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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEE ANTHONY CORLEY,

APPELLANT

APPELLATE CASE NO. 2020-000214

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in admitting evidence that appellant and his cohorts were frequent users of methamphetamine where that evidence was not integral to the state's case and the impermissible evidence only served to portray appellant in a negative light as a bad person?

STATEMENT OF THE CASE

Appellant was indicted by the Lexington County grand jury for murder, criminal conspiracy, and desecration of human remains. R. 912-917. Appellant's jury trial was held before the Honorable Steven H. John and a jury from January 27 – February 3, 2020. R. 1. Appellant was represented by Taylor Bell and Joseph Leventis. The state was represented by Suzanne Mayes and Angela Martin. R. 1.

The jury found appellant guilty as charged. R. 840, ll. 13 – 25. The judge sentenced appellant to life imprisonment for murder, ten-years' imprisonment for desecration of human remains, and five-years' imprisonment for criminal conspiracy. R. 841, l. 15 – 842, l. 7.

This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

STATEMENT OF FACTS

Jeneice Kennedy, the mother of the decedent, testified that in April of 2017, the decedent told her that she was going to Florida "to get away from some people." R. 38, ll. 8 – 12. Kennedy recalled that about a week later, on April 16, 2017, she spoke with the decedent on the phone and they made plans to get together the following Sunday, April 23, 2017. R. 38, ll. 13 – 18. On that Sunday, April 23rd, Kennedy sent the decedent a text message asking if the decedent was going to meet her at McDonald's, and Kennedy received a response from the decedent's phone asking: "Who is this?" R. 41, l. 17 – 42, l. 5. Kennedy asked the decedent to call her, but she never did. R. 42, ll. 5 – 14.

Kennedy and her husband drove to the decedent's house, and "everything looked like it normally would if she had everything locked up," but the decedent did not answer the door and there were no cars next to the house. R. 42, ll. 19 – 25. Kennedy assumed that the decedent was out, and she stated that it was not unusual for the decedent to not respond to her. Kennedy thought the decedent might have gone back to Florida or to Myrtle Beach with some friends. R. 43, ll. 1 – 12.

Later, in May of 2017, Kennedy learned that the decedent had not been spending her income tax money and had not picked up her prescription anxiety medicine, which "were definite red flags." R. 43, ll. 14 – 17. Kennedy texted the decedent's phone on May 24, 2017 to say that she was filing a missing person report and that the phone would be "tracked by police investigators." Kennedy filed a missing person report the following day with the Lexington County Sheriff's Department. R. 43, l. 19 – 44, l. 14.

Michael Gooding with the Lexington County Sheriff's Department was assigned to investigate the disappearance of the decedent. R. 120, ll. 1 – 25. Gooding discovered that the

decedent used her debit card to withdraw money from an ATM on April 19, 2017. Gooding then discovered that the car the decedent was seen in at the ATM was a white Nissan, which belonged to appellant's mother. R. 121, l. 20 – 123, l. 14. The police began disseminating information to the public seeking information from anyone who knew anything about the decedent's disappearance. R. 124, ll. 6 – 22. Ultimately, Gooding received information that appellant and his ultimate co-defendant, Harriet "Haley" Coleman,[1] might be involved in the decedent's disappearance. R. 128, ll. 2 – 19.

On June 15, 2017, Gooding spoke with appellant at appellant's mother's house. R. 132, ll. 2 – 14. According to Gooding, appellant told him that the decedent was living in Charleston and that she was trying to get her "life in order." R. 134, l. 17 – 136, l. 10. Appellant allegedly showed Gooding a Facebook message he had sent to the decedent; however, the Facebook message had not been read by the decedent. Gooding then claimed that appellant told him the decedent was in Jupiter, Florida. However, appellant would not give the police any more specific information because appellant had promised the decedent that he would not tell anyone her location. R. 136, l. 11 – 138, l. 10.

The following day, June 16, 2017, the decedent's remains were discovered in the woods off of a dirt road. R. 139, ll. 3 – 19. Law enforcement officers discovered decedent's bones inside of a trash can which had been burned and filled with cement. R. 78, l. 1 – 88, l. 19. Gooding went to speak with appellant a second time on June 21, 2017 at his mother's house. R. 139, l. 20 – 140, l. 3. Appellant denied having any involvement in the decedent's disappearance. R. 141, l. 7 – 142, l. 19.

