STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Stephanie P. McDonald, Circuit Court Judge

Appellate Case No. 2014-001516

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DEANGELO MITCHELL, DEFENDANT, AND AA ACE BAIL BY FRANCES AND PALMETTO SURETY CORP., SURETIES FOR THE DEFENDANT,

APPELLANTS.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Pursuant to State v. Boatwright, the circuit court properly estreated bond for a violation other than non-appearance in court, and the circuit court did not abuse its discretion in estreating one-half of the bond where the court carefully considered the required factors and where the amount was not arbitrary or capricious.

STATEMENT OF THE CASE

Deangelo Mitchell was arrested in Charleston County in September of 2011 for possession with intent to distribute cocaine base. He was released on a $25,000.00 surety bond. In December of 2011, Mitchell was arrested for trafficking in cocaine, manslaughter, and distribution of cocaine base, second offense, and $400.000.00 bond was set. In January of 2012, Mitchell's bond was consolidated for all of the pending charges and a $150,000.00 surety bond was set. The bond contract specifically provided that house arrest and electronic monitoring were conditions of the bond. On February 13, 2012, a $150.000.00 consolidated bond was executed by Appellant and filed with the Charleston County Clerk of Court.

On July 26, 2012, Mitchell appeared before the Honorable Stephanie P. McDonald for a bond revocation hearing. The State alleged that revocation of bond was appropriate because of numerous violations of the house arrest/electronic monitoring term of the bond contract. After hearing testimony and arguments from the parties, the judge issued an order revoking Mitchell's bond and remanding him into custody. On August 8, 2012, the State filed a Notice of Forfeited Recognizance seeking an estreatment of the bond. A hearing was held on this issue on September 7, 2012, and another on October 11, 2012. Subsequently, on September 16, 2013, Mitchell pled guilty pursuant to negotiations with the State and was sentenced to a total of fifteen years' incarceration. Thereafter, on July 8, 2014, Judge McDonald filed an Order of Estreatment of Bond. A notice of appeal was timely served and filed.

ARGUMENT

Pursuant to State v. Boatwright, the circuit court properly estreated bond for a violation other than non-appearance in court, and the circuit court did not abuse its discretion in estreating one-half of the bond where the court carefully considered the required factors and where the amount was not arbitrary or capricious.

Relevant Facts

Deangelo Mitchell was arrested in September 2011 for possession with intent to distribute cocaine base. He was released on a $25,000.00 surety bond. In December 2011, Mitchell was arrested for trafficking in cocaine, manslaughter, and distribution of cocaine base, second offense, and $400.000.00 bond was set. Thereafter, pursuant to Mitchell's motion to reconsider or modify his previous bond, Judge James B. Gosnell, Jr., signed an order granting a consolidated bond on January 25, 2012. (See Order dated 1/25/12). This order was filed in the Charleston County Clerk's Office on January 26, 2012. (See Order). The order specified that release was conditioned upon "$150,000 surety, 24 hour house arrest at 4107 Blanton St., N. Charleston, SC with passive satellite monitoring other than work, medical, atty, court and church escorted with family member, girlfriend." (See Order).

Pursuant to this order, Appellants AA Ace Bail by Frances and Palmetto Surety Corporation agreed to secure Mitchell's bond on February 13, 2012. (See "Bail Proceeding Form II, Order Specifying Methods and Conditions of Release, and attachments including "Power of Attorney" form). Frances C. Jenkins signed as "surety bondman" under the "Appearance Recognizance with Surety" section of the bail form and listed "Palmetto Surety" as the name of the insurance company. (See Bail Proceeding Form II, dated 2/13/12). This bail form was filed along with Judge Gosnell's order and specifically made reference to this order by incorporating it and stating "See

Order." (See Bail Proceeding Form II). The form stated that the surety would be indebted to the State of South Carolina in the amount of $150,000.00 "should named defendant fail in performing the conditions of this Order." (See Bail Proceeding Form II). The form also provided that the defendant would be released from custody "on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him **and do what shall be ordered by the court** and not depart the State without the permission of the court **and be of good behavior**."[1] (See Bail Proceeding Form II) (emphasis added).

