

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2012-GS-07-105
Appellate Case No.

Robert Jarad PratherAppellant,
v.
State of South Carolina. Respondent.

MOTION FOR BOND PENDING APPEAL

Pursuant to Rules 240 and 246 of the South Carolina Appellate Court Rules, Robert Jarad Prather, the Appellant herein, moves this Court for an order granting him bail in this matter during any further appeal by the State.

The factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the appellant.

In re Michael H., 360 S.C. 540, 553, 602 S.E.2d 729, 736 (2002). Each of these factors is addressed below:

1. The Nature of the Crime

Prather was convicted of murder in connection of the death of Gerald Stewart, a man in his "mid to late 40's" who was a chronic alcoholic with a severely

enlarged heart, liver and spleen. He weighed nearly 300 pounds at the time of his death. At trial, the State's forensic pathologist, Janice Ross, testified that he could have died at any moment due to his poor health:

Q: But, of course, on the other hand, with that enlarged heart he had, he could have died at any time; is that correct?

A: Yes.

Q: Just drop dead?

A: Yes.

R.p.366, ll. 12-17.

Prather has been tried twice for Stewart's death. The jury did not convict him after the first trial. Three years later, the State tried him again. Prather remained on bond during this entire time without incident. During the second trial, they introduced two new witnesses: The testimony of Officer Mark Jones who testified that Prather must have carved "rapist" into the decedent's back because Prather's co-defendant, Joshua Phillips, misspelled "rapist" in his written statement to him. And the testimony of SLED profiler, Paul LaRosa who, during rebuttal and without any notice to the defense at all, "analyzed" the scene and concluded that two people were responsible for the condition of the decedent's body that, in addition to being carved, was also covered with a blanket.

Significantly, Prather testified at both trials and his testimony remained consistent. He testified that he met Gerald Stewart at a bar called "Calloway's" and was introduced to him by Joshua Phillips. R.p.652, ll. 3-4. The night he met him, Prather told Stewart that he had received a fine in Richland County. Stewart said that he knew a judge who could

reduce that fine. R.p.652, ll. 3-23. A week later, Prather was again playing pool at Calloway's and Stewart showed up. He said he was looking for Joshua to give him a note about Prather meeting with the judge. It had Stewart's phone number on it. This note was found in Prather's wallet. *Id.* Prather said he called Stewart a couple of weeks later, and they agreed to go meet the judge one Saturday morning. R.p.653, ll. 3-7. Prather picked him up at his house, and they met with the judge. *Id.*

On April 21st, the night before Stewart's death, Prather was again playing pool at Calloway's. Joshua showed up with his new girlfriend. She eventually left, and Prather's friends left. Joshua and Prather stayed and continued playing pool. R.pp.653-64. Joshua asked if Prather could give him a ride to his brother's house, and he did so. They hung out with Joshua's brother that night. R.p.654, ll. 1-14.

The next morning, they did not have anything to do. Joshua suggested that they go to Gerald Stewart's house. R.p.654, ll. 16-25. Prather drove. R.p.655, l. 20. They arrived around 1:00 pm. R.p.655, l. 6. The three of them hung out and drank. Phillips and Stewart were drinking whiskey. R.p.655, ll. 10-12. When they ran out, Prather drove all of them to the store to get more. R.p.655, ll. 17-20. Around 5:00- 6:00 pm, Ron Rabon, Stewart's roommate, arrived. R.p.656, ll. 1-15. He changed out of his work clothes and then joined them. Around 8:00 pm, they left to buy more whiskey. *Id.* They ended up buying beer instead. R.p.657, ll. 4-5. They returned to the house and went back to playing cards. *Id.* Stewart told them that, if they were looking to make some money, that he had a building in the backyard that needed to be cleaned out. They got up to walk outside to look at it. Prather went to the refrigerator to get a beer; Joshua and Stewart were outside.