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[1] Harriet Coleman went by the name "Haley," and she was referred to as Haley throughout the trial. She is referred to hereinafter after as "Haley" for ease of reference.

Officers with the Lexington County Sheriff's Department also interviewed an individual named Jake Rupert on June 21 and June 22, 2017. After the interviews with Rupert, officers obtained arrest warrants for appellant and his co-defendant, Haley, and they were both arrested on June 23, 2017. R. 146, l. 23 – 149, l. 17. After appellant was arrested, he was interviewed by Gooding and another investigator at the Sheriff's Department. R. 149, ll. 18 – 25.

Appellant's interview was audio recorded, and he also gave a written statement to the investigators. R. 155, ll. 15 – 20; R. 161, ll. 4 – 25. Appellant told the investigators that on the morning of April 21, 2017, he was at his house with the decedent when his co-defendant, Haley, came over to his house. Appellant was getting ready to leave for a court appearance. Haley was angry that Appellant had another woman – the decedent – over at his house, and she "football tackled" the decedent to the ground. When the decedent hit the ground, appellant heard "a crunch." Appellant told Haley that he had to leave to go to court and that when he returned from court, he wanted his house to look "like nothing happened." Appellant maintained that when he returned from court, nobody was at his house. Appellant denied having any involvement in destroying the decedent's body, and he denied knowing what Haley did with the decedent's body. R. 163, l. 6 – 165, l. 23. Investigator Gooding acknowledged on cross-examination that Haley was much larger than the decedent. R. 194, l. 1 – 195, l. 7.

Haley testified against appellant, and she claimed in essence that she was only guilty of accessory after the fact of murder for helping appellant dispose of the body and desecration of human remains. R. 462, ll. 1 – 11. Haley said that she was in love with appellant and that they had an ongoing sexual relationship even though appellant also dated several other women at the same time. R. 463, ll. 17 – 466, l. 8.

Haley alleged that she went to appellant's house on the morning of April 21, 2017 to offer him a ride to his court date. She maintained that appellant appeared to be panicked and distraught. R. 469, ll. 5 – 17. According to Haley, appellant asked her to stay at his house until he got back from court and for her to not let anybody inside of his house. R. 469, ll. 18 – 23.

When appellant returned from court, Haley claimed that appellant told her and Jake Rupert, appellant's friend who dropped by after appellant had already left for court, that he killed the decedent because "he thought she was drilling holes in his wall for the purpose of spying on him or trying to set him up with somebody and [because] she wouldn't give him her Google password." R. 473, l. 15 – 474, l. 23. After Jake Rupert left the house, Haley said that appellant began threatening to commit suicide, so she went outside to sit in her car. R. 476, l. 1 – 477, l. 1. Haley said that while she was sitting in her car, appellant came outside and apologized to her. R. 477, ll. 2 – 6.

Haley recalled that appellant put the decedent's body in a trash can and put the trash can in the back of her van. Haley said that she drove the van to appellant's uncle's house where they set the trash can on fire in the uncle's backyard. R. 480, l. 1 – 481, l. 19. While appellant and Haley were at the uncle's house, Haley stated that she left to get gasoline to continue burning the decedent's body and to pick up fast food for them to eat. Haley used the decedent's debit card to purchase these items. R. 483, l. 1 – 484, l. 9. After the fire went out, Haley maintained that appellant moved the decedent's remains into a different trash can and they took it to a storage building behind appellant's house. R. 485, ll. 1 – 14.

Haley claimed that appellant came up with the idea to pour concrete over the decedent's remains. Haley suggested they do that at her mother's house because nobody would bother them there. R. 486, ll. 10 – 24. After pouring two bags of concrete into the trash can over the

decedent's remains, Haley claimed that they left the trash can in the woods behind her mother's house. R. 487, l. 1 – 488, l. 2.

Jake Rupert, who was serving an eight-year sentence in federal prison at the time of appellant's trial, also testified against appellant. R. 704, ll. 4 – 17. Rupert claimed that on April 21, 2017, he went to appellant's house and that appellant was acting paranoid. R. 710, l. 24 – 712, l. 9. Rupert maintained that Haley was also at appellant's house and that appellant confessed to killing the decedent. R. 713, l. 23 – 714, l. 18. According to Rupert, appellant asked him to help dispose of the decedent's body, but Rupert refused to help, and left. R. 714, l. 19 – 715, l. 12.

