THE STATE OF NEW HAMPSHIRE

ROCKINGHAM
SUPERIOR COURT

ROCKINGHAM, SS. SUPERIOR COURT

2008 FEB 25 P 3: 45

07-S-2885

STATE OF NEW HAMPSHIRE

V.

JESSE BROOKS

STATE'S SECOND MOTION TO REVOKE BAIL &
MOTION TO EXPEDITE HEARING

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and for a second time moves this Honorable Court to revoke the defendant's bail. In support of this motion, the State submits the following:

1. The defendant, Jesse Brooks, has been charged with one count of conspiracy to commit capital murder, in connection with the 2005 murder of Jack Reid. On February 5, 2007, the Auburn District Court set bail in the amount of $500,000 cash. The defendant posted bail on that date, and has been free on bail since that time.

2. The court imposed a number of conditions on the defendant's release at that time. Those conditions included that the defendant refrain from excessive use of alcohol, and use of narcotic or controlled drugs, and that the defendant shall immediately notify any New Hampshire Court in which the case was pending of any change of address. Additionally, the defendant was ordered "to keep the peace and be of good behavior."

3. The defendant's conditions of bail stated that if he were to fail in compliance with the conditions of bail, cash bail would be forfeited, in addition to the possibility of the defendant being arrested, detained, and subjected to additional charges.

4. The defendant's case was bound over to the Rockingham County Superior Court, and the grand jury returned an indictment for Conspiracy to Commit Capital Murder on November 9, 2007.

5. On or about June 7, 2007 defense counsel notified the State the defendant had been arrested for numerous offenses involving controlled drugs in Boston. Reports from the Boston Police Department state that the defendant was arrested on June 6, 2007 at about 9 p.m. after police observed him in what appeared to be a drug transaction outside of a Holiday Inn Express. When approached by officers, the defendant shoved his right hand into his pocket and removed it in a fist. Within the defendant's pocket were the following: 9 bags of suspected heroin, 7 bags of suspected crack cocaine, three pieces of loose crack cocaine, 2 additional plastic bags of suspected heroin, suboxone pills, percocet pills and oxycodone pills. The defendant then accompanied the police officers to the Holiday Inn Express where he was staying, and showed them a black bag that contained prescription pill bottles in his name, and a bottle of suboxone pills with the label torn off. Police reports indicate that the defendant was charged with six separate drug counts, including three drug offenses committed near a park or school.

6. On or about December 13, 2007, the State filed a motion to revoke the defendant's bail, based on the aforementioned conduct, and what the State perceived as the defendant's subsequent failure to provide the State with sufficient documentation regarding the defendant's treatment status, and/or any steps the defendant may have taken to address his obvious drug problem, which the State believed went directly to the issue of whether the defendant posed an ongoing danger to himself or others.

7. On or about December 19, 2007, this Court held a hearing regarding the State's motion to revoke bail. This Court declined to revoke the defendant's bail, but on or about

December 20, 2007 the Court issued an order specifying the conditions of the defendant's pretrial release. Paragraph 11 of the Court's order specifies that "Defendant shall refrain from the use of all controlled drugs other than those duly prescribed by defendant's physician(s) for legitimate medical purposes and used in accordance with his doctors' orders." See 12/20/07 Order at 2. The Court also ordered the defendant to be subject to random urinalysis by the probation department. See id. Finally, the Court ordered that "violation of any of the foregoing terms and conditions of this order may result in revocation of pretrial release and the detention of the defendant in custody pending trial." See id. at 3.

8. On December 26, 2007, the probation department collected a urine sample from the defendant. Unfortunately, the toxicology section of the New Hampshire State Police Forensic Laboratory then suspended urinalysis between January 10, 2008 and February 19, 2008, while the laboratory made some modifications to its equipment. The defendant's December 26, 2007 urine sample was not tested prior to the cessation of testing, but was immediately tested when testing began again.

