

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS § C. SUPREME COURT
APPEAL FROM Horry COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5631 (S.C. Ct. App. filed February 27, 2019)

Appellate Case No. *2019-000840*

THE STATE, PETITIONER,

v.

HEATHER ELIZABETH SIMS, RESPONDENT.

**APPENDIX
VOL. V**

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3922

JIMMY RICHARDSON
Solicitor, Fifteenth Judicial Circuit

Post Office Box 1276
Conway, SC 29528
(843) 255-5880

ATTORNEYS FOR PETITIONER
BLAKE A. HEWITT
Counsel for Respondent

Bluestein, Thompson, Sullivan LLC
Post Office Box 7965
Columbia, SC 29202
(803) 734-1330

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2016-001385

THE STATE,RESPONDENT,

v.

HEATHER ELIZABETH SIMS,APPELLANT.

**EMERGENCY MOTION TO VACATE THE GRANT OF APPELLANT'S IMMEDIATE
RELEASE**

The State of South Carolina respectfully submits the following in response to the Court of Appeal's Order filed May 3, 2019 granting immediate, unconditional release of Appellant:

1. On the afternoon of Friday, May 3, 2019, the State received an email with an attached order indicating the Department of Corrections "shall immediately process [Sims]'s release." (Exhibit A)
2. This order was issued only eight days after Sims, through counsel, requested the appeal bond (Exhibit B), and only four days after receipt by the State. Pursuant to Rule 240(e), SCACR, the State has ten days from the date of service to file an original and six copies of the return with the clerk's office. The State intends to file a Return to the Motion for an Appeal Bond and to petition for certiorari.

3. **The State has never been served with a petition for release of Sims.**
4. The State's Return, which it still plans to file Monday, has critical information for the Court of Appeals to consider before ruling on Sims's motion.
 - a. On May 3, 2019, the below-signed counsel met with the victim's parents prior to the issuance of the order, and assured them the process would be fair and their concerns would at least be considered by the Court of Appeals.
 - b. The return will include a letter from the victim's family, detailing why they believe an appeal bond should not be issued. Pursuant to S.C. Const. art. I, § 24(4), the South Carolina Victims' Bill of Rights, the victim's family has the right to be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail.
 - c. The return also includes information regarding a recent disciplinary action against Sims, which occurred on April 29, 2019, which necessitated her removal from her original institution and the loss of her status as a teacher's aide. Upon information and belief, this misbehavior is directly relevant to the determination of the Nichols¹ factors which guide when an appeal bond should be issued.
5. The Court of Appeals does not have jurisdiction to order immediate release: Sims petitioned for an appeal bond, not an unconditional release from custody. Thus, the

¹ When deciding whether to grant an appeal bond, our courts consider:

[1] the existence of the probability of a reversal, [2] the enormity of the charge, [3] the danger that if freed the accused will commit a crime of like character, [4] the probability of a forfeiture of the bail and escape, [and] [5] the character and reputation of the accused and his surrounding circumstances, such as his recent convictions, if any, of other or similar offenses, as well as his personal attitude toward society and government.

Nichols v. Patterson, 202 S.C. 352, 356, 25 S.E.2d 155, 156 (1943).

Court of Appeal's order grants relief different and apart from that requested, and the Court of Appeals does not have jurisdiction to grant this unrequested relief.

6. The Court of Appeals also does not have jurisdiction to grant immediate release of Sims without an appeal bond because remittitur has not been issued in this case. The Court of Appeals denied the Petition for Rehearing on April 19, 2019; remittitur is not proper until May 20, 2019.
7. Further, the Court of Appeals' order fails to reference an appeal bond or any conditions for such. Instead, it requires the Department of Corrections to "immediately process [Sims]'s release."
8. In addition to the return to the appeal bond, the State also plans to petition for certiorari to the Supreme Court of South Carolina regarding the Court of Appeals' decision in this matter
9. Petitioner Heather Sims is currently incarcerated with the South Carolina Department of Corrections for a term of twenty-five years' incarceration, suspended to ten years' of active service and five years' probation following her conviction for voluntary manslaughter in Horry County.
10. Following her conviction, Sims appealed, arguing the jury improperly found her guilty of voluntary manslaughter because no evidence supporting such a conviction was presented at trial. The South Carolina Court of Appeals agreed and reversed Sims's conviction and sentence. State v. Sims, Op. No. 5631 (S.C. Ct. App. filed February 27, 2019) (Shearouse Adv. Sh. No. 9 at 109).
11. On March 14, 2019, the State filed a petition for rehearing of the case, arguing:

- a. The Court of Appeals, by viewing the evidence in the light most favorable to Sims, applied the incorrect standard of review to the case.
 - b. The Court of Appeals' opinion ignored much of the evidence presented at trial, including Sims's own inconsistent statements to law enforcement officers which described voluntary manslaughter scenarios.
 - c. The Court of Appeals improperly found the State could not retry Petitioner for involuntary manslaughter, because the jury, which could not have reached a verdict on involuntary manslaughter due to reaching a verdict on voluntary manslaughter, did not acquit Petitioner of that charge.
12. After requesting a return from Sims, the Court of Appeals denied the motion through an order filed April 19, 2019.
13. As noted by the Court of Appeals' order, as it stands, Sims's conviction has been overturned and a new trial is precluded. Without any restrictions on Sims's release, the State fears Sims may leave this jurisdiction.

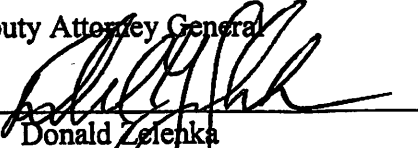
WHEREFORE, the State respectfully requests that this Honorable Court vacate its May 3, 2019 order due to a lack of jurisdiction, grant its Emergency Motion to Stay Proceedings and Stay the Grant of an Appeal Bond until the State can submit its return on May 6, 2018. Further, if the appeal bond is granted after that review, the State requests any future order discuss the appeal bond, and not grant an unconditional release of Sims.

Respectfully submitted,

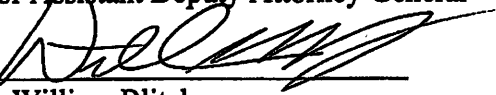
ALAN WILSON
Attorney General

DONALD ZELENKA

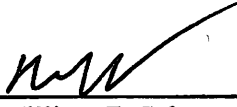
Deputy Attorney General

By: 
Donald Zelenka
Office of the Attorney General

WILLIAM BLITCH
Senior Assistant Deputy Attorney General

By: 
William Blitch
Office of the Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

By: 
William F. Schumacher, IV
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

May 3, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2016-001385

THE STATE,RESPONDENT,

v.