R.p.657, ll. 17-20. As Prather walked outside, he saw Joshua and Stewart on the ground, rolling around. Joshua was screaming at Stewart and hitting him in his face, chest, and stomach. *Id.* Prather broke up the fight and helped Stewart get up, R.pp.658-657, and make his way back into the house. When they got back into the house, Joshua hit Stewart in the mouth again. *Id.*

Prather attempted to speak to Joshua about what was going on, but Joshua was crying and upset. He would not tell Prather what the fight was about. R.p.659, ll. 5-10. At this point, it was around 10:00 pm. Around that time, Ron Rabon came out of his back bedroom and asked them if they knew where he could buy some cocaine. Joshua told him that a guy sells it behind his brother's house. Then, Joshua, Prather, and Rabon went to the brother's house and purchased \$20 worth of cocaine from a man who lived behind Joshua's brother's house. Prather testified that he and Rabon consumed the cocaine. R.pp.659-660. While there, Joshua and his brother had a fight and Joshua's brother gave him a box with his belongings in it and told him to leave. Joshua threw the box in Prather's car and they went back to Stewart's house. R.p.660, ll. 12-18.

They returned to Stewart's house around 11:15 pm. Rabon went back to his bedroom. Stewart put on the movie, "Tombstone." R.p.660, l. 25. Joshua was falling asleep, so Prather handed him a pillow. Prather and Stewart finished watching the movie. Stewart indicated he wanted to go out and do something. R.p.661, ll. 10-17. Prather said he wanted to take Joshua's stuff back to his brother's house, so he left and did that. He was gone for about 45 minutes to an hour. He returned to Stewart's house and honked the horn. R.p.661, l. 25. Stewart eventually came out, and they drove off. R.p.662, ll. 2-4.

They ended up at Uncle Louie's, a bar. They drank beer. Then Stewart ordered shots of vodka. Prather did not drink any of the vodka. R.p.663, ll. 1-4. Prather went to the bathroom, and when he returned, Stewart was gone. The bartender told him that Stewart went across the street to use the ATM machine. Stewart did not return. The bar was closing and the bartender told him there was a tab. Prather said something like, "someone should kick his ass for that!" R.p.663, ll. 23-24. Prather said the bartender told him not worry about it; that he does it all the time. R.p.664, ll. 4-6.

On the way back to his house, Stewart wanted to know if Prather could get him any cocaine from the guy they got it from earlier. Prather told him he really did not know him that well, but that he would try. He dropped Stewart off at his house, and then went back to the drug dealer. He was gone for about thirty minutes. R.p.664, l. 30. He did not get any additional drugs.

Prather then returned to Stewart's house and walked in. He saw Stewart come out of his bedroom completely naked, and with an erection and clothes in his hands. R.p.665, ll. 4-6. Stewart looked at him, and asked if he knew that Josh "liked his dick sucked." And he asked him if he (Prather) had ever "fucked Josh." R.p.665, ll. 11-13. As he was saying this, Stewart began dressing. Prather asked where Josh was, and Stewart told him not to worry about it. Prather wanted to take Joshua home, but Stewart told him he was not leaving. R.p.665, ll. 18-19. Prather started to move, and Stewart grabbed his arm. Prather told him that if he did not let him go, he would call the police. Stewart told him that he was not going to do that. Prather then hit Stewart, R.p.666, l. 9, and they fell to the floor. Prather jumped up and went into the bedroom. There he found Joshua in bed in his

boxers. Prather screamed at him to get up, but Joshua did not move. He tried to shake him to wake him up, but he was not moving. He slapped him in the face and saw his eyes roll back in his head. R.p.667, l. 21. When Joshua came to, they saw a dildo on the bed by Joshua's feet. They looked around for Joshua's clothes and then left the bedroom and entered the living room area. They observed that Stewart was getting up, and using the couch to help him. Joshua hit Stewart again on the head. R.p.668, ll. 19-20. Joshua was screaming and upset and kicked Stewart. R.p.66, l. 23- p. 669, l. 4.

At the time of this incident, Prather weighed 135 pounds. R.p.669, l. 20.

As they were leaving, Joshua could not find his shoes. At the door, Prather went out to the car and Joshua went back into the house to find his shoes. R.p. 670, ll. 6-8. When he left the house, Stewart was still alive. Prather denies that he carved anything into Stewart's back. R.p.670, ll. 23-25.

