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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
SPARTANBURG COUNTY

The Honorable J. Mark Hayes, II
Circuit Court Judge

Appellate Case No. 2023-001934
Case No. 2019-CP-42-01605

Stephanie Irene Greene, # 359489

Petitioner,

v.

State of South Carolina

Respondent.

REPLY IN SUPPORT OF MOTION FOR BAIL PENDING APPELLATE REVIEW

Petitioner Stephanie Irene Greene (“Ms. Greene”) respectfully submits this reply in support of her motion for bail pending appellate review. For the reasons stated in Ms. Greene’s motion, certiorari briefing, and herein, the applicable factors weigh in her favor and bail is appropriate in this unique circumstance.

I. Ms. Greene has a high likelihood of success on the merits.

Ms. Greene directs the Court’s attention to the Brief of Appellant for a full discussion of the merits demonstrating a high likelihood of success. Those arguments are incorporated by reference herein in full.

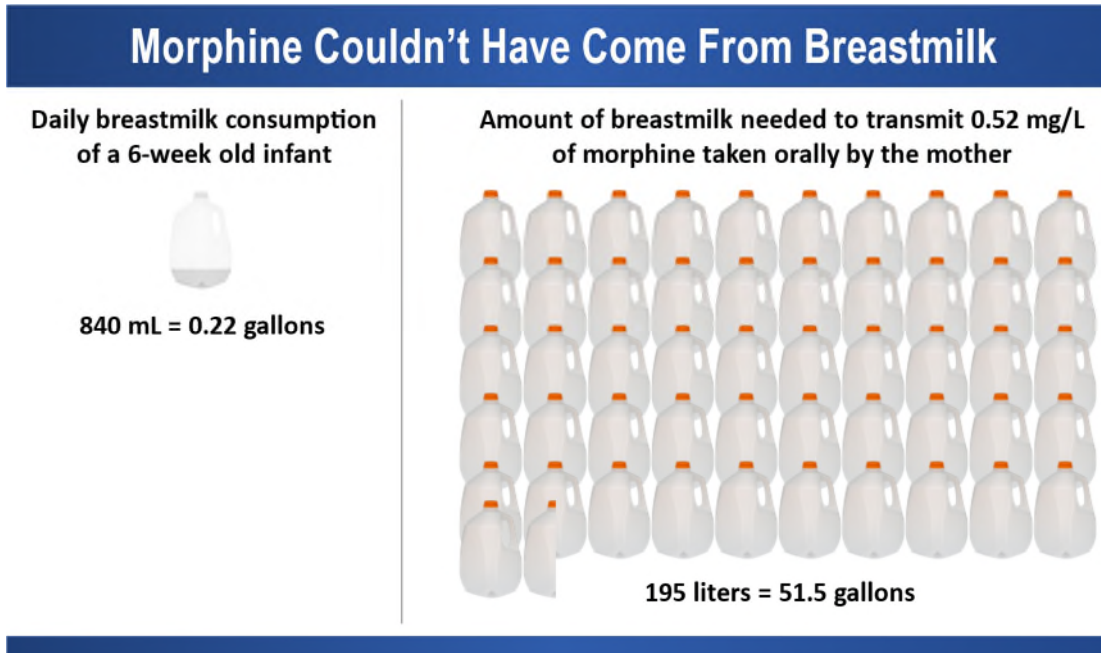
In brief, Ms. Greene introduced evidence and testimony at PCR demonstrating another reasonable hypothesis that the jury should have been permitted to consider. The State’s theory on extreme indifference at the underlying trial was that Petitioner was pregnant, hid that pregnancy from her doctors,¹ and continued to take prescription morphine after giving birth while breastfeeding, which transmitted through her breastmilk at a lethal level. However, the testimony from PCR established that this was not inherently dangerous *and L.G.’s cause of death was not because of any deliberate action by Petitioner to put L.G. in harm’s way because she suffered from renal failure.* The jury should have been permitted to balance these positions and, had the jury been permitted to do so, there is a reasonable probability that its conclusion would have been different.²

At PCR, Ms. Greene’s expert witnesses both testified to a reasonable degree of medical certainty that L.G. suffered from renal failure and that this was the cause of her death. (*See Br. of Pet. pp. 5-7*). Ms. Greene also presented testimony supporting that morphine consumption while

¹ The State has repeatedly raised the fact that Petitioner “concealed” her pregnancy in its briefing in this case. This is entirely irrelevant to whether Petitioner acted with extreme indifference because L.G. did not die in utero – she was forty-six days old when she passed. As Dr. Twombly testified and the medical records reflected, L.G. was doing well until the renal failure occurred. (PCR Day I 198:18-22; A. 1432.) She had a normal, “healthy” well visit at two weeks of age with “absolutely no concerns by the pediatrician” and was “fine” until a few days before she passed. (PCR Day I 198:18-22, 200:17-201:20, 204:10-21; A. 1432, 1434-35, 1438.) Likewise, the State has devoted considerable attention to Petitioner’s actions following L.G.’s death such as omitting the fact that she was taking medications from investigators. Again, this had nothing to do with Petitioner’s actions towards L.G. and whether they met the extreme indifference standard.

