

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Mar 01 2021**

**SC Court of Appeals**

---

APPEAL FROM LANCASTER COUNTY  
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

---

Case No. 2019-001417

---

Kayla Marie Cook,

Appellant,

vs.

The State,

Respondent.

---

**APPELLANT'S REPLY TO RETURN IN OPPOSITION TO  
MOTION FOR APPEAL BOND**

---

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, SC 29201  
(803)734-1330  
Robert M. Dudek  
rdudek@sccid.sc.gov  
Susan B. Hackett  
shackett@sccid.sc.gov

Nelson Mullins Riley & Scarborough LLP  
1320 Main Street/ 17<sup>th</sup> Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000  
Daniel J. Westbrook  
dan.westbrook@nelsonmullins.com  
Amber M. Hendrick  
amber.hendrick@nelsonmullins.com

Appellant Kayla Marie Cook submits this Reply to the State's Return opposing Appellants' Motion for Appeal Bond.

Grounds for the Motion are:

- 1) Based on affidavits from her two treating MUSC oncologists, Ms. Cook will likely die sometime before July 2021 and until she dies will be too sick to be a flight risk. Motion at 5-6.
- 2) The trial court failed to grant a mistrial after allowing a law enforcement officer to offer hearsay testimony that Ms. Cook's child told him information that enforced the State's case. *Id.* at 3-4.
- 3) The trial court failed to exclude evidence of an arm injury to the child who died (the "Minor"), even though the injury was unrelated to the Minor's death. *Id.* at 4.
- 4) The serious nature of the crime should not weigh against Ms. Cook's release on bond, given that the primary evidence of her guilt was a conclusion by State experts disputed by defense experts. *Id.* at 5.
- 5) If released on bond, Ms. Cook will have family support, legal support, medical care, and a secure place to live. *Id.* at 6.

In its Return, the State contends that the trial judge was aware of Ms. Cook's medical condition at sentencing. Return at 2. That assertion is, at best, a half-truth. At the sentencing, Judge McIntosh was told by defense counsel that Ms. Cook had cancer, but that a biopsy had not yet been done, so that her doctors were merely "*leaning towards* that being malignant." *If* it proved malignant it would mean she had Stage III cancer. "*If* it starts to spread" it would become a Stage IV cancer. Tr. at 1272:4-10 (emphasis added).

The summary by defense counsel to Judge McIntosh is far less certain and convincing than the sworn affidavits by Ms. Cook's Board certified MUSC oncologists. Drs. Hornig and Graboyes do not qualify their opinion with "ifs" or "maybes." They state under oath and with authority that Ms. Cook is in Stage IV of an aggressive cancer that is "no longer curable" and that involves a

number of highly unpleasant symptoms. Exs. A and B to Motion. What was a mere possibility at the time of sentencing has, unfortunately, proven to be a reality.

The State essentially argues that Ms. Cook deserves to suffer out her life in prison, without consideration of bond, because she was convicted of a heinous crime. That conviction, of course, is under appeal. As noted above, the conviction rested primarily on the testimony of what the State characterizes as “multiple” experts. Return at 3. Actually, there were two. The two State pathology experts opined that the Minor’s fatal injuries could only have occurred during a window of time when she was alone with Ms. Cook. Tr. at 778:21 – 779:2, 1156:20-23. The defense expert, Dr. Batalis, disagreed, concluding the relevant window of time included a period when the child was alone with her father.<sup>1</sup>Tr. at 1000:20 – 1001:7.

According to the Return, “even if Cook’s appeal is ultimately unsuccessful, Cook would still be facing a retrial and the very real prospect of another sentence of life without parole, which would strongly incentivize flight if she ever happened to be released from custody.” Return at 10. This statement is wrong for two reasons. First, if Ms. Cook’s appeal is “unsuccessful,” she would not face a retrial. Second, even if her appeal is successful, she would face neither a retrial nor the “very real prospect” of another lengthy sentence, incentivizing flight. She will not live that long.

The Return attacks Ms. Cook’s character with three other assertions. Return at 10. First, it states that she violated conditions of her pretrial bond, but fails to note it was a relatively minor violation, as evidenced by the fact that bond was reinstated after thirty days. Second, the Return

---

<sup>1</sup> The State’s Return disparages Dr. Batalis’s opinions as “bizarre.” Return at 3 n.1. It should be noted that Dr. Batalis has been employed by MUSC for 11 years and is Board certified in clinical, anatomic, and forensic pathology. He has been qualified as an expert 50-75 times by South Carolina courts alone, testifying for the prosecution in all but one of those cases. He has been published 50 times and in Ms. Cook’s trial was qualified without objection or voir dire examination. Tr. at 982:19 – 986:7.

notes that Ms. Cook has incurred “at least” one disciplinary infraction while in prison. A more accurate statement would be that Ms. Cook has incurred, *at most*, only one infraction. SCDC’s online “Inmate Search” feature, which lists one disciplinary infraction for Ms. Cook, states that SCDC “makes no guarantee as to the reliability of the data” contained therein. Ex. 1, attached. Finally, the Return claims that Ms. Cook “openly admitted to making false statements” to investigators. Return at 10. In fact, what Ms. Cook admitted was that, during an enormously stressful time, she was sometimes upset and confused, causing her to make some inaccurate and inconsistent statements. Tr. at 1113:13-23.

At the end of the Return, the State suggests a number of conditions the Court should impose if it grants Appellant’s Motion. Return at 11-12. Most of these appear reasonable. Ms. Cook generally agrees to these proposed conditions, but with a comment respecting one and a modification respecting another. The comment relates to the proposal that Ms. Cook be held responsible for the costs of monitoring. While that is agreeable, Appellant trusts the Court will take this expense into account when setting the bond amount. Appellant’s modification applies to the proposal that Ms. Cook be prohibited from having in-person contact with any children – including her own children, ages four and seven. The proposed modification is that Ms. Cook be allowed in-person contact with her children, even if only in a supervised meeting.

In light of the impact of COVID-19 on court scheduling, as well as Ms. Cook’s brief life expectancy, there is no time to remand this matter. Instead, Appellant respectfully requests that the Court of Appeals expeditiously set a reasonable bond amount, determine reasonable conditions for bond, and grant this Motion.

SOUTH CAROLINA COMMISSION ON  
INDIGENT DEFENSE  
DIVISION OF APPELLATE DEFENSE

Robert M. Dudek  
S.C. Bar No. 1767  
Email: rdudek@sccid.sc.gov  
Susan B. Hackett  
SC Bar No. 71238  
Email: shackett@sccid.sc.gov  
P.O. Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

NELSON MULLINS RILEY & SCARBOROUGH  
LLP

By: /s Daniel J. Westbrook  
Daniel J. Westbrook  
SC Bar No. 012939  
E-Mail: dan.westbrook@nelsonmullins.com  
Amber M. Hendrick  
SC Bar No. 102963  
E-Mail: amber.hendrick@nelsonmullins.com  
1320 Main Street / 17th Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000

*Attorneys for Appellant Kayla Marie Cook*

Columbia, South Carolina

March 1, 2021