

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

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APR 13 2016

Doyet A. "Jack" Early, III, Circuit Court Judge

**SC Court of Appeals**

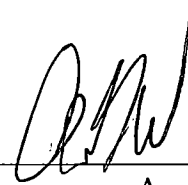
Case Number: 2016-000140

The State of South Carolina ..... Respondent,

v.

Julie Ann Getson, Defendant, Christy Nimau, Georgia-Carolina Enterprises, Inc., Surety,  
and Accredited Insurance Co., Insurance Company,  
Of which Georgia-Carolina Enterprises, Inc. is the ..... Appellant

**APPELLANT'S REPLY BRIEF**



Aaron G. Walsh  
WalshLaw, PA  
P.O. Box 639  
Aiken, SC 29802  
803-642-9700; fax 803-644-6933  
SC Bar# 71222  
Attorney for Appellant

April 7, 2016

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## ARGUMENT

THE STATE HAS MISINTERPRETED, AND SO MISARGUED, THE STATUTORY REQUIREMENTS AND CASELAW REGARDING REMISSION OF A FORFEITED BOND.

### AUTHORITY AND DISCUSSION OF AUTHORITY

S.C. Code Ann. § 38-53-70

Ex Parte Polk; 354 S.C. 8; 579 S.E.2d 329 (Ct.App.2003).

State v. Boatwright, 310 S.C. 281; 423 S.E.2d 139 (1992).

In its brief, the State makes two primary errors. The first is to completely ignore the benefit of bond to the state, and to adopt almost an adversarial stance between law enforcement and sureties. While that may match with current reality at the trial level, it does not match the law. "Bail is not a revenue measure[.]... South Carolina has long encouraged bondsmen to enter into bail contracts, in order to facilitate the release of defendants whose guilt has yet to be determined **and to relieve the state of the cost of providing for the defendants while in jail.**" Boatwright at 285 (emphasis added).

Pre-trial detention is expensive, and had surety not bonded this defendant, the state would have paid to keep her in jail. They may take the position that the bond issue is somehow only between defendants and sureties, but that ignores Justice Toal's understanding of the benefit of bond to the State.

The State's second error, which is made from start to finish, is confusing "shall" with "may." In making the determination as to remission, § 38-53-70 of the South Carolina Code (2010) applies, reading in part:

"the court may direct that the judgment be remitted in whole or in part...if it appears that justice requires the remission of part or all of the judgment. In making a determination as to remission of the judgment, **the court shall consider the costs to the State** or a county or municipality resulting from the necessity to continue or terminate the defendant's trial **and the efforts of law enforcement officers or agencies to locate the defendant.**" (emphasis added).

As to costs to the State, as the state's brief accurately notes on page 6, "the court's order makes clear that there have been no costs to the state as of yet...", but then relies on the court's finding that there is a possibility of future costs. Absolutely nothing in the statute, or in Polk or Boatwright, allows for this type of speculation as to costs, especially as here, where there is nothing whatsoever in the record as to any possible future costs. In other words, the State did not even argue possible future costs, but the court (apparently on its own volition) added possible future costs as a factor, which was error.

This is not the only speculation about costs by the State. On page 7 of their brief, the State says "the bond was only for \$5,000.00 and extradition from California would easily exceed that amount." There was no evidence presented whatsoever as

to the costs of extradition, and the State may not simply decide in their brief what the costs would have been. Appellant could as easily say it would have only cost \$500.00, but that would have no more support in the record than does the State's assertion of costs. Reliance on speculation is error.

As to the (completely admitted) lack of efforts of law enforcement to locate this defendant, in its brief, the State on page 8 says that "Appellant interprets 38-53-70 as **permitting** the court to consider a lack of law enforcement assistance in securing the defendant as a factor in whether to remit bond." That is not accurate; Appellant interprets the statute as **requiring** the court to do so by the use of the word "shall," which is mandatory, not permissive, language. The court is required to consider the lack of efforts by law enforcement, and did not do so.

