

**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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

The Trial Judge erred in ordering the estreatment of an appearance bond in this matter.

- A. The bondsman has satisfied his obligations under an appearance recognizance surety bond when a Defendant is delivered to the Court or to the custody of the State.**
- B. The amount of estreatment in this matter was arbitrary and capricious and did not comply with the factors established by Ex Parte Polk.**

STATEMENT OF THE CASE

On or about September 19, 2011 Deangelo Mitchell was arrested on warrant M726862 (Possession with Intent to Distribute Cocaine), and subsequently released on a \$25,000.00 Bond. On or about December 20, 2011 Mr. Mitchell was arrested on warrants M99502 (Trafficking in Cocaine), M995386 (Manslaughter), and M995387 (Distribution of Cocaine) and a \$400,000.00 bond was set (R. p. 001-002) . During a preliminary hearing on January 25, 2012 Mr. Mitchell's bond was consolidated on all of his pending charges and with the consent of the State a \$150,000.00 surety bond was set with the specific condition of house arrest and electronic monitoring that was to be provided by a third party company (R. p. 005). On February 13, 2012, a \$150,000.00 appearance recognizance surety bond was executed by the Appellant with the Charleston County Clerk of Court (R. p. 004).

On July 26, 2012, Deangelo Mitchell was called to Court (R. pp. 035-108) before the Hon. Stephanie P. McDonald upon request by the State for a hearing to determine whether a revocation of his bond was appropriate as a result of alleged violations to the electronic monitoring element of the January 25, 2012 bond Order (R. p. 005). Mr. Mitchell did appear on this date and after hearing testimony and arguments, the Court issued an Order revoking his bond and remanding Mr. Mitchell into custody (R. p. 022).

On August 8, 2012 a Notice of Forfeited Recognizance (R. p. 023) was filed by the State seeking an estreatment of the bond posted by the Appellant. Two hearings were held regarding the State's request for estreatment, one on September 7, 2012 (R. pp. 109-139) and an additional hearing on October 11, 2012 (R. pp. 140-163).

Mr. Mitchell remained in the custody of the County Detention Center until he entered a

guilty plea on September 16, 2013. Upon entry of his plea, Mr. Mitchell was remanded to the South Carolina Department of Corrections where he remains currently serving an active sentence.

On July 8, 2014 an Order of Estreatment of Bond was filed by the Hon. Stephanie P. McDonald, said order was received by the Appellant on July 9, 2014 (R. pp. 024-030). A Notice of Intent to Appeal was filed by the Appellant on July 15, 2014 (R. pp. 031-032). Requests for the transcripts of the three (3) hearings in this matter were made by the Appellant and the final transcript was received on October 2 , 2014. A request for extension to file Initial Brief and Designation of Matter was filed by the Appellant on October 13, 2014 and the Court granted an extension by Order until December 3, 2014 (R. pp. 033-034).

ARGUMENT

I. The Trial Judge erred in ordering the estreatment of an appearance bond in this matter.

The overriding purpose of requiring the posting of a bond before releasing the defendant from custody is to insure the defendant's appearance in court. See State v. Workman, 274 S.C. 341, 263 S.E. (2d) 865 (1980); Town of Mayesville v. McCutcheon, 205 S.C. 241, 31 S.E. (2d) 390 (1944); Saunders v. Hughes, 2 Bailey 504 (1831)

SC Code Section 17-15-20 establishes the premise that bonds allowing the release of a Defendant facing criminal charges are specifically for appearance.

(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.

(B) Unless a bench warrant is issued, an appearance recognizance or an appearance bond is discharged upon adjudication, a finding of guilt, a deferred disposition, or as otherwise provided by law. An appearance bond is valid for a period of three years from the date the bond is executed for a charge triable in circuit court and eighteen months from the date the bond is executed for a charge triable in magistrates or municipal court. In order for the surety to be relieved of liability on the appearance bond when the time period has run, the surety must provide sixty days written notice to the solicitor, when appropriate, and the respective clerk of court, chief magistrate, or municipal court judge with jurisdiction over the offense of the surety's intent to assert that the person is no longer subject to a valid appearance bond. If the appropriate court determines the person has substantially complied with his court obligations and the solicitor does not object within the required sixty days by demanding a hearing, the court shall order the appearance bond converted to a personal recognizance bond and the surety relieved of liability.