On July 26, 2012, the circuit court held a hearing on the State's motion to revoke or modify Mitchell's bond. (See 7/26/12 Tr., p. 1-7; see State's Motion to Revoke Bond). Mitchell was present at this hearing. (Tr. p. 2, lines 4-5). The solicitor requested that the court revoke Mitchell's consolidated bond due to repeated violations of the house arrest conditions of his bond. (Tr. p. 3-4; p. 7). Mitchell testified at this hearing and stated that his bond conditions were never explained to him and that his bondswoman never told him he was in violation of his bond conditions. (Tr. p. 13-16; p. 19-20). He also testified that he was employed at his uncle's catering business and that he made regular payments to his bondswoman in the amount of $100 to $200. (Tr. p. 15; p. 19).

Frances Jenkins, Mitchell's bondswoman, also testified at the hearing. She testified that she knew electronic monitoring was a part of Mitchell's bond. (Tr. p. 23). She admitted she had been notified by the monitoring company of Mitchell's violations,

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[1] This "good behavior" term was also contained in the bail form Mitchell signed the previous month regarding his previous bond. (See Bail Proceeding Form II dated 12/20/11). See also S.C. Code § 17-15-20 (stating that "[e]very appearance recognizance or appearance bond will be conditioned on the person charged personally appearing before the court specified to answer the charge or indictment and to do and receive what shall be enjoined by the court, and not depart the State, **and to be of good behavior** toward all citizens thereof, or especially toward any person or persons specified by the court.") (emphasis added).

and each time in response, she contacted Mitchell to warn him to stop. (Tr. p. 24-25). However, in contrast with Mitchell's testimony, Ms. Jenkins testified that Mitchell was not employed, but stated he nevertheless made "regular" payments to her in the amount of $100 to $200 dollars per month.[2] (Tr. p. 25; p. 27). She averred she did not know where this money was coming from. (Tr. p. 27, lines 15-17). Ms. Jenkins agreed "100 percent" that "part of [her] job as a bondsman is to help enforce the conditions of the bond." (Tr. p. 40, lines 18-21). She also agreed that the bond form is an "acknowledgment that you do a little bit more than just appearances." (Tr. p. 40, line 22 – p. 41, line 2). Ms. Jenkins also admitted that she had the ability to move to "come off the bond" for a defendant's violation of the "good behavior" clause present in every bond. (Tr. p. 36, line 8 – p. 37, line 17). See S.C. Code § 17-15-20(A) ("An appearance recognizance or appearance bond must be conditioned on the person charged personally appearing before the court specified to answer the charge or indictment **and** to do and receive what is enjoined by the court, **and** not to leave the State, **and be of good behavior** toward all the citizens of the State, or especially toward a person or persons specified by the court.") (emphasis added); S.C. Code § 38-53-50(B) ("If the circumstances warrant immediate incarceration of the defendant **to prevent imminent violation of one of the specific terms of the bail bond**, or if the defendant **has violated one of the specific terms of the bond**, the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved. . . .") (emphasis added).

[2] During cross-examination by Mitchell's defense attorney, Ms. Jenkins was presented with a letter dated January 21, 2012, from Mitchell's uncle to the court stating the uncle's intention to employ Mitchell at his catering business if Mitchell was released on bond. (Tr. p. 27-28). At that point, Ms. Jenkins stated she remembered the letter. (Tr. p. 29, lines 22-24).

Upon questioning from the court, Ms. Jenkins admitted she knew that Judge Gosnell's order granting the consolidated bond required GPS monitoring and that Mitchell "was subject to certain house arrest provisions" and indicated that her knowledge of these conditions was the reason she called Mitchell and told him to stop violating those conditions. (Tr. p. 43, lines 1-8). However, Ms. Jenkins claimed she never received a copy of Judge Gosnell's order containing the house arrest conditions and refused to answer the circuit court's question about whether or not as bondsperson it was "incumbent on [her] to look for a copy of the order and make sure [she] knew what the terms and conditions were." (Tr. p. 43, lines 9-13). Ms. Jenkins then stated "[b]ut there is so much paperwork that we don't get as bondsman. It's just a lot of things that are left with big open spaces seriously, so." (Tr. p. 43, lines 14-16). She further testified that she "was surprised to get a copy of that order, to tell you the truth, that bond order form."[3] (Tr. p. 43, lines 18-20).

