

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM COUNTY

Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NINA BATES,

APPELLANT

APPELLATE CASE NO. 2013-002022

RECORD ON APPEAL

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SC Court of Appeals

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State of South Carolina)
) Court of General Sessions
 County of Greenwood) 2013-GS-24-1001

State of South Carolina)
) Transcript of Record
)
 Nina Bates)
) DEFENDANT

June 13, 2013
 Greenwood, South Carolina

B E F O R E:

Honorable Thomas L. Hughston, Judge.

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

Cam Morrow, Assistant Solicitor
 Attorney for the State

Megan Flannery, Assistant Public Defender
 Attorney for the Defendant

Joy E. Holston
 Official Court Reporter

1 THE COURT: Nina Pamila Falkingham, is that your
2 name?

3 MS. BATES: It is Nina Pamila Falkingham.

4 THE COURT: Nina, okay.

5 MS. BATES: Yes sir, it is Bates now, that was my
6 first married name.

7 THE COURT: I couldn't understand you.

8 MS. FLANNERY: She was just saying that she is now
9 married and her last name is Bates.

10 THE COURT: All right. Well, I guess we can put in
11 here also known as, tell me what you are also known as
12 now.

13 MS. BATES: Nina Bates.

14 THE COURT: B-A-T-E-S?

15 MS. BATES: Yes, sir.

16 THE COURT: I have two charges here, Ms. Falkingham
17 or Ms. Bates. Which one do you want me to call you?

18 MS. FALKINGHAM: Ms. Bates preferably.

19 THE COURT: All right. One charge that you did on or
20 about February 4th of 2013 unlawfully manufacture
21 methamphetamine. Do you understand that charge and the
22 possible penalty of 15 years in the penitentiary?

23 MS. BATES: Yes, sir.

24 THE COURT: Also December 12, 2012 the State claims
25 that you did violate section 63-5-70 of the South Carolina

1 Code of Laws commonly called unlawful conduct toward a
2 child, Timothy Alexander Bates. It doesn't say exactly
3 what it is that they claim that you did that constitutes a
4 violation of that statute. Do you know?

5 MS. BATES: He passed away through an accident, I
6 fell asleep while I was breastfeeding. They are saying
7 that the toxicology report afterwards showed a trace of
8 methamphetamine in his system.

9 THE COURT: All right.

10 MS. FLANNERY: Ms. Bates admits that she was the
11 guardian of Timothy and ultimately everything that
12 happened to him was her responsibility but she doesn't
13 know how the meth got into her system. She is taking full
14 responsibility because it is her child and anything that
15 happened to him was her responsibility.

16 THE COURT: Well, that doesn't quite do it. The
17 claim is that you did something that placed the child at
18 unreasonable risk of harm affecting the child's life,
19 physical or mental health or safety or caused to be done
20 unlawfully or maliciously any bodily harm to the child so
21 that life or health of the child was endangered or likely
22 to be endangered or willfully abandoned the said child. I
23 haven't heard anything that I think qualifies as that yet.
24 But maybe we will get to it. But anyway, do you
25 understand the charges and the possible penalty, 10 years

1 on the unlawful conduct towards a child, 15 on the
2 manufacturing of methamphetamine.

3 MS. BATES: Yes, sir.

4 THE COURT: You don't have to plead guilty to either
5 one of these charges. You have an absolute right to a
6 jury trial, put the State to the test and see if they can
7 convince twelve jurors that you are guilty beyond a
8 reasonable doubt. Do you understand that?

9 MS. BATES: Yes, sir.

10 THE COURT: Would you like to have a jury trial?

11 MS. BATES: No, sir.

12 THE COURT: How do you wish to plead?

13 MS. BATES: Guilty for the manufacturing charges and
14 no contest for the--

15 THE COURT: Well, do you understand as far as the no
16 contest plea in connection with that is concerned,
17 nevertheless I could sentence you to the maximum of 10
18 years on that. Do you understand that?

19 MS. BATES: Yes, sir.

20 THE COURT: Understanding that do you still wish to
21 waive your right to a jury trial and enter these pleas?

22 MS. BATES: Yes, sir.

23 THE COURT: Has anybody promised you anything or
24 threatened you in any way to get you to plead guilty and
25 no contest?