9. On February 25, 2007, the State received the laboratory report regarding the defendant's December 26, 2007 urine sample. See 2/22/08 Laboratory Report Regarding 12/26/07 Sample, attached hereto[1]. The defendant's December 26, 2007 urine sample tested positive for benzodiazepine, a cocaine metabolite, opiates, 6-acetyl morphine, and buprenorphine. Upon information and belief, cocaine metabolites only appear when an individual has used cocaine. Also upon information and belief, 6-acetyl morphine only appears when an individual has used heroin; it does not appear when an individual has used any legal

[1] The State received two other laboratory reports on February 25, 2008, regarding samples that were collected on January 2, 2008 and January 8, 2007. Both of those lab reports indicate that each sample tested positive for benzodiazepine, opiates and oxycodone. The State is not moving to revoke the defendant's bail at this time based on those tests, because further testing is necessary to determine whether the positive tests of those samples are due to illicit drugs or due to the consumption of drugs for which the defendant has a lawful prescription.

drug which may be chemically related. The metabolites of cocaine and heroin indicate that he had recently used the two illegal drugs in clear violation of both state law and explicit court orders.

10. RSA 597:7-a, III provides that the State may initiate a proceeding for revocation of bail by filing a motion with the court that ordered release of the defendant pending trial. The court shall revoke a defendant's bail if two conditions are met. Initially, it must find there is clear and convincing evidence that the defendant has violated any condition of release. RSA 597:7-a, III(a)(2). Secondly, among other things, it must also find the person is unlikely to abide by any condition or combination of conditions of release. RSA 597:7-a, III(b)(2). Additionally, "[i]f there is probable cause to believe that, while on release, the person committed a federal or state felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person shall not pose a danger to the safety of any other person or the community." RSA 597:7-a, III.

11. Simple possession of heroin or cocaine constitutes a felony in this state. See RSA 318-B:26, II(a). Given that the defendant's urine has tested positive for metabolites of cocaine and heroin, there is probable cause to believe that he "knowingly or purposely obtain[ed], purchas[ed], transport[ed], or possess[ed] actually or constructively, or had under his control" cocaine and heroin. There is a rebuttable presumption that no condition or combination of conditions will assure that the defendant is not a danger to himself and the community.

12. Moreover, the results of the very first urine screen obtained by probation just a week after this defendant's most recent bail hearing demonstrate that there is clear and convincing evidence that the defendant has violated a condition of his release by using cocaine and heroin.

13. Given the events of the last year, it is also clear that there is no condition or combination of conditions that will ensure that the defendant does not pose a danger to the safety of himself or to the community, and it is just as clear that the defendant is unlikely to abide by any condition or combination of conditions of release. While charged with conspiracy to commit murder, this defendant has been found with a full panoply of drugs, and he was arrested and charged with drug offenses as a result. This Court subsequently gave the defendant a second chance after the State filed its first motion to revoke his bail, but just a week after the hearing, the defendant tested positive for cocaine and heroin. This Court's orders are clearly meaningless to the defendant, and his bail should therefore be revoked, in order to ensure the safety of both the defendant and the community. See RSA 597:7-a,III(b)(1), (2)

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

A. Hold an expedited hearing in this matter; and

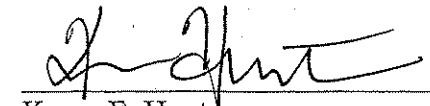
B. Revoke the defendant's bail in this matter; and

C. Grant such other relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
By its attorneys

KELLY A. AYOTTE
ATTORNEY GENERAL



Dated: February 25, 2008

Karen E. Huntress
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Concord, NH 03301
(603) 271-3671

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2008, the foregoing Motion To Revoke Bail was forwarded by electronic and first class mail to Maria Durant, Esq., William Kettlewell, Esq., and Peter Anderson, Esq., counsel for the defendant.

