

NOS. 2007-2373

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NOS. 88292, 88293

STATE OF OHIO

Plaintiff-Movant

-vs-

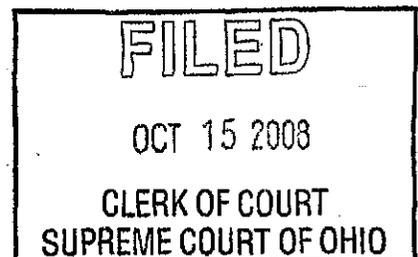
PARRIS BOSWELL

Defendant-Respondent

MOTION TO REVOKE APPEAL BOND

Counsel for Plaintiff-Appellant
WILLIAM D. MASON (0037540)
CUYAHOGA COUNTY PROSECUTOR
THORIN FREEMAN (0079999)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800

Counsel for Defendant-Appellant
Timothy Young (0059200)
Kelly K. Curtis (0079285)
8 East Long St. 11th Floor
Columbus Ohio 43215



STATE'S MOTION TO REVOKE APPEAL BOND

I. Summary of argument

This Court should order that Boswell's appeal bond be immediately revoked because:

- Boswell is indicted in CR-08-515446 for possessing criminal tools, kidnapping with firearm specifications, and aggravated robbery with firearm specifications and;
- Boswell is a suspect in another armed robbery in Middleburg Heights.

This Court should revoke Boswell's appeal bond and order the trial court to remand Boswell until this appeal is final.

II. Procedural history

There are 2 separate criminal cases before this Court. In CR-00-387210, Boswell pleaded guilty to aggravated burglary and assault. In CR-00-388072, Boswell pleaded guilty to having a weapon under disability, aggravated robbery with a firearm specification, and felonious assault with a firearm specification.

Boswell withdrew these pleas. That ruling is presently before this Court. While the appeal was pending, Boswell was granted two appeal bonds.¹

¹ Ex. A-1 & A-2.

Boswell is now indicted for violent felonies. He also a suspect in another aggravated robbery.

III. Law and analysis

A. Jurisdiction

After a criminal defendant is permitted an appeal bond, the court in which the appeal is being prosecuted “may reduce or increase the amount of that bail” or otherwise change the bail.²

This case is presently being prosecuted in this Court. Thus, this Court has jurisdiction to change Boswell’s appeal bond and order him remanded.

B. Facts of Aggravated Robbery

Parris Boswell and James Owens attempted to rob a Kentucky Fried Chicken on Friday September 5, 2008. Boswell’s accomplice has admitted that he and Boswell robbed the restaurant.³

Owens indicated that he and Boswell went to KFC. Boswell jumped behind the counter to get to the safe. Owens held a store employee at gunpoint. Boswell and Owens fled and were captured hiding in a garage. When Boswell was arrested by a Parma police officer a bag of marijuana

² R.C. 2949.04.

³ Ex. B.

was found in Boswell's pants pockets. Owens and Boswell were indicted on September 25, 2008.⁴

C. Application

When considering the parameters of an appeal bond, Crim.R. 46 guides the Court. A court is required to consider five factors in determining bail: "1) the nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon; (2) The weight of the evidence against the defendant; (3) The confirmation of the defendant's identity; (4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution; (5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order."⁵

Boswell and Owens committed an aggravated robbery with a firearm. This is a serious offense. Boswell is also facing charges of aggravated burglary and aggravated robbery with a firearm. Boswell is a danger to the community. His appeal bond must be revoked or the citizens of Cuyahoga

⁴ Ex. C.

⁵ Crim.R. 46

County are in danger of this violent defendant. The first factor weighs in favor of this Court vacating Boswell's appeal bond.

The weight of the evidence against Boswell is strong. His accomplice admits that he and Boswell committed the robbery. Boswell was also arrested with marijuana on his person. The likelihood of conviction is strong. The second and third factors weigh in favor of vacating Boswell's appeal bond.

Boswell committed this robbery while on an appeal bond. He also had marijuana while he was on appeal bond. Boswell has no respect for the laws of Ohio. He is a legitimate threat to the safety of law-abiding citizens. Boswell is likely to continue to commit violent felonies and innocent people will be placed in deadly peril if Boswell is not immediately remanded.

This Court should not permit Boswell to remain free on an appeal bond while this case is pending.

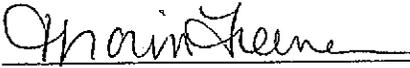
IV. Conclusion

This Court should exercise its authority, revoke Boswell's appeal bond, and order him remanded for the duration of this appeal. Boswell is a

danger to society and a review of the Crim.R. 46 factors supports Boswell's immediate incarceration. The State's motion should be granted.

Respectfully submitted,

WILLIAM D. MASON
CUYAHOGA COUNTY PROSECUTOR

By: 
THORIN FREEMAN (0079999)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800

SERVICE

A copy of the foregoing Motion to revoke appeal bond has been mailed on October 14, 2008 to Kelly K. Curtis, 8 East Long St. 11th Floor Columbus Ohio 43215.


