

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No: 2013-000224

RECEIVED
JAN 28 2014
SC Court of Appeals

THE STATE,

Respondent,

vs.

ERICK HEWINS,

Appellant.

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FEB 28 2014
SC Court of Appeals

RETURN TO MOTION FOR APPEAL BOND

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, Erick Hewins, was indicted for trafficking in cocaine base / crack cocaine (greater than 10 grams, third offense) (2010-GS-23-8295) and possession of a schedule IV controlled substance (clonazepam) (2010-GS-23-8296). On January 14-17, 2013, Appellant stood trial before the Honorable G. Edward Welmaker and a jury. Appellant was found guilty of the charge and was sentenced to an aggregate term of twenty-six (26) years. Thereafter, Appellant filed and served notice of appeal on January 25, 2013.

2. Appellant moves this Court for Bond Pending Appeal. The State asks this Court to exercise its discretion to deny the motion. Whitener v. State, 225 S.C. 244, 81 S.E.2d 784 (1954).

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. Patterson, 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.

3. The State contends, first, it is unlikely Appellant will prevail on appeal. On appeal from a motion to suppress on Fourth Amendment grounds, this court applies a deferential standard of review and will reverse only if there is clear error. State v. Tindall, 388 S. C. 518, 520, 698 S.E.2d 203, 205 (2010). The State submits there is substantial evidence to support the trial court's rulings in this regard to the initial detention and subsequent Terry frisk. Appellant consented to the search of his pocket which yielded a large amount of cash and four pills of clonazepam, a controlled substance. Further, the State submits that the chain of custody was, as the trial court found, established as far as practicable.

4. Appellant stands convicted of a third narcotics offense, a crime considered violent and serious. When arrested, the approximately 37-year-old Appellant was meeting two teenage females. Other than his current convictions, Appellant has a steady prior criminal history:

- 1992: trespass after notice

- 1993: possession of crack cocaine, assault and battery with intent to kill
- 1995: revocation of probation, distribution of crack cocaine, threatening a law enforcement officer, possession of crack cocaine
- 2000: disorderly conduct
- 2001: operating uninsured vehicle, assault
- 2002: criminal domestic violence
- 2003: indecent exposure, two counts of domestic assault
- 2004: no proof of insurance, driving without a license
- 2005: two counts of criminal domestic violence
- 2006: arrest for failure to appear for court
- 2009: open container, driving under the influence, two counts of possession of marijuana
- 2010: disorderly conduct, driving under the influence
- 2012: driving under suspension, possession of crack cocaine

(Attachment A, Tr. p. 421, line 19 – p. 422, line 23.) Appellant’s criminal history shows a steady, consistent, uninterrupted pattern of criminal behavior involving drugs, violence against persons, and dangerous operation of a vehicle. Appellant’s consistent history of criminal convictions establishes his continuing disregard for the rules of government and the sanctity of the welfare and safety of others.

5. In addition to Appellant’s prior criminal record, the chance of forfeiture of bail and escape should be considered in light of a prior instance of failure to appear. This chance is heightened in that, in spite of Appellant’s significant criminal record, he has never faced a period of incarceration as serious as that which he now faces. The weight of a twenty-six year sentence

must be considered. The State submits Appellant will pose a risk if released on bond pending this appeal.

6. The State also submits Appellant does not possess the requisite character and reputation deserving of his release on bond pending appeal. In addition to Appellant's prior record, which includes threatening a law enforcement officer, this Court's attention is directed to Appellant's expletive-filled outbursts directed at the circuit judge, law enforcement, and the solicitor at the close of his trial. (Attachment A, Tr. p. 421, lines 12-15; p. 422, lines 3-4; p. 422, lines 8-10; p. 423, lines 8-11.) Appellant's behavior in the courtroom shows great disrespect for the authority and administration of law. Appellant is a repeat offender who would pose danger to any community, and Appellant's personal attitude toward society and government are clear from his criminal record and actions in the courtroom. These are clear indications this Court should not exercise its discretion and permit the Appellant's release on bond pending appeal.

7. Unlike a pretrial bond request, Appellant does not stand before this Court cloaked with a presumption of innocence. Indeed, the evidence of his guilt was overwhelming.

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

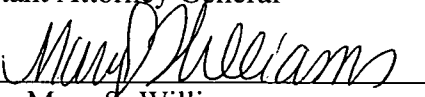
WHEREFORE, the State moves this Court to deny Appellant's request for release on appeal bond.

[Signature on next page.]