Joshua walked quickly back to the car. He had something in his hands, but it was dark so Prather did not identify it. Prather told Joshua that they needed to go to the police, or the hospital. They stopped by Joshua's brother's house to get shoes. R.p.671, ll. 12-17. Joshua was upset and crying the whole time. At one point, he tried to jump from the car. Prather pulled over into a Chinese food restaurant parking lot and told Joshua he needed to calm down. Joshua jumped from the car and ran across the Plaza and into Calloway's bar. R.p.672, ll. 8-20. Prather jumped out and followed him into the bar. He convinced Joshua that he needed to go to the hospital, and then Prather drove him there. R.p.673, ll. 23-25.

At the hospital, Prather told a nurse, Donna Sharpe, what happened. R.p.673, ll. 18-25. He also told law enforcement what happened at Gerald Stewart's house. R.pp.674-676. The entire time that Joshua Phillips was at the hospital, and while Prather was speaking to law enforcement, Phillips never told anyone that Prather had "made him do it."

After this testimony, SLED profiler, Paul LaRosa was allowed to testify over objection. LaRosa had never been accepted as an expert witness in crime scene analysis. Tr. 747. He had not been given any information relating to Joshua Phillips mental health history. Tr. 748. According to LaRosa, his job was limited to "get an idea of how many possible offenders could be in that scene." Tr. 747¹. LaRosa could not answer defense counsel's question as to the reliability of profiles in general. Tr. 748-49. LaRosa acknowledged he did not have any formal training from an educational institution in the area of psychology and that he had only completed a 30-day internship with the

¹ LaRosa attempted to minimize the extent of his opinion in this case, despite the fact that it was a critical element that the State had to prove. The following exchange illustrates the duplicitous nature of the State's argument:

Q: You are not here to say that Mr. Prather did anything, are you?

A: That is correct. The only thing that I can say based upon what limited amount of time that I've had to do this, because I couldn't get a complete victimology, I couldn't look at their past histories, their psychological files or any of that. When I look at the crime scene I saw two offenders because we have elaborate staging in which one offender wants the world to know that this guy is a rapist. Whether he is in his mind or not that is the perception that this offender wants to give to the public that this guy is a rapist I want the world to see, and, in fact, I want the world to see so much that I'm going to put a dildo next to him to show how disgusting he is. And in direct conflict with that is another personality who is wanted to erase and undo what has happened. That is from two different personalities, which is my opinion is two different offenders." Tr. 745-46.

Department of Mental Health in that field. Tr. 763. The trial court judge, however, found LaRosa's testimony admissible and "reliable for the jury to hear on the issues of staging, directed anger and recovery." Tr. 754.

Before the jury, the State asked:

Q: What makes you an expert in crime scene analysis?

A: I'm not quite sure—what makes—I believe the training that I've gone through, the intense crime scene work that I've already done for the state where I'm testified as a - an expert in crime scene reconstruction and assessment and the intense two-year training program that I went through, and I believe that when I was accepted by my brothers and sisters within the FBI as an equal and allowed to write criminal and crime scene analysis and profiles for the FBI with my name attached and the SLED letterhead with the FBI seal right next to it, and they allowed it to kind of go out to different agencies. I worked one in California, Utah. Those types of things where my name was attached to those people who I admire and respect and who are the leaders in the behavioral science world. I guess I want to say — I mean, it's not my decision to say, but I believe that my training and experience has put me up there. I'm on equal plain with my peers within the FBI."

Tr. 761-62.

LaRosa then opined that two people had to be involved in "staging" the crime scene. Specifically, he testified that one person carved "rapist" into the decedent's back while another person, feeling the shame, covered him with a blanket.

LaRosa's "staging" testimony was used to support the State's otherwise unsupported theory that Phillips and Prather acted in concert, and contradicted Prather's testimony that he was not involved in, nor did he witness, any carving of the word "rapist" on Stewart and had no knowledge as to Stewart's being covered in a blanket. It also contradicted Prather's testimony that he left Phillips in the house alone with the

decendent. In short, this testimony was offered to impeach Prather's version of events regarding Stewart's death that the State was well-aware of since he testified on his own behalf at his first trial.