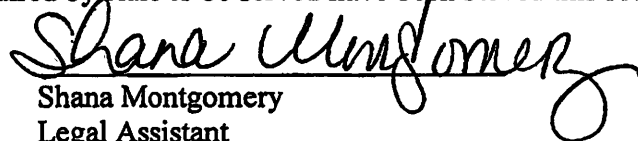
HEATHER ELIZABETH SIMS,APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Respondent's Petition for Rehearing on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Blake A. Hewitt, Esquire
Bluestein, Thompson, Sullivan LLC
Post Office Box 7965
Columbia, SC 29202

I further certify that all parties required by Rule to be served have been served this 3rd day of May, 2019.



Shana Montgomery
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368

Exhibit A

The South Carolina Court of Appeals

The State, Respondent,

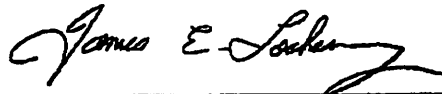
v.

Heather Elizabeth Sims, Appellant.

Appellate Case No. 2016-001385

ORDER

Appellant has petitioned for release from custody following this court's reversal of her conviction for voluntary manslaughter. Because the conviction has been overturned and a new trial is precluded by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the petition is granted. The South Carolina Department of Corrections shall immediately process Appellant's release.



C.J.



J.



J.

Columbia, South Carolina

cc:

Blake A. Hewitt, Esquire

L. Morgan Martin, Esquire

Benjamin Alexander Hyman, Esquire

Alan McCrory Wilson, Esquire

William Frederick Schumacher, IV, Esquire

Jimmy A. Richardson, II, Esquire

The Honorable J. Cordell Maddox, Jr.

FILED

May 3, 2019

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Exhibit B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-GS-26-05243
Appellate Case No. 2016-001385

State of South Carolina Respondent,

v.

Heather Elizabeth Sims Appellant.

PETITION FOR BAIL AND APPEAL BOND

Pursuant to Rule 240 (motions and petitions) and Rule 246 (stays in criminal cases) of the South Carolina Appellate Court Rules, Heather Sims respectfully requests this Court admit her to bail while she awaits this Court's issuance of the remittitur or the Supreme Court's decision if a petition for writ of certiorari is filed.

Heather believes the circumstances warrant her release on bail. The factors like probability of reversal and likelihood of re-offense are analyzed below, however, the key reason for this request is Heather's desire to return to her young son as soon as possible. As the Court knows, Heather was convicted of voluntary manslaughter for shooting her husband after he assaulted her. Their son has been raised by Heather's parents since her conviction. Respectfully, there is no good reason to keep Heather in prison or prolong her separation from her child now that this Court has reversed.

Abbreviated Factual Background

This Court is, of course, aware of the case's background given the Court's recent review of the merits. Briefly, Heather was convicted of voluntary manslaughter for the shooting of her husband in their home. She claimed her husband attacked her with a knife and that she acted in self-defense.

The State claimed the killing was murder and that Heather's story about being attacked was untrue. (R.pp.1593-1624) (the State's closing argument). The jury disagreed, acquitting Heather of murder but convicting her of voluntary manslaughter. (R.p.3) (verdict form).

The trial court sentenced Heather to twenty-five years imprisonment but suspended that sentence to 10 years prison and 5 years of probation. (R.p.1699, lines 13-15). The length of the sentence affects a particular statute on bail, as outlined below.

This case has taken an inordinate amount of time to move through the court system.

The shooting occurred in August of 2013, when the couple's son was about four months old. (R.p.1340, line 11) (the son's birthday is in March of 2013). Heather was not tried until November of 2015, over two years later. (R.p.15) (start of trial transcript). The trial court did not deny Heather's motion for a new trial until June of 2016; six months after the trial. (R.p.4).

Heather's son recently turned six years old. He was roughly two-and-half when Heather was convicted and began serving her sentence.

Authority to Grant Bail

This motion for an appeal bond is properly made in this Court because this Court retains jurisdiction over the case until the Supreme Court grants or denies a petition for a writ of certiorari. *In re Michael H.*, 360 S.C. 540, 552, 602 S.E.2d 729, 735 (2004).

This Court may grant bail in any case. *State v. Whitener*, 225 S.C. 244, 248, 81 S.E.2d 784, 786 (1954). A statute says bail is not allowed on a sentence of more than ten years in prison, see S.C. Code Ann. § 18-1-90, but that statute conflicts with the Constitution's grant of the power to issue extraordinary writs, including "the inherent power to set bond[.]" *Whitener*, 225 S.C. at 248, 81 S.E.2d at 786. This Court has the same authority. S.C. Code Ann. § 14-8-200(a).

The statutory ban on bail applies because Heather's original sentence of confinement for 25 years is no less a sentence even though it was suspended. *State v. Gibbs*, 353 S.C. 226, 228, 577 S.E.2d 454, 455 (2003). *Whitener* nevertheless applies as well; meaning, this Court may grant bail.

The purpose of bail:

is to relieve the accused of imprisonment, and the state of the burden of keeping him, pending the trial (or pending appeal), and at the same time, to put the accused as much under the power of the court as if he were in the custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him.

Id. at 229, 577 S.E.2d at 456. A bond "relieves the State of the cost of supervising the [defendant], perhaps unnecessarily, during the appeal process." *Id.* at 229, 577 S.E.2d at 456. It also "allow[s] the defendant to go free during the pendency of his appeal while assuring his presence upon affirmance of his conviction." *State v. Workman*, 274 S.C. 341, 343, 263 S.E.2d 865, 866 (1980).

In deciding whether to grant an appeal bond, the Court considers:

[1] the existence of the probability of a reversal, [2] the enormity of the charge, [3] the danger that if freed the accused will commit a crime of like character, [4] the probability of a forfeiture of the bail and escape, [and] [5] the character and reputation of the accused and his surrounding circumstances, such as his recent convictions, if any, of other or similar offenses, as well as his personal attitude toward society and government.

Nichols v. Patterson, 202 S.C. 352, 356, 25 S.E.2d 155, 156 (1943).

(1) The Probability of a Reversal

An appellate court should not allow bail if the record shows that the alleged errors are frivolous, the appeal is taken merely for delay, or where there is no reasonable ground or probable cause for the appeal. *Id.* at 355-56, 25 S.E.2d at 156.

Here, however, this Court has already determined the appeal has more than a reasonable ground; it has a winning ground. That decision is, of course, subject to the Supreme Court's discretionary review. Nevertheless, this Court's reversal illustrates that the appeal is not taken for the purpose of delay.

This Court's decision is also sound. Heather claimed self-defense. The State claimed Heather's story was a complete fabrication and that the killing was a cold-blooded murder. Nobody endeavored to present evidence of voluntary manslaughter or argued a voluntary manslaughter case to the jury. This Court correctly held voluntary manslaughter should not have been charged.

(2) The Enormity of the Charge

Heather was indicted for murder. (R.p.2). The jury acquitted her of that charge but convicted her of voluntary manslaughter. (R.p.3).