James Robinson, owner of Robinson Monitoring Company, also testified at the hearing. Mr. Robinson testified that normally the bonding agency first informs defendants regarding their bond conditions, but stated when his employees hook up defendants to electronic monitoring, they again inform defendants regarding their conditions. (Tr. p. 46, lines 12-17). He agreed that the monitoring company would have to know what a defendant's conditions are so that the company can tell whether or not there is a violation of those conditions. (Tr. p. 46, lines 18 – p. 47, line 16). Regarding Mitchell's case, Mr. Robinson testified that he became aware of Mitchell's continuing violations of the house arrest provisions of his bond. (Tr. p. 47, lines 17-20). His office

[3] Notably, this was the same form that Ms. Jenkins signed agreeing to be the surety on Mitchell's bond. (See Bail Proceeding Form II dated 2/13/12).

contacted both Mitchell himself and Ms. Jenkins, the bondswoman, regarding the violations. (Tr. p. 47, line 21 – p. 48, line 5). His office contacted Ms. Jenkins on "several occasions" and, at one point, told her "she needed to arrest the defendant because he would not comply with what he was doing. He was staying out all night, two, three o' clock in the morning and it was very obvious." (Tr. p. 48, lines 9-14). Indeed, the GPS reports indicated that Mitchell was in "downtown" Charleston and was nowhere near his home in North Charleston. (Tr. p. 53-54).

Significantly, Mr. Robinson testified that the first time he told Ms. Jenkins that Mitchell needed to be picked up and put back in jail due to noncompliance, Ms. Jenkins responded that "she wasn't feeling good and couldn't do it." (Tr. p. 55, lines 1-5). On another occasion, after Robinson's office informed Ms. Jenkins that Mitchell was "all over the place" and that "it looks like he's possibly out there doing drug transactions," Ms. Jenkins responded, "well, that's how he makes a living." (Tr. p. 55, lines 6-11). Ms. Jenkins then stated that she would not "pick him up" for the noncompliance. (Tr. p. 55, lines 11-12). Mr. Robinson stated that once "[i]t got to the point where there was just no compliance," he contacted the solicitor's office to report the violations. (Tr. p. 48, lines 5-9).

After also hearing testimony from Mitchell's uncle, the circuit court issued a ruling revoking Mitchell's bond. (See Tr. p. 71-73). The court stated that what stunned her the most "is some of the absolute blatant disregard that I have heard today from folks that are supposed to be familiar with this process about compliance with the law and the court orders." (Tr. p. 71, lines 4-8). The court then addressed Ms. Jenkins and informed her that "it is a big deal if somebody violates their electronic monitoring. It's a big deal.

It's a violation of the court order." (Tr. p. 71, lines 9-11). The judge then pointed out that although South Carolina law provides that usually defendants are entitled to reasonable bail, S.C. Code § 17-15-10 gives judges the authority to impose certain conditions of release. (Tr. p. 71, lines 12-24). Specifically, subsection (C) of that statute specifically addresses placing restrictions on travel, association, or place of abode of a person. (Tr. p. 71, line 25 – p. 72, line 2).

The judge found it was not credible that Mitchell was not aware he was violating his bond by visiting the locations he visited in the late hours of the evening and early hours of the morning. (Tr. p. 72, lines 3-8). She ruled: "I can't help but find that he has been in violation of court orders from the beginning of this process." (Tr. p. 72, lines 13-15). The judge also found that "everybody" was aware of what the terms and conditions of Mitchell's bond were and that the claims to the contrary were "incredible." (Tr. p. 72, lines 22-25). Finally, she stated she was revoking the bond for "repeated, repeated, repeated violation of the court orders." (Tr. p. 73, lines 1-3). The solicitor then advised the court that, "based upon the testimony today," the State would plan to move forward with the estreatment process. (Tr. p. 73, lines 13-16). The judge stated, "I think under State v. Boatwright you are more than authorized to do that." (Tr. p. 73, lines 17-19).

On September 7, 2012, the circuit judge held a hearing on the State's motion to estreat Mitchell's bond. At this hearing, the State argued that the bond should be estreated in full due to the bondswoman's willful noncompliance with her duty of ensuring Mitchell followed the house arrest conditions of his bond.[4] (9/7/12 Tr. p. 4-8; p.