1 MS. BATES: No, sir.

2 THE COURT: Are you entering those pleas then freely
3 and voluntarily?

4 MS. BATES: Yes, sir.

5 THE COURT: I will accept your pleas then.
6 Solicitor, what do you know about all of this?

7 MR. MORROW: Yes, Your Honor. On December the 12th
8 of 2012 Ms. Nina Bates at in Greenwood,
9 South Carolina did willfully and unlawfully commit an
10 unlawful conduct toward a child by exposing a five week
11 old child, T.B. , to methamphetamine. An officer
12 with the City of Greenwood responded to Self Regional
13 Hospital in reference to an infant's death and found that
14 the child had, the coroner's report found that the child
15 had allegedly died from unsafe sleeping habits however the
16 child's toxicology report tested positive for
17 methamphetamine. Ms. Bates was breastfeeding the child
18 while using methamphetamine. And then on February 4th of
19 2013 Ms. Bates knowingly and intentionally manufactured
20 meth at that same , Greenwood, South
21 Carolina address. Agents located meth lab residue and
22 waste outside the residence, asked consent to search the
23 residence and did find a meth lab inside.

24 THE COURT: I might say based on what's been
25 presented by the State as the facts in connection with

1 that unlawful conduct and all I would concur in that that
2 you are more than likely guilty of that. And I can
3 understand the plea. Any record?

4 MR. MORROW: She has a charge from 2011 of driving
5 under suspension but that is it on her record, Your Honor.

6 THE COURT: What would you like to tell me then on
7 behalf of your client?

8 MS. FLANNERY: Thank you, Your Honor, I just wanted
9 to respond and make sure it was very clear that the
10 coroner's report specifically said that it was ruled as
11 accidental as a result of a sleeping habit and nothing
12 more.

13 THE COURT: That is contrary to the plea.

14 MS. FLANNERY: She is not charged with his death,
15 with in relation to the death, she is charged with him
16 testing positive for methamphetamine.

17 THE COURT: I understand that this is really a
18 reduction from what the charge could have been as far as I
19 see it anyway. But the fact that she apparently ingested,
20 took, whatever shape, form or fashion, methamphetamine
21 while she was breastfeeding the child and the child was
22 harmed.

23 MS. FLANNERY: Your Honor, the reason we did the no
24 contest is because Ms. Bates says that she was not using
25 methamphetamines at the time.

1 THE COURT: Well, I mean there is certainly--

2 MS. FLANNERY: However, she is aware that her son
3 tested positive for methamphetamine.

4 THE COURT: Well, then you have to reach the
5 conclusion that somebody else was giving him the
6 methamphetamine. I am just saying that certainly a jury
7 could certainly based on those facts, could certainly
8 reach the conclusion that she was taking methamphetamine
9 while she was breastfeeding the child. And that is why I
10 say that the plea is appropriate.

11 MS. FLANNERY: I just wanted to clarify the
12 difference between the death and the charges, that is all
13 I was trying to do.

14 THE COURT: I am not going to punish her for murder
15 or manslaughter, I want to punish her under the law of up
16 to 10 years for unlawful conduct toward a child based on
17 the facts as the State has recited them.

18 MS. FLANNERY: Thank you, Your Honor. Nina has a
19 long work history, she was in the HR department, HR
20 manager at K-mart for six years. And then she worked for
21 three years as a shift manager at Sykes. She was working
22 at Sykes until she became pregnant, she had to go on
23 medical leave during her pregnancy and then had maternity
24 leave and then was off and had three leaves but Sykes is
25 ready to have her back. They said she was a great manager

1 and they want her to come back at any time. Her husband,
2 Andrew, is here today standing with her, supporting her.
3 Nina had set up to go to Faith Home right before she was
4 arrested. She was suppose to go in that Friday. She was
5 also already going and getting grief counseling. Nina
6 thinks that her drug use is a way to mask the pain of
7 grief and she, instead of handling it properly she was
8 turning to drugs.

9 THE COURT: Pain and grief of what?

10 MS. FLANNERY: Of losing her child, Your Honor.

11 THE COURT: Well, I will let that pass. I mean she
12 is pleading guilty to manufacturing meth, what was she
13 manufacturing for?

14 MS. FLANNERY: Your Honor, this was after Alex passed
15 away, she manufactured meth.

16 THE COURT: I understand. Go ahead.

17 MS. FLANNERY: She does have a 13-year-old daughter
18 who lives in Travelers Rest, she is paying child support
19 for her. She also has a 90 day sentence left on the child
20 support on her daughter. We are asking that you consider
21 letting her stay in jail until a bed opens at rehab and
22 then probation. She does acknowledge that she has a drug
23 problem, she is not going to be out on the street. That
24 is the first thing she said to me, I do not want to be on
25 the street right now. I don't have enough time sober in

1 order to stay away from drugs so she does know that. She
2 has been in jail for 122 days. There has been some talk
3 around the court that this hasn't affected her. And I can
4 tell you that this has affected her greatly, she is very
5 upset about this.