The state also called Michael Potts as a "jailhouse snitch" against appellant. Potts was serving a seven-year sentence in federal prison for being a felon in possession of a firearm. R. 662, ll. 4 – 21. Potts claimed that he was in booking at the Lexington County Detention Center at the same time as appellant and he overheard appellant telling another inmate that he had choked and killed the decedent. R. 663, l. 2 – 664, l. 20. Potts additionally maintained that while housed in the same dorm as appellant, he overheard appellant confess to killing the decedent to another inmate. This time, Potts claimed that he overheard appellant tell another inmate that he killed the decedent because "she had people installing cameras around the house watching them have sex." R. 664, l. 24 – 665, l. 23.

William Stevens with the Richland County Coroner's Office was qualified as an expert in forensic anthropology. R. 369, l. 2 – 370, l. 19. Stevens assisted with removing the decedent's remains from the trash can and concrete so he could examine them. R. 370, l. 21 – 371, l. 15. Stevens arranged the decedent's bones in anatomical order and then used magnification to look for perimortem trauma. R. 374, l. 21 – 377, l. 9. Stevens noted that the decedent had fractures to

her first and second ribs on both sides and that at least one of those fractures occurred before the decedent's remains were burned. R. 382, l. 4 – 384, l. 9. Stevens did not find any indication that the decedent's neck was broken. R. 384, ll. 14 – 17.

According to Stevens, the decedent's fractures were not consistent with a fall but were consistent with "compressive force and/or twisting to the base of the neck." R. 385, l. 8 – 386, l. 2. However, on cross-examination Stevens admitted that the decedent's injuries were consistent with "blunt force trauma to the sternal region" and that such blunt force trauma could have been caused by "an impact to the chest such as a football tackle." R. 395, l. 10 – 401, l. 3.

Appellant called Nicholas Batalis, who was qualified as an expert in forensic pathology. R. 597, ll. 5 – 13. Batalis testified that he had never seen a strangulation that resulted in the first rib being fractured in the decedent. R. 599, ll. 19 – 24. Batalis maintained that the decedent's fractures were most likely caused by blunt force trauma to the sternal region. R. 601, ll. 11 – 14. Batalis further testified that the decedent's rib fractures could have possibly punctured the decedent's lungs and caused internal bleeding. R. 602, l. 18 – 603, l. 18. Finally, Batalis agreed that the decedent's injuries could be explained by her having been forcefully tackled to the ground by a person who was much larger than her. R. 606, ll. 4 – 11.

ARGUMENT

The trial judge erred in admitting evidence that appellant and his cohorts were frequent users of methamphetamine because that evidence was not integral to the state's case and the impermissible evidence served only to portray appellant in a negative light as a bad person.

Relevant facts

The assistant solicitor told the judge during a pretrial hearing that she intended to elicit testimony from various witnesses, that they were frequent users of methamphetamine, and that they regularly used methamphetamine with appellant. R. 2, l. 6 – 3, l. 7. The state's theory of the case was that appellant murdered the decedent because of a paranoid delusion he was having that the decedent was spying on him and having people watch him through holes in the walls of his house. The state alleged that appellant subsequently confessed to several different individuals who he used drugs with. The solicitor argued that the testimony regarding the drug use was necessary to explain appellant's delusions and how he and the other witnesses knew each other and why he felt comfortable confessing to them. R. 3, l. 8 – 6, l. 7.

Defense counsel responded that the state had presented no expert testimony to connect appellant's alleged paranoid delusion to drug use. It was purely speculative for the state to suggest that the alleged delusions were drug related. Therefore, while counsel agreed that the state could elicit testimony that appellant was allegedly having paranoid delusions about the decedent spying on him, counsel argued that the state could not elicit testimony that drug use was the cause of this alleged paranoia. Counsel argued that the testimony regarding appellant's drug use was more prejudicial than probative and that it would serve only to portray appellant as a bad person. R. 7, ll. 1 – 25.

