

STATE OF LOUISIANA

NO. 20-K-291 C/W
20-K-305

VERSUS

FIFTH CIRCUIT

KERRIAN JAVANA CLOFER
DAVANA CLOFER TRIPPS

COURT OF APPEAL

C/W

STATE OF LOUISIANA

STATE OF LOUISIANA

VERSUS

DAVANA CLOFER TRIPPS
KERRIAN JAVANA CLOFER

May 04, 2021

Susan Buchholz
First Deputy Clerk

IN RE STATE OF LOUISIANA

**APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
MADELINE JASMINE, DIVISION "A", NUMBER 15,274**

Panel composed of Judges Susan M. Chehardy,
Robert A. Chaisson, and Stephen J. Windhorst

WRITS GRANTED, REMANDED WITH INSTRUCTIONS

Relator, the State of Louisiana, seeks this Court's supervisory review of the trial court's ruling that granted defendant Javana Tripps' motion to sever her trial from that of her daughter, Kerrian Clofer, as well as the trial court's rulings that denied the State's motion in limine to designate evidence as *res gestae*, or in the alternative, notice of evidence under La. C.E. 404(B). The trial court granted defendant's motion to sever before considering the State's motion in limine, as seen by the fact that the trial court entered separate judgments on the State's motion in limine—one for the charges against Davana Tripps (40th JDC No. 2015-CR-274 (1)), and another for the charge against Kerrian Clofer (40th JDC No. 2015-CR-274 (2)). We consolidated the State's two writ applications seeking review of these three judgments for consideration.

As to the State's motion in limine (20-K-305), although the State attached the evidence it purports to introduce at trial to its motion in limine, the transcript of the March 11, 2020 hearing reveals that the State failed to offer, file, and introduce into evidence the pertinent exhibits. While a full evidentiary hearing is not

mandated when determining the admissibility of other crimes evidence, *see State v. Taylor*, 16-1124, 16-1183 (La. 12/1/16), 217 So.3d 283, 292, we decline to review the propriety of the trial court's ruling in this particular instance without the evidence properly entered into the record. Accordingly, we grant the State's writ application in 20-K-305, vacate both of the trial court's judgments entered on the State's motion in limine, and remand to the trial court to conduct a new hearing. *See State v. Pigott*, 18-598 (La. App. 5 Cir. 1/24/19), 2019 WL 322837 (granting writ and remanding to reopen hearing for State to offer, file, and introduce into evidence the exhibits at issue on State's notices of intent to use other crimes evidence and *res gestae* evidence); *State v. Durning*, 16-737 (La. App. 5 Cir. 1/17/17) (unpub.) (granting writ to allow State to properly offer, file, and introduce into evidence two consent judgments related to the State's *res gestae* notice).

As to defendant Tripps' motion to sever (20-K-291), La. C.Cr.P. art. 704 provides: "Jointly indicted defendants shall be tried jointly unless: ... (2) The court, on motion of the defendant, and after contradictory hearing with the district attorney, is satisfied that justice requires a severance." Because the trial court's determination as to the State's motion in limine affects its decision as to whether justice requires severance under La. C.C.P. art. 704(2), we also grant the State's writ application in 20-K-291, vacate the trial court's judgment granting defendant Tripps' motion to sever, and remand with instructions to conduct a new hearing subsequent to the trial court's ruling on the State's motion in limine.

Gretna, Louisiana, this 4th day of May, 2021.

SMC
SJW

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CHAISSON, J., DISSENTS IN PART.

I respectfully dissent from the majority's conclusion that the trial court's ruling on the State's "Motion in Limine to Designate Evidence as *Res Gestae*, or in the Alternative, Notice of Evidence under La. C.E. art. 404(B)," needs to be vacated and the matter remanded for a new hearing in order to afford the State the opportunity to properly introduce the evidence relating to its motion. Although the State did not formally introduce the exhibits in support of its *motion in limine*, it did submit the evidence, including police reports and certified copies of convictions from Calcasieu Parish, to the trial court. *See State v. Taylor*, 16-1124, 16-1183 (La. 12/1/16), 217 So.3d 283. Based on the evidence presented, the trial court denied the State's *motion in limine* and issued judgments with reasons for its ruling as to each defendant, noting as to both that the probative value of the evidence was outweighed by its prejudicial effect. Absent an abuse of discretion, a trial court's ruling on the admissibility of evidence pursuant to La. C.E. art. 404(B)(1) will not be disturbed. *State v. Carter*, 15-99 (La. App. 5 Cir. 7/29/15), 171 So.3d 1265, 1280, *writ denied*, 15-1618 (La. 10/17/16), 207 So.3d 1068. In

the present case, I find no abuse of discretion in the trial court's ruling on the State's *motion in limine*.

RAC

SUSAN M. CHEARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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CLERK OF COURT
NANCY F. VEGA
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SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **05/04/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

20-K-291
C/W 20-K-305

E-NOTIFIED

40th District Court (Clerk)
Honorable Madeline Jasmine (DISTRICT JUDGE)
Honorable Vercell Fiffie (DISTRICT JUDGE)
Lisa M. Parker (Respondent)
Nghana L. Gauff (Respondent)

Honorable Bridget A. Dinvaut (Relator)
William R. Dieters (Relator)
Justin B. LaCour (Relator)

MAILED