² The fact that the State’s experts did not opine to a reasonable degree of medical certainty that the morphine level measured in L.G. could be explained from breastfeeding alone drives the problem home. Trial counsel should have been utilizing experts like Dr. Scialli and Dr. Twombly to challenge, undermine, and exclude this unreliable speculation, yet he failed to do so. This resulted in significant prejudice to Petitioner because, in addition to not hearing the alternative cause, the jury also heard testimony which would not have survived the court’s gatekeeping function had it been challenged.

breast feeding is not inherently dangerous, and L.G. would have had to consume an impossible amount of breast milk to reach the level measured on the toxicology report absent some externality not reasonably foreseeable to Ms. Greene (here, that the child was suffering from renal failure). (*See id.*) Ms. Greene’s reproductive and developmental toxicology expert, Dr. Anthony Scialli, prepared the following demonstrative to support this point:



(*See id.*) Both of Ms. Greene’s experts then opined to a reasonable degree of medical certainty that the renal failure L.G. experienced was not caused by the morphine. (*Id.* at 5-10.) Rather, one of the most common causes of acute renal failure is illness, and L.G.’s medical records reflected that she developed a cold a few days before she passed. (*See id.*) When babies are congested, they do not feed as well and can become dehydrated, which is one of the most common causes of renal failure. (*See id.*)

Dr. Scialli also testified about the importance of the Zipursky paper and its conclusions, which aligned with and confirmed the opinions he would have been prepared to offer had been called at Petitioner’s trial. (*See Applicant’s Ex. 7, Zipursky & Juurlink, The Implausibility of*

Neonatal Opioid Toxicity from Breastfeeding, Clinical Pharmacology & Therapeutics (May 2020); A. 1647-66.) The Zipursky paper concluded that “the belief that newborns can develop opioid toxicity from breastfeeding is supported by very little data, and . . . neonatal opioid toxicity from breastfeeding is *exceedingly improbable*.” (*Id.* (emphasis added).) This constitutes evidence of material facts not previously presented and heard that warrant a new trial.

Therefore, for the reasons more fully stated in the Brief of Petitioner, the PCR erred by finding that although trial counsel’s performance was deficient, Petitioner was not sufficiently prejudiced to warrant postconviction relief. As a result, there is a high likelihood of success on the merits in this appeal and bail is appropriate.

II. The other factors weigh in favor of bail under these circumstances.

The special considerations at issue in this case warrant close scrutiny of the applicable factors for bail pending appellate review. As the Amicus Curiae brief submitted in support of the Petition detailed, the State’s theory at trial was unprecedented and that remains the case over a decade later.³ The State’s theory that Petitioner’s breastfeeding of her daughter led to her death was unsupported by the science at the time of trial and is directly rebutted by the current science as evidenced by the Zipursky paper. These compelling, one-of-a-kind underlying circumstances combined with what Petitioner established at PCR and this Court’s grant of certiorari on four grounds, support granting the motion for bail here. As the Motion noted, Petitioner does not dispute that homicide by child abuse is a serious offense. However, this is far from the typical homicide by child abuse case.

³ Petitioner directs the Court to the amicus curiae brief submitted by the American College of Obstetrics and Gynecologist, Pregnancy Justice, and Time Served, which discusses this in greater detail.

Regarding danger to the community, aside from the underlying convictions, the only issues identified by the State are that: (1) Ms. Greene committed a disciplinary infraction early in her incarceration and (2) she did not disclose her prescriptions when speaking with law enforcement the day of her daughter's death. As to the first issue, as the Motion notes, the infraction arose from a mental health episode early in Petitioner's confinement and would no longer be considered an infraction under the current policies. On the second issue, the State faults Petitioner for something that occurred 14 years ago on the date of her daughter's death. The State has not identified anything that would support that Petitioner would be a threat to the community at this time.

Regarding flight risk, the willingness of the amicus curiae – all highly respected organizations – to submit a brief in support of a matter that they are passionate about in no way supports that Petitioner would, in turn, have “access to extensive resources” that would facilitate her absconding. This argument is entirely without merit.

Finally, as the supporting letters attached to the Motion detailed, Petitioner has a considerable support network all of whom are motivated to provide her sufficient support and ensure she would satisfy any requirements set by this Court for bail.

CONCLUSION

For the reasons stated in the Renewed Motion and the Brief of Petitioner, Petitioner Stephanie Greene respectfully requests that the Court order her release pending this appeal upon the posting of a reasonable bond.

Signature on Following Page

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Stephanie Irene Greene, do hereby certify that I have served all counsel of record in this action with a copy of the document(s) set forth below under Supreme Court Order dated April 24, 2024.

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Dated: December 1, 2025