A bondsman's duty is to act as a surety for the individual who has been released on bond to insure that the Defendant appears before the Court as Ordered. It is not a specific duty of a

bondsman to act as a guarantor of the specific behavior of an individual on bond, but they are to ensure that the Defendant does appear to have an adjudication on the matter to which they were bonded. It is not the Appellant's position that an individual who is out on bond does not have to comply with specific requirements relating their release, nor does the Appellant take the position that a bond may not be revoked for failure to adhere to conditions of release, it simply maintains that the obligation as a surety for an appearance recognizance is satisfied when an individual appears for Court and ultimately has their matter adjudicated while they are present.

A bondsman always has the authority to physically remand the defendant to the custody of the jurisdiction holding the bond and relieve himself from the obligation under the bond. State v. Brakefield, 302 S.C. 317, 396 S.E. (2d) 103 (1990) and accordingly after relinquishing custody to the State they are to be exonerated from all liability on an appearance bond. *Id.* Similarly, Rule 46 of the Federal Rules of Criminal Procedure governs bail and bail forfeiture in federal criminal cases. Specifically relevant to this matter is Rule 46(f) and 46(g):

(f) Bail Forfeiture.

(1) Declaration. The court must declare the bail forfeited if a condition of the bond is breached.

(2) Setting Aside. The court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if:

(A) the surety later surrenders into custody the person released on the surety's appearance bond; or

(B) it appears that justice does not require bail forfeiture.

(g) Exoneration. The court must exonerate the surety and release any bail when a bond condition has been satisfied or when the court has set aside or remitted the forfeiture. **The court must exonerate a surety who deposits cash in the amount of the bond or timely surrenders the defendant into custody.**

In this matter, the Trial Court erred when it looked only to actions under taken by the individual while he was out on bond and failed to consider the ultimate purpose of the surety, or bondsman, on an appearance bond is to ensure the Defendant's appearance for Court.

A. When the Defendant is delivered to the Court or to the Custody of the State the bondsman has satisfied his obligations and any estreatment is improper.

The actual bond form used by the Court in this matter, form SCCA/511 clearly states on its face that the bondsman is to act in its capacity as a surety for **appearance recognizance** (R. pp. 001-004). This form is the approved form issued by the South Carolina Court Administration to be used on bonds in criminal matters. Beyond any other claims made by the State, the purpose of the bond which released Deangelo Mitchell was that of an appearance bond. There were a number of conditions imposed on Mr. Mitchell as part of the Order (R. p. 005), that was said to accompany the Bond form, specifically relevant to this matter, the condition of electronic monitoring.

The Appellant does not contest that Mr. Mitchell may have had several potential violations with the electronic monitoring provision of his bond, nor does the Appellant contest that the Court lacked authority to revoke Mr. Mitchell's release and have him placed back in custody pending trial or plea. The Appellant maintains that when they secured Mr. Mitchell's appearance in Court as noticed on July 26, 2012, where Judge McDonald ordered his bond revoked (R. p. 022), they fulfilled their obligation as surety. Once the Court remanded Mr. Mitchell to custody by revoking and terminating his bond, at that hearing, which the surety secured his presence for, all obligations of the Appellant were complete in accordance with SC Code Section 17-15-20.

The disconnect in the positions of the State and the Appellant in this matter arise over the Court's interpretation of State v. Boatwright 310 S.C. 281, 423 S.E.2d 139 (1992). In its Order, the Trial Court relies on the dicta of Boatwright to state "that estreatment for a violation of the

good behavior condition is proper.” However, it is important that this Court look to what the actual issue of behavior was in Boatwright. In Boatwright the behavior condition violated was that the Defendant **failed to appear as noticed**. The argument in that case centered around if the actions of a separate agency which made it impossible for the Defendant’s appearance constituted the fault of the bondsman. Since the Defendant did not appear in accordance with his appearance bond the estreatment was ordered. This is clearly distinctive from the matter at bar. In a vacuum considering only the dicta but not the underlying facts of Boatwright was in err.

As previously noted the long standing South Carolina jurisprudence as well as the State Statutes dealing with bonds, bondsman, and estreatment all maintain that the obligation of a bondsman is to secure the Defendant’s appearance. Under South Carolina law, when the terms of the bond are breached, the bond is estreated by a conditional order. S.C. Code Ann. § 17-15-170 (1976); *See Pride v. Anders*, 266 S.C. 338, 223 S.E.2d 184 (1976); *State v. Holloway*, 262 S.C. 552, 206 S.E.2d 822 (1974).

