

Russell M. Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

V.

*

Indictment:

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CR 2000433

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GREG MCMICHAEL

*

TRAVIS MCMICHAEL

*

WILLIAM R. BRYAN

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4.70 STATE'S MOTION IN LIMINE AS TO THC

The State moves this Court to exclude evidence that Mr. Arbery had 3.2ng/mL of THC in his system at the time of his death, per the report of Toxicologist Amanda Cooke of the GBI dated July 14, 2020, who will not be able to testify as to whether Mr. Arbery was under the influence of THC at the time of the homicide nor what the effects of THC were on Mr. Arbery.

1.

There is a long line of cases that support the contention that marijuana in a decedent's system at the time of death, including in cases where the defense is self-defense, is not admissible when there is no way to know whether the victim was actually under the influence of marijuana at the time he was killed, and no expert can say what, if any effect the marijuana had on the victim at the time of his death. See James v. State, 270 Ga. 675, 676 (1999); Rivera v. State, 295 Ga. 380, 384 (2014) (Because there was no evidence regarding when the victim had consumed cocaine or what, if any, effect it had on him at the time of the altercation, evidence regarding the toxicology report would likely have been excluded as irrelevant to defendant's justification defense.)

2.

Speculation is not allowed. Robinson v. State, 272 Ga. 131, 133 (2000) (Where the expert witness could not say what, if any, effect cocaine had on the victim

at the time of his fatal argument with appellant, the trial court correctly concluded that the expert's evidence was too speculative.)

3.

The Georgia Supreme Court has noted that “[e]vidence of drug use is inadmissible when it is intended only to impugn a victim's character and has no relevance to any disputed issues in the case.” Gill v. State, 296 Ga. 351, 352 (2014) (Where defendant speculated that drugs in the victim’s system could have been affecting him at the time of the homicide, there was insufficient basis for the toxicology evidence to be admitted at trial.) See also, e.g., James v. State, 270 Ga. 675, 676 (1999) (exclusion of expert testimony on victim's marijuana use was proper where “the defense could not demonstrate how the use of drugs contributed to behavior of the victim that would have been relevant to [the defendant's] justification defense”).

4.

In this case, we have a very minor amount of THC, that was not found during the first toxicology screening of the victim’s blood, but only at the second screening. In cases where alcohol or cocaine have been found in the victim’s system, and the defendant wished to show that the victim was the first aggressor, it was not error to exclude such evidence when there was no way for the expert to opine what effect the substances had on the victim at the time of death. See Daniels v. State, 276 Ga. 632, 633 (2003) (In a self-defense case, it was not error for the trial court to grant the State’s motion to exclude evidence that the victim had cocaine in his system at the time of the murder since the defendant could not prove with some degree of certainty that the drugs caused the victim to be violent); Dunn v. State, 292 Ga. 359, 361-362 (2013) (Not error for the trial court to refuse to allow the medical examiner to testify to the victim’s blood alcohol content of 0.072 when the ME “did not know the victim's experience with alcohol and could not tell whether it made her euphoric, aggressive, or sleepy.”); Mondragon v. State, 304 Ga. 843, 845-846 (2019) (Not error to exclude toxicology report when defendant was unable to proffer evidence of the effect that the victim’s blood alcohol content would have had on him or even the effect that drinking alcohol had on the victim generally.)

The State requests that the testimony of Amanda Cooke, and the toxicology report finding a minor amount of THC in the victim's system, be excluded as not being relevant to the defendant's justification defense.

This the 4th day of October, 2021.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above 4.70 STATE'S MOTION IN LIMINE AS TO THC via the Odyssey E-File System to:

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This the 4th day of October, 2021.

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