs in the household is likewise relevant and admissible as res gestae

evidence because it constitutes the environment Victim lived in before the brothers left the household. The brothers were only allowed in the bedroom to smoke drugs. Victim was shoed away at least some of the time in a half-hearted attempt to shield her from the household environment of heavier drugs. It also proves there were limitations on the opportunity for the brothers to observe Tallent's sexual abuse of Victim.

In the instant case, the trial court did not err in denying the motion to sever the charges. Victim and the two brothers were the primary witnesses for both the sexual and the drug-related offenses. The offenses were of the same character, both involved offenses against minors who were in Tallent's custody. The sexual assaults were ongoing at the time the bothers moved in and the use of drugs occurred at the same time after the brothers moved into the house. The offenses also all occurred at the same location, Tallent's home. Tallent begrudgingly concedes the probative value of testimony he shared marijuana and alcohol with Victim. This evidence is admissible for both the sexual assault charges and the contributing to Victim's delinquency and therefore is admissible evidence in both cases. The use of cocaine and methamphetamine, the production of crack cocaine, and allowance of strangers to use drugs inside the house all are probative evidence of the contributing charge. They also provide the context of the responsible-parent free environment in which Victim was always in Tallent's bedroom in a nightgown, Tallent lay in bed all day, drugs were freely used by the children, and Victim filled the role of Tallent's girlfriend.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be denied. Should this Court see fit to grant the petition, Respondent respectfully requests permission to brief the issues herein more fully.

Respectfully submitted,

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