There is no question voluntary manslaughter is serious. Still, no authority suggests it is so serious that it counts against granting a bond. Heather was on bond the entire time between her arrest in August of 2013 and her trial more than two years later. (R.p.699, line 22 - p.700, line 19).

(3) The Danger That the Accused Will Commit a Crime of like Character

Nothing suggests there is a danger that Heather will commit a crime of like character if granted bail. She has no criminal history whatsoever.

(4) The Probability of a Forfeiture and Escape

There is no probability that an appeal bond would be forfeited and that Heather would try to evade the court's jurisdiction while out on bond. She grew up in Horry County and returned there after graduating from nursing school. (R.p.1322-1323). At the time of this incident she was gainfully employed as a nurse anesthetist at a hospital near her home. *Id.*

Heather's family resides in the court's jurisdiction and she owns property in the court's jurisdiction. Heather and her deceased husband had a home constructed on land given to Heather by her grandfather. (R.p.1336, line 23 - p.1337, line 2). Heather's parents live next door. (R.p.1466, lines 9-11).

(5) The Character and Reputation of the Accused and His Surrounding Circumstances, Including Recent Convictions of Other or Similar Offenses, as Well as His Personal Attitude Toward Society and Government.

Nothing suggests Heather's character and reputation count against granting her a bond. For the majority of Heather's incarceration she has worked as a teacher's assistant at the high school on the campus of the facility where she is housed. The retired principal of that high school sent a letter supporting Heather's character and work ethic. Attachment A. Heather also provided—at the request of counsel—a list of her constructive activities during her incarceration. Attachment B. Nothing suggests she has been anything other than a model inmate, if not an exceptional one, and nothing suggests her character or her attitude toward government cut against granting a bond.

**

The circumstances of this case are heartbreaking for all involved. David Sims' death is unquestionably a tragedy. Nothing in this petition should be interpreted as overlooking or diminishing that tragedy.

And while the State has the right to ask the Supreme Court to review this Court's decision, the fact remains that the conviction *has* been reversed. There will be no way to compensate for the additional time spent in prison between now and the time the case is remitted if certiorari is not sought, if certiorari is denied, or if certiorari is granted and this Court is affirmed.

Finally, this Court's decision is sound. There is no evidence Heather lost control of her actions and shot her husband because she had an irresistible urge to do violence. He had a knife, he cut her, and he threatened her. She warned him to stop because she was scared but *he did not stop*. She then shot one time, killing him as he came at her. Other than the State's theory that the killing was murder, that is the only narrative with any evidentiary support. That narrative does not support a charge on voluntary manslaughter.

CONCLUSION

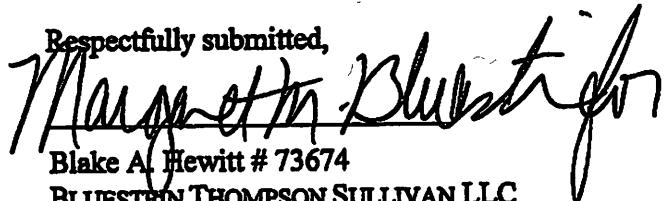
For the foregoing reasons, Heather Sims requests that the Court exercise its discretion to grant her an appeal bond.

April 25, 2019

L. Morgan Martin # 3667
LAW OFFICES OF L. MORGAN MARTIN

B. Alex Hyman # 75416
THE HYMAN LAW GROUP

Respectfully submitted,



Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Appellant

Attachment A

From the Desk of Dr. Pamela Thomas

September 15, 2018

Dear Attorney for Heather Sims:

I previously served as the principal for Sara A. Bahb School at the Camille Griffin Graham Correctional Facility. I am writing this letter on behalf of Heather Sims regarding her character and work ethic. Ms. Sims worked as a teacher assistant under my tutelage. Selected based on her advanced academic ability and her willingness to help other inmates, she transitioned into the teacher assistant position and exemplified positive character and superior work ethics.

Ms. Sims showed extraordinary self-initiative, resourcefulness, dependability, and trustworthiness. Through her self-initiative and resourcefulness efforts, she completed assignments and projects without constant direction from the supervising school staff. For example, Ms. Sims made charts, signs, lists and the like that helped to streamline our school operations for daily procedures and during more specific events as school-wide testing.

The school staff showed comfort in assigning student inmates for Ms. Sims to tutor because of her initiative and availability to work around schedules and qualifying events. Furthermore, she showed innovative skills in varied instructional grouping such as one-one-one and small group tutoring. During these tutoring sessions, she illustrated concepts in abstract and concrete ways for ultimate comprehension. She used advanced techniques that built confidence in student inmates who were often unmotivated and oppressed. However, her unique appeal helped many student inmates to attain their academic goal. Often, Ms. Sims instituted instructional strategies during the final phases for student inmates to earn a credential such as a GED.

Finally, I observed Ms. Sims exhibit trustworthy traits as she served as a teacher assistant in working with school staff and student inmates. She showed dependability by giving accurate information in planning and instituting school events. Furthermore, she presented accurate evidence and data regarding student inmate academic needs and progress towards goal completion.

Ms. Sims worked in support of the school operations and assisted us in streamlining operations to best suit the needs of the population. Most importantly, she served the student inmates and motivated them to higher learning. As the former principal, I write this letter with confidence and poise regarding Heather Sims.

Sincerely,



Pamela Thomas, PhD
Retired Principal

Attachment B

March 25, 2019

Blake,

Here is a list of things that I have done while my incarceration from when I got out of receiving (February 2016) til now:

- Held a job position as a Teacher's Assistant for the entire incarceration (3.5 years)
- Taught GED Math to students as well as teachers who were not proficient in the subject
- Taught my own Fast Track WorkKeys Class
- Single handedly coordinated getting numerous people into school who staff members didn't think had enough time to get their GED. I created a schedule and deadlines as to when they had to complete steps so that they could finish their GED before they were released.
- Assisted the guidance counselor and principal in organizing and implementing the waiting list, folders and testing.
- Obtained my WorkKeys and received a Gold in Locating, and Platinums in Reading and Math
- Obtained On the Job Training Certificates in Teacher's Aide I, II and III
- Developed hand written study guides in GED Math that are now used at other mens institutions and has helped several inmates at other institutions pass their Math portion of their GED.
- Assisted with 60 inmates obtaining their GED to date.
- Intervened and helped 3 inmates where were choking, passing out and having an airway obstruction following a seizure. Medical is very slow on our compound, and by the time they arrived, I had corrected the problem.
- Interviewed on the news stations to speak about programs here at Camille Graham such as "A Mother's Voice."
- Converted a Satanist to Christianity, as well as leading 3 other inmates to Christ.
- Helped several inmates create resumes, perform college searches and write parole letters.
- Bible Studies/Groups:
 - Spiritual Warfare Bible Study
 - Bill Glass Bible Study
 - Prison Fellowship Bible Study
 - CIU Bible Study
 - Celebrate Recovery
 - Hannah's Gift (for parents)
 - Stress Management
 - SisterCare Group
 - Dog Training Certificate

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-GS-26-05243
Appellate Case No. 2016-001385

State of South Carolina, Respondent,

v.