Assistant Prosecuting Attorney



42684717

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO
Plaintiff

PARRIS BOSWELL
Defendant

Case No: CR-00-388072-A

Judge: JOHN D SUTULA

INDICT: 2911.01 AGGRAVATED ROBBERY W/FIREARM
SPECIFICATIONS
2903.11 FELONIOUS ASSAULT WITH FIREARM
SPECIFICATIONS
2923.13 HAVING WEAPONS WHILE UNDER
DISABILITY

JOURNAL ENTRY

DEFENDANT'S MOTION FOR APPEAL BOND IS GRANTED; PER RECOMMENDATION OF BOND COMMISSIONER'S
OFFICE.
BOND SET AT \$25,000.00. BOND TYPE: CASH/SURETY/PROP. BOND TERMS: NONE .

12/05/2006
CPITT 12/05/2006 15:19:16

Judge Signature

Date

FILED
2006 DEC 11 P 4: 04
CLERK OF COURTS
CUYAHOGA COUNTY
1931

HEAR
12/05/2006





42684009

IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

STATE OF OHIO
Plaintiff

PARRIS BOSWELL
Defendant

Case No: CR-00-387210-ZA

Judge: JOHN D SUTULA

INDICT: 2911.11 AGGRAVATED BURGLARY
2903.13 ASSAULT

JOURNAL ENTRY

DEFENDANT'S MOTION FOR APPEAL BOND IS GRANTED, PER RECOMMENDATION OF BOND COMMISSIONER'S OFFICE.

BOND SET AT \$10,000.00. BOND TYPE: CASH/SURETY/PROP. BOND TERMS: NONE .

12/05/2006

CPITT 12/05/2006 15:02:22

Judge Signature

Date

CLERK OF COURT
COURT HOUSE
CANTON, OHIO 44702
419.253.1234

2006 DEC 11 P 4: 04

FILED

HEAR
12/05/2006



PARMA POLICE DEPARTMENT
BUREAU OF CRIMINAL INVESTIGATION

Date: 05 Sep 08

Incident No. 0824938

0
The following is a voluntary statement taken from James E. Owens, B/M, DOB 7-15-80, 28 years-old, SSN #277-78-9391, of 3030 E. 125th Street, Cleveland Ohio 44104, cell phone #216-372-3579, by Detective Kevin Riley #788 with regards to Parma Police Criminal Investigation case #0824938.

Before you make a statement, I must advise you, that you have the right to remain silent, that anything you say can be used against you in court. You have the right to consult with a lawyer, that a lawyer will be appointed to represent you if you cannot afford one, If you decide to talk to me now without a lawyer present, you will still have the right to stop talking to me at anytime until you talk to a lawyer.

Now, do you understand all your rights which I have explained to you?

yes. If so, do you care to make a statement?

Ans. yes

Signature: James Owens Date: 9-8-08

Q) On Friday, September 5, 2008, were you arrested by the Parma Police Department?

A) Yes.



James Owens

P 1 to 4

Q) Do you know in what city you were arrested?

A) I don't know the name of the street. I just know it was in Parma.

Q) Where were you at the time you were arrested?

A) I was hiding in a garage inside in a cubby hole or storage room in the back of a garage.

Q) Who were you with at the time you were arrested?

A) I was in the garage with a guy I know as "P."

Q) Showing you a photo of Parris Boswell, is this the male you know as "P?"

A) Yes.

Q) How did you end up hiding in the garage with Parris?

A) A guy in a orange colored shirt saw us and he knew which way we were going so we needed to get into a garage to hide.

Q) On Friday, September 5, 2008 at about 2:30pm, did you and Parris enter a KFC in Parma?

A) Yes.

Q) What happened after you and Parris entered the KFC?

A) I thought me and Parris were going in there to get some food. But when we walked in Parris took off and went around the front counter. I jumped over the front counter and went to the back of the restaurant. I saw a girl worker behind the counter. I pulled a gun from my right side waistband. I held the gun in my right hand. I told the girl to come away from the cash register. I grabbed her shirt and told to come this way. I told her I wasn't trying to hurt her. She was about to cry and scream...I don't know.

News Journal

P 2-4

Q) Where was Parris while you were with the girl?

A) I don't know where Parris went. I was in the back of the restaurant on the other side of the manager's office with the girl. I didn't actually see any other employees inside of the store. The next thing I knew, Parris told me to go and we left the store. Me and Parris ran out the front door. I still had the gun with me and I put it back in my waist.

Q) What were you and Parris wearing when you went inside of the KFC?

A) I was wearing black jeans, a white T-shirt, a black hat, a black mask, like a stocking cap, I wasn't wearing gloves, I was wearing blue Nike Air Force Ones. Parris was wearing blue jeans, his green Air Jordan's, a white T shirt, he was wearing a black mask.

Q) What happened after you and Parris ran out of the store?

A) We walked towards Walgreens. Parris had put some clothes into a backpack and he threw it. I didn't see him throw it. I then saw a guy in an orange shirt that we thought was a construction worker with a walkie-talkie. He was talking with someone saying something like they are here. Me and Parris ran across the street towards a building. While I was running, the gun fell from my waistband, I did not throw it. I ran to some bushes and me and Parris ended up hiding in a garage.

