

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case Tracking No. 2015-000051

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APR 04 2016

SC Court of Appeals

Respondent,

THE STATE,

v.

TRACY WHEELER STUBBLEFIELD AND
AAAA BAIL BONDING AND FORSTER
IDEMNITY COMPANY, SURETIES,

Appellants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly estreated the bond because the bond documents were executed by someone with apparent authority to issue the bond on behalf of Appellants, the State reasonably relied on those bond documents by releasing Stubblefield from custody, and Stubblefield clearly violated the conditions set forth in the bond documents by failing to appear when required to do so.

STATEMENT OF THE CASE

On June 22, 2013, a Charleston County magistrate set a \$10,000 surety bond for Tracy Stubblefield on a distribution of methamphetamine charge. Larry G. Ballard executed the surety bond on June 24, 2016, on behalf of Appellant AAAA Bail Bonds, as agent for Appellant Crum & Forster Ind. Co.

Stubblefield failed to appear in court when the case was called, and the circuit court issued a bench warrant for his arrest. The State filed a Notice of Forfeited Recognizance on October 1, 2014, and the parties appeared at a hearing on November 14, 2014, before the Honorable R. Markley Dennis, Jr., Circuit Court Judge.

The circuit court estreated the full bond amount by Order filed November 24, 2014. The appeal followed.

STATEMENT OF FACTS

The Charleston City Police Department arrested Tracy Stubblefield for distribution of methamphetamine.¹ (Arrest Warrant No. 2013A1010203447; Record on Appeal [R.], pp. ____). On June 22, 2013, a Charleston County magistrate (Judge Baldwin) set a surety bond of \$10,000 for Stubblefield, who signed the bond documents acknowledging if he was released on bond, he was required to appear in court when his case was called by the State. (Bail Proceeding Form II, completed, signed and dated June 22, 2013, with signed Acknowledgement by Defendant dated June 22, 2013, signed Checklist for Magistrates and Municipal Judges; R., pp. ____). On June 24, 2013, Larry G. Ballard executed the surety bond for Stubblefield on behalf of AAAA Bail Bonds, as agent for Appellant Crum & Forster Ind. Co. (hereinafter collectively referenced as "Appellants"). (Appearance Recognizance with Surety dated June 24, 2013; R., pp. ____).

Stubblefield did not appear in court when the case was called, and on May 1, 2014, the circuit court issued a bench warrant for his arrest for failure to appear as required. The State filed a Notice of Forfeited Recognizance on October 1, 2014, which required Appellants to appear at a hearing on November 14, 2014 before the Honorable R. Markley Dennis, Jr., Circuit Court Judge, to show cause why the bond should not be estreated.² (Notice of Forfeited Recognizance, filed October 1, 2014, Letter from South Carolina Department of Insurance to Crum & Forster Indemnity Company dated October 10, 2014; R., pp. ____).

¹The Arrest Warrant states the charge is distribution of methamphetamine, but the bond documents reflect a charge of possession of methamphetamine.

²The State informed the court Larry Ballard was no longer issuing bonds.

The State and Appellants, represented by counsel, appeared at the November 14 hearing. The State presented the bond documents and informed the court Larry Ballard was no longer in the bail bond business. Appellant's counsel stated it appeared Larry Ballard issued the bond in this case, as well as others, without authority from Appellants, who did not learn of his actions until receipt of the State's forfeiture notice regarding Stubblefield's bond. (Hearing Transcript [HT], pp. 1-3; R., pp. _____).

The circuit court indicated the possibility Larry Ballard acted without actual authority was not before the court, but if there was a bond issued in this case, the clerk of court accepted the bond, and the State acted upon it by releasing Stubblefield, it was a binding obligation. The court noted Appellants might have a legitimate claim against Larry Ballard to recoup the bond amount, but the bond obligation to the State remained the same. (HT, pp. 3-4; R., pp. _____).

The State indicated Appellants stated they were concerned about possible kidnapping charges if they picked up Stubblefield under a "counterfeit bond" without a court order allowing them to do so. The court indicated the bond documents signed by the magistrate constituted a legitimate bond order, and Appellants' counsel stated "going with that could help us with that in getting this defendant under the circumstances." (HT, pp. 4-5; R., pp. _____).

Appellants' counsel then informed the court Appellants were working with the Attorney General's Office, the Department of Insurance, and the clerks of court in three counties, to determine the extent of bonds executed by Larry Ballard on behalf of Appellants. He further stated the bond at issue was executed by a surety runner, which could not bind a bond. The court again noted Appellants may have legitimate claims against Larry Ballard, but the bond at issue in this case appeared to be a legitimate bond

on its face, and the clerk of court relied on it when releasing Stubblefield. (HT, pp. 5-7; R., pp. ____).