The Court erred in issuing a final order where the bondsman did comply. The bondsman should have further been exonerated from any sanctions from the Court.

The question of exoneration has been recently considered in several jurisdictions. In United States v. Mann, No. 6:09-cr-48, (SD Georgia 2014) and in United States v. Salyer No. 2:10-cr-0061 LKK (ED California 2014) Courts examined the Government’s attempt to estreat a bond and found that when the Defendant is surrendered into custody it was proper to return forfeited funds and to exonerate the surety.

The fact underling the reason the bond was revoked would only be relevant if the Court was forced to issue a bench warrant for a failure to appear. In that circumstance it would have

been proper to begin a Polk analysis in making a determination as to a bond estreatment. Even if that were the case here, which it is clearly not, the Appellant would be properly exonerated upon securing the Defendant into the State's custody.

B. The amount of estreatment in this matter was arbitrary and capricious and did not comply with the factors established by Ex Parte Polk.

Where the Appellant maintains that the Order of any estreatment was improper and in error, it would further maintain that the amount of \$75,000.00 (R. pp. 024-030) is incongruous with a proper Ex Parte Polk analysis and was arbitrary and capricious.

Section 38-53-70 lays the foundation for what must be considered by the Court prior to ordering an estreatment:

“In making a determination as to remission of the judgment, the court shall consider the costs to the State or any 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.”

Section 38-53-70 of the 1976 Code of Laws of South Carolina, as amended.

The construct established by §38-53-70 has been scrutinized in several opinions, and solidified in Ex Parte Polk, 354 S.C. 8, 573 S.E.2d 329 (Ct. App 2003). In Polk, the Court looked to § 38-53-70 as well as the cases of State v. Boatwright, and State v. Workman, to determine what must be addressed before ordering the estreatment. The Court overturned a bond estreatment saying that although some amount could be deemed appropriate by the Trial Judge, several factors must be examined to avoid an abuse of discretion.

In its ruling, the Polk Court determined that standard established by the 5th Circuit case

United States v. Parr, 594 F.2d. 440 (1979) should be applied in South Carolina, and that at a minimum the trial Judge must consider the following Three (3) factors:

1. The purpose of the Bond.
2. The nature and wilfulness of the default.
3. Any prejudice or additional expense resulting the State stemming from the Default.

Ex Parte Polk, 354 S.C. 8, 13, 573 S.E.2d 329, 331 (Ct. App 2003).

After careful weighing of these Three (3) factors the Court is to use its discretion in determining a proper estreatment amount. It is the Appellant's position that the Court did not give the proper examination of these factors and failed to properly address the requirements in its ruling that an estreatment be ordered in the amount of Seventy Five Thousand Dollars (\$75,000.00) (R. pp. 024-030).

While maintaining the Appellant's position that any estreatment was improperly ordered; in making it's order, the Court's failure to properly address the three (3) elements of a bond estreatment. The first element, relating to the purpose of the bond in this matter is not under contention. The purpose of Mr. Mitchell's bond being set at \$150,000.00 directly related to the seriousness of the matter, and the danger to the community and potential flight risk associated with potential sentences (R. p. 005).

The Second element of nature and wilfulness of default has been thoroughly addressed in the Appellant's first argument. Their was no default on the appearance recognizance bond; the Defendant did appear for Court when requested on July 26, 2012, by doing such the bondsman fulfilled their obligation as surety on Mr. Mitchell's bond.

When examining the question of costs to the State, Polk notes that Section 38-53-70

“unambiguously provides that the trial court must consider the costs to the state in determining remission of the judgement on a forfeited bond.” State v. Polk, 354 S.C. at 12, 579 S.E.2d at 331 (2003). Any failure to weigh those costs would deem the Court’s judgement arbitrary and capricious. Id. In the present matter, the only considerations addressed were those costs incurred by the State in its attempt to wrongfully estreat the Bond. The State did offer affidavits (R. pp. 166-169) and a memoranda (R. pp. 164-165) as to the costs associated with their preparation for the estreatment hearing, but they 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. Since the Defendant was remanded to the custody of the local detention center subsequent to his bond revocation hearing, to which he was present, there were no costs associated with any alleged bond violations.

