

STATE OF SOUTH CAROLINA) IN THE COURT OF APPEALS

COUNTY OF HORRY)

Case Number: 2013-000197

The State of South Carolina,
Respondent,

**DEFENDANT'S MOTION FOR
BOND PENDING APPEAL**

vs.

Marquis T. Evans

Appellant.

RECEIVED

AUG 21 2013

SC Court of Appeals

The Defendant, Marquis T. Evans, by and through undersigned counsel, Russell W. Mace III, hereby moves for a bond pending the appeal of his case to the South Carolina Court of Appeals, pursuant to S.C. Code Ann. § 18-1-90. In support of this motion, the Defendant would show the following:

1. On January 10, 2013, Evans was convicted of one count of receiving stolen goods in violation of S.C. Code Ann. § 16-13-180(B)(2).
2. Evans was sentenced on January 10, 2013 after a four hour trial (including lunch) to three years imprisonment. A notice of appeal was timely filed.
3. A motion for bond pending appeal was previously filed on February 21, 2013 with the South Carolina Court of Appeals. Respondent filed a return to Evans' motion for bond on March 1, 2013 requesting that the matter be heard before the circuit court.
4. A subsequent motion for bond was filed with the circuit court and was heard on May 16, 2013 in the Horry County Court of General Sessions before the Honorable Edward B. Cottingham. At the hearing, counsel was not given an opportunity to argue

the motion for bond pending appeal on Evans' behalf. (*See attached* Bond Hr. p. 4, lines 6-15.) Rather, the trial court stated that it remembered the facts of the case and Evans' connections with North Carolina. Specifically, the trial court indicated that it recalled the case involving "a lot of farm equipment." (*Id.* at 2, line 22.) However, Evans trial actually concerned welding equipment. (R. p. 43, lines 9-12.) After hearing the State's position and its request that bond be denied, the trial court subsequently denied Evans' motion and allowed no argument or rebuttal from counsel. Furthermore, it is clear from the record that the trial court did not consider the factors applicable in a motion for bond pending appeal. Therefore, Evans now requests that this Court consider his motion for bond pending appeal.

5. "Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense." S.C. Code Ann. § 18-1-90. Factors to be considered in admitting a person to bail pending appeal are (1) the existence of the probability of reversal; (2) the enormity of the charge; (3) the danger that if freed the accused will commit a crime of like character; (4) the probability of a forfeiture of the bail and escape; and (5) the character and reputation of the accused and his surrounding circumstances. *Nichols v. Patterson*, 202 S.C. 352, 25 S.E.2d 155 (1943).
6. Counsel for Evans filed a meritorious brief on Evans' behalf which included several evidentiary issues with the trial that could likely result in reversal. During the trial, the trial court acknowledged that "the jury could've easily found [Evans] not guilty based on the evidence in the case." (R. p. 166, lines 11-12). Notably, this Court granted Evans oral arguments on July 16, 2013 and the case is scheduled to be heard in December.
7. Evans was charged with one count of receiving stolen goods in violation of S.C. Code Ann. § 16-13-180(B)(2). Dayne C. Dukes, an employee of Airgas National Welders, testified during the trial that the goods stolen were worth approximately \$5,000. (R. p. 74, line 5.) This was a low class felony that was

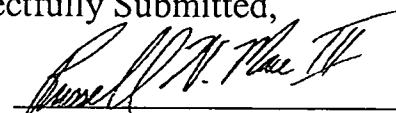
slightly above the value cap for a misdemeanor property offense.