The court then ordered estreatment of the full bond amount, giving Appellant's thirty days to produce Stubblefield to avoid paying the bond. (HT, p. 7; R., p. ____). The subsequent written Bond Estreatment Order gave Appellants until December 15, 2014, to produce Stubblefield, or submit the full bond amount in a single payment. (Bond Estreatment Order filed November 24, 2014; R., pp. ____). This appeal followed.

ARGUMENT

The circuit court properly estreated the bond because the bond documents were executed by someone with apparent authority to issue the bond on behalf of Appellants, the State reasonably relied on those bond documents by releasing Stubblefield from custody, and Stubblefield clearly violated the conditions set forth in the bond documents by failing to appear when required to do so.

Appellants contend the circuit court erred in estreating the bond executed by their agent because the last page of the bond documents was not signed by the magistrate. As support for this argument, Appellants ignore indisputable facts, engage in rank speculation and unsupported allegations, and truly elevate form over substance.

The State's right to estreatment of a bail bond in a criminal case arises from the contract created by the parties' signatures on the bail bond form. *E.g.*, State v. Policao, 402 S.D. 547, 741 S.E.,2d 774, 779 (Ct. App. 2013). "Relief from bond forfeiture is in the discretion of the trial court." State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139, 141 (1992). The appellate court will not reverse the trial court's estreatment of a bond forfeiture absent an abuse of discretion, which occurs when the ruling is based on an error of law. Policao, 741 S.E.2d at 776.

The right to a bail bond is governed by Title 17, Chapter 15 of the South Carolina Code of Laws. The requirements for surety bondsmen who act for insurance companies as sureties on bail bonds are set forth in Title 38, Chapter 53 of the South Carolina Code of Laws. When a surety bail bond is issued, the surety's liability becomes conditionally fixed when the defendant defaults on the conditions of the bond by failing to appear in court. Policao, 741 S.E.2d at 777 (*citing* Pride v. Anders, 266 S.C. 338, 323 S.E.2d 184, 185 [1776]). After a bench warrant is issued, it is available for pick-up by the surety or its representative within seven days of issuance, and the bond is forfeited if the surety

fails to deliver the defendant within ninety days of the date the bench warrant was issued.

Id. (citing S.C. Code §38-53-70 (2012))

Appellants rely on S.C. Code §17-15-160 (2015) as support for their contention the bail bond for Stubblefield was invalid because none of the entities named therein signed the recognizance as a witness, which he asserts imposes an affirmative responsibility on the court “to ensure that the surety is present and has signed the appropriate documentation that will cause the court to release a defendant.” In the face of this contention, however, Appellants’ “Statement of the Case” concedes “Stubblefield was bonded out of jail **pursuant to a power of attorney and bail bond issued from Crum and Forster Indemnity Company through its executing agent Larry Ballard.**” (Brief of Appellants, p. 1) (emphasis added). In short, Appellants **concede** Larry Ballard acted as their agent pursuant to a power of attorney in issuing the surety bail bond, and their attempt to invalidate the bail bond (on which the State relied in releasing Stubblefield) due to the absence of a signature truly elevates form over substance.

Appellants’ argument also ignores their own statutory affirmative duty to provide information to the clerks of court which are designed to avoid the very circumstance at issue in this case. Pursuant to S.C. Code §38-53-210 (2015), an insurer appointing surety bondsmen are required annually to provide “a list of all surety bondsmen appointed by the insurer to write bail bonds on its behalf” to the clerk of court of each county where the bondsmen are doing business. If an insurer terminates the appointment of a surety bondsman, the insurer “shall file written notice of the termination with [the Insurance Department], together with a statement that it has given or mailed notice to the surety bondsman and to the clerks of the circuit courts of the counties in the State where the

insurer has been obligated on bail bonds through the agent within the past three years.”

Id.

Implicit in Appellants’ concession Larry Ballard issued the Stubblefield bail bond as their agent pursuant to a power of attorney is an admission they provided his name to the Charleston County Clerk of Court as a surety bondsman acting on their behalf as required by §38-53-210. They do not contend, and there is no evidence, they ever advised the Clerk of Court his authority was terminated prior to issuance of the Stubblefield bail bond. Therefore, Larry Ballard had apparent authority to act on Appellants’ behalf when issuing surety bail bonds in Charleston County, the State relied on that authority when releasing Stubblefield pursuant to the bail bond executed by Larry Ballard, and Appellants are bound by his actions.³ See Froneberger v. Smith, 406 S.C. 37, 748 S.E.2d 625, 630 (Ct. App. 2013) (apparent authority to do an act is created as to a third person by written or spoken words, or conduct of the principal, which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him).