After LaRosa's testimony, and without the defense having any opportunity to meaningfully challenge it, Prather was convicted of the murder of Gerald Stewart.

2. The Probability of Reversal

On September 6, 2017, the South Carolina Court of Appeals issued its opinion in *State v. Prather*, reversing and remanding for a new trial. Judge Williams wrote a dissent. The Court of Appeals decided the case on one ground-- the improper rebuttal testimony of Paul LaRosa. The Court found that the trial court judge abused his discretion by allowing the State to present the evidence that was offered to "complete the State's case-in-chief" and was not limited to refuting Prather's testimony. The Court also found that "[s]uch broad expert testimony on reply "explain[ing] the crime scene" could not reasonably" have been anticipated by Prather. These findings do not represent a departure from existing law in this State and are well supported by the facts in this particular case. For that reason, it is highly unlikely that the South Carolina Supreme Court will reverse the Court of Appeal's decision.

3. The Possibility of Escape and the Character and Circumstances of Prather

Prior to these charges, Prather had no criminal history. While awaiting trial-- both times-- he was allowed to remain on bond. He did so without incident, and making all required court dates. At the time of this conviction, he was attending Midlands

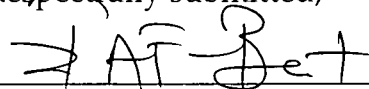
Technical College in Columbia and had an A average. Upon release he would like to finish college and major in English and Religious Studies. His intention is to complete his associates degree from Midlands Tech and then transfer to a four-year university or college. Prather is also a Certified Life Guard with the Red Cross.

Upon release, he will continue to live with his mother, Pamela Prather, who owns her own home at 400 Old Chalk Bed Road in Batesburg, South Carolina. She worked as a paralegal for 40 years. She has worked as the Manager of the Legal Division of the Highway Department from 1983 to 1996. She also does title abstract work for Brock & Scott since 2006 to present. She used to work for Congressman Joe Wilson from 1996-1999. She was the FOIA Officer for the Highway Department. If this Court grants Prather an appellate bond, he will live at home with his mother while the State pursues its appeal of this case. With no history of violence, aside from this conviction, and a significant history of compliance with making required court dates, Prather is an excellent candidate for release pending appeal.

Conclusion

Respectfully, Prather asks this Court to grant him an appellate bond pending the State's appeal of this case.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
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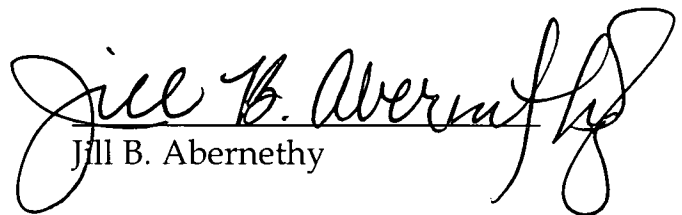
Case No. 2012-GS-32-2619
Appeal Case No. 2014-001500

Robert Jared Prather Appellant,
v.
State of South Carolina. Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Appellant's Motion for Bond Pending Appeal was served by first class United States mail, postage prepaid, this 10th day of October, 2017, upon the following:

Anthony Mabry
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211


Jill B. Abernethy

BLUME FRANKLIN-BEST & YOUNG, LLC

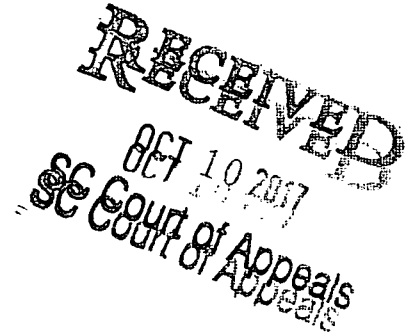
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October 10, 2017

Jenny Abbott Kitchings
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29201



Re: *The State v. Robert Jared Prather*, Appellate Case No. 2014-001500

Dear Ms. Kitchings,

Please find enclosed for filing, with certificate of service, the original and six copies of the Appellant's Motion for Bond Pending Appeal.

If you should have any questions, please feel free to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Jill B. Abernethy".

Jill B. Abernethy
Paralegal

cc: Jarad Prather
Anthony Mabry