8. Until the present conviction, Evans had no record of criminal activity for a period of ten years. His latest certified conviction indicated in the record was for a false pretenses charge committed in 2001. (R. p. 162, lines 12-25.) Evans was arrested for the present offense on July 13, 2011.
9. While Evans does have connections to North Carolina, Evans has consistently appeared for court on this matter. During trial, the State requested that Evans' bond be revoked. The trial court denied the State's request recognizing that Evans had appeared on each scheduled court date. (R. P. 5, lines 13-25.) Additionally, in its return to Evans' motion for bond, Respondent makes several references to Evans' prior criminal history. However, the record only indicates certified convictions on three of the charges: possession of a stolen vehicle, obtaining goods by false pretenses, and a misdemeanor for possession of stolen goods. All of these convictions were for low-level, non-violent, property crimes.
10. Evans would show that he is not a flight risk and does not pose a danger to the safety of the community if released. Evans only convictions are low-level property offenses, each of which occurred ten years before the instant offense.
11. If the Defendant is not released on bond pending the resolution of his appeal, there is a high likelihood that he will have served the duration of his sentence before the completion of the appellate process.
12. The Solicitor's office objects to any bond being granted for the defendant.

WHEREFORE, the Defendant moves this Court for a reasonable bond and release until the conclusion of the appellate process.

Respectfully Submitted,

By:



Attorney for Defendant

Russell W. Mace III
The Mace Firm
1341 44th Avenue North, Suite 205
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-2900

Date: August 19, 2013

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) (2007-GS-26-04650)
3)
4 STATE)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 MARQUIS T. EVANS) May 16, 2013
8) Conway, S. C.
9)

10 B E F O R E:

11 HONORABLE EDWARD B. COTTINGHAM, Judge.

12
13 A P P E A R A N C E S:

14 BRADLEY C. RICHARDSON, ESQ.
15 ASSISTANT SOLICITOR FOR HORRY COUNTY
16 ATTORNEY FOR STATE

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18 RUSSELL W. MACE, III, ESQ.
19 ATTORNEY FOR DEFENDANT

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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1 (THE FOLLOWING TAKES PLACE ON MAY 16, 2013.)

2 THE COURT: I understand you have an appellate issue in
3 another case that you want heard.

4 MR. RICHARDSON: Yes sir, Your Honor. This is on
5 indictment number (2012-GS-26-00465), State of South Carolina,
6 County of Horry versus Marquis Evans. This is a case that was
7 tried back in January of this year, Your Honor. It was
8 receiving stolen good, Two to Ten Thousand Dollars, third or
9 subsequent offense. The Defendant was found guilty on or
10 about ---

11 THE COURT: Was it a plea or a trial?

12 MR. RICHARDSON: It was a trial, Your Honor. The trial
13 before you is Thursday. It was on or about January 10th,
14 2013.

15 THE COURT: What were the facts in the ---

16 MR. RICHARDSON: Your Honor, the Defendant -- we've
17 actually got a victim -- representative of the victim, Airgas
18 here in court today. There was a burglary that took place at
19 several Airgas locations up in North Carolina. The stolen
20 property was placed on Craigslist and appeared here in Horry
21 County ---

22 THE COURT: I remember that, a lot of farm equipment.

23 MR. RICHARDSON: Yes sir. At trial the Defendant was
24 represented by Scott Bellamy, D. Scott Bellamy, and I
25 represented the State at the trial, Your Honor, Brad

1 Richardson. He was convicted by a jury, Horry County jury,
2 and Your Honor sentenced him to three years.

3 Presently he is represented, for the purposes of appeal,
4 by Mr. Russell Mace. Mr. Mace has waived his client's
5 appearance here for the purpose of this hearing, Your Honor,
6 and he has filed a motion. That's what's being heard today, a
7 motion for an appellate bond. Under the statute the charge
8 carries less than ten years. He got sentenced to less than
9 ten years, and he could ask for an appellate bond. The State
10 would just oppose any such bond.

11 **THE COURT:** Where does he now -- where did he reside at
12 the time of the trial? He had connections up in Cary, North
13 Carolina, wasn't it?

14 **MR. RICHARDSON:** It was up in Cary, North Carolina,
15 Your Honor. He had had some connections outside of ---

16 **THE COURT:** Mr. Mace, I know of no reason why I should
17 give an appellate bond. He would be out before the appeal is
18 heard.