[4] The State also noted that Appellants could not "plead ignorance" regarding their duty to report violations of electronic monitoring because both Palmetto Surety and Frances Jenkins were involved in a case a few years ago where they were apparently reprimanded for their failure to report electronic monitoring violations after a defendant out on bond cut off his ankle bracelet and subsequently committed a second

24). The solicitor noted that most bonds are estreated for failure to appear, but that the Boatwright and Workman cases also authorize a court to estreat a bond for violations of other conditions of bond. (Tr. p. 5, lines 16-25). Appellants' counsel argued that since Appellant had been delivered to the State's custody and the bond was revoked, estreatment was not appropriate because the bondswoman had satisfied her duties. (See Tr. p. 8-23). The judge indicated her belief that Ms. Jenkins had been "flat-out lying" in certain respects at the July hearing, and found there had been "bad faith" and "no good behavior" in this scenario. (Tr. p. 11, lines 2-17; p. 29, lines 1-3). Significantly, the judge also pointed out that acting in violation of a court order is acting in violation of the law and suggested that doing so would violate a "good behavior" condition. (See Tr. p. 23, lines 3-6). The judge then indicated she did not intend to estreat the entire $150,000, and noted that she would need to consider the three "Polk factors" before making a decision. (Tr. p. 23-30). The judge requested affidavits from the State regarding the costs expended in order to ascertain and address Mitchell's noncompliance with the electronic monitoring. (Tr. p. 28-29). The judge then took the matter under advisement pending receipt of further information. (Tr. p. 30).

The State subsequently submitted two affidavits and a memorandum setting forth costs totaling $2,876.58. On October 11, 2012, another hearing was held regarding estreatment of the bond. The State referenced the costs detailed in the affidavits but argued that the court was not limited to those costs because the court was also required to consider the purpose of the bond and the willfulness of the violation. (10/11/12 Tr. p. 3-4). The State argued that the willfulness of the violation was the most significant factor in this case because the bondswoman was made aware of Mitchell's violations on several

criminal sexual conduct crime. (9/7/12 Tr., p. 6-7; see also 10/11/12 Tr. p. 4-5).

occasions yet she deliberately elected not to take appropriate action to address the violations. (Tr. p. 3, line 25 – p. 4, line 5). The State also pointed out that the testimony revealed that the reason the bondswoman chose to allow Mitchell's violations to continue was because he was regular with his payments to her and if Mitchell were placed into custody, those payments would stop. (Tr. p. 4, lines 6-10). Therefore, the bondswoman "intentionally, willfully defeated the purpose of the bond for her own financial considerations." (Tr. p. 4, lines 11-12). The State argued that a bondsman assumes responsibility for "all aspects of the bond" and that it is "not within his discretion to pick and choose those aspects to benefit, and ignore those aspects that do not." (Tr. p. 5, lines 8-12). The solicitor pointed out that "Boatwright establishes that it is within your discretion to estreat his bond." (Tr. p. 5, lines 12-14).

Appellants' counsel argued that a bonding company signs an appearance bond, and that there is no case in the state of South Carolina indicating that a bonding company is "the insurer of the defendant's behavior." (Tr. p. 6, lines 14-18). Counsel noted that Mitchell never failed to appear at any hearing and that he even appeared at the hearing pursuant to which his bond was revoked. (Tr. p. 6, lines 19-23). Counsel also argued that once Mitchell's bond was revoked, there was no bond to estreat.[5] (Tr. p. 6, line 24 – p. 7, line 2). Counsel further stated that "[t]he purpose of the bond is not to enrich the coffers of the state of South Carolina;" instead, "[t]he purpose of the bond is to require the appearance of the defendant." (Tr. p. 7, lines 13-15).

