

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Alexander S. Macaulay, Circuit Court Judge

Indictment Nos. 2005-GS-47-15, 2005-GS-47-23, 2005-GS-47-24

State of South Carolina Respondent,

v.

Mario Ramos Hinojos, Defendant,
and
Richard G. Thompson d/b/a All-Out Bail Bonding, as Surety, Accredited Property and Casualty
Ins., Surety,
of Whom Richard G. Thompson d/b/a All-Out Bail Bonding and Accredited Property and
Casualty Ins. are the Appellants.

Appellate Case No. 2013-000567

RECORD ON APPEAL

Benjamin A. Stitely, Bar No.: 75339
Robert T. Williams, Bar No.: 6149
Williams, Hendrix, Steigner & Brink, P.A.
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Lexington, South Carolina 29072
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ATTORNEYS FOR APPELLANT

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ATTORNEYS FOR RESPONDENT

RECEIVED

JUN 26 2013

SC Court of Appeals

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STATE OF SOUTH CAROLINA.) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE.) THIRTEENTH JUDICIAL CIRCUIT

FILED

CASE NO: G-530079

V.

USA. C. D. NEAR.

MARIO RAMOS HINOJOS, CLERK, STATE GRAND JURY
Defendant.) ORDER SETTING BOND

This matter came before the Court on August 22, 2005, for the purpose of setting bond. The defendant was present. The following attorney appeared on behalf of the defendant:

The State was represented by James H. H. H. of the Attorney General's Office.

The defendant is charged with the following offense(s):

Trafficking Ice greater than 400 grams

After hearing from the defendant and the State, the Court finds it appropriate, and it is therefore Ordered, that:

_____ Bond is denied at this time with leave for defense counsel to file a written motion for bond.

_____ A Personal Recognizance Bond in the amount of \$_____ is set at this time.

_____ A Surety Bond in the amount of \$_____ is set at this time; and, the defendant is allowed to post 10%.

A Surety Bond in the amount of \$ 100,000.00 is set at this time; and, the defendant is not allowed to post 10%.

_____ Bond is reduced from _____ to _____ and does/does not
include other pending charges.

AND IT IS SO ORDERED.

CHIEF ADMINISTRATIVE JUDGE - CRIMINAL
FIFTH JUDICIAL CIRCUIT
PRESIDING JUDGE
SOUTH CAROLINA STATE GRAND JURY

August 22, 2005
Columbia, South Carolina

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA,) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE.) THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

MARIO RAMOS HINOJOS,)
Defendant.)

FILED

AUG 25 2005

CASE NO: G-530079

USA O'DUNEAR,

CLERK, STATE GRAND JURY,

ORDER

It is hereby ordered that Bond for the above Defendant is set at \$ 100,000.00

with the following conditions:

1. The Defendant is not to leave the State of South Carolina.
2. The Defendant, at the request of the State, and at his/her own expense shall be subject to drug tests. Upon notification of a test, the Defendant shall appear at a facility designated by the State for drug testing, not to exceed one test per month.
3. The Defendant shall have no contact with any co-defendant, either directly or indirectly, without the prior permission of the Court.
4. The Defendant is obligated to advise the Court if he/she has a passport and shall surrender it to the Clerk of Court. (I do/do not have a passport)
5. The Defendant shall not sell or encumber any property, personal or real, during the term of his/her bond, without the prior written permission of the South Carolina Law Enforcement Division.
6. The Defendant shall, within ten days of the date of this Order, advise the Clerk of Court, State Grand Jury in writing whether he/she intends to represent himself/herself, to retain counsel, or whether he/she desires to have counsel appointed, assuming that he/she meets the indigency requirements. If the Defendant meets the indigency requirements, and desires to have counsel appointed, he/she should appear before the Clerk of Court and fill out appropriate forms to apply for court-appointed counsel. The Clerk of Court will then forward the necessary papers to the appropriate judge, who shall decide whether to appoint an attorney to represent the Defendant.