19 **MR. MACE:** Judge, that's exactly why he should get an
20 appellate bond, because if he ends up serving the full term
21 before the Appellate Court makes a decision, and if ---

22 **THE COURT:** What is the appellate issue in that case?

23 **MR. MACE:** Judge, there's going to be some evidentiary
24 issues and jury instruction issues.

25 **THE COURT:** Well, I remember the case. I don't

1 remember any -- any contest about the jury instructions. As I
2 remember I asked was there any other further additions or
3 instructions and the answer was no.

4 **MR. MACE:** And Judge, that may be a structural error
5 that we have in the appeal. It goes beyond ---

6 **THE COURT:** No sir, he -- no sir, I conclude that
7 serving three years, he's a flight risk, he's got connections
8 in North Carolina. I respectfully deny that. If I'm wrong,
9 take it up with the Appellate Courts.

10 Thank you, sir.

11 **MR. MACE:** Your Honor, just so we are clear ---

12 **THE COURT:** Yes.

13 **MR. MACE:** You don't want to hear any argument from
14 me ---

15 **THE COURT:** No sir. No sir. I remember ---

16 **MR. MACE:** You are just denying it flat?

17 **THE COURT:** ---The case. I remember his connections.
18 I remember the connection with Cary, North Carolina. As a
19 matter of fact, it was a big deal, and now with three years
20 hanging over his head I conclude he may be a flight risk, and
21 I respectfully decline to do it.

22 **MR. MACE:** Thank you.

23 **THE COURT:** Thank you.

24 **MR. RICHARDSON:** Thank you, Your Honor.

25 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

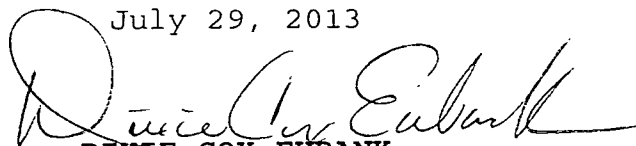
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **MOTION HEARING** of the captioned case, relative to appeal, in the **COURT OF GENERAL SESSIONS** for **HORRY COUNTY, SOUTH CAROLINA**, on the 16th **May, 2013**.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

July 29, 2013


DIXIE COX EUBANK

CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

The State of South Carolina,

Respondent,

v.

Marquis T. Evans,

Appellant.

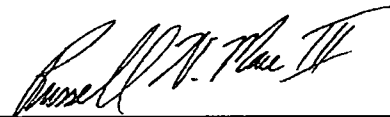
Appeal from Horry County
Edward B. Cottingham, Circuit Court Judge

Case No.: 2013-000197

PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Defendant's Motion for Bond Pending Appeal in the above referenced case has been served upon Salley W. Elliott Esq., Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211 on this 19th day of August, 2013.

August 19, 2013



Russell W. Mace III, Esq.
Attorney for Appellant

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AUG 21 2013

SC Court of Appeals

THE MACE FIRM

ATTORNEYS AT LAW

RUSSELL W. MACE III, ESQ
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LIC.: FLORIDA, GEORGIA, SOUTH CAROLINA

REPLY TO:

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Jenny Abbott Kitchings, *Clerk of Court*
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

August 19, 2013

Re: *State v. Marquis T. Evans*
2013-000197

Dear Ms. Kitchlings:

Please find enclosed the original and seven (7) copies of the ***Motion for Bond Pending Appeal*** along with my ***Certificate of Service*** regarding the above-referenced matter. Please forward a clocked copy of the motion and certificate of service to my office at your earliest convenience. I have enclosed a self-addressed stamped envelope for easy mailing.

Thank you for your assistance in this matter. Should you need any additional information, please do not hesitate to contact me.

Sincerely,



Trish Summersett
Paralegal
Enclosure

cc: Salley W. Elliott, Esq.

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AUG 21 2013
SC Court of Appeals

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