

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Laurens County  
Honorable Robert Frank Addy, Jr. Circuit Court Judge

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Appellate Case No: 2011187128

STATE OF SOUTH CAROLINA,

Respondent,

vs.

RICHARD BRNDON LEWIS,

Appellant.

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**RETURN TO MOTION FOR BOND PENDING APPEAL**

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The State of South Carolina respectfully submits the following in opposition to Appellant's Motion for Bond Pending Appeal:

1. Richard Brandon Lewis was convicted of Aiding and Abetting Homicide by Child Abuse on March 3, 2011 in Laurens County. He was sentenced to ten (10) years, suspended on the service of seven (7) years. On March 4, 2011, Appellant timely filed and served notice of appeal. He also filed and served a motion for an appeal bond in the Laurens County Court of General Sessions.
2. A hearing regarding Appellant's motion for appeal bond was in held in Greenwood,

South Carolina on March 9, 2011 with the consent of all concerned parties. Appellant was not present, but Appellant's counsel, C. Rauch Wise, Esquire, waived Appellant's presence at the hearing. Deputy Solicitor Jack Hammack appeared on behalf of the State. At the hearing, Appellant argued he should be granted relief because he did not have a duty to protect the child victim because he was not the victim's legal parent or guardian. The Honorable Frank Addy, Jr. denied Appellant's motion on March 10, 2011 because Appellant did not meet all the factors in Nichols v. Patterson, 202 S.C. 352, 25 S.E.2d 155 (1943).

3. Thereafter, Appellant moved this Court to order his release on bond during the pendency of the appeal. In support of his request, Appellant contended in that motion that the trial judge failed to charge the jury they could only convict him for an act of omission if they found he had assumed a duty to the victim. Secondly, Appellant asserted the hospital Chaplin's testimony should not have been allowed into evidence because it was highly prejudicial. Thirdly, Appellant asserted that the State should be judicially estopped from using Appellant's own testimony against him because his testimony was inconsistent. The Appellant alleged that contrary to the trial court's position, he has established that there is likelihood that his conviction will be reversed on appeal.

4. The State argued to this Court that it should decline to consider Appellant's motion. Pursuant to Rule 246 (a), SCACR, Appellant had already presented the motion for release on bond pending the appeal to the trial court judge who considered and denied the request. Respondent also asked this Court to exercise its discretion to deny the motion and responded to each of the arguments presented by Appellant in support of his request. This Court issued an

order denying Appellant's request for release on bond pending appeal on August 23, 2011.

5. Thereafter, this Court issued an opinion reversing the conviction in this case on May 15, 2013. State v. Richard Brandon Lewis, Op. No. 5132 (S.C. Ct. App. filed May 15, 2013).

6. Appellant now moves again for his release on bond pending appeal.

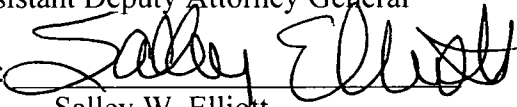
7. Respondent submits that this Court should decline to consider Appellant's motion because it is one that must be heard in the trial court pursuant to Rule 246 (a), SCACR. Based upon the sentence received in this case, Appellant must present the motion to the trial court. Holmes v. State, 344 S.C. 41, 543 S.E.2d 537 (2001). Alternatively, Respondent submits that the request for release on bond must be denied for the reasons advanced by Respondent in its response to the Appellant's previous motion for appeal bond.

WHEREFORE, the State moves this Court to deny Appellant's request for release on appeal bond.

Respectfully submitted,

ALAN WILSON  
Attorney General

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By:   
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June 17, 2013

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From Laurens County  
Robert Frank Addy, Jr., Circuit Court Judge

Appellate Case No: 2011-187128

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The State,

Respondent,

vs.

Richard Brandon Lewis,

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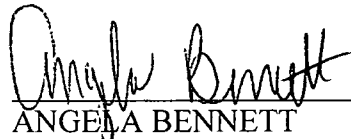
**PROOF OF SERVICE**

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I, Angela Bennett certify that I have served the Return to Motion for Bond Pending Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, C. Rauch Wise, Esquire, 305 Main Street, Greenwood, South Carolina 29646.

I further certify that all parties required by Rule to be served have been served.

This 17<sup>th</sup> day of June, 2013.



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