Heather Elizabeth Sims, Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Petition for Bail and Appeal Bond* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

William F. Schumacher, IV
Alan M. Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211



Erin Bridges

April 25, 2019

The Supreme Court of South Carolina

The State, Petitioner,

v.

Heather Elizabeth Sims, Respondent.

Appellate Case No. 2019-000737

ORDER

Respondent's conviction for voluntary manslaughter was reversed by the court of appeals. *State v. Sims*, Op. No. 5631 (S.C. Ct. App. filed Feb. 27, 2019). In response to Respondent's motion for bail and appeal bond, the court of appeals issued an order requiring the South Carolina Department of Corrections (SCDC) to immediately process Respondent's release.

The State has now filed an emergency motion asking this Court to vacate the order of the court of appeals ordering Respondent's release, stay the proceedings, and stay any order concerning an appeal bond pending the State's submission of a return to the motion.

The order of the court of appeals dated May 3, 2019, ordering SCDC to release respondent is stayed pending consideration of the State's motion by the full Court.



FOR THE COURT

C.J.

Columbia, South Carolina

May 3, 2019

cc:

Blake A. Hewitt, Esquire

L. Morgan Martin, Esquire

Benjamin Alexander Hyman, Esquire

Alan McCrory Wilson, Esquire

William Frederick Schumacher, IV, Esquire

Jimmy A. Richardson, II, Esquire

The Honorable J. Cordell Maddox, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-GS-26-05243
Appellate Case No. 2016-001385

State of South Carolina Respondent,

v.

Heather Elizabeth Sims Appellant.

RETURN

This return is filed pursuant to the Court's request. Respectfully, the petition for rehearing should be denied.

- A. **Setting aside the lack of any evidence for the State's new theory of voluntary manslaughter, it is hard to understand the theory on its own terms.**

The petition for rehearing posits a hypothetical set of facts as supporting a voluntary manslaughter charge. Setting aside for a moment the lack of any actual evidence for this new theory of the case, it is difficult to understand the theory on its own terms.

The theory goes like this: Heather Sims and her husband David were constantly fighting and had been in counseling. Their marriage was deteriorating. The fatal encounter began with a verbal altercation that progressed to a physical struggle. Heather armed herself at some point. The State

posits Heather *chose* to arm herself “rather than” run away. Then, Heather fired at her husband. The State says Heather might not have actually been in danger when she fired. “Alternatively,” the State proposes Heather was not in any danger until David charged at her because *he* was afraid.

It is difficult to understand the argument that a voluntary manslaughter charge is appropriate because Heather supposedly could have run away or because *David* (the aggressor) might have been afraid when *he lunged at her*. Again, under this theory, David came at Heather while holding a knife. He wrestled her phone away from her through the use of brute force, hurting her with the knife. It is hard to see how someone could seriously fault Heather for arming herself. Her husband had a knife and had just assaulted her. It is frankly hard to derive any support for criminal liability from this version of events.

This State’s newly proposed narrative is nothing like *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391 (2001) or *State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993). Both of those cases involve a defendant’s active pursuit of the person who eventually died. There is no evidence of active pursuit here. The only way to get this case to *Knoten* or *Lowry* is to make things up. The nominal dispute about whether the gun was located in the bathroom or the bedside table cuts the other way because, as *the State* vehemently argued below, “[e]very step” to get the gun while David was “trapped” in the bathroom would be premeditation. (R.pp.1606, line 23 - p.1607, line 23).

The State’s argument also has a strong flavor of self-interest. It is easy to find cases where the State has successfully argued *against* a voluntary manslaughter charge. *State v. Niles*, 412 S.C. 515, 772 S.E.2d 877 (2015); *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010); *State v. Childers*, 373 S.C. 367, 645 S.E.2d 233 (2007). The State’s argument in these cases tends to be some variant of the proposition that the defendant’s own testimony contradicts heat of passion or

sufficient legal provocation. In other words, the defendant is tied to his theory of the case and must own that theory completely when the State *opposes* a manslaughter instruction. Now, however, the State is arguing completely against its theory of the case and speculating about various versions of the facts because the shoe is on the other foot—the State *wants* a manslaughter charge and the defendant objects. This looks like a double standard. The State does not follow such a charitable approach when defendants request charges on lesser offenses.

B. The Court properly examined all of the evidence, including Heather's own testimony, and noted there did not appear to be significant inconsistencies.

The evidence is generally consistent if one sets to the side the opposing opinions given by each side's experts about Heather's wounds. The only "witness" testimony came from Heather. The State called Allyson Brown, but Brown's testimony supported Heather's testimony in all material respects. Heather's story has always been consistent: she has always said David entered the bathroom to work on the toilet, that they argued, that David turned on her with a knife, and that he lunged at her before she shot. The Court examined all of this evidence, at length, in its opinion.

The rehearing petition appears to fault the Court for relying on Heather's testimony. The rehearing petition also criticizes what the State perceives as ignoring supposedly inconsistent statements to law enforcement and to Brown.

Again, Heather's story has always been consistent. And it was natural for the Court to examine Heather's testimony at length. Heather is the only witness to this encounter. Most of the evidence related to this event came from her. This is nobody's fault. It is just a fact.

A disturbing aspect of the State's argument is that if it is accepted, it would mean voluntary manslaughter should be charged anytime there is a claim of self defense where the defendant is the

only witness. Credibility is always in dispute. The State could simply claim the defendant is lying about the fatal encounter and that the defendant struck the fatal blow in a fit of rage. The State could also claim the threat to the defendant was over and that there was no need to use deadly force. All of this speculation would be fair game.

This is precisely the sort of impermissible blending between voluntary manslaughter and self-defense that the Supreme Court condemned in *State v. Starnes* and that then-Chief Justice Toal criticized in her concurring opinion in *State v. Childers*. See *Starnes*, 388 S.C. at 599–600, 698 S.E.2d at 609 (such a holding would render voluntary manslaughter a lesser-included offense of self-defense); *State v. Childers*, 373 S.C. 367, 376, 645 S.E.2d 233, 237-238 (2007). Voluntary manslaughter is not a lesser-included component of self defense. Inferences are based on evidence. It is not permissible to just make things up.

C. The Court applied the correct standard of review, explaining the determining factor was whether there was any evidence of manslaughter before examining the whole record.

