

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

SC Court of Appeals

R. MARKLEY DENNIS, JR., Circuit Court Judge

Appellate Case No. 2015-00051

The State,

Respondent,

v.

Tracy Wheeler Stubblefield,

Appellant

And

AAAA Bail Bonding and Crum and Forster
Indemnity Company, Sureties for the
Defendant,

Also Appellants

FINAL BRIEF OF APPELLANTS

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Statement of the Issues on Appeal

Whether the judge erred in failing to consider the lack of the Magistrate's attestation of the Appearance Recognizance with Surety on the bail proceeding form resulting in the estreatment of the bond of the defendant.

Statement of the Case

This case is an appeal of the Bond Estreatment Order of the Circuit Court dated November 21, 2014. The facts of this case began when the defendant Tracy Stubblefield was arrested for possession of methamphetamines in June 2013. On June 24, 2013, 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. At the time, Appellant Crum and Forster was unaware of Ballard's activities. He did not submit the power of attorney, bond paperwork, or required fee to the company. Crum and Forster first became aware that this bond existed when it received the Notice of Forfeited Recognizance dated September 29, 2014.

Defendant Stubblefield was required to appear before the Court of General Sessions on Friday, September 13, 2013. Defendant Stubblefield failed to make this appearance. A bench warrant was issued by the Judge of the Court of General Sessions on May 1, 2014, for the arrest of Defendant Stubblefield. (R. pp. 12, 18) On September 29, 2014, Jennifer McCoy, Assistant Solicitor for the Ninth Judicial Circuit issued a Notice of Forfeited Recognizance. (R. pp. 11, 17) On November 14, 2014, the Honorable R. Markley Dennis, Jr. held a show cause hearing. On November 21, 2014, Judge Dennis issued a Bond Estreatment Order estreating the \$10,000 amount to the bond. (R. p. 2)

On December 26, 2014, appellants filed their Notice Of Appeal.

Appellants contend that the lower court erred in its decision by failure to consider the fatal flaw in the bond paperwork -- the failure of the magistrate to complete and attest to the Appearance Recognizance with Surety on the bail proceeding form.

Argument

The Circuit Court erred in estreating the bond, improperly ruling that a valid bond existed where the magistrate did not complete and attest to the Appearance Recognizance with Surety on the bail proceeding form.

According to Section 17-15-160 of the South Carolina Code of Laws:

In all recognizances by any person for keeping the peace, good behavior or appearing as a party, surety or witness at any court of criminal jurisdiction within the State the sum of money in which any such person shall be bound shall be made payable to the State and every such recognizance shall be good and effectual in law provided it be signed by every party thereto in the presence of a judge, clerk of a court of common pleas, magistrate or notary public who shall sign the recognizance as a witness. S.C. Code Ann. Section 17-15-160 (Emphasis added).

This code section makes clear that the bond setting court has an affirmative responsibility to ensure that the surety is present and has signed the appropriate documentation that will cause the court to release a defendant.

Two important pieces of the criminal justice system are occurring here. First, the court is determining that it is willing to release a defendant and will only do so if it is satisfied that there are in place sufficient inducements for the defendant to appear in court at a later date. Those inducements usually require money. Recognizing that many defendants do not have the means to satisfy substantial bond obligations, the surety system is in place. A surety, after making appropriate arrangements with the defendant, is then willing to guarantee the defendant's appearance in court or to be willing to forfeit the face value of the bond.

The signature and attestation requirements in South Carolina law are specifically designed to protect both the surety and the court. The court, through its completion of the form

and through its attestation to the signature of the surety can be certain that it is dealing with an appropriately licensed surety who has made a voluntary decision to commit itself to the obligations of the bond. The court also gains some confidence that there will now be a third party at hand with a sufficient motivation to ensure that the defendant shows up for court. Likewise, the surety is protected by only engaging in those transactions in which it wishes to participate.

In this case, the failure of the bond setting court to fill out the appropriate form and to attest to the surety's signature caused the bail system to break down. The Bail Proceeding Form submitted by the assistant solicitor with the original Notice of Forfeited Recognizance does not contain the required signatures. (R. p. 23) The form clearly states that it is the Appearance Recognizance with Surety. The judge only signs the first page where the defendant Stubblefield has placed his initials. On the second page, the defendant Stubblefield signs the Acknowledgement by Defendant. At the bottom of the page, however, no one, including the surety or the judge signed the Appearance Recognizance with Surety section.