After some discussion regarding what the appropriate remedy should be when a bondsperson willfully fails to act on known violations of bond conditions, and regarding the responsibility of bondspeople and monitoring companies generally, the judge stated

[5] Note, however, that the bondswoman's violations occurred *before* Mitchell's bond was revoked.

there was "no question in my mind that there have been violations of at least the provisions of the bond by the defendant – we have dealt with that, we have revoked it – but by the bondsperson who should have been policing that, for lack of a better word, and we just need to carve out a remedy." (Tr. p. 15, lines 9-15). The judge reiterated her previous finding that she did not find it credible that the bondswoman was not aware of the conditions of Mitchell's bond. (Tr. p. 16, lines 11-14). The judge added that what she would be finding in her order would be "willful violations of the duty to supervise and comply with the contract of the bond order." (Tr. p. 17, lines 6-8). She agreed with the solicitor's statement that the bondswoman engaged in "active concealment." (Tr. p. 21, lines 10-12). The judge pointed out that the State's costs were less than she anticipated, but that "under Polk and Boatwright I'm not limited to the amount of expenditure, there has got to be something to address the purpose of the bond. It's almost like punitive damages. There has got to be some teeth in it to deter future behavior, and the willfulness of the violation here." (Tr. p. 17, line 25 – p. 18, line 12). Finally, the judge stated the estreatment she planned to order would not be more than half of the amount of the bond, but she needed more time to review additional materials and construct the language of her order.

On September 16, 2013, Mitchell pled guilty to involuntary manslaughter and a cocaine offense and was sentenced to fifteen years for the cocaine offense and five years, concurrent, for involuntary manslaughter. Subsequently, on July 9, 2014, the circuit court judge issued an Order of Estreatment of Bond. (See Order). In this order, the judge found that partial estreatment was warranted due to the fact that "[t]he violations of the defendant, as well as Ms. Jenkins' admitted failure to fulfill her obligations as the

bondsperson and take appropriate action to address them, were clearly willful." (Order, p. 6). The order also stated that the court had considered the State's affidavits pertaining to the costs incurred in addressing Mitchell's violations and the other factors set forth in Ex Parte Polk, 354 S.C. 8, 579 S.E.2d 329 (Ct. App. 2003), including the purpose of the bond and the nature and willfulness of the violation. (Order, p. 5-6). The order also pointed out that there was additional prejudice because, as a result of the failure to report the electronic monitoring violations in this case and in other cases subsequently brought to the attention of the court, the court felt compelled to impose a moratorium on electronic monitoring until a workable solution was reached. (Order, p. 6). Ultimately, it was decided that the Charleston County Sheriff's Office would have to take on the responsibility (and cost) of monitoring arrestees on house arrest. (Order, p. 6-7). The order concluded that, considering the willful violations by both Mitchell and the bondswoman – which clearly violated the purpose of the bond order – in addition to the expenses the State incurred in addressing both violations and the further prejudice which eventually resulted in the sheriff's department having to assume responsibility for monitoring, the court found it appropriate to estreat one-half of the bond amount. (Order, p. 7).

A. Under State v. Boatwright, a bondsperson on an appearance recognizance bond has obligations going beyond simply ensuring the appearance of the defendant in court, and estreatment based upon violations of other bond conditions is proper.

Appellants argue that their obligation on Mitchell's appearance recognizance bond was satisfied when Mitchell appeared for court and ultimately has his matter adjudicated while he was present. (Brief of Appellant, p. 5-6). Appellants do not dispute that Mitchell "may have had several potential violations with the electronic monitoring

provision of his bond" and do not dispute that the circuit court had authority to revoke Mitchell's bond and have him placed back in custody. (See Brief of Appellant, p. 6). Appellants also have not challenged the circuit court's finding that the bondsperson in this case "ignored" Mitchell's bond conditions regarding house arrest and satellite monitoring and "intentionally declined to report Mitchell's numerous excursions (in the middle of the night) to areas known for drug activity," or the circuit court's finding that "[t]he violations of the defendant, as well as Ms. Jenkins' admitted failure to fulfill her obligations as the bondsperson and take appropriate action to address them, were clearly willful." (See Order of Estreatment of Bond, p. 4 & p. 6). Instead, Appellants argue only that the bondsperson's duty ended when Mitchell was delivered into custody and that estreatment was therefore not appropriate.[6] Accordingly, the very narrow issue before this Court is whether or not the circuit court abused its discretion by estreating bond based upon a violation other than the defendant's non-appearance in court.

Appellants' argument is against South Carolina Supreme Court precedent and must be rejected. The circuit court judge's partial estreatment of the bond was in direct compliance with twenty-two-year-old South Carolina case law. Therefore, the circuit court judge could not possibly have abused her discretion by ordering this estreatment.