The Court cites and applies the right standard of review. The opinion notes that the evidence at trial determines the law to be charged. Slip op. at 10 (citing *State v. Gilland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012)). The opinion also notes that the circuit court must charge a lesser-included offense if there is “any evidence” the defendant committed the lesser offense rather than the greater offense. Slip op. at 11 (citing *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004)). The opinion explains the court examines the “totality of the evidence” in determining whether there is a rational inference the defendant committed the lesser offense. *Id.* (citing *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006)). The opinion then examines Heather’s version of events and the State’s version of events.

Twice, the opinion says the facts are viewed in the light most favorable to the defendant. Slip. op. at 11 and 17. But that is not what the opinion actually does. The opinion examines Heather's version of events *and* the State's version of events. The opinion notes the absence of any evidence Heather and David were not in relatively close proximity to one another throughout the fatal encounter and the opinion correctly concludes that at bottom, the State's after-the-trial attempt to cobble together a theory of voluntary manslaughter is nothing more than an invitation to speculate. Slip op. at 21, 23.

The statement about viewing facts in the light most favorable to the defendant when determining whether a manslaughter charge is appropriate appears to have originated in *State v. Gadsen*, which says "[i]n determining whether the evidence required a charge of voluntary manslaughter, we view the facts in a light most favorable to the defendant." 314 S.C. 229, 233, 442 S.E.2d 594, 597 (1994). That sentiment accurately describes the civil summary judgment standard and the directed verdict standard in all cases but it does not seem to fit well with jury charges. In a case with competing claims of murder and self-defense, the facts would presumably support murder when viewed in the State's favor. The facts would presumably support self-defense when viewed in the light most favorable to the defendant. The focal point on lesser-included offenses is more neutral; it is not about viewing the evidence with a lean in either direction. The key question, as the Court noted in the opinion, is whether there is any evidence to support the charge.

Again, the opinion performs the correct analysis. It examines Heather's version of events and the State's version of events. This is the same sort of analysis found in *State v. Wharton*, 381 S.C. 209, 214-215, 672 S.E.2d 786, 788 (2009). Like this case, *Wharton* reversed the circuit court's decision to charge voluntary manslaughter. The Court cited *Wharton* here. Slip op. at 10.

D. The Court correctly barred a subsequent trial for involuntary manslaughter. Resting the decision on the lack of evidence for that charge would avoid the constitutional question even though the Court's constitutional ruling is correct.

The Court's constitutional ruling is sound. The jury should not have marked anything next to involuntary manslaughter. Yet, the jury acquitted Heather of that offense. It does not matter that the acquittal was the result of the jury's legal error in being confused or disregarding its instructions. An acquittal is generally binding even though it is the result of an error of law. *Horry Cty. v. Parbel*, 378 S.C. 253, 263, 662 S.E.2d 466, 471 (Ct. App. 2008) (overruled on other grounds by *State v. Oxner*, 391 S.C. 132, 705 S.E.2d 51 (2011)); *State v. Tillinghast*, 375 S.C. 201, 203, 652 S.E.2d 400, 401 (2007); *Ball v. United States*, 163 U.S. 662, 670-671 (1896).

There is an exception to the rule that an acquittal is binding. It requires the acquittal to have been procured by fraud or collusion. *Parbel*, 378 S.C. at 262, 662 S.E.2d at 471 (citing *State v. Holliday*, 255 S.C. 142, 145, 177 S.E.2d 541, 542 (1970)). There is no such claim here. Indeed, the defense consistently maintained involuntary manslaughter should not be on the verdict form at all.

Still, it would be equally sound to ground the Court's analysis on the lack of any evidence supporting an involuntary manslaughter charge. Involuntary manslaughter is an unintentional killing without malice while engaged in either an unlawful activity not naturally tending to cause great bodily harm or a lawful activity with reckless disregard for the safety of others. *Sullivan v. State*, 407 S.C. 241, 244, 754 S.E.2d 885, 887 (Ct. App. 2014).

Keep in mind that the jury would only get to involuntary manslaughter if it had already rejected murder. Thus, the jury would have rejected the State's argument that there was no fight in the bathroom and that Heather's story was fabricated.

It is hard to see what evidence could possibly constitute “an unlawful activity” by Heather. She obviously had the right to arm herself after being assaulted. It is equally hard to see what could possibly qualify as a “lawful activity” Heather did “with reckless disregard for the safety of others.” She obviously had the right to shoot as her husband lunged at her with a knife and she shot one time. It is difficult to understand how any of that can be called reckless.

It also bears mentioning that *the State* specifically argued to the circuit court that there was no evidence of involuntary manslaughter. (R.p.1535, lines 16-25).

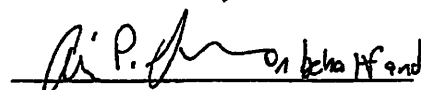
Voluntary manslaughter requires heat of passion—a state of mind in which the killer succumbs to an “irresistible urge to do violence.” Here, both of the parties—the State and Heather Sims—went out of their way to prove Heather had complete control of her faculties. Both parties sought to *disprove* the idea that Heather was *not* in control of her actions. The natural result of these positions is the very thing that commands reversal. There is no evidence of heat of passion. The petition for rehearing should be denied.

Respectfully submitted,

April 1, 2019

L. Morgan Martin # 3667
LAW OFFICES OF L. MORGAN MARTIN

B. Alex Hyman # 75416
THE HYMAN LAW GROUP

 on behalf and with permission

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of General Sessions

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2013-GS-26-05243
Appellate Case No. 2019-000737

State of South Carolina Petitioner,

v.

Heather Elizabeth Sims Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Return* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

William F. Schumacher, IV
Alan M. Wilson
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

May 6, 2019



Erin Bridges

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2016-001385

THE STATE,RESPONDENT,

v.

HEATHER ELIZABETH SIMS,.....APPELLANT.

RETURN TO PETITION FOR APPEAL BOND

The State of South Carolina respectfully submits the following return to the petition for appeal bond, served on April 25, 2019, and received by the State on April 29, 2019:

1. Petitioner Heather Sims is currently incarcerated with the South Carolina Department of Corrections for a term of twenty-five years' incarceration, suspended to ten years' of active service and five years' probation following her conviction for voluntary manslaughter in Horry County.
2. Following her conviction, Sims appealed, arguing the jury improperly found her guilty of voluntary manslaughter because no evidence supporting such a conviction was presented at trial. The South Carolina Court of Appeals agreed and reversed Sims's conviction and

sentence. State v. Sims, Op. No. 5631 (S.C. Ct. App. filed February 27, 2019) (Shearouse Adv. Sh. No. 9 at 109).

