

STATE OF LOUISIANA

*

NO. 2018-K-0616

VERSUS

*

COURT OF APPEAL

MARCO PARKER

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 537-573, SECTION "B"

Honorable Tracey Flemings-Davillier, Judge

Judge Regina Bartholomew-Woods

(Court composed of Judge Daniel L. Dysart, Judge Regina Bartholomew-Woods,
Judge Paula A. Brown)

DYSART, J., DISSENTS WITH REASONS

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WRIT GRANTED; RELIEF DENIED

OCTOBER 3, 2018

Relator, State of Louisiana (“State”), seeks supervisory review of the district court’s June 22, 2018 ruling granting Defendant’s motion *in limine* to exclude text messages recovered from Defendant’s cell phone. For the following reasons, we find that the district court did not err; therefore, we deny the relief sought by the State.

FACTUAL BACKGROUND

In its writ application, the State asserts the following:

On September 4, 2015[,] Cornelius Bentley was shot and killed while in a motel room on Chef Menteur Highway. In video surveillance from the motel’s parking lot, two subjects later identified as the defendant and Calvin Morris [“Morris”] are seen exiting the motel room. One of the subjects later identified as the defendant is seen going over to a trash can and dropping something inside. Both subjects are then seen leaving the parking lot. A Glock Model 17 handgun was recovered from the trash can outside of the motel room.

In a recorded interview with an NOPD homicide detective, Defendant admitted that after witnessing Morris shoot the victim, he deposited the handgun into a trash receptacle outside of the motel room. However, Defendant denied having any knowledge that the homicide would occur before Morris abruptly shot

the victim for no discernable reason. During the homicide investigation, NOPD extracted text messages from Defendant's cell phone that are at issue in this writ application. In one of the text message exchanges, which were sent to a contact in his phone entitled "Wife," Defendant and she discussed the theft of twenty thousand dollars; in another message Defendant stated, "Man Im [sic] ready to kill."

PROCEDURAL HISTORY

Morris was subsequently charged by grand jury indictment with one count of second degree murder, in violation of La. R.S. 14:30.1. Defendant was charged with one count of obstruction of justice in a homicide investigation, a violation of La. R.S. 14:130.1.¹ Thereafter, Morris pled guilty to an amended count of conspiracy to commit second degree murder, a violation of La. R.S. 14:(26)30.1, and was sentenced to ten (10) years in the Department of Corrections.

¹ La. R.S. 14:130.1 provides, in pertinent part:

A. The crime of obstruction of justice is any of the following when committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as described in this Section:

(1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance either:

(a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers; or

(b) At the location of storage, transfer, or place of review of any such evidence.

(b) The giving of information, evidence, or any aid relating to the commission or possible commission of a parole or probation violation or any crime under the laws of any state or of the United States.

* * *

Counsel for Defendant filed a motion *in limine* to exclude the text messages that NOPD extracted from Defendant's cell phone, which the district court granted on June 22, 2018. It is from this ruling that the State now seeks supervisory review.

DISCUSSION

In criminal matters, evidence must be relevant to be admissible at trial. Evidence is relevant if it has "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." La. C.E. art. 401. In contrast, "[e]vidence which is not relevant is not admissible." La. C.E. art. 402. Moreover, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time." La. C.E. art. 403.

In the present case, Defendant's statement that he had no prior knowledge that Morris would shoot the victim, as well as the text messages that NOPD extracted from Defendant's cell phone are irrelevant to the crime of obstruction of justice. Defendant's state of mind **prior** to the homicide is irrelevant because Defendant is not charged as a principal, accessory or conspirator to the homicide. Presently, Defendant is charged with obstruction of justice, which contemplates tampering with evidence, *vis-à-vis*, disposing of the handgun **after** the homicide occurred; therefore, text messages sent to and from Defendant regarding money and his desire to kill someone are not probative to the crime charged and their

probative value would be substantially outweighed by their prejudicial value and would lead to either confusion or outright mislead the jury.

CONCLUSION

For the aforementioned reasons, we deny the relief sought by the State.

WRIT GRANTED; RELIEF DENIED