The solicitor continued to contend that the drug use was necessary to present the full circumstances because "[t]he reason [appellant] trusted these people is because they were using drugs together." R. 8, l. 6 – 9, l. 3. The solicitor further argued that "to say somebody came over and [appellant] made this admission and shows them the body wouldn't even make sense without them understanding that these are close associates of his and they are persons that he freely uses drugs with on a regular basis." R. 9, ll. 8 – 14.

Defense counsel pointed out that there were other reasons that appellant and the witnesses associated with one another, including having sexual relationships. R. 9, ll. 18 – 21. Counsel argued that the state wanted to portray appellant and his associates as "just one big group of people using drugs," which was unnecessary and more prejudicial than probative. R. 9, ll. 18 – 10, l. 2.

The trial judge ruled that the testimony would be allowed:

> I don't think there's any question there would be some stigma attached to the use of illegal narcotics. But as it has been presented to the Court I do not think it presents a full and complete picture to the jury as to the relationship between the parties, why the defendant would exhibit a trust in these individuals to relay incriminating information regarding a serious crime. Why would he divulge this type of information if he was not comfortable with them in engaging in other illegal activity? I'm going to allow the testimony of the purported witnesses.

R. 10, l. 3 – 11, l. 3.

Immediately prior to opening statements, defense counsel renewed his objections "under [Rule] 404(a) and (b) relating to drug abuse." R. 14, ll. 10 – 13. Counsel wanted to ensure his objection to the drug evidence was preserved for appeal without being strategically hindered going forward. Counsel stated: "I want the Court to understand that I would like that to be preserved even though if we ourselves elicit information relating to that [drugs] just based on

your prior ruling I want that objection just to be preserved for the record." R. 14, ll. 14 – 19. The judge responded: "I understand you have objected to my ruling. Now, what the Appellate Courts think about questions you asked (sic) and answers you elicit, that'll be up to them." R. 14, ll. 20 – 23. Immediately after this exchange, the trial proceeded with opening statements.

Armed with the judge's ruling, the solicitor in her opening statement made repeated references to appellant and the other witnesses using drugs together. She told the jury that these "witnesses that are involved with drugs are the ones that would know what happened to [the decedent]." R. 18, ll. 22 – 25. Defense counsel then conceded in his opening statement following the solicitor that appellant was a drug user and that many of the other witnesses were also drug users. R. 28, l. 22 – 29, l. 2.

The very first witness that the state called was the decedent's mother who testified that the decedent had been addicted to drugs ever since she was a teenager. The decedent was thirty-six years old when she disappeared. R. 35, ll. 1 – 22.

The second witness called by the state was Jennifer Bryant who testified that she was serving a prison sentence for manufacturing methamphetamine. R. 50, l. 13 – 51, l. 14. Bryant claimed that she was at appellant's house on April 18, 2017 and was using meth with appellant and others. R. 54, l. 12 – 55, l. 19. Bryant claimed that the decedent was also present at that time and that she asked Bryant to help her, so Bryant tried to arrange for the decedent to get a ride to leave appellant's house. R. 55, l. 20 – 59, l. 18. Bryant further claimed that appellant would not allow the decedent to leave his house, so Bryant left without the decedent. R. 59, l. 19 – 61, l. 21.

Appellant's co-defendant, Haley Coleman, testified that she had a sexual relationship with appellant and that she was in love with him. R. 463, ll. 8 – 23. Haley said that appellant

"supplied [her] with the drugs that [she] needed" including methamphetamine. R. 464, ll. 12 – 17. Haley claimed that she used meth with appellant and Jake Rupert on the day that appellant allegedly told them that he killed the decedent. R. 469, l. 13 – 471, l. 9; R. 473, l. 2 – 475, l. 9.

Regina Wangness testified that she was appellant's neighbor and she had known appellant for ten years. R. 628, ll. 8 – 16. Wangness testified that she was addicted to methamphetamine and that appellant confessed to killing the decedent to her. R. 629, l. 13 – 630, l. 3; R. 636, ll. 11 – 19.

Finally, Jake Rupert also testified that he used and "supplied" methamphetamine. R. 710, ll. 19 – 23. Rupert recalled that he grew up with appellant and had known him for fifteen or twenty years. R. 705, ll. 3 – 8. Rupert frequently socialized with appellant because appellant was "good friends with [Rupert's] sister," and he and appellant would play basketball together regularly. R. 705, ll. 15 – 24. Rupert claimed that he went to appellant's house the day after the decedent was killed because appellant asked Rupert to bring him meth. R. 711, l. 17 – 712, l. 21. According to Rupert, he was using meth with appellant and Haley when appellant confessed to killing the decedent. R. 713, l. 12 – 714, l. 18.