Karen E. Huntress

Dated: February 25, 2008

State of New Hampshire

DEPARTMENT OF SAFETY

John J. Barthelmes, Commissioner of Safety

Division of State Police

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

Colonel Frederick H. Booth
Director

FORENSIC LABORATORY

Criminalistics Group
(603 271-3573 Fax: 271-1086

Toxicology Group
(603) 271-4668 Fax: 271-5936

Timothy J. Pifer
Laboratory Director

Client Name: BROOKS, JESSE
Client ID: 001646006
Specimen: 1357459
Reference:

Agency: EXETER DISTRICT OFFICE
Requested By: NELSON, DEB
Collected: 12/26/07
Tested: 2/20/08

SPECIMEN OUTCOME: POSITIVE

IMMUNOASSAY

TEST	RESULT	CUTOFF
AMPHETAMINE/ECSTASY	NEGATIVE	500 ng/mL
BENZODIAZEPINE	**POSITIVE**	200 ng/mL
MAY BE POSITIVE DUE TO MEDICATION		
CANNABINOID	NEGATIVE	50 ng/mL
COCAINE METABOLITE	**POSITIVE**	300 ng/mL
ETHYL ALCOHOL	NEGATIVE	10 mg/dL
OPIATES	**POSITIVE**	300 ng/mL
6-ACETYL MORPHINE	**POSITIVE**	10 ng/mL
OXYCODONE	NEGATIVE	100 ng/mL
BUPRENORPHINE	**POSITIVE**	5 ng/mL
METHADONE	NEGATIVE	300 ng/mL

VALIDITY TESTING

TEST	RESULT	CUTOFF
CREATININE	NORMAL	20 mg/dL
SPECIFIC GRAVITY	NORMAL	1.003 - 1.050
PH	NORMAL	4.0 to 9.0

Comments:

COCAINE METABOLITE, OPIATES, 6-ACETYL MORPHINE, BUPRENORPHINE result(s) verified by reanalysis.

Anna Weaver

Date: FEB 22 2008

IMMUNOASSAY TECHNIQUE IS A PRESUMPTIVE TEST. REQUESTS FOR CONFIRMATION BY A MORE SPECIFIC METHOD MUST BE MADE WITHIN 30 DAYS OF RECEIPT OF REPORT.

An ASCLD/LAB accredited laboratory

Speech/Hearing Impaired, TDD Access: Relay NH 1-800-735-2964

STATE OF NEW HAMPSHIRE
Department of Safety
State Police Forensic Laboratory – Toxicology Group
33 Hazen Drive
Concord, NH 03305
(603) 271-4668

GENERAL INFORMATION:

1. Sample #: 1357455
2. Inmate/System ID: 001-64-6006
3. Taken By: Clemons, John
4. Requested By: Nelson, Deb
5. Date of Collection: 12/26/07
6. Time of Collection: 1253
7. Offender/Applicant: Jesse Brooks
8. Medications Taken Within the Last 30 Days: OxyContin, Percocet, Xanax, Ambien
9. Submitting Unit: Exeter
10. Division:
   - ____ Administration/Personnel
   - ____ NHSP/Men
   - X Field Services (SITE: EXD)
   - ____ Northern NH Correctional Facility
   - ____ NHSP/Women
   - ____ Lakes Region Facility
   - ____ Other (SITE: ____)
11. Type of Sample: ____ From Random List X Other

CHAIN OF CUSTODY SECTION:

DATE	TIME	RELINQUISHED BY	RECEIVED BY	PURPOSE
12/26/07	1253	Offender	Clemons	Collection
12/26/07	1255	Clemons	[illegible]	Storage
2/21/08	—	SEE EXETER PD AFFIDAVIT		
2/21/08	1100	[illegible]	TOX 4 [illegible]	STORAGE

Forensic Lab Case Review
Admin [illegible] 2-25-08
Tech [illegible] 2-25-08

DISTRIBUTION:
White..... Laboratory
Canary..... Offender/Job Applicant File
Pink..... Submitting Unit Copy (post-test)
Goldenrod..... Submitting Unit Copy (pre-test)

DSSP 322 (Rev. 4/05)