

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Horry County  
Honorable Edward B. Cottingham, Circuit Court Judge  
Appellate Case No: 2013-000197

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THE STATE,

Respondent,

vs.

MARQUIS T. EVANS,

Appellant.

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AUG 27 2013

SC Court of Appeals

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**RETURN TO MOTION FOR APPEAL BOND**

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The State of South Carolina respectfully requests this Court accept its response and submits the following in opposition to Appellant's petition for appeal bond:

1. The Appellant, Marquis T. Evans, was indicted at the December 2012 term of the General Sessions Court for Horry County for one count of receiving stolen goods value more than \$2000 but less than \$10,000 (third or subsequent offense). On January 10, 2013, Appellant stood trial before the Honorable Edward B. Cottingham and a jury. Appellant was found guilty of the charge and was sentenced to confinement for a period of three years. Thereafter, Appellant filed and served notice of appeal on January 16, 2013.

2. On February 21, 2013, Appellant moved this Court for Bond Pending Appeal on the ground Appellant's sentence did not exceed 10 years. On March 1, 2013, the State filed a Return to Motion for Appeal Bond, arguing it was more appropriate for the circuit court to conduct a

hearing to determine whether an appeal bond should be granted and, if so, in what amount and under what conditions. Holmes v. State, 344 S.C. 41, 42, 543 S.E.2d 537, 537 (2001).

3. Appellant filed a subsequent motion for bond with the circuit court. A hearing was held on May 16, 2013, in Conway, South Carolina, before the Honorable Edward B. Cottingham. Appellant was not present, but Appellant's counsel, Russell W. Mace, III, waived Appellant's presence at the hearing. Assistant Solicitor Bradley C. Richardson appeared on behalf of the State. At the hearing, Judge Cottingham pointed out that Appellant would be out before the appeal was heard. The transcript from the hearing shows Judge Cottingham considered the appropriate factors, including flight risk. Specifically, Judge Cottingham recalled that Appellant had ties to Cary, North Carolina, and concluded he may be a flight risk with three years hanging over his head. (Tr. Bond Hr. p. 4, lines 6-8; 17-21.) The circuit court denied the motion.

4. On August 19, 2013, Appellant again moved this Court for Bond Pending Appeal on the ground the circuit court did not consider the factors applicable in a motion for bond pending appeal. The State submits that this Court should decline to consider Appellant's motion. Pursuant to Rule 246 (a), SCACR, Appellant has already presented the motion for release on bond pending the appeal to the circuit court judge, who considered and denied the request. In view of the action by the circuit court on the same matter, the motion should not be reconsidered by this Court. However, should this Court consider the request pursuant to Whitener v. State, 225 S.C. 244, 81 S.E.2d 784 (1954), the State asks this Court to exercise its discretion to deny the motion. This Court's consideration of Respondent's release on bond pending appeal must be exercised with caution and only in exceptional circumstances. In considering a request for release on bond pending appeal, our Supreme Court opines that the following factors should be reviewed: (1) probability of success on appeal and the relief granted; (2) the seriousness of the

crime committed; (3) the danger to the community if Appellant is released; (4) the character and circumstances of Appellant; (5) the probability of forfeiture of bail and escape; and (6) the Appellant's attitude toward society and government, Nichols v. Parker, 202 S.C. 352, 25 S.E.2d 155 (1943). The State submits that this case does not present the requisite circumstances to warrant Appellant's release on bond pending appeal. For the reasons set forth below, the State requests that this Court deny the motion for release on bond pending appeal.

5. The State contends, first, it is unlikely Appellant will prevail on appeal. Sufficient evidence existed to support the circuit court's denial of his directed verdict motion. Of the other issues argued on appeal, they were either not preserved for appellate review or based on objections that were sustained. Indeed, at the bond hearing, when Appellant told the circuit court he was appealing jury instruction issues, Judge Cottingham pointed out that Appellant did not object to the jury instructions. (Tr. Bond Hr. p. 4, lines 1-3.)

6. The State asserts that Appellant stands convicted as a repeat offender of receiving stolen goods of value more than \$2000 but less than \$10,000. Other than this conviction, Appellant has a long prior criminal history starting in 1994, with convictions for breaking and entering a motor vehicle and breaking and entering. (R. p. 162, line 12-14). Appellant also has convictions for burning of a school house, possession of stolen goods, possession of a stolen vehicle, financial identity fraud, obtaining goods by false pretenses, and an escape from prison charge. (R. p. 162, line 15-19). The two prior property crimes were charges of possession of a stolen vehicle and obtaining goods by false pretenses. (R. p. 162, line 20-25). Appellant's history of committing criminal convictions establishes his continuing disregard for the rules of government and the sanctity of the welfare and safety of others.

7. The chance of forfeiture of bail and escape is great in view of the fact Appellant's prior

conviction for escaping, which indicates his increased likeliness to attempt flight after posting bond. Also, Appellant's permanent address is in North Carolina, making his ties to the area suspect. The State submits Appellant will pose a similar risk if released on bond pending this appeal.

8. The State also submits Appellant does not possess the requisite character and reputation deserving of his release on bond pending appeal. As stated above, Appellant was convicted of his third or subsequent property crime. Appellant is a repeat offender who would pose danger to any community, and lack of good character and reputation are clear indications this Court should not exercise its discretion and permit the Appellant's release on bond pending appeal.

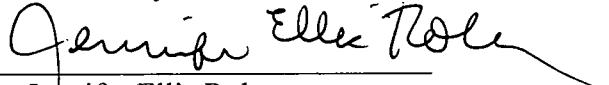
9. Based on all the foregoing, the State prays this Court deny Appellant's motion for release on bond pending appeal.

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 27, 2013

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**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Return to Appellant's Motion for Appeal Bond on Appellant by depositing two (2) copies of same in the United States mail, postage prepaid, addressed to: Russell W. Mace, III, Esquire, 1341 44<sup>th</sup> Avenue N. Suite 205, Myrtle Beach, South Carolina 29577.

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

This 27<sup>th</sup> day of August, 2013.



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