The *Boatwright* Case

In State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139 (1992), the defendant was arrested in Aiken County for forgery and a parole violation in December 1990. Boatwright, 310 S.C. at 282, 423 S.E.2d at 140. He was released on an appearance bond and Fallaw signed as surety. Id. In January, the state of Georgia issued a parole violation arrest warrant for the defendant. Id. Subsequently, he was arrested for criminal

[6] Appellants' argument was similarly limited below. (See 9/7/12 Tr. p. 8-30; 10/11/12 Tr. p. 6-23).

domestic violence in Aiken County. Id. He then pled guilty, waived extradition, and was released to Georgia authorities in March 1991. Id. The defendant's forgery case was called for trial later in the month of March. Id. The defendant failed to appear, and a rule to show cause was issued. Id. An affidavit of non-service stated that the defendant was incarcerated in Georgia on April 5. Id. Fallaw, the surety, was served with the rule to show cause and appeared at the estreatment hearing. Id. At the hearing, the circuit court found that Fallaw failed to show cause why he should not be held liable on the bond and estreated one-half of the bond amount. Id. On appeal, Fallaw argued that the circuit court erred in finding that the defendant violated the terms of his bond and erred in ordering that one-half of the bond be estreated to the State. Id.

The South Carolina Supreme Court held that when a defendant is extradicted to another state, a surety is no longer able to perform his obligation under the bond contract; therefore, a surety should be released from liability when estreatment is ordered for non-appearance after the defendant has been extradicted. Id. at 283, 423 S.E.2d at 140. Nevertheless, the Supreme Court held that since the circuit judge found, and Fallaw conceded, that the defendant breached the condition of good behavior – which was clearly set forth in the standard bond form that Fallaw signed – estreatment was proper because the violation of the "good behavior" condition served as a separate basis for it. Id. The Supreme Court then specifically stated that "[e]streatment for a violation of the good behavior condition is proper." Id. (citing State v. Workman, 274 S.C. 341, 263 S.E.2d 865 (1980)). The Supreme Court also pointed out that "[a]s a professional bondsman, Fallaw is certainly aware that **an appearance bond carries conditions**

beyond the defendant's presence in court." Id. at 283, 423 S.E.2d at 141 (emphasis added).

The Boatwright opinion is controlling in Appellants' case. Boatwright makes it clear that an "appearance bond" carries with it conditions beyond simply securing the the defendant's presence in court. Boatwright also makes it clear that estreatment of a bond is in fact proper for reasons other than a defendant's non-appearance in court. Contrary to Appellants' contention, the relevant language in Boatwright is not "dicta" where the Supreme Court upheld the estreatment **solely** on the basis of a violation of a condition **other than** non-appearance. (See Brief of Appellant, p. 6-7). Where the circuit court judge relied upon the settled precedent of Boatwright, she did not abuse her discretion in ordering partial estreatment based upon the violation of conditions of the bond other than non-appearance in court. Cf. United States v. Vaccaro, 51 F.3d 189 (9th Cir. 1995) (rejecting bail bond company's contention that a bond cannot be forfeited except for a defendant's failure to appear and holding that the district court did not err by ordering a bond forfeiture for the defendant's violation of the "break no laws" condition of a release order incorporated by reference into the bond form); United States v. Santiago, 826 F.2d 499 (7th Cir. 1987) (holding that the district court properly refused to set aside the forfeiture of a bond – despite the fact that the defendant never missed any court dates – where the defendant, by engaging in drug trafficking while out on bond, willfully breached the conditions set forth in a release order incorporated into his bond form which required that the defendant not commit a crime during the period of his release); United States v. Stanley, 601 F.2d 380 (9th Cir. 1979) (upholding the district court's refusal to remit all or part of the forfeited bail even though defendant attended all required court

appearances where the defendant "intentionally breached the travel restrictions of his bond" and was suspected of engaging in smuggling activities during such breach); United States v. Dunn, 781 F.2d 447 (5th Cir. 1986) (affirming the decision of the district judge ordering forfeiture of the defendant's entire bond amount where defendant violated the travel restrictions which were conditions of his bond); United States v. Terrell, 983 F.2d 653 (5th Cir. 1993) (holding that the defendant's "appearance bond" secured not only his appearance in court but also included conditions that the defendant report for drug tests, not possess a controlled substance, and not leave a five-county area). Appellants are not entitled to reversal on this ground.

