

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2013-001895

RECEIVED

MAR 11 2014

SC Court of Appeals

State of South Carolina,

Respondent,

vs.

James Richard Bartee,

Appellant.

RETURN TO MOTION FOR BOND PENDING APPEAL

Respondent State of South Carolina respectfully submits the following in opposition to Appellant's Motion for Bond Pending Appeal:

1. Appellant James Richard Bartee was charged in Oconee County with Solicitation/Solicitation to Commit a Felony, to wit: soliciting an individual to commit the act of kidnapping retired Circuit Court Judge James C. Williams, Jr. On August 26, 2013 through September 3, 2013, Appellant stood trial before the Honorable R. Lawton McIntosh, and a jury. Appellant was convicted as charged. He was sentenced on September 3, 2013, to ten (10) years, suspended upon the service of five (5) years and probation for five (5) years as well as community service and psychiatric evaluation and treatment upon release to probation.

2. After sentencing, Appellant moved the trial court judge for release on bond pending appeal. The trial judge denied the motion, finding the “charge in this case is particularly serious and I want him in detention while that appeal is pending. (See attached Tr. p. 263).

3. Appellant filed and served notice of appeal on September 5, 2013, and the appeal is currently pending before this Court.

4. Appellant now moves this Court for a hearing on his motion and for this Court to set bail and to permit his release from custody pending the appeal.

5. In support of his request for release from custody on bond pending appeal, Appellant asserts that he is fifty-six (56) years of age, is a retired special agent of the United States Secret Service where he worked for twenty-five (25) years, that he owns a home and has family in Oconee County, that he continues to work as a private contractor with the Secret Service and established two businesses in Oconee County. He also states that he was released on a Ten thousand (\$10,000) bond before trial.

6. Respondent submits that this Court should deny the motion for release on bond pending appeal. Pursuant to Rule 246 (a), SCACR, Appellant has already presented the motion for release on bond pending the appeal to the trial court judge who considered and denied the request, determining that the charge was particularly serious and Appellant’s detention necessary. (See attached Tr. p. 263, lines 1 - 7). In view of the action and ruling by the trial judge who presided at trial during presentation of the evidence in this case, the motion should not be reconsidered by this Court.

7. 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. The State submits that release on bond pending appeal should 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) the 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; and (4) the character and circumstances of Appellant. Nichols v. Patterson, 202 S.C. 352, 25 S.E.2d 155 (1943).

Respondent 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, Respondent requests that this Court deny the motion for release on bond pending appeal.

8. Respondent contends, first, that the request should be denied because Appellant fails to show he will likely prevail on appeal. He offers no information respecting issues or rulings below that will likely result in reversal of the conviction.

9. Second, Respondent submits that the crime for which Appellant was convicted is extremely serious. Appellant was charged with and convicted of "counseling, enticing, or inducing" another individual to kidnap retired Circuit Court Judge James C. Williams, Jr. Respondent submits that the crime Appellant committed is extremely serious and reveals planning and consultation for illegal purposes. The acts necessary to accomplish the kidnapping would likely have been extremely violent. Appellant should not be released during the appeal after conviction for such an offense.

10. Respondent also submits Appellant does not possess the requisite character deserving of his release on bond pending appeal. Although the Appellant has no previous criminal offenses and is a former special agent of the United States Secret Services, his conviction reveals he is capable of plotting and attempting to have horrific, violent acts carried out against a retired circuit court judge. Respondent notes that the trial judge's sentence in this case requires Appellant to submit to a psychiatric evaluation and comply with recommended psychiatric treatment when Appellant is released to and while supervised on probation. Appellant's release

on bond pending appeal would circumvent these requirements that the trial judge obviously thought were necessary to protect the community and victim in this case. (See attached Tr. pp. 261-262). Appellant may pose a danger to the same victim and community where the crime was committed, particularly if the sentencing recommendations for evaluation, treatment and supervision can be circumvented by premature release on bond pending the appeal. These matters are clear indications this Court should deny Appellant's release from custody on bond pending the appeal.

11. Respondent submits the surrounding circumstances of this case call for denial of Appellant's release from custody on bond pending appeal. Appellant's offense establishes a total disregard for the rules of government and the welfare and safety of others. Despite working in law enforcement for a number of years, Appellant actively sought to circumvent the requirements of the law to solicit the kidnapping of a retired judge who lived in the community. The presentation by the Solicitor at sentencing indicates a fear that Appellant continued to disregard the rules of society after being charged with the crime. (See attached Tr. p. 261, lines 13-25). Appellant's disregard for the rules and laws enacted to maintain and protect all citizens indicates he may pose a similar risk to the community if he is released on bond pending this appeal.

12. The factors this Court considers in determining whether to grant bond pending appeal weigh against Appellant. Appellant will not likely succeed upon appeal, the nature of the crime is violent, Appellant poses a danger to the community, and Appellant's character has proven to be harmful.

13. Based upon all the foregoing, Respondent prays that this Court deny Appellants request for release on bond pending appeal.

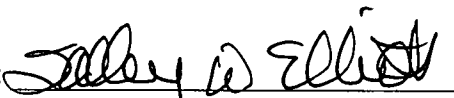
WHEREFORE, Respondent moves this Court to deny Appellant's request for release on appeal bond.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit

By: 
Salley W. Elliott
S.C. Bar No. 1871

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ATTORNEYS FOR RESPONDENT.

March 11, 2014

1 an attempt to kidnap or harm Judge Williams at some
2 point. But clearly we all heard Mr. Bartee say, no,
3 stop, don't do it. Your Honor, I would ask that you
4 impose a minimal sentence in this matter, Your Honor.
5 Thank you.

6 THE COURT: Mr. Bartee, is there anything you
7 want to add to that?

8 MR. BARTEE: I believe my attorney said it
9 eloquently. I'm shocked. I'm sorry, but I don't even --
10 I pick bugs up in my dojo and carry them outside. I've
11 never had any attempt to ever hurt anyone.

12 THE COURT: Anything from the State?

13 MS. ADAMS: Your Honor, Judge Williams wanted
14 you to know that he could not be here today because he
15 had a prior engagement that he could not get out of. But
16 he informed me on Friday that if the jury did come back
17 with a guilty verdict, that obviously he supported the
18 maximum sentence involved in this case, especially due to
19 the fact that Mr. Bartee is prior law enforcement.

20 The jury clearly felt that there was enough evidence
21 to convict him, as do we. We feel that the maximum is
22 appropriate as well. From the beginning, Your Honor, he
23 has made baseless accusations against all law enforcement
24 agencies involved, and he has gone above and beyond
25 basically to try to perpetrate a fraud on the court. And

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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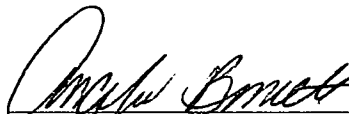
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion for Bond Pending Appeal on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Jack B. Swerling, 1720 Main Street, Suite 301, Columbia, South Carolina 29201

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

This 11th day of March, 2014.



ANGELA BENNETT
Administrative Assistant

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ALAN WILSON
ATTORNEY GENERAL

March 11, 2014

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

Re: The State v. James Richard Bartee
Appellate Case N: 2013-001895

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Return to Motion for Bond Pending Appeal along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: Jack W. Swerling, Esquire
Ms. Trisha Allen

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