In fact, there is no information whatsoever in that section about the surety at all. There is yet another section in the last page of the form submitted by the assistant solicitor which does list the surety and contains a stamped signature. (R. pp. 16, 22) There is no place in any of these documents where Mr. Ballard actually signed anything, despite the requirements in the South Carolina code requiring the signature be by the surety, a responsibility that may not be delegated to another

A professional or surety bondsman may not sign or countersign blank bail bonds, nor may he give a power of attorney to, or otherwise authorize anyone to countersign his name to bonds unless the authorized person is a licensed bondsman or runner directly employed by the bondsman giving power of attorney. Copies of all powers of attorney must be filed immediately with the department and the clerk of the circuit court of the county in the state where the bondsman giving the power of attorney is currently writing or is obligated on bail bonds. S.C. Code Ann. Sec. 38-53-200 (1976).

Appellants contend that the executing agent Larry Ballard committed fraud against Appellant Crum and Forster and against the court in several ways. He issued a bond without notifying the appellant and without submitting required fees. He never informed appellant of the existence of the bond.

By failing to take the proper steps to ensure that there was a surety aware of and behind the bond in question, the bond setting court set in motion the breakdown of the bail system in this case. Defendant Stubblefield walked out of court that day and has never returned. The surety in this case, Crum and Forster, had no knowledge that bond even existed. They only learned of the bond when they received the notice from the Department of Insurance which had been served by the assistant solicitor. By that time, it was virtually impossible to attempt to apprehend this defendant, since the surety had no knowledge of him and had never secured adequate information that could facilitate apprehension if necessary. Moreover, the surety now believes that he has left the state for parts unknown.

The parties now know that it is likely Mr. Ballard committed extensive fraud against the surety, a number of defendants, and the court. His stamped signature appears on the document, but it is unclear whether he actually ever appeared in court. The lack of certainty about his actual presence in court that day raises even more questions about the integrity of the system. Had the court followed the law as contained in section 17-15-160, Mr. Ballard would have been required to be present and sign the document. It is certain that the judge would not have permitted a stamped signature whether affixed by Mr. Ballard or anyone else. In fact, there is no evidence in this case at any level that any agent authorized by Crum and Forster actually was present in court that day or had anything to do with this bond at all. This possibility and other questions related to this case would not exist if the court had filled out the form and attested to an actual signature.

The lower court did not adequately consider the requirements of the form and attestation by the bond setting magistrate. The court stated:

If there is no bond, then obviously there's nothing to estreat. If there's a bond and the clerk of court accepted that and we acted upon that bond, then it is a bond as far as I'm concerned insofar as its effect of releasing the inmate. (R. p. 6, lines 12-18)

The court further stated:

Sir, I understand you have legitimacy. The problem I have is that this – that the clerk of court acted on that. On its face, it appears to be a bond . . . (R. p. 8, lines 18-21)

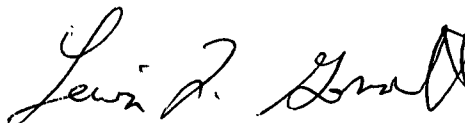
The court's error occurred when it only considered one aspect of the bond. The court did not consider the requirements of section 17-15-160. The front page of the bond had one signature, but the bond was far from complete and thus invalid without the attestation of the surety's signature.

The errors here were numerous and at all levels. Either Mr. Ballard committed fraud or someone posing as him got Defendant Stubblefield out of jail. Either way, there is no way for the bond setting magistrate or the Clerk of Court to know as the magistrate did not execute the required parts of the form before Stubblefield was released. The provisions in the law are designed to prevent just this kind of occurrence where a Defendant goes free and the court has no idea who is responsible. The bond is only "effective in law" if signed by every party in the presence of the magistrate. Clearly, that did not happen here. Appellant should not be held responsible for the failure of the court system to do what the law so clearly requires.

Conclusion

For the foregoing reasons, Appellants respectfully request that the Court of Appeals reverse the circuit court's decision estreating the bond in this case.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lewis F. Gossett", written over a horizontal line.

Lewis F. Gossett
Attorney for the Appellants
SC Bar No. 015101

5-20-16

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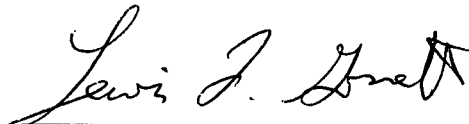
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PROOF OF SERVICE

I certify that I have served the Final Brief on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on May 20, 2016, addressed to its attorney of record, Deborah R.J. Shupe, 1000 Assembly Street, Room 519 Columbia, South Carolina 29201.



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