

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions

Rivers Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2013-001895

State of South Carolina Respondent

v.

James Richard Barte, Jr. Appellant

MOTION FOR APPEAL BOND

The Appellant, James Richard Barte, Jr., through his undersigned attorney, Jack B. Swerling, hereby requests that the Court conduct a hearing and set bail in the above referenced matter. The grounds of the Motion are as follows:

1. The Appellant was convicted of Solicitation / Solicitation to Commit a Felony on September 3, 2013 in the Oconee County Court of General Sessions. The Appellant received a sentence of ten (10) years, suspended on service of five (5) years and five (5) years probation. (*Exhibit A - Sentence Sheet*). The trial judge in the case was the Honorable R. Lawton McIntosh.

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SC Court of Appeals

2. A Motion for an appeal bond was made at the conclusion of the trial after sentencing, and the request was denied. (*Exhibit B - pages of the trial transcript wherein bond was addressed*).

3. A Notice of Appeal was filed on September 9, 2013, and the Appellant is awaiting the completion of the trial transcript.

4. South Carolina Code § 18-1-90 provides:

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. However, bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.

5. Pursuant to the statute referenced above, and the fact that the Appellant's sentence did not exceed ten (10) years, the Appellant may be admitted to bail.

6. The Appellant is a fifty-six (56) year old retired Special Agent of the United States Secret Service. He served in the capacity for twenty-five (25) years. The Appellant is a graduate of the American University. The Appellant is married and has two (2) daughters. Upon retirement from the Secret Service, the Appellant moved to Oconee County in 2000. The Appellant owns his own home. The Appellant continued to work as a private contractor with the Secret Service. The Appellant established two (2) businesses in Seneca, South Carolina - James R. Bartee & Associates, LLC, an investigative and consulting firm, and Aikido of Lake Keowee, where he taught Aikido and self-defense classes.

7. Upon the Appellant's arrest, he was released on a Ten Thousand (\$10,000.00) Dollars personal recognizance bond.

WHEREFORE, the Appellant prays that the Court conduct a hearing to determine a reasonable bail amount pending the conclusion of this appeal.

Respectfully submitted,



JACK B. SWERLING
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Facsimile (803) 799-4059
Email: jacklaw@aol.com

Attorney for Appellant

February 18, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF Oconee)
 STATE VS.)
 James Richard Bartee Jr)
 AKA:)
 Race: w Sex: M Age: 55)
 DOB: 09-16-1957 SS#: 229-88-5605)
 Address: PO Box 1410)
 City, State, Zip: Seneca, SC 29679)
 DL#: 007420760 SID#:)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT/CASE#: 2012GS3700597
 A/W#: N130838
 Date of Offense: 5/27/2012
 S.C. Code §: 17-25-0030
 CDR Code #: 0795

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Solicitation / Solicitation to commit a Felony

CONVICTED OF or PLEADS

in violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0795
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: David Rhys Wagner 064068 SC Bar# James Bartee Jr Defendant W. Brock Brown 66798 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed 5 years
 and/or to pay a fine of \$ 25.00; provided that upon the service of 5 years and/or payment
 of \$ 0; plus costs and assessments as applicable*; the balance is suspended with probation for

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SC Court of Appeals

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
 Total: \$ 0 plus 20% fee: \$ 0
 Payment Terms: _____
 Set by SCDPPPS _____

250 days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: Defendant shall undergo psychiatric evaluation & shall adhere to any treatment recommendations

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Copy to:
 Det
 Sol
 Prob

Clerk of Court/ Deputy Clerk: Beverly H. Whitfield
 Court Reporter: Kerene Allison
 SCCA/217 (03/2011)

Presiding Judge: [Signature]
 Judge Code: 2755
 Sentence Date: 2-3-13

1 the jury saw through it. And we feel that the maximum is
2 appropriate as well.

3 THE COURT: Anything further?

4 (No response)

5 THE COURT: Mr. Bartee, I'm going to sentence
6 you to ten years, suspended on five years active with
7 five years probation. You will also, when you're on
8 probation, undergo a psychiatric evaluation and abide by
9 any treatment recommendations if there are any. Also,
10 you will have to, while you're on probation, do two
11 hundred and fifty hours public service.

12 Good luck to you.

13 MR. BARTEE: Thank you.

14 THE COURT: You have ten days to appeal this
15 verdict.

16 MR. BARTEE: Yes, sir.

17 MR. BRANNON: Your Honor, may I speak to that?

18 THE COURT: Yes, sir.

19 MR. BRANNON: With all due respect, Your Honor,
20 I do intend to file a notice of appeal.

21 THE COURT: Sure. I would expect no less.

22 MR. BRANNON: It is my understanding of the
23 rules, Your Honor, that until notice of appeal is filed,
24 that this court retains jurisdiction to grant bond, an
25 appeal bond. I can tell this Court that I will be filing

1 that notice of appeal tomorrow. I would ask the Court to
2 consider allowing my client to remain on bond pending the
3 appeal.

4 THE COURT: I thank you for your motion, but
5 I'm going to deny that respectfully. I think that the
6 charge in this case is particularly serious, and I want
7 him in detention while that appeal is pending.

8 Thank you, Doug.

9 MR. BRANNON: Your Honor, may I -- this may be
10 unusual, may I discuss this with my client at the table
11 before he's taken away?

12 THE COURT: Yes, sir, you may.

13 MR. BRANNON: Thank you. Your Honor, may I
14 have Mrs. Bartee join us?

15 THE COURT: Yes, you may.

16 (WHEREUPON, court stood at recess in this case.)

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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PROOF OF SERVICE

I, Kellie A. Switzer, certify that I have served the **Motion for Appeal Bond** on the following, by depositing a copy of it in the United States Mail, postage prepaid, on February 18, 2014, addressed to:

Salley W. Elliott, Senior Assistant Deputy Attorney General
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

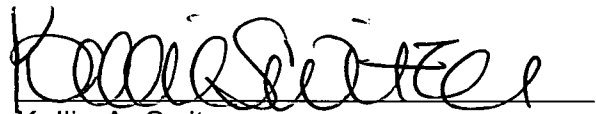
David R. Wagner, Jr., Assistant Solicitor
Tenth Circuit Solicitor's Office
415 S. Pine Street
Walhalla, South Carolina 29691

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February 18, 2014



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Fax 803-799-4059*

February 18, 2014

The Honorable Tonya Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State of South Carolina v. James Richard Barte, Jr.
Appellate Case No.: 2013-001895

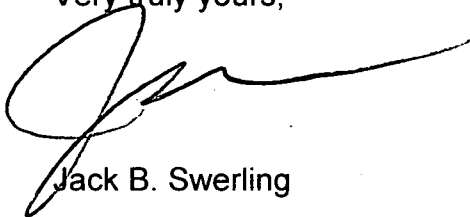
Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of a Motion for Appeal Bond, along with the Proof of Service, in the above referenced matter. It would be greatly appreciated if you would clock the extra copy and return it to me in the enclosed envelope.

By copy of this letter, I am serving Salley W. Elliott, Senior Assistant Deputy Attorney General, and David R. Wagner, Jr., Assistant Solicitor, with a copy of same.

If you have any questions, do not hesitate to contact me.

Very truly yours,



Jack B. Swerling

JBS/kas
Enclosure

cc: Salley W. Elliott, Senior Assistant Deputy Attorney General
David R. Wagner, Jr., Assistant Solicitor
James Richard Barte, Jr. #00356847

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