Additionally there was **no actual** prejudice or additional expense upon the State stemming from the alleged Default. The affidavits offered by the State at the estreatment hearing on October 11, 2012 were accountings of the State’s efforts to be enriched through estreatment, they did not substantiate any costs to secure the Defendant’s presence and make no mention of costs incurred by his non-appearance in court. The State was left in this matter in the exact position they would have been had the Defendant never been bonded in the first place, no time nor resources were expended to locate the Defendant, re-secure his custody, or have his underlying charges adjudicated.

By ordering estreatment in the amount of \$75,000.00 the Court failed to show how that applied in the adjudication or conviction of Mr. Mitchell or in the securing of his appearance to be adjudicated or convicted.

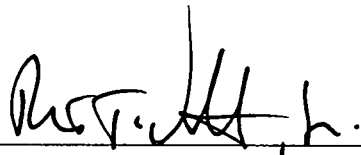
CONCLUSION

The Trial Court erred in its decision to Order an estreatment of the appearance bond posted by the Appellant in this matter. Where the Defendant appeared for Court as noticed the Appellant as a surety for appearance fully complied with their obligation and should be exonerated from any Order of estreatment.

The Trial Court further erred by abusing its discretion in determining the amount of any estreatment to be ordered. The Court failed to properly consider Polk factors including the actual costs to the State as well as prejudice in procuring the Defendant for trial/plea, but instead utilized bond estreatment as a punitive action. In this matter the Court's ruling was arbitrary and capricious.

Respectfully submitted,

February 11, 2015



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

Appellate Case No. 2014-001516

The State of South Carolina Respondent,

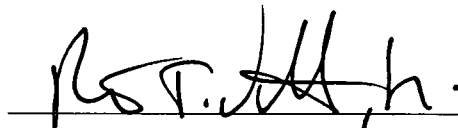
v.

Deangelo Mitchell, Defendant and AA Ace Bail by Frances and Palmetto Surety Corp., Sureties
for the Defendant, Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b),
SCARC.

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ORIGINAL

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AND

AA ACE BAIL BY FRANCES AND PALMETTO SURETY CORP., SURETIES
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APPELLANTS.

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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 of bond estreated 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. (R. p. 5). This order was filed in the Charleston County Clerk's Office on January 26, 2012. (R. p. 5). The order specified that release was conditioned upon "\$150,000 surety, 24 hour house arrest at [a particular address in North Charleston, SC] with passive satellite monitoring other than work, medical, atty, court and church escorted with family member, girlfriend." (R. p. 5).

Pursuant to this order, Appellants AA Ace Bail by Frances and Palmetto Surety Corporation agreed to secure Mitchell's bond on February 13, 2012. (R. p. 3-4). 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. (R. p. 4). 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." (R. p. 3-5). 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.” (R. p. 4). 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 (R. p. 3) (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 R. p. 7-21; p. 35-41). Mitchell was present at this hearing. (R. p. 36, 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. (R. p. 37-38; p. 41). 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. (R. p. 47-50; p. 53-54). 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. (R. p. 49; p. 53).

Frances Jenkins, Mitchell’s bondswoman, also testified at the hearing. She testified that she knew electronic monitoring was a part of Mitchell’s bond. (R. p. 57). She admitted she had been notified by the monitoring company of Mitchell’s violations, and each time in response, she contacted Mitchell to warn him to stop. (R. p. 58-59). However, in contrast with Mitchell’s testimony, Ms. Jenkins testified that Mitchell was

¹ This “good behavior” term was also contained in the bail form Mitchell signed the previous month regarding his previous bond. (See R. p. 1-2). 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).

not employed, but stated he nevertheless made “regular” payments to her in the amount of \$100 to \$200 dollars per month.² (R. p. 59; p. 61). She averred she did not know where this money was coming from. (R. p. 61, 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.” (R. p. 74, lines 18-21). She also agreed that the bond form is an “acknowledgment that you do a little bit more than just appearances.” (R. p. 74, 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. (R. 70, line 8 – p. 71, 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).

Upon questioning from the court, Ms. Jenkins admitted that she knew that Judge Gosnell’s order granting the consolidated bond required GPS monitoring and that

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. (R. p. 61-62). At that point, Ms. Jenkins stated she remembered the letter. (R. p. 63, lines 22-24).

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. (R. p. 77, 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.” (R. p. 77, 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.” (R. p. 77, 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 (R. p. 77, 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. (R. p. 80, 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. (R. p. 80, lines 18 – p. 81, 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. (R. p. 81, lines 17-20). His office contacted both Mitchell himself and Ms. Jenkins, the bondswoman, regarding the violations. (R. p. 81, line 21 – p. 82, line 5). His office contacted Ms. Jenkins on

³ Notably, this was the same form that Ms. Jenkins signed agreeing to be the surety on Mitchell’s bond. (See R. p. 3-5).