6 THE COURT: I am sure of that.

7 MS. FLANNERY: And this is something that is going to
8 haunt her for the rest of her life.

9 THE COURT: I can understand that.

10 MS. FLANNERY: I just want to make sure that that was
11 put out there because I have met with her several times
12 and I know how upset she is about this and how much she
13 looks back on every single second of his life and tries to
14 figure out what she could have done. So we just ask that
15 you take all into account that she was trying to get some
16 help for herself. She has served some time in jail
17 already and that she does have a good job to come back to
18 when she is ready to come back out.

19 THE COURT: We will go to you now, Ms. Bates.
20 Anything that you would like to tell me.

21 MS. BATES: I don't know how the meth got in his
22 system, I didn't start doing meth until a week after he
23 passed away.

24 THE COURT: That is hard to believe.

25 MS. BATES: I didn't. I had a boy in my house who

1 was doing it, that is my fault. That is why I am taking
2 blame to it. But as far as manufacturing, I didn't
3 manufacture until after the fact. Also I was using meth
4 for an escape instead of dealing with his death and
5 dealing with the guilt I had for falling asleep, not
6 pertaining to the drug use.

7 MS. FLANNERY: And, Your Honor, if it is all right
8 with you, Ms. Bates' husband, Andrew, was also charged
9 with methamphetamine and she just wanted to give a
10 statement that he was not involved in it in any way and
11 that she was, she and the other codefendant were the only
12 people responsible. If you would allow her to put that on
13 the record.

14 THE COURT: Go right ahead.

15 MS. BATES: Me and my codefendant were the only ones
16 aware of what was going on.

17 THE COURT: You and who?

18 MS. BATES: Me and my codefendant were the only ones
19 aware of what was going on and what was happening on the
20 premises. My husband and my brother were both at work
21 when this was going on.

22 THE COURT: I am sorry, you want to say something
23 else?

24 MR. MORROW: I wanted to know the codefendant's name.

25 MS. BATES: James Ardis.

1 COURT REPORTER: How do you spell his last name?

2 MS. BATES: A-R-D-I-S.

3 THE COURT: I am not familiar with methamphetamine as
4 far was what it looks like, what it's consistency is or
5 whatever after it is manufactured. Can anybody tell me
6 that.

7 MS. BATES: It is powder form and it depends on the
8 method of use, whether you smoke it or ingest it or use IV
9 use.

10 THE COURT: I would imagine the IV use would be the
11 least common.

12 MS. BATES: Yes sir, I would agree with you.

13 MS. FLANNERY: Your Honor, it also can be, now people
14 have gotten sophisticated at it, can be made in something
15 as small as a twenty ounce soda bottle. So it is not
16 necessarily what you think of, it is like a lab with a
17 huge room.

18 THE COURT: That wasn't the point. I was thinking
19 about and questioning about, you know, I am just trying to
20 figure out, you know,--

21 MS. BATES: How it could have gotten, yes sir.

22 THE COURT: -- in that child and everything and so it
23 is not a liquid so you couldn't put it in there with an
24 eye drop.

25 MS. FLANNERY: It is a fine powder also, Your Honor.

1 THE COURT: I understand that, it was more than
2 likely a powder. All right. I appreciate what you are
3 doing, Ms. Bates, but I conclude after thinking about the
4 situation, balancing all of the competing interest,
5 purposes of sentencing. The two that come to mind, well,
6 come to mind dictate more or less what I am going to do
7 are number one, general and specific deterrence. General
8 deterrence means that through this sentence I am speaking
9 to the community at large and telling them if you do what
10 this lady did and what she has plead guilty of no contest
11 to then you are going to suffer a substantial loss of
12 liberty. And number two, to insure again specific
13 deterrence means that I am specifically going to keep you
14 from being able to access meth or anything else like that
15 through prison. And number three, I think that there is a
16 moral justification for punishing you. I think that this
17 is such a violation of the law and of the morals of the
18 community that you deserve to be punished. So, with that
19 the sentence on the unlawful conduct toward a child
20 conviction is that you be confined to the South Carolina
21 Department of Corrections for a period of 10 years.
22 However that sentence is suspended on the service of 5
23 years with 5 years of probation to follow that. You get
24 credit for your jail time toward that. I am going to
25 provide at least at this point that you participate in and

1 followup with some type of substance abuse program on your
2 release from prison and of course they will be testing you
3 randomly to see if you are using any illegal drugs at that
4 point and time. Concurrent, 5 years on the manufacturing
5 with credit for 122 days jail time toward that. Good luck
6 to you.

7 MR. MORROW: Thank you, Your Honor.

8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

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State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the
Eighth Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the County of Greenwood, South
Carolina on the 13th day of June, 2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

August 24, 2013



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

WITNESSES

Daniel Watt
Greenwood Police Department

WARRANT NUMBER

2013A2420100104

Foreman of the Grand Jury

Date: _____

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

June Term, 2013

Indictment # 13GS24- 1001

THE STATE

vs.