Appellants further assert a signature and attestation by one of the parties designated in §17-15-160 assures the court “it is dealing with an appropriately licensed surety who has made a voluntary decision to commit itself to the obligations of the bond,” and “there will now be a third party at hand with a sufficient motivation to ensure that the defendant shows up for court.” (Brief of Appellant, p. 3). An even greater

³At the hearing, Appellants indicated they were working with clerks of court in three counties to determine the extent of Larry Ballard’s activities as their agent. (HT, p. 5; R., p. ____). Thus, Appellants clearly knew the counties in which they authorized him to act on their behalf.

source of those assurances to the court, however, is the principal's (Appellants') compliance with the statutory notification requirements in §38-53-210.

Appellants' contentions regarding execution of the bond documents ignores a significant fact apparent from the documents themselves. Stubblefield appeared before the magistrate via video conference on June 22, 2013, the magistrate (Judge Ballard) set the \$10,000 surety bond and conditions and Stubblefield acknowledged the bond conditions on that date. The surety bond was not issued, and Stubblefield was not released, until June 24, 2013, when Larry Ballard executed the Appearance Recognizance with Surety section of the form, which explains why the magistrate did not sign that portion of the form on June 22.⁴

Appellant makes conclusory allegations regarding purported fraud by Larry Ballard, none of which obviates its obligation under the Stubblefield surety bail bond. For instance, the allegation Larry Ballard failed to notify Appellants of the bond or remit the proper fees to them relates **only** to Larry Ballard's obligations to Appellants, not Appellants' obligations under the surety bail bond. Also, Appellants' speculation regarding some unknown person posing as Larry Ballard acted to get Stubblefield out of jail flies in the face of its concession Larry Ballard issued the surety bail bond as agent for Appellants.

⁴Appellants contend Larry Ballard's signature appears to be stamped on the document. It is not readily apparent from the copies provided to the State that the signature is stamped, but even if true, it does not render the surety bail bond invalid. A professional bondsman may designate people as runners, and assuming the designated people meet the statutory requirements and their names are provided to the county clerks of court where the bondsman conducts business, the runners may countersign bonds on the bondsman's behalf. S.C. Code §§38-53-200 and -230 (2015). It is entirely possible the Appearance of Recognizance with Surety section of the bail bond form was properly countersigned (or stamped) by a properly designated runner, especially in light of Stubblefield's subsequent release from custody.

As the circuit court found, even if true, Appellants' allegations support an action by Appellants against Larry Ballard. Appellants gave him apparent authority to act on their behalf by issuing surety bail bonds, and the State relied on that authority by releasing Stubblefield. It is undisputed Stubblefield willfully violated the conditions of his bond by failing to appear in court, and the circuit court properly issued a bench warrant for his arrest. *See Policao*, 741 S.E.2d at 780 (the primary purpose of requiring a bond prior to release from custody is to assure the defendant's appearance at trial). Appellants failed to produce Stubblefield in court after the bench warrant was issued, and the State acted well within the terms of the surety bail bond in seeking estreatment of the full bond amount.⁵

If bail is to mean anything, estreatment is the only inducement to ensure compliance with the conditions. When a person with apparent authority, such as Larry Ballard, issues a surety bail bond on which the State relies in order to release the defendant from custody, the principal (Appellants) is responsible on the bond. The circuit court acted well within its discretion in ordering estreatment of the full bond amount in this case, and its ruling should be affirmed.

⁵Appellants assert Stubblefield has left the state and his whereabouts are unknown. (Brief of Appellant, p. 5). Assuming the truth of this assertion, the State would likely incur significant expense in locating him and returning him for trial, even if it is possible. *See Policao*, 741 S.E.2d at 780 (it is difficult to determine the cost to the State in finding someone whose whereabouts are unknown).

CONCLUSION

Based on the foregoing, Respondent submits the circuit court's ruling should be affirmed.


Respectfully submitted,

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April 4, 2016

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TRACY WHEELER STUBBLEFIELD AND
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Appellants.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellants by depositing a copy in the United States mail, postage prepaid, addressed to:

Lewis F. Gossett, Esquire
329 Amstar Road
Columbia, SC 29212

I further certify all parties required by Rule to be served have been served.

This 4th day of April, 2016.



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April 4, 2016

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SC Court of Appeals

Lewis F. Gossett, Esquire
329 Amstar Road
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Re: The State v. Tracy Wheeler Stubblefield, et. at.
Appellate Case No. 2015-000051

Dear Mr. Gossett:

Enclosed is a copy of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: The Honorable Jenny A. Kitchings (original and 2 copies enclosed)
Victim Services (with enclosures)