“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.” (R. p. 82, lines 9-14). Indeed, the GPS reports indicated that Mitchell was in “downtown” Charleston and was nowhere near his home in North Charleston. (R. p. 87-88).

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.” (R. p. 89, 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.” (R. p. 89, lines 6-11). Ms. Jenkins then stated that she would not “pick him up” for the noncompliance. (R. p. 89, 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. (R. p. 82, lines 5-9).

After also hearing testimony from Mitchell’s uncle, the circuit court issued a ruling revoking Mitchell’s bond. (See R. p. 105-107). 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.” (R. p. 105, 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.” (R. p. 105, 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. (R. p. 105, lines 12-24). Specifically, subsection (C) of that statute specifically addresses placing restrictions on travel, association, or place of abode of a person. (R. p. 105, line 25 – p. 106, 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. (R. p. 106, 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.” (R. p. 106, 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.” (R. p. 106, lines 22-25). Finally, she stated she was revoking the bond for “repeated, repeated, repeated violation of the court orders.” (R. p. 107, 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. (R. p. 107, lines 13-16). The judge stated, “I think under State v. Boatwright you are more than authorized to do that.” (R. p. 107, 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 (R. p. 112-16; p. 132). 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

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 criminal sexual conduct crime. (R. p. 114-15; see also p. 143-44).

other conditions of bond. (R. p. 113, 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 R. p. 116-31). The judge indicated her belief that Ms. Jenkins had been "flat-out lying" in certain respects at the July hearing, and found there has been "bad faith" and "no good behavior" in this scenario. (R. p. 119, lines 2-17; p. 137, 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 R. p. 131, 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. (R. p. 131-38). The judge requested affidavits from the State regarding the costs expended in order to ascertain the effect of Mitchell's noncompliance with the electronic monitoring. (R. p. 136-37). The judge then took the matter under advisement pending receipt of further information. (R. p. 138).

The State subsequently submitted two affidavits and a memorandum setting forth costs totaling \$2,876.58. (R. p. 164-69). 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. (R. p. 142-43). 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 violation on several occasions yet she deliberately elected not to take appropriate action to address the violations. (R. p. 142, line 25 – p. 143, 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. (R. p. 143, lines 6-10). Therefore, the bondswoman "intentionally, willfully defeated the purpose of the bond for her own financial considerations." (R. p. 143, 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." (R. p. 144, lines 8-12). The solicitor pointed out that "Boatwright establishes that it is within your discretion to estreat his bond." (R. p. 144, 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." (R. p. 145, 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. (R. p. 145, lines 19-23). Counsel also argued that once Mitchell's bond was revoked, there was no bond to estreat.⁵ (R. p. 145, 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." (R. p. 146, 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 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 –

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

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.” (R. p. 154, 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. (R. p. 155, 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.” (R. p. 156, lines 6-8). She agreed with the solicitor’s statement that the bondswoman engaged in “active concealment.” (R. p. 160, 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.” (R. p. 156, line 25 – p. 157, 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. (R. p. 161-62).

On September 16, 2013, Deangelo 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 R. p. 24-30). 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, was clearly willful.” (R. p. 29). 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. (R. p. 28-29). 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. (R. p. 29). 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. (R. p. 29-30). 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. (R. p. 30).

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 R. p. 27 & p. 29). 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 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

⁶ Appellants' argument was similarly limited below. (See R. p. 116-38; R. p. 145-62).

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 of the estreatment 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 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 R. p. 89, 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 R. p. 28-30). Accordingly, since the circuit court carefully considered the Polk factors and estreated an appropriate amount of bond particularly 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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March 3, 2015

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."


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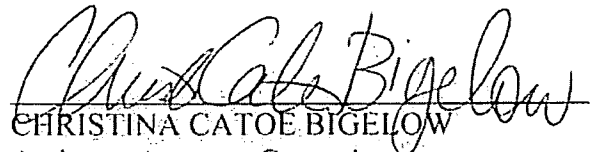
AND

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PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **Robert T. Williams, Sr.**, Williams, Hendrix, Steigner & Brink, P.A., Post Office Box 849, Lexington, South Carolina, 29071, this 3rd day of **March, 2015**.


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