7. The Defendant shall appear at all scheduled hearings and at the trials of the above indictment(s).
8. The Defendant shall keep the Clerk of Court advised of his/her home address and telephone number so that notices of court hearings and trials may be sent to the appropriate location.
9. The Defendant understands that any future violation of any Federal, State, County, or Municipal Law will be considered a violation of the conditions of this bond and grounds for revoking bond.
10. The Defendant understands that he/she has the right to be present at the trial of his/her case that it is his/her responsibility to maintain contact with his/her attorney and the Clerk of Court in order to know the date that the trial of his/her case is scheduled for. The Defendant further understands that this Order acts as a notice of his/her right to be present at trial, and that the trial will proceed in his/her absence upon a failure to attend the Court.
11. The bond is set in the amount of \$25,000.00. Which shall be secured by sufficient surety in the form and matter prescribed and approved by the Clerk of Court. The underwriting insurance company, if any, shall list the collateral for the bond with the Clerk of Court in addition to providing an appropriate power of attorney between the bondsmen and the insurance company.

IT IS SO ORDERED.


CHIEF ADMINISTRATIVE JUDGE - CRIMINAL
FIFTH JUDICIAL CIRCUIT
PRESIDING JUDGE
SOUTH CAROLINA STATE GRAND JURY

August 22, 2005
Columbia, South Carolina

I have read and understand the terms and conditions of my release under this Order.

8/22/05
(Date)

[Signature]
Defendant

I have read and understand the terms and conditions of this Order.

8-15-05
(Date)

[Signature]
Surety

8-25-05
(Date)

[Signature]
Surety

8-25-05
(Date)

[Signature]
Surety

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
STATE OF SOUTH CAROLINA

Ticket or Warrant No. 67-250079
IN THE () COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form P)

Name of Defendant: ARIN RAYMOND HINIGES

Offense Charged: Trafficking Cocaine

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.
This determination was based upon the following findings of fact:

FILED

AUG 25 2005

USA C. DUNBAR

CLERK, STATE GRAND JURY

(Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEREFORE, IT IS HEREBY ORDERED:

- That the above named defendant 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.
- That the above named defendant be released from custody provided as follows (check one).

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$_____, his release to be obtained by payment to the court of _____% of this bond in cash, this amount being \$_____. The defendant will be obligated to the State in the full amount of \$_____ such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$200,000.

- ☒ That the defendant shall appear at (check one):
the term of the court of general sessions beginning on [Date: when scheduled by the court] at [Time: _____] o'clock, _____ M., at [Place: _____] and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
☐ the session of magistrate/municipal (circle one) court beginning on [Date: _____] at [Time: _____] o'clock, _____ M., at [Place: _____]. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant HH

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Signature of Judge [Signature]

Date _____

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

Address

City/State/Zip

Signature of Defendant [Signature]

Date 8/22/05

Social Security Number/Telephone No

Attorney Representing Accused (if known)

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of _____
Name of person or organization

_____ Address _____ City _____ State/Zip _____ Telephone _____
who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears

Signature of Custodian (If Appointed) Date

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, ____ M. to _____ o'clock, ____ M. on _____ on condition that he return to the custody of _____ at _____ as designated.

d. ☒ Other Conditions. The defendant will comply with the following other conditions of release:

See attached order

APPEARANCE RECOGNIZANCE WITH SURETY

On the 25th day of August, 2005, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$200,000 such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

6-6 Accredited Surety/All-Cut-Bail Bonding
Name of Surety (Printed or Typed)

9 McGee Street
Address of Surety

Greenville, SC 29601
City/State/Zip
AF-00214113 864-370-3991

Richard G. Thompson
Signature of Surety

August 25, 2005
Signature of Judge

August 25, 2005
Date

Form Approved by
S.C. Attorney General
Section 17-15-40
March 4, 2000

Bonds by Guyton / Partner Surety
105 Main St.

Travelers Rest SC 29616

864 TEL 134-1113
864 FAX 751-1371
864 301-5776

WICGIC-5 RNDNB
EIS A & AMKIA

GREENVILLE SC

Tony D Bar - 66, 666

W. Aaron - 66, 666

STATE OF SOUTH CAROLINA)

IN THE GENERAL SESSIONS COURT
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

COUNTY OF GREENVILLE)

STATE OF SOUTH CAROLINA)

CASE NUMBER: 2005-GS-47-15

vs.)

2005-GS-47-23

2005-GS-47-24

FILED

ORDER

MAR 31 2006

MARIO RAMOS HINOJOS)

LISA C. DUNBAR,
CLERK, STATE GRAND JURY

Defendant.)