B. The circuit court's estreatment of one-half of the bond was not error where the circuit court judge carefully considered the required factors and the amount was not arbitrary or capricious.

"[T]he State's right to estreatment or forfeiture of a bail bond issued in a criminal case arises from the contract, *i.e.*, the bail bond form signed by the parties." State v. McClinton, 369 S.C. 167, 171, 631 S.E.2d 895, 897 (2006). "The issue of whether a bond forfeiture should be remitted, and if so, to what extent, is vested in the discretion of the trial judge." Ex parte Polk, 354 S.C. 8, 11, 579 S.E.2d 329, 330 (Ct. App. 2003). "[T]he exercise of that discretion by the trial judge will not be set aside unless it is made to appear that it was abused." State v. Holloway, 262 S.C. 552, 555, 206 S.E.2d 822, 823 (1974). "Among the factors to be considered in determining whether and to what extent relief will be granted are (1) the purpose of the bond; (2) the nature and wilfulness of the default; [and] (3) any prejudice or additional expense resulting to the State." State v. Workman, 274 S.C. 341, 343, 263 S.E.2d 865, 866 (1980). "If bond is forfeited because of ignorance or unavoidable impediment rather than willful default, the trial court may,

on affidavit showing cause or excuse, remit the forfeiture in full or in part." Boatwright, 310 S.C. 281, 283, 423 S.E.2d 139, 140 (citing S.C.Code Ann. § 17-15-180 (1985)).

Appellants argue that the circuit court's estreatment amount of $75,000 – one-half of the total bond amount – was "incongruous with a proper Ex Parte Polk analysis and was arbitrary and capricious." (Brief of Appellant, p. 8). Appellants do not dispute the "purpose of the bond" factor and agree that "[t]he purpose of Mr. Mitchell's bond being set at $150,000 directly related to the seriousness of the matter, and the danger to the community and potential flight risk associated with potential sentences." (Brief of Appellant, p. 9). However, Appellants contend that the judge erred in her assessment of the second factor, the nature and willfulness of the default, arguing there could be no default where Mitchell was delivered into custody and thereby "the bondsman fulfilled [her] obligation as surety on Mr. Mitchell's bond." (Brief of Appellant, p. 9). Appellants also assert that the court erred in its consideration of the costs to the State because the only costs considered were those "incurred by the State in its attempt to wrongfully estreat the bond." (Brief of Appellant, p. 9). In that vein, Appellants argue there was no actual prejudice or additional expense to the State because the costs incurred "were not related to obtaining custody of the Defendant nor did they deal with any prejudice to the State in the prosecution of Mr. Mitchell." (Brief of Appellant, p. 10).

Contrary to Appellants' contentions, the circuit court did not abuse its discretion in deciding to estreat one-half of the bond and this amount was not arbitrary or capricious. As discussed previously, under Boatwright, the court did not err in ordering estreatment for a violation other than non-appearance. Notably, the amount of

estreatment in Boatwright was also one-half of the bond amount, which significantly weakens Appellants' argument that such an amount is arbitrary and capricious. See Boatwright, 310 S.C. at 282, 423 S.E.2d at 140. Further, the court's findings regarding the willfulness of Mitchell's violations and the willfulness of the bondswoman's default (that is, failing to take appropriate action upon learning of Mitchell's numerous violations of his house arrest conditions) have not been challenged on appeal; in any event, they are clearly supported by the record. (See *infra*, p. 4-11). The default by the bondswoman wherein she knowingly allowed Mitchell to repeatedly engage in what appeared to be drug transactions at all hours of the night because "that's how he makes a living" was not only willful but also repugnant to the dignity of our court system. (See 7/26/12 Tr. p. 55, lines 10-11). The court also properly considered the costs incurred by the State in attempting to address both Mitchell's and the bondswoman's violations. (See Order, p. 5-7). Accordingly, since the circuit court carefully considered the Polk factors and estreated an appropriate amount of bond particurly considering the egregiousness of the violations, the court did not abuse its discretion. The estreatment of one-half of the bond should be upheld.

CONCLUSION

For the reasons discussed above, the State requests that this Court affirm the decision of the circuit court.

Respectfully submitted,

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