Nina Pamela Falkingham
AKA Nina Bates

INDICTMENT FOR

MANUFACTURE OF METHAMPHETAMINE
44-53-0375

CDR: 3198

I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT

Nina Bates

DEFENDANT

10/13/2013
DATE

Chad A. [Signature]
WITNESS

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

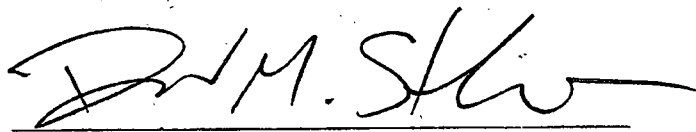
COUNTY OF GREENWOOD

INDICTMENT FOR**MANUFACTURE OF METHAMPHETAMINE
44-53-0375**

At a Court of General Sessions, convened in June, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Nina Pamila Falkingham, in Greenwood County, on or about February 4, 2013 willfully, unlawfully and knowingly manufacture or otherwise aid, abet, attempt or conspire to manufacture Methamphetamine, in violation of Section 44-53-375(B) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

WITNESSES

Jeffrey Crisp
Greenwood Police Department

WARRANT NUMBER

2013A2420100141

Foreman of the Grand Jury

Date: _____

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

June Term, 2013

Indictment # 13GS24- 1002

THE STATE

VS.

Nina Pamela Falkingham

INDICTMENT FOR

UNLAWFUL CONDUCT TOWARD A CHILD
63-05-0070

CDR: 2481

I DO HEREBY WAIVE MY RIGHT
TO GRAND JURY PRESENTMENT

Nina Bates

DEFENDANT

6/13/2013

DATE

CAH

WITNESS

THE STATE OF SOUTH CAROLINA

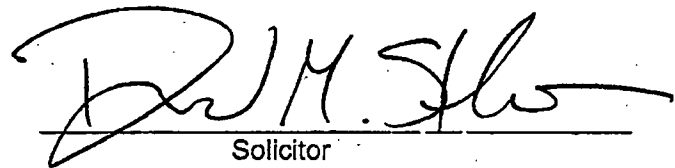
COUNTY OF GREENWOOD

INDICTMENT FOR**UNLAWFUL CONDUCT TOWARD A CHILD**
63-05-0070

At a Court of General Sessions, convened on the 7th day of June, 2013, the Grand Jurors of Greenwood County present upon their oath:

That Nina Pamila Falkingham, in Greenwood County, on or about December 12, 2012 willfully and unlawfully while being a person who had charge or custody of a child, or who was the parent or guardian of a child, or who was responsible for the care and support of a child, one Timothy Alexander Bates, did place the said child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or caused to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or willfully abandoned the said child, in violation of the provisions of Section 63-5-70 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court Of General Sessions
The Honorable Thomas L. Hughston, Jr., Circuit Court Judge

Case No. 2013GS24-1001 and -1002

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2013 SEP 20 PM 12 41

The State,

Respondent

v.

Nina Bates (aka Nina Falkingham),

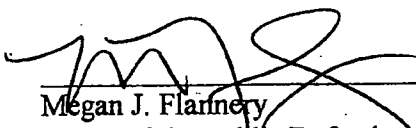
Appellant.

NOTICE OF APPEAL

Nina Bates appeals her sentence in this case. The Sentence was imposed by the Honorable Judge Thomas L. Hughston, Jr. on June 13, 2013, following a guilty plea.

This appeal is based on the following:

1. The court erred as it determined Ms. Bates was guilty of acts she was not charged with nor pleading guilty to, based on testimony by the prosecutor that was objected to by the defense. Specifically Judge Hughston determined that Ms. Bates to be responsible for her son's death even though she was not charged with this and the coroner found the death to be accidental.
2. The court erred in using the above described determination of guilt to influence the sentence imposed.


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September 20, 2013

Other Counsel of Record:

Christopher A. Morrow, Esquire

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SC Court of Appeals

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 20, 2013



Robert M. Pachak
Appellate Defender

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ATTORNEY FOR APPELLANT

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DEC 20 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from County

Thomas L. Hughston, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

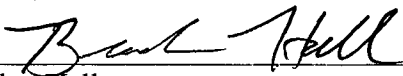
NINA BATES,

APPELLANT

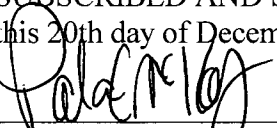
APPELLATE CASE NO. 2013-002022

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of December, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of December, 2013.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.