Closing argument by the state

The solicitor made repeated references to drug use by appellant and the other witnesses in her closing argument. She argued that appellant was "fueled by drugs" and that he took advantage of the decedent because of her drug addiction. R. 776, l. 22 – 778, l. 15. The solicitor also told the jury that appellant was "evil" for using meth with Rupert and Haley while the decedent's body was in his closet. R. 780, ll. 1 – 23. Furthermore, the solicitor suggested that appellant's paranoid delusion that the decedent was spying on him was a result of his drug use. R. 781, ll. 2 – 10.

Discussion

Rule 404(b), SCRE, provides: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." "It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual." State v. Gillian, 360 S.C. 433, 443, 602 S.E.2d 62, 67 (Ct. App. 2004). Furthermore, in order to be admissible, "[t]he bad act must logically relate to the crime with which the defendant has been charged." Id.

If the prior bad act which the state seeks to introduce against the defendant is not the subject of a criminal conviction, then "evidence of the bad act must be clear and convincing." State v. Stokes, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009). However, even if there is clear and convincing evidence of the prior bad act, admission of the evidence is still subject to a Rule 403, SCRE, analysis. Id.

Under Rule 403, SCRE, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013). "'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." Rule 401, SCRE.

Here, the trial judge erred in allowing the state to introduce testimony that appellant and the other witnesses regularly used drugs together. This evidence had nothing to do with the only relevant issue in the trial which was whether or not appellant killed the decedent. The solicitor's

argument that appellant's drug use caused his alleged paranoia was unsupported by any probative evidence. Instead, this theory by the state was pure speculation. See State v. Smith, 309 S.C. 442, 446, 424 S.E.2d 496, 498 (1992) (noting that "evidence of drug use is incompetent to establish motive for a crime or the state of mind of the defendant where the record does not support any relationship between the crime and the drug use); State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990) (holding that evidence of the defendant's alleged crack use the night before the robbery was inadmissible where nothing in the record showed a logical connection between the drug use and the crime).

Furthermore, appellant's association with the state's witnesses was easily explained by factors unrelated to drug use. Appellant had a sexual relationship with both the co-defendant, Haley, and the decedent. He was friends and neighbors with several other witnesses. Jake Rupert testified that he grew up with appellant and had known him for fifteen or twenty years. They frequently played basketball together. R. 705, ll. 3 – 24.

Regina Wangness testified that she was appellant's neighbor and she had known him for ten years. R. 628, ll. 8 – 16. It was simply not necessary to elicit testimony about drug use to explain why and how appellant knew each of the witnesses involved.

In State v. King, 422 S.C. 47, 69-70, 810 S.E.2d 18, 29-30 (2017), the Supreme Court found the admission of a profanity-laced jail call between the defendant and another individual was error pursuant to Rule 403, SCRE. Specifically, the Supreme Court found that admission of the jail call was improper, in part, because it included impermissible references to alleged prior bad acts by King. Id. The King Court noted that the jail calls did have some probative value in "establishing King's ownership of the cellphone that called the cab company," but that the jail call "was not the only evidence that could have served this purpose." Id. The Court found that

this diminished the probative value of the jail call and its probative value was outweighed by the danger of unfair prejudice.

As in King, here, there was other evidence that could and did serve the purpose of explaining how appellant knew the other witnesses. The repeated references to drug use had little probative value because other evidence had already established appellant's relationships with the witnesses.

The testimony about appellant's drug use and the other witnesses' frequent drug use was a gratuitous attack on appellant's character meant to portray him as a bad person.[2] See State v. Coleman, 301 S.C. 57, 60, 389 S.E.2d 659, 660-61 (1990) (holding that evidence that the defendant was a social user of cocaine was inadmissible where "the only function of this evidence was to demonstrate appellant's bad character and social irresponsibility"). The trial judge should have excluded this testimony.