On August 22 2005, my bond in this matter was set at \$ 200,000.00 surety and certain conditions of bond were imposed. **INITIAL** MRH

On December 13, 2005 the State Grand Jury returned indictments. **INITIAL** MRH

I agree to be continued on the same bond amount originally set in this case.

INITIAL MRH

I agree that all conditions, stipulations, and undertakings contained in my original bond agreement remain in force as part of this Order to Continue Bond and are applicable to charges in the Indictments filed December 13, 2005. **INITIAL** MRH

Gilbert B. Scott
DEFENDANT

The undersigned is aware of the additional charges brought against the defendant in the Indictments filed December 13, 2005 and agrees to continue to be bound in all respects on the original bond filed August 25, 2005, as it was originally drafted, for all charges currently pending against the defendant in this matter.

[Signature]
SURETY

W. Neil Shaw
SURETY

[Signature]
SURETY

I CONSENT [Signature]
ASSISTANT ATTORNEY GENERAL

Based on the aforementioned acknowledgments by the Defendant, Surety and consent by the Assistant Attorney General, it is hereby ordered that the Defendant be continued on the original bond.

IT IS SO ORDERED.

[Signature]
**CHIEF ADMINISTRATIVE JUDGE - CRIMINAL
FIFTH JUDICIAL CIRCUIT
PRESIDING JUDGE
SOUTH CAROLINA STATE GRAND JURY**

Columbia, South Carolina

March 31, 2006

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

THE STATE OF SOUTH CAROLINA,

VS.

MARIO RAMOS HINOJOS,

Defendant.

IN THE COURT OF GENERAL SESSION

Indictment No: 2005-GS-47-15

FILED

MAY 07 2007

ORDER

JAMES R. PARKS
CLERK, STATE GRAND JURY

This matter came before the Court on the Defendant's Motion to Remove Electronic Device. Present at the hearing was Susan Porter of the Attorney General's Office and the Defendant's attorney, Rodney Richey, Esq. Prior to the hearing, the parties informed the court that an agreement had not been reached on the issue. Based on the arguments of counsel in the Court file, the Court makes the following findings:

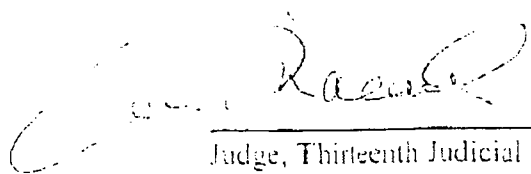
1. The Defendant was placed on house arrest as an initial condition of his bond.
2. That the Defendant has complied with all terms of his bond.
3. That the Defendant, at this time, is not a flight risk.
4. That the Electronic Device shall be removed from the Defendant and the Defendant's Motion is granted

WHEREFORE,

IT IS ORDERED, that the Defendant is hereby released from Electronic Monitoring. The Defendant shall appear at the Greenville County Courthouse on Monday, April 9, 2007 at 9:00 a.m. and all dates thereafter he is instructed to report or his case can be tried in his absence and he can be sentenced in his absence.

AND IT IS SO ORDERED.

DATED: April 27, 2007
Greenville, South Carolina



Judge, Thirteenth Judicial Circuit

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

FILED

THE STATE OF SOUTH CAROLINA) Indictment No. 2005-GS-47-15
) 2005-GS-47-23
) 2005-GS-47-24

DEC 14 2007

JAMES R. PARKS
CLERK, STATE GRAND JURY

-versus-

ORDER FOR BENCH WARRANT

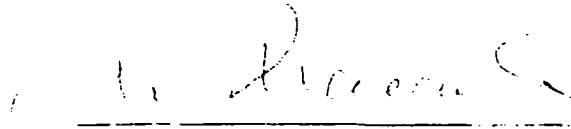
MARIO RAMOS HINOJOS

This matter is before me on motion of the State of South Carolina, by the through its undersigned Clerk of Court, State Grand Jury, James R. Parks, for the issuance of an Order for a Bench Warrant for the arrest of Mario Ramos Hinojos. On December 10, 2007, a week-long term of court was held in Greenville County, South Carolina for the purposes of the trial of Seth Aaron Stearns and sentencing of Mario Ramos Hinojos, and the Defendant did not appear and therefore a Bench Warrant shall be issued on December 13, 2007.

THEREFORE, IT IS ORDERED that a Bench Warrant be forthwith issued and executed to secure the appearance of the said Mario Ramos Hinojos.