Respectfully submitted,

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

BY: 
Mary S. Williams
S.C. Bar No: 76192

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ATTORNEYS FOR RESPONDENT

February 28, 2014

A

1 THE COURT: We'll have to wait just a moment
2 until the clerk gets back.

3 All right. Are there any matters before we impose
4 sentence? From the State or Mr. Harbin?

5 MS. MONTS: No, Your Honor.

6 MR. HARBIN: Nothing from the Defense, Judge.

7 THE COURT: All right. If you would come forward
8 with Mr. Hewins, I'd be glad to hear from you and him and
9 anyone else.

10 (WHEREUPON, Ms. Monts, Mr. Harbin and Mr. Hewins
11 approached the bar.)

12 THE DEFENDANT: I'm gonna listen, but on that
13 appeal that you won't win. You ain't by no means fucking
14 with me, man, at all. You know the Judge gonna go with the
15 crooked cops.

16 THE COURT: All right. Mr. Harbin, be glad to --
17 well, let me hear from the State first as far as prior
18 record?

19 MS. MONTS: Your Honor, prior record includes
20 1992, trespass after notice; 1993, possession of crack
21 cocaine, assault and battery with intent to kill; 1995, a
22 probation revocation. Also in 1995 distribution of crack
23 cocaine, threatening law enforcement officer, possession of
24 crack cocaine; 2000, disorderly conduct; 2001, operating
25 uninsured vehicle and assault; 2002, criminal domestic

1 violence; 2003, indecent exposure. And in the State of
2 Tennessee two counts of aggravated assault ---

3 THE DEFENDANT: Wasn't no fucking two counts,
4 bitch.

5 MS. MONTS: 2004, no proof of insurance,
6 operating a non-registered vehicle, driving without a
7 license.

8 THE DEFENDANT: That's all we got ... get to get
9 up there telling mother-fucking lies and these fucking
10 local Judges ---

11 THE COURT: I'll give you a chance. I'll give
12 you a chance to talk. Let me hear from her and I'll
13 certainly give you a chance to talk, Mr. Hewins.

14 MS. MONTS: 2005, two counts of criminal domestic
15 violence; 2006, arrest on a failure to appear for court;
16 2009 ---

17 THE DEFENDANT: Failure to appear 2006, when? On
18 what charge?

19 THE COURT: I'll let you respond to it in a
20 minute. Let me get what she has to say. All right, sir?

21 MS. MONTS: 2009, open container, driving under
22 the influence, possession of marijuana; 2010, disorder
23 conduct, DUI; 2012, DUS, possession of crack cocaine.

24 THE COURT: All right. Mr. Harbin, be glad to
25 hear from you and certainly from your client if he'd like

1 to address the Court.

2 MS. BROWN: Y'all going to take my baby?

3 THE COURT: Yes, ma'am.

4 MS. BROWN: You gonna take my son away?

5 THE COURT: Yes, ma'am. If you'll hang on just a
6 minute, we can only have one person talk at the time, all
7 right?

8 THE DEFENDANT: Local Judges always side with
9 y'all little punks, you see what I'm saying. But according
10 to the law you didn't have no reason to be stopping a black
11 man and fucking with me, boy.

12 THE COURT: Anything you want to tell me, Mr.
13 Hewins?

14 MS. BROWN: I don't understand this?

15 THE DEFENDANT: Not really.

16 THE COURT: All right, sir.

17 THE DEFENDANT: I know you wrong according to the
18 law. I mean, this man didn't have no reasonable suspicions
19 to be stopping that car in front of my car and coming and
20 harassing me. See, what I'm saying.

21 THE COURT: Yes, sir.

22 THE DEFENDANT: But y'all local Judges all going
23 to go with your little police.

24 THE COURT: Well, fortunately you have a ---

25 THE DEFENDANT: I'm most definitely going to put

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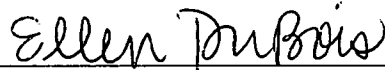
PROOF OF SERVICE

I, Ellen DuBois, 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:

Jessica H. Lerer, Esquire
Strom Law Firm, LLC
2110 Beltline Boulevard, Suite A
Columbia, SC 29204

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

This 28th day of February, 2014.



Ellen DuBois
Administrative Assistant
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ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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RE: State v. Erick Hewins
Appellate Case No. 2013-000224

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Return to Appellant's Motion for Appeal Bond in the above case.

Sincerely,

Mary S. Williams
Assistant Attorney General
S.C. Bar No: 76192

MSW/ed
Enclosures

cc: Jessica H. Lerer, Esquire