3. On March 14, 2019, the State filed a petition for rehearing of the case, arguing:
 - a. This Court, by viewing the evidence in the light most favorable to Sims, applied the incorrect standard of review to the case.
 - b. The Courts opinion ignored much of the evidence presented at trial, including Sims's own inconsistent statements to law enforcement officers which described voluntary manslaughter scenarios.
 - c. The Court improperly found the State could not retry Petitioner for involuntary manslaughter, because the jury, which could not have reached a verdict on involuntary manslaughter due to reaching a verdict on voluntary manslaughter, did not acquit Petitioner of that charge.
4. After requesting a return from Sims, the Court of Appeals denied the motion through an order filed April 19, 2019.
5. In her petition, Sims argues an appeal bond is appropriate pursuant to the factors set forth in Nichols¹, because:
 - a. The Court of Appeals found there was no evidence of voluntary manslaughter presented at trial, and review of the case by the Supreme Court is in that Court's discretion.

¹ When deciding whether to grant an appeal bond, our courts consider:

[1] the existence of the probability of a reversal, [2] the enormity of the charge, [3] the danger that if freed the accused will commit a crime of like character, [4] the probability of a forfeiture of the bail and escape, [and] [5] the character and reputation of the accused and his surrounding circumstances, such as his recent convictions, if any, of other or similar offenses, as well as his personal attitude toward society and government.

Nichols v. Patterson, 202 S.C. 352, 356, 25 S.E.2d 155, 156 (1943).

- b. Voluntary manslaughter is serious, but “no authority suggests it is so serious that it counts against granting a bond.
 - c. “Nothing suggests there is a danger that Heather will commit a crime of like character if granted bail.”
 - d. “There is no probability that an appeal bond would be forfeited and that [Sims] would try to evade the court’s jurisdiction while out on bond” because she grew up in Horry County and lived there throughout most of her life.
 - e. “Nothing suggests Sims’s character and reputation count against granting her a bond”; “Nothing suggests she has been anything other than a model inmate, if not an exceptional one, and nothing suggests her character or her attitude toward government cut against granting a bond.”
6. On May 3, 2019, the Court of Appeals issued an order demanding “[t]he South Carolina Department of corrections . . . immediately process [Sims]’s release.” Notably, this order did not reference an appeal bond or place any restrictions on Sims’s release. Further, the order was issued eight days after Sims’s appellate counsel mailed the appeal to the Court of Appeals and the State, and only four days after it was actually received by the latter. Pursuant to Rule 240(e), SCACR, any party opposing a motion has ten days from the date of service thereof to file a return to such a motion. A court may, in its discretion, enlarge or limit the time for filing that return, but the State was no informed of any such decision.
7. Following the State’s receipt of said order, it filed emergency motions to vacate the order for Sims’s release in both the Court of Appeals and Supreme Court. The order filed in the Supreme Court also requested that court assume original jurisdiction of the matter pursuant to Rule 245(a), SCACR.

8. By way of this return, the State argues the following facts and considerations should weigh against granting the release of Sims.

The Probability of Reversal

Sims claims an appeal bond should be granted because the Court of Appeals correctly found no evidence of self-defense was presented to the trial judge. However, as noted by the State in its petition for rehearing, the Court of Appeals ruling was incorrect for several reasons. First and foremost, the Court of Appeals applied an incorrect standard of review in its opinion: it reviewed the evidence in the light most favorable to Sims, despite the fact that Sims was the party who objected to the charges of voluntary and involuntary manslaughter. Then, applying this standard, the Court focused its opinion on Sims's own self-serving trial testimony and ignoring the inconsistent and outright incorrect statements she made in her 9-1-1 call and in her police interview hours after the shooting.

Further, it is possible that the Supreme Court grant certiorari and reverse the Court of Appeals' decision as to the State's ability to retry Sims on the charge of involuntary manslaughter.

The Enormity of the Charge

Voluntary manslaughter is one of the most serious crimes a person may be charged with. Further, the State originally charged Sims with murder and provided evidence of such a trial. While the State agrees the enormity of the charge, by itself, is not dispositive of the propriety of an appeal bond, the seriousness of her charges should weigh against a decision to release her from custody.

The Danger that the Accused Will Commit a Crime of Like Character

Certainly, the State acknowledges it seems unlikely that Sims would be placed into position, while on bail, in which she would commit another voluntary manslaughter. However, a jury panel of twelve disinterested individuals listened to the evidence presented for and against Sims's guilt and found her guilty of voluntary manslaughter. By finding her guilty of such a crime, the jury implicitly found Sims capable of extreme violence upon provocation. If twelve unbiased jurors could reach this conclusion after hearing the evidence, including Sims's testimony, first-hand, the Court of Appeals should not discount that possibility that Sims could commit other violent crimes upon release.

The Probability of Forfeiture and Escape

Sims claims there is "no probability" her appeal bond would be forfeited and she would try to evade the court's jurisdiction while out on bond. This bold proclamation ignores the facts of Sims's situation: Sims began her incarceration on November 16, 2015. Heather still has the majority of her sentence to serve. Further, any misbehavior while serving her five year probation could lead to her serving a full twenty-five year sentence. If it appears the Supreme Court will reinstate her conviction, Sims has strong motivation to escape the jurisdiction. Plus, due to her prior employment as a nurse anesthetist, she likely has the financial resources to attempt such an escape.

The Character and Reputation of the Accused and His Surrounding Circumstances, Including Recent Convictions of Other or Similar Offenses, as Well as His Personal Attitude Toward Society and Government

In her petition for an appeal bond, Sims argues "nothing suggests she has been anything other than a model inmate, if not an exceptional one" or that her character and reputation should count against granting her an appeal bond. While such a statement may have been true at the

time the petition was filed, it is not true at this point. It has come to the State's attention that Sims has been disciplined. While the exact nature of such infraction has not been placed on her record yet, her online records do indicate that she was moved to a disciplinary unit at the Graham facility and that she was terminated from her position as a teacher's aide as a result. (Attachment A). The State believes this demonstrates Sims prior behavior while incarceration was a façade, one she dropped the moment she believed she would be released from prison.

Further, Sims's reputation for dishonesty is evident in the record of this case. Appellant's representation of the events surrounding the shooting changed among the several times she recalled the events. The story she provided to the 9-1-1 operator and in her police interview were significantly different than her testimony at trial. Unsurprisingly, her trial testimony was what painted her actions in the most beneficial light. The State also presented evidence that the crime scene was manipulated after the shooting. In addition to forensic evidence presented by the State, Sims admitted to police that she "probably" moved the knife and that she moved his body. Regardless, her recent misbehavior and documented misrepresentations indicate that Sims is dishonest and could easily disregard any conditional release.

Other Considerations

As noted Sims, her condition has been reversed by the Court of Appeals. If the Supreme Court denies certiorari, her release from prison is all but assured. It is the State's opinion that Sims is attempting to obtain immediate release because she recognizes the very real possibility the Supreme Court grants certiorari in this matter.

Finally, it is critical that this Court, before granting an appeal bond, consider the wishes of the victim's family members, who are themselves victims of this terrible shooting. In their letters (Attachments B and C), the family members have noted numerous concerns with Sims's

behavior, including her unwillingness to allow for a paternity test of her and victim's soon. Despite her 2015 conviction, she has resisted a non-invasive paternity process well into the appellate process.