IT IS FURTHER ORDERED that this defendant shall be arrested immediately and placed in confinement and shall not be released there from except upon Order of this Court this Court shall be notified immediately upon the effectuation of the defendant's arrest.

IT IS SO ORDERED.


 ALEXANDER S. MACAULAY
 CIRCUIT COURT JUDGE

Greenville, South Carolina
 December 14, 2007

STATE OF GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA

) Indictment No. 2005-GS-47-15
) 2005-GS-47-23
) 2005-GS-47-24

-versus-

) BENCH WARRANT
)
)

MARIO RAMOS HINOJOS
_____)

TO ALL THE SHERIFFS, DEPUTY SHERIFFS, CONSTABLES, and other
Peace Officers of the State of South Carolina:

WHEREAS, on December 13, 2007, the Honorable Alexander Macaulay Ordered, inter alia, that a Bench Warrant be issued for the arrest of Mario Ramos Hinojos to secure the appearance of this Defendant for the purpose of proceedings related to the disposition of Indictment Nos. 2005-GS-47-15, 2005-GS-47-23, 2005-GS-47-24.

IT IS THEREFORE ORDERED that you make diligent search for Mario Ramos Hinojos and immediately arrest him and deliver him to the County Jail where he will be safely held until he may be brought before this Court, or otherwise discharged by due course of law.

IT IS FURTHER ORDERED that the County Jailer notify the Clerk of Court for the State Grand Jury, Immediately, during normal operating hours of that office, when the said Mario Ramos Hinojos is in custody.

WITNESS, THE CLERK OF COURT FOR THE STATE GRAND JURY OF SOUTH CAROLINA, this 14th day of December, 2007.



James R. Parks
Clerk of Court
State Grand Jury

FILED

JAN 17 2008

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARAS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

THIRTEENTH JUDICIAL CIRCUIT

The State of South Carolina,

Petitioner.

PETITION FOR ESTREATMENT OF BOND

vs.

Indictment No.: 2005-GS-47-15

Mario Ramos Hinojos, as Defendant;

2005-GS-47-23

Richard G. Thompson, D/B/A

2005-GS-47-24

All-Out-Bail Bonding, as Surety;

Warrant No.: G-530079

Accredited Property & Casualty Ins.,

as surety;

Tracey Bowen, D/B/A Bonds by

Gaynell, as Surety;

W. Leon Stowers, D/B/A Giggie's

Bonding Company LLC, as Surety;

Palmetto Surety Corp., as Surety.

Respondents.

The Petitioner acting by and through the Attorney General, would respectfully allege and show this Court the following:

That the Petition for Estreatment of a Bond is made pursuant to § 17-15-170 of the Code of Laws of South Carolina (1976), as amended, and this Court has exclusive jurisdiction over any estreatment or forfeiture proceeding. The Attorney General, and his assistants, represents the State of South Carolina, in the County of Greenville, in all matters related to the criminal prosecution of persons indicted by the State Grand Jury. Further, the Attorney General is authorized to institute this proceeding by § 17-15-170 of the Code of Laws of South Carolina (1976), as amended.

That on August 18, 2005, Mario Ramos Hinojos, Defendant was arrested in Spartanburg County, South Carolina, and charged with Trafficking in Methamphetamines in excess of 400 grams in violation of South Carolina Code Ann. § 44-53-375(C); and subsequently, on August 22, 2005, The Honorable Reginald Lloyd issued an order for a surety bond with several special conditions in the amount of \$200,000.00. On that same day, the Defendant executed an "Order Specifying Methods and Conditions of Release", a copy of which is attached hereto and incorporated herein by reference, wherein the Defendant agreed to all the conditions of bond, specifically to be placed on electronic monitoring, agreed to keep the Clerk of Court advised of his home address, telephone number and to keep in contact with the Clerk of Court on a weekly basis, agreed not to



leave the State of South Carolina, and agreed to stay in touch with Special Agent Max Dorsey of the South Carolina Law Enforcement Division ("SLED") on a weekly basis.

That on August 25, 2005, Richard G. Thompson, D/B/A All-Out-Bail Bonding, Respondent executed the "Order Specifying Methods and Conditions of Release" acknowledging indebtedness to the State of South Carolina in the sum of \$66,666.66, such sum to be levied if the within named Defendant failed in performing any of the conditions of the Order. All Out Bail Bonding, Inc. is duly licensed as a surety producer for Accredited Surety and Casualty Company, Inc.