Q) How did you and Parris decide to go to this KFC in Parma?

A) Earlier in the day, Parris called me and asked me if we wanted to ride with me and get some money. I told him I would go with him. He picked me up at E. 125th and Buckeye. He was driving the white Chevy truck. We drove to the west side, we were just riding around. We were planning on robbing somebody or something but we did not have the KFC picked out ahead of time. When we got to Parma, Parris parked the truck behind a building and he backed the truck in and was

Answer

facing the store. We got out and walked to a bus stop across the street from the KFC. We sat there about 10 minutes. Parris said he wanted to get some food. We walked across the street and the next I thing I knew he was in there running and I pulled my mask down and I jumped over the counter. I was just following his lead.

Q) Are you and Parris responsible for any other robberies in the Greater Cleveland area?

A) I never robbed any other businesses with Parris or any other persons. I have robbed dope boys before but never a business.

Q) Is there anything else you like to add to your statement today?

A) No.

Q) Are you currently under the influence of any drugs or alcohol at this time?

A) No.

Q) Are you being coerced, threatened or promised anything in return for your statement?

A) No.

Q) Have you read your statement and is it the truth?

A) yes

James Owens
James E. Owens

9-04-08
Date

Det. KR 788
Detective Kevin Riley #788

4/20/11

THE STATE OF OHIO

VS.

PARRIS BOSWELL /
JAMES OWENS ✓

A TRUE BILL INDICTMENT FOR

AGGRAVATED ROBBERY R.C. 2911.01 (A)(1)
W/CTS

DATE OF OFFENSE	THE TERM OF	CASE NO.	COUNT
SEPTEMBER 5, 2008	SEPTEMBER OF 2008	CR 515446	1-2

The State of Ohio, }
CUYAHOGA COUNTY

SS.

CR08515446-B

53730908



The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, **IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO**, Do find and present, that the above named Defendant(s), on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully

did, in attempting or committing a theft offense, as defined in Section 2913.01 and Section 2913.02 of the Revised Code, or in fleeing immediately after the attempt or offense upon KFC and/or Jessica Rodriguez, have a deadly weapon to-wit: firearm, on or about their person or under their control and either displayed the weapon, brandished it, indicated that they possessed it, or used it.

FIREARM SPECIFICATION: 1 YEAR (2941.141)

The Grand Jurors further find and specify that the offenders had a firearm on or about their person or under their control while committing the offense.

FIREARM SPECIFICATION - 3 YEARS (2941.145)

The Grand Jurors further find and specify that the offenders had a firearm on or about their person or under their control while committing the offense and displayed the firearm, brandished the firearm, indicated that they possessed the firearm, or used it to facilitate the offense.

COUNT TWO: KIDNAPPING R.C. 2905.01 (A)(2)

The Grand Jurors, on their oaths, further find that the Defendant(s) unlawfully did, by force, threat or deception, purposely remove Jessica Rodriguez from the place where she was found or restrained her of her liberty for the purpose of facilitating the commission of a felony to wit: Aggravated Robbery R.C. 2911.01 (A)(1) or the flight thereafter.

FIREARM SPECIFICATION: 1 YEAR (2941.141)

The Grand Jurors further find and specify that the offenders had a firearm on or about their person or under their control while committing the offense.

FIREARM SPECIFICATION - 3 YEARS (2941.145)

The Grand Jurors further find and specify that the offenders had a firearm on or about their person or under their control while committing the offense and displayed the firearm, brandished the firearm, indicated that they possessed the firearm, or used it to facilitate the offense.

RECEIVED FOR FILING

SEP 25 2008

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Lois Gross
Foreman of the Grand Jury

William A. Puerat
Prosecuting

EXHIBIT

tabbles

C

THE STATE OF OHIO

VS.

PARRIS BOSWELL
JAMES OWENS

A TRUE BILL INDICTMENT FOR

POSSESSING CRIMINAL TOOLS R.C. 2923.24 (A)

DATE OF OFFENSE

SEPTEMBER 5, 2008

THE TERM OF

SEPTEMBER OF 2008

CASE NO.

CR 515446

COUNT

3

The State of Ohio,
CUYAHOGA COUNTY

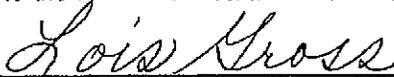
} SS.

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, **IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO**, Do find and present, that the above named Defendant(s), on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully

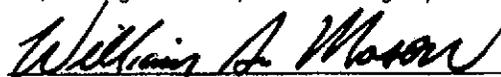
COUNT THREE: POSSESSING CRIMINAL TOOLS R.C. 2923.24 (A)

The Grand Jurors, on their oaths, further find that the Defendant(s) unlawfully possessed or had under their control a substance, device, instrument, or article, with purpose to use it criminally, to-wit: a mask and/or backpack and/or hoodie, and such substance, device, instrument, or article was intended for use in the commission of a felony, in violation of Section 2923.24 of the Ohio Revised Code

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.



Foreman of the Grand Jury



Prosecuting Attorney