Without question, Sims's release would place a great strain upon victim's family members. The State requests the Court of Appeals withhold granting an appeal bond and order Sims's release only after final resolution of this case.

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER
Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 

WILLIAM F. SCHUMACHER
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 6, 2019

Attachment A



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	FEMALE	SCDC ID	00366198
RACE:	WHITE	SID:	SC02117755
HEIGHT:	5'08"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	176 lbs.	ADMISSION DATE:	11/25/2015
AGE:	37	LOCATION:	GRAHAM R&E
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	CRE-1214-B
BUILD:	MEDIUM	EWC LEVEL:	
COMPLEXION:	FAIR	EEC LEVEL:	
HAIR COLOR:	BROWN	PROJECTED RELEASE DATE:	05/25/2024
EYE COLOR:	BROWN	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
PICTURE DATE:	11/25/2015	SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/INV	CAT	INDICT	STATUS
VOLUNTARY MANSLAUGHTER	ADULT-STRAIGHT SENTENCE	10	0	0	HORRY	11/16/2015	V	4	13GS26-05243	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINARY SANCTIONS

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

NO DISCIPLINARIES DURING CURRENT INCARCERATION

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
04/29/2019	GRAHAM R&E	INCARCERATED	DISCIPLINARY
09/18/2018	GRAHAM	INCARCERATED	ADMINISTRATIVE
09/18/2018	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/14/2017	GRAHAM	INCARCERATED	ADMINISTRATIVE
09/14/2017	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
06/19/2017	GRAHAM	INCARCERATED	ADMINISTRATIVE
06/19/2017	LEXINGTON CO	AUTH ABSENCE (AWL)	MEDICAL
01/28/2016	GRAHAM	INCARCERATED	ADMINISTRATIVE
12/16/2015	GRAHAM R&E	INCARCERATED	RETURN FROM COURT
12/16/2015	ANDERSON CO	AUTH ABSENCE (AWL)	TO COURT
11/25/2015	GRAHAM R&E	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
TEACHER AIDE	05/20/2016	04/29/2019	DISCIPLINARY/LOCK-UP	2F5
TEACHER AIDE	02/02/2016	05/19/2016	MI ELIGIBLE FOR LEVEL 2	3F5

EARNED EDUCATION CREDITS

NO EARNED EDUCATION CREDITS DURING CURRENT INCARCERATION

Attachment B

May 3, 2019

To The Court

Re: Appeal Bond for Heather Sims

We have been asked to write this letter concerning the request for parole by Heather Sims. We are the parents of David, our only son, who was killed by this defendant. We have one daughter, Destiny.

First of all, we are of the opinion that she should be given no consideration at all as she premeditatedly planned and killed our son then attempted to blame him for her crime by fabricating his trying to stab her. We know our son would never stab anyone or hurt anyone especially his wife and the mother of his child. Dr. Werner Spitz, as an expert witness, testified that the wounds on her were self-inflicted in an attempt to make it look like David had done it.

The day before the murder our son was at our home in Florence and let us know that the relationship with Heather was such that he needed to come back and live with us. He and Heather and the child lived in Conway. She killed him the very next day as he was packing to move home.

The last witness the state was going to put up was me, his mother, and I was prepared to say that as a result of his visit with us the day before she shot him, I was preparing his room upstairs in our house for him to come live with us. For some reason the state decided to rest without my testimony. The jury came out at one point and asked for the definitions of murder and manslaughter to be given to them again indicating they were considering murder.

Heather had stayed on him continuously through text messages which were introduced at the trial to take out a life insurance policy shortly before she killed him payable to her for \$750,000.00. He only paid two premiums, one at time of application and one was drafted from his bank account.

We believe it is very significant the fact that Heather is afraid to have a paternity test performed which we have been attempting to get for almost three years.

We were told by a Guardian ad Litem that she was required during one of our few visitation periods to be careful and not allow the child out of her sight for fear we would obtain evidence to get a paternity test done. We were always suspicious why she would intentionally kill the loving father of her child if, in fact, it really was David Jr.'s. That raised our concern as to why she would be so afraid of a simple, noninvasive paternity test. She has fought hard and spent thousands of dollars on attorney's fees fighting a simple paternity test and succeeded in her goal of delaying the test until the appellate court heard her case. We can only assume she either knows it is not David's child or is unsure and is afraid the appellate justices would learn the

results of a test that may indicate that the child is not David's. The delays in attempting to get this test have been unbelievable, months between simple motions etc. and numerous attorneys.

Just this week we got notice that Heather had committed some violation in prison and has been put in lockup. This seems contrary to the glowing picture she presents in her motion for bond and we hope the details of this are discovered and considered before any further decisions are made pertaining to Heather Sims.

Since we lost our only son, there are no words to describe how our lives have forever changed. Our hearts ache with each breath we take. We will never be able to see him again on this earth. The one and only thing that keeps us going is that we know he is in heaven and that one day we will see him again.

Heather has never in any way expressed or shown any remorse.

We do not feel safe in her being released from prison, as she has already taken one life.

We are asking the court to deny the appeal bond.

Respectfully,

Margaret Rose Sims

Margaret Rose Sims

David Sims, Sr.

David Sims, Sr.

Attachment C

May 3, 2019

To The Court

Re: Appeal Bond for Heather Sims

- Heather Sims shot and killed her husband David Sims on 8/11/13.
- Heather had demanded David take out a life insurance policy in the amount of (\$750,000) just weeks prior to killing him. He had only made two payments on the policy. All of this was confirmed in the trial through text messages and the life insurance company.
- A Stand Your Ground Hearing was held before Judge Maddox. It was determined this was NOT self-defense and, therefore, would go to a jury trial.
- Jury trial took place in November 2015. A jury of her peers found her GUILTY. They had the option of not guilty, however, after all the evidence was presented they determined she was GUILTY, that she deliberately killed David.
- Judge sentenced her to 25 years, reduced to 10 years and 5 years probation, a small price to pay for taking a life.
- Currently she is in disciplinary lock up in prison.

This alleged technicality over whether it was appropriate for a charge of Voluntary manslaughter is just that, a legal technicality that the defense and the state are disputing. We understand that the State is going to ask the Supreme Court to reconsider this case. We only want Justice for David, as he has no voice now. Heather needs to remain in custody until such time. She has taken a life and been found guilty, I am not sure what other evidence should be needed to keep her in prison.

August 11, 2013 changed our lives forever. Her selfish decision to kill David has ruined many lives. She took my brother, my best friend. She took my parents only son. She took my child's uncle. Not a day goes by that this ordeal does not impact our lives. She has never had consequences in her life and she thought her father could once again pay her way out of this mess. No matter what we do, we can never bring David back to be here on this earth with us.