That on August 25, 2005, Tracey Bowen, D/B/A Bonds by Gaynell, Respondent executed the "Order Specifying Methods and Conditions of Release" acknowledging indebtedness to the State of South Carolina in the sum of \$66,666.66, such sum to be levied if the within named Defendant failed in performing any of the conditions of the Order. Bonds by Gaynell are duly licensed as a surety producer for Palmetto Surety Corporation.

That on August 25, 2005, W. Leon Stowers, D/B/A Giggie's Bonding Company, LLC, Respondent executed the "Order Specifying Methods and Conditions of Release" acknowledging indebtedness to the State of South Carolina in the sum of \$66,666.66, such sum to be levied if the within named Defendant failed in performing any of the conditions of the Order. Giggie's Bonding Company, LLC is duly licensed as a surety producer for Palmetto Surety Corporation.

That on December 13, 2005, Mario Ramos Hinojos was indicted by the State Grand Jury in Indictment 2005-GS-47-15, 2005-GS-47-23, and 2005-GS-47-24. On March 31, 2006, the Honorable James W. Johnson, Jr. ordered that the defendant be continued on the original bond and the Defendant and all of the above referenced Respondents agreed to remain on the original bond and acknowledged that it now applies to the charges in the Indictments returned on December 13, 2005 by executing a new Order, a copy of which is attached hereto and incorporated herein by reference.

That on April 27, 2007, the Honorable Alexander S. Macaulay, with the consent of the Defense Attorney, Rodney Richey, and the Assistant Attorney General, Susan O. Porter, removed the electronic monitoring device condition of the defendant's bond. All other conditions remained in effect. A copy of the Order is attached hereto and incorporated herein by reference.

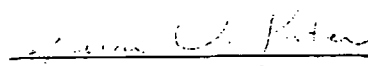
That on November 20, 2007, the Defendant pled guilty to Trafficking Methamphetamines 28 – 100 grams, first offense, Trafficking Cocaine 28 – 100 grams, first offense, Possession of a Firearm during the Commission of a Violent Crime, Trafficking Methamphetamines by Conspiracy 28 – 100 grams, first offense, and Trafficking Marijuana between ten (10) and one hundred (100) pounds, first offense in front of the Honorable Alexander S. Macaulay. The Defendant's sentencing was deferred until the week of December 10, 2007 and the defendant was continued on bond without any objection by the above referenced Respondents.

That sometime between November 20, 2007 and December 9, 2007, the Defendant moved from his known address without informing the Clerk of Court of his new address and new telephone number, and to the belief of South Carolina Law Enforcement Division, as well as the Petitioner, has left the State of South Carolina. The Defendant failed to appear for court during the week of December 10, 2007 and failed to keep in touch with the Clerk of Court as well as Special Agent Max Dorsey during the week of December 10, 2007. Therefore, a bench warrant was submitted to the Circuit Court Judge for his signature on Thursday, December 13, 2007. Subsequently, a Bench Warrant was issued on Friday, December 14, 2007 by the State Grand Jury Clerk of Court's Office. That thirty (30) days has passed since the issuance of the Bench Warrant and Defendant is still at large, has not been arrested, nor been remanded to the custody of the South Carolina Law Enforcement Division.

That Respondents have failed to present the Defendant, to the South Carolina Law Enforcement Division; and that Petitioner, due to the Respondents' failure to present the Defendant, is properly before this Court seeking estreatment of the bond signed by the said Respondents for the Defendant.

WHEREFORE, the Petitioner prays that this Court estreat and confirm judgment against the Respondents in the full amount of the bond, Two Hundred Thousand Dollars (\$2000,000.00), signed by the Respondents for the Defendant with such monies forfeited to the Clerk of Court of the State Grand Jury to be disbursed pursuant to § 17-15-260 of the Code of Laws of South Carolina (1976), as amended; and for such other and further relief as this Court may deem just and proper.

By:


Susan O. Porter, Assistant Attorney General
State Grand Jury Division
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-1601

January 17, 2008

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

THIRTEENTH JUDICIAL CIRCUIT

The State of South Carolina,

Petitioner,

vs.