In State v. Dickerson, 341 S.C. 391, 396, 535 S.E. 2d 119, 121 (2000), conversely the Supreme Court held that the trial judge properly allowed evidence of the defendant's drug use at the time of the alleged murder. In Dickerson, the state's medical examiner testified that the killing of the victim was "overkill," meaning the assailant inflicted significantly more injuries than were necessary to cause death. Id. at 395, 535 S.E.2d at 120-21. The medical examiner further testified that she had only seen "overkill" in "lovers' quarrel" cases or where the assailant was "high on drugs like cocaine." According to the medical examiner, the expert literature on the subject of "overkill" also indicated that it was often the result of the assailant being high on drugs or motivated by sexual passion. Id.

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[2] Appellant also did not testify and put his character in issue. See Mitchell v. State, 298 S.C. 186, 188-89, 379 S.E.2d 123, 124 (1989) (In a criminal case, the state cannot attack the character of the defendant unless the defendant himself first places his character in issue).

The Dickerson Court held that the defendant's drug use was admissible to prove the killer's *identity* as the defendant. Id. at 396, 535 S.E.2d at 121. Specifically, the Court found that the defendant's admission to using drugs at the time of the murder, coupled with the medical examiner's testimony that "overkill" was frequently a result of drug use, served to prove that the defendant was in fact the killer. Id. at 397, 535 S.E.2d at 122.

Unlike Dickerson, there was no testimony in this case connecting appellant's alleged drug use to the killing of the decedent. There was no allegation of "overkill," nor was there any expert testimony connecting appellant's alleged paranoia to his alleged drug use. Further, the drug use was not necessary to establish appellant's identity, or any other fact in controversy.

The solicitor's argument that appellant's drug use with the state's witnesses explained why he was willing to confess to them ignores the plain reality that people confess to many different people for many different reasons. In fact, the state's presentation of the "jailhouse snitch" belied their own argument in this regard. Michael Potts claimed that he overheard appellant confessing *twice* to different inmates at the jail, and there was no indication that appellant knew these inmates or had ever used drugs with them in the past. If the solicitor's argument was correct that the drug use was necessary to explain why appellant confessed to his drug associates, it would logically follow that appellant *would not* have confessed to people that he did not use drugs with.

In State v. Smith, 309 S.C. 442, 445, 424 S.E.2d 496, 498 (1992), the Supreme Court held that it was reversible error to allow introduction of the defendant's prior cocaine use. The defendant in Smith was accused of murdering her husband during the commission of an armed robbery. The defendant's alleged paramour testified that, prior to the murder, the defendant

"smoked cocaine," and that the defendant had on prior occasions dropped her paramour off "and left [him] beside the road two and three hours at a time while she was going to get cocaine." Id.

The Smith Court found the testimony regarding the defendant's prior drug use was irrelevant and unduly prejudicial. Id. The Supreme Court reasoned that there was no evidence to connect the defendant's drug use to a motive to murder and the evidence "served only to discredit her character and portray her as a miscreant reprobate." Id. at 446, 424 S.E.2d at 498. The Smith Court also rejected the argument that the defendant's drug use was admissible under the *res gestae* exception, finding that the drug use and the murder were "totally unconnected." Id.

Here, as in Smith, appellant's alleged drug use was "totally unconnected" to the decedent's death and therefore inadmissible under the *res gestae* theory. The state's allegation that appellant was motivated to kill the decedent because of a drug induced paranoia was pure speculation because there was no testimony ever presented connecting appellant's drug use to his paranoia. Defense counsel conceded that evidence of the alleged paranoia was admissible. What was not admissible was appellant's drug use. The state could have fully presented their case without introducing testimony that appellant and his associates were frequent users of meth. This testimony served only to "discredit [appellant's] character and portray [him] as a miscreant reprobate." Id.

This drug evidence was unnecessary to a full presentation of the state's case because it was not required to explain why appellant knew the witnesses, and it was not required to explain why appellant allegedly confessed to Coleman and Rupert. Furthermore, it was improper speculation to suggest that appellant's drug use caused his paranoia which motivated him to kill the decedent as there was never any evidence presented establishing this as a fact. Instead, the

evidence of frequent drug use served only to portray appellant as a bad person and was unfairly prejudicial. It invited a verdict on the impermissible basis of bad character. Consequently, given the admission of this highly prejudicial inadmissible evidence, appellant's conviction should be reversed. See State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992); State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990); State v. Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990).

CONCLUSION

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

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This 11th day of October, 2021.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

October 11, 2021

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