We would feel very uneasy with her being released from prison, as she has already taken one life and has never shown or expressed any remorse in any way.

We ask the court to deny this appeal bond.

Respectfully,

Destiny Studzinski (sister)

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2016-001385

THE STATE,RESPONDENT,

v.

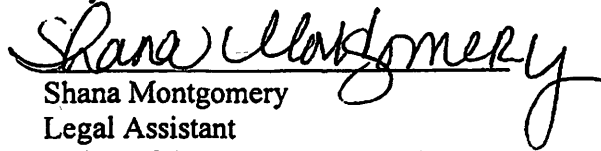
HEATHER ELIZABETH SIMS,APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Respondent's Return to Petition for An Appeal Bond on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Blake A. Hewitt, Esquire
Bluestein, Thompson, Sullivan LLC
Post Office Box 7965
Columbia, SC 29202

I further certify that all parties required by Rule to be served have been served this 6th day of May, 2018.



Shana Montgomery
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368

The South Carolina Court of Appeals

The State, Respondent,

v.

Heather Elizabeth Sims, Appellant.

Appellate Case No. 2016-001385

ORDER

Appellant has petitioned for bail and an appeal bond following this court's reversal of her conviction for voluntary manslaughter. After reviewing Appellant's petition, the State's return, and the factors outlined in *Nichols v. Patterson*, 202 S.C. 352, 356, 25 S.E.2d 155, 156 (1943), the petition for an appeal bond is granted.

IT IS ORDERED that Appellant shall be released from custody upon the following conditions: (1) she will surrender herself to the Sheriff of Horry County upon order issued by this court or the South Carolina Supreme Court; (2) she will comply with all orders issued by this court or the South Carolina Supreme Court; (3) she will surrender all passports; (4) she will not depart the State of South Carolina without the permission of this court or the South Carolina Supreme Court; (5) she will be of good behavior; and (6) she shall keep her counsel informed of her current contact information, including her telephone number and place of residence, during the pendency of her case.

IT IS FURTHER ORDERED that Appellant shall not be released until she and a good and sufficient surety have signed a recognizance in the amount of \$50,000,¹ which shall be forfeited to the State upon the failure of respondent to comply with the terms of this order. The form of the bond and the surety thereon shall be approved by the circuit court judge. The recognizance shall be filed with the Clerk of Court of Horry County.

¹ The amount of Appellant's appeal bond is equal to the bond ordered by the circuit court prior to trial.

IT IS SO ORDERED.

James E. Lockery C.J.

John D. Seaton J.

Stephen P. McNeill J.

Columbia, South Carolina

cc:

Blake A. Hewitt, Esquire

L. Morgan Martin, Esquire

Benjamin Alexander Hyman, Esquire

Alan McCrory Wilson, Esquire

William Frederick Schumacher, IV, Esquire

Jimmy A. Richardson, II, Esquire

The Honorable J. Cordell Maddox, Jr.

South Carolina Department of Corrections

FILED

May 14, 2019

The Supreme Court of South Carolina

The State, Petitioner,

v.

Heather Elizabeth Sims, Respondent.

Appellate Case No. 2019-000737

ORDER

Respondent's conviction for voluntary manslaughter was reversed by the court of appeals,¹ and the State's petition for rehearing was denied on April 19, 2019. On April 25, 2019, Respondent served and filed a motion for bail and appeal bond. Prior to the expiration of time for the State to file a return to the motion,² the court of appeals issued an order requiring the South Carolina Department of Corrections to immediately process Respondent's release because a new trial is precluded by the Double Jeopardy Clause.

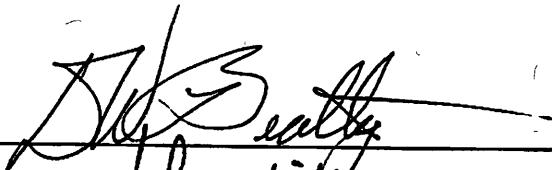
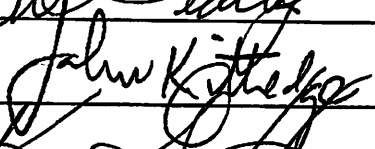
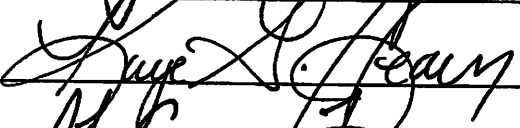
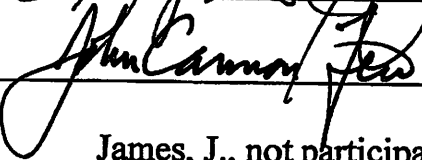
The State has filed an emergency motion in this Court's original jurisdiction asking the Court to vacate the order of the court of appeals ordering Respondent's release, stay the proceedings, and stay any order concerning an appeal bond pending the State's submission of a return to the motion. The State argues the time for filing its return to the motion for bail or appeal bond had not expired when the court of appeals issued its order. In addition, the State notes Respondent did not ask the court of appeals to release her from custody unconditionally, but merely requested she be released on bail pending appeal. Finally, the State indicates it intends to petition this Court for a writ of certiorari to review the decision of the court of appeals. By order dated May 3, 2019, the court of appeals' decision ordering Respondent's release was stayed pending consideration by the full Court.

The State's petition for a writ of certiorari to review the decision of the court of appeals is not due until May 20, 2019. *See* Rule 242(c), SCACR (a petition for

¹ *State v. Sims*, Op. No. 5631 (S.C. Ct. App. filed Feb. 27, 2019).

² *See* Rule 240(e), SCACR (a party opposing a motion shall have ten days from the date of service to serve and file a return to the motion).

writ of certiorari shall be served and filed within thirty days after the petition for rehearing is finally decided by the court of appeals). Because the time for the State to seek a writ of certiorari has not yet expired, the court of appeals' decision is not yet final, and the court of appeals erroneously gave effect to its decision reversing Respondent's conviction when it ordered Respondent's unconditional release from custody. Cf. Rule 221(b), SCACR (the court of appeals shall not send the remittitur to the lower court until the time to petition for a writ of certiorari under Rule 242(c) has expired). Accordingly, the order of the court of appeals ordering the immediate release of Respondent is vacated without prejudice to any decision by the court of appeals to reconsider Respondent's motion for bail and appeal bond after reviewing the State's return to the motion. All other relief requested by the State is denied as moot.

	C.J.
	J.
	J.
	J.

James, J., not participating

Columbia, South Carolina

May 13, 2019

cc:
Blake A. Hewitt, Esquire
L. Morgan Martin, Esquire
Benjamin Alexander Hyman, Esquire
Alan McCrory Wilson, Esquire
William Frederick Schumacher, IV, Esquire
Jimmy A. Richardson, II, Esquire
The Honorable J. Cordell Maddox, Jr.
South Carolina Department of Corrections
The Honorable Jenny Abbott Kitchings