Mario Ramos Hinojos, as Defendant;

Richard G. Thompson, D/B/A

All-Out-Bail Bonding, as Surety;

Accredited Property & Casualty Ins.,

as surety;

Tracey Bowen, D/B/A Bonds by

Gaynell, as Surety;

W. Leon Stowers, D/B/A Giggie's

Bonding Company LLC, as Surety;

Palmetto Surety Corp., as Surety.

Respondents.

Order and Rule to Show Cause for
Estreatment of Bond

Indictment No.: 2005-GS-47-15

2005-GS-47-23

2005-GS-47-24

Warrant No.: G-530079

ORIGINAL FILED

FEB 19 2008

JAMES R. PARKS
CLERK, STATE GRAND JURY

TO: Mario Ramos Hinojos and his attorney, Rodney Richie,
Richard G. Thompson D/B.A All-Out-Bail Bonding,
Accredited Property & Casualty Ins.,
Tracey Bowen D/B/A Bonds by Gaynell.
W. Leon Stowers D/B/A Giggie's Bonding Company, LLC, and
Palmetto Surety Corporation

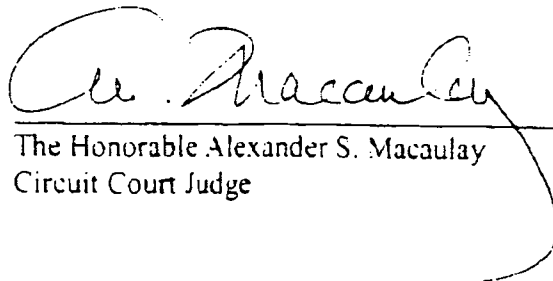
Upon having read the attached Petition of the State, it appears that the Respondents in the matter of the Mario Ramos Hinojos, have not complied with the terms and conditions of the bond entered on the records of the State Grand Jury Clerk of Court on August 25, 2005, for the sum of \$200,000.00.

THEREFORE, IT IS ORDERED that the recognizance signed by the Respondents is forfeited by the Respondents' noncompliance, and judgment is entered against the Respondents in the sum of \$200,000.00 (\$66,666.66 individually).

IT IS FURTHER ORDERED that the Respondents shall appear before the Court of General Sessions for Greenville County, the Honorable Alexander S. Macaulay presiding, on MARCH 25, 2008 to then

and there show cause, if any can be shown, why the said conditional judgment should not be confirmed against the Respondent in the amount of \$200,000.00.

AND IT IS SO ORDERED.


The Honorable Alexander S. Macaulay
Circuit Court Judge

February 13, 2007

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

CASE NO: 2005-GS-47-15, ~~2005-GS-47-23~~,
2005-GS-47-24

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE V. MARIO RAMOS HINOJOS AS DEFENDANT, RICHARD G. THOMPSON,
D/B/A ALLOUT BAIL BONDING, AS SURETY, ET AL

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP: ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP: ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

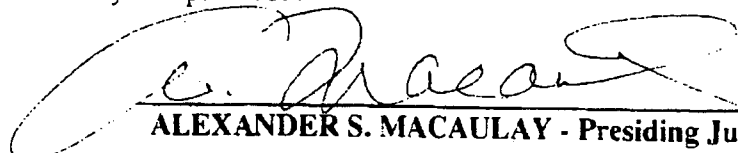
IT IS ORDERED AND ADJUDGED:

☒ See attached order:

☐ Statement of Judgment by the Court/Formal
Order to Follow:

Dated at Walhalla, South Carolina, this 15th Day of April 2009.

Court Reporter: NA


ALEXANDER S. MACAULAY - Presiding Judge

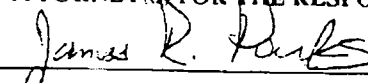
This judgment was entered on the 17th day of April, 2009 and a copy mailed first class this 17th day of April, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Williams, Sr., Esq. - Post Office Box 849,
Lexington, South Carolina 29071 - 803.359.1550

Jennifer Evans, Esq., Assistant Attorney General, Post
Office Box 11549, Columbia, South Carolina 29204 -
843.727.6500

ATTORNEY(S) FOR THE PETITIONER(S)

ATTORNEY(S) FOR THE RESPONDENT(S)



The Honorable James R. Parks - Clerk, State Grand Jury

CRCP APP-24/FORM 4

FILED

APR 17 2009

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

The State of South Carolina,

Petitioner,

ORDER FOR ESTREATMENT OF BOND

vs.