The State then asserts that Appellant is "read[ing] in a requirement that law enforcement assist the bondsman in securing the defendant...." and says this so called requirement is inconsistent with the purpose of bond. This is also not accurate, and makes both of the two errors made consistently by the State. Firstly, it again ignores the purpose of bond vis a vis the benefit to the State, by treating it as something wholly between the surety and defendant. Secondly, it again ignores the word "shall."

The state argues on page 9 that "the logical interpretation supports the conclusion that efforts and expenditures made by law enforcement in trying to secure the defendant are simply one of the costs the court **may consider**." The state's

so-called 'logical conclusion' is at odds with the clear language of the statute, and so is not a logical conclusion at all. The State may do as it chooses, but if it chooses to make no effort, and to expend no costs, as in this case, the court **must** consider that failure, which did not happen here.



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AARON G. WALSH

P.O. Box 639

Aiken, SC 29802

(803) 642-9700

SC Bar# 71222

Attorney for Appellant

OTHER COUNSEL OF RECORD:

Alan Wilson  
Attorney General

V. Henry Gunter  
Assistant Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211  
803-734-3727

J. Strom Thurmond, Jr.  
Second Circuit Solicitor  
PO Drawer 3368, Aiken SC 29802  
803-642-1557

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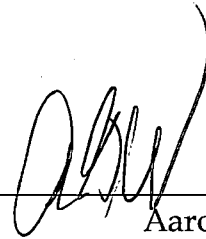
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CERTIFICATE OF COUNSEL

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The undersigned hereby certifies this Reply Brief complies with Rule 208(3),  
SCACR.

April 7, 2016



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Aaron G. Walsh  
WalshLaw, PA  
P.O. Box 639  
Aiken, SC 29802  
(803) 642-9700  
SC Bar# 71222  
Attorney for Appellant

OTHER COUNSEL OF RECORD:

V. Henry Gunter  
Assistant Attorney General for the State of South Carolina  
P.O. Box 11549  
Columbia, S.C. 29211

J. Strom Thurmond, Jr.  
Second Circuit Solicitor  
PO Drawer 3368, Aiken SC 29802

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**PROOF OF SERVICE**

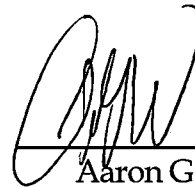
I certify that I have served Appellant's Reply Brief by depositing a copy of it, and of this  
Proof of Service, in the United States Mail, postage prepaid, on April 7, 2016, addressed to:

The Honorable Jenny Abbot Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

The Honorable Alan Wilson  
Attorney General for the State of South Carolina  
&  
V. Henry Gunter, Assistant Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

Solicitor J. Strom Thurmond, Jr.  
Second Circuit Solicitor's Office  
PO Drawer 3368, Aiken SC 29802

I further certify that all parties required by Rule to be served have been served, this  
7<sup>th</sup> day of April, 2016.



---

Aaron G. Walsh  
WalshLaw, PA  
118 Laurens Street, SW; Suite C (29801)  
Post Office Box 639  
Aiken, South Carolina 29802  
803-642-9700; fax 803-644-6933  
SC Bar ID: 71222  
Attorney for Appellant

WalshLaw, PA  
118 Laurens Street, SW; Suite C (29801)  
Post Office Box 639  
Aiken, SC 29802  
803-642-9700/fax 803-644-6933

Aaron G. Walsh, Esq.  
Licensed in SC and TN

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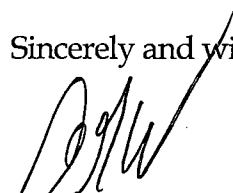
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Madam Clerk,

I hope today finds you well. Enclosed for filing is Appellant's Reply Brief, along with the appropriate certification and proof of service.

Sincerely and with best regards,

  
Aaron G. Walsh

Cc: V. Henry Gunter & Alan Wilson, J. Strom Thurmond, Jr.

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WALSHLAW, PA  
PO BOX 639  
AIKEN, SC 29802



The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211-1629

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