Indictment No.: 2005-GS-47-15
2005-GS-47-23
2005-GS-47-24

Mario Ramos Hinojos, as Defendant
and

Richard G. Thompson, d/b/a
All-Out-Bail Bonding, as Surety,
Accredited Property & Casualty Ins.,
as Surety,

Warrant No.: G-530079

Respondents.

THIS MATTER came before the Court upon the State of South Carolina's Motion, dated January 17, 2008, for an Order Estreating the Bond of the above-named Defendant, Mario Ramos Hinojos. At the hearing, held March 25, 2008, the Court reserved its ruling until a copy of the November 20, 2007, Guilty Plea of Mario Hinosjos, Transcript of Record ("Transcript") could be obtained. Upon receipt of the Transcript, a second hearing was scheduled for and held on November 7, 2008, at which the State of South Carolina was represented by Jennifer D. Evans, Assistant Attorney General, and the Respondents, Richard G. Thompson, d/b/a All-Out-Bail Bonding, as surety, and Accredited Property & Casualty Ins., as surety, were represented Robert T. Williams, Sr., Esquire. Following argument by counsel, the Court requested the parties to submit memoranda of law.

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Having fully considered the able oral and written arguments of counsel and the record, including the Transcript, the following findings are made and conclusions entered.

FINDINGS OF FACT

This Court has jurisdiction of the parties hereto, the subject matter hereof and all matters contained herein pursuant to the Order of the Supreme Court of South Carolina assigning the State Grand Jury Investigation Number 2005-163.

The Attorney General and his Assistants, as officers discharging their duties, imposed by law, represent the State of South Carolina, in the Greenville County Court of General Sessions, in all matters related to the criminal prosecution of persons indicted by the State Grand Jury. Further, the Attorney General is authorized to bring this proceeding pursuant to S.C. Code Ann. § 17-15-170 (2003).

On August 18, 2005, the Defendant, Mario Ramos Hinojos ("Hinojos"), was arrested in Spartanburg County, South Carolina, and charged with Trafficking Methamphetamines, in excess of 400 grams, in violation of S. C. Code Ann. § 44-53-375(C). Subsequently, on August 22, 2005, the Honorable Reginald I. Lloyd, Circuit Judge, issued an Order Setting Bond in the amount of Two Hundred Thousand Dollars (\$200,000.00). Contemporaneously therewith, Judge Lloyd entered an Order setting forth several special conditions, to include, *inter alia*, that: Defendant "stay in weekly contact with SLED Agent Max Dorsey;" the "Defendant shall appear at all scheduled hearings and at the trials of the above Indictment(s);" and the "Defendant understands that . . . it is his[] responsibility to maintain contact with . . . the Clerk of Court." To which terms and

conditions of his release under the bond Order. Hinojos acknowledged he understood and agreed.

Thereafter, on August 25, 2005, Richard G. Thompson, d/b/a All-Out-Bail Bonding for Accredited Surety and Casualty Ins. ("Surety"), along with two other bonding companies, acknowledged that each had read and understood the special terms and conditions of the bond Order and executed their individual endorsement acknowledging indebtedness to the State of South Carolina in the amount of \$66,666.66, each — being one third of the total amount of the bond, \$200,000.00 — such sum to be levied in the event the Defendant failed in performing any of the conditions of the Order. Richard G. Thompson, d/b/a All-Out-Bail Bonding is duly licensed surety bondsman for the insurer, Accredited Surety and Casualty Ins., pursuant to and as provided by S.C. Code Ann. §§ 38-53-10, *et seq.* (1989), as amended.

On December 13, 2005, Hinojos was indicted by the State Grand Jury in Indictments 2005-GS-47-15, 2005-GS-47-23, and 2005-GS-47-24. On March 31, 2006, the late Honorable James W. Johnson, Jr., Circuit Judge, ordered that the Defendant be continued on the original bond and the Surety, together with the other sureties, agreed to be bound in all respects on the original bond filed August 25, 2005. Thereafter, on April 27, 2007, at a hearing in Anderson County, Hinojos' motion to remove the electronic monitoring device as a condition of the original bond was granted by the this Court. All other conditions of the bond remained in force and effect.

On November 20, 2007, Hinojos appeared before this Court to plead guilty and the Court was advised by the State: "At this time we are going to defer sentencing. Mr. Hinojos is still cooperating in this case, and we anticipate him being a potential witness

during the week of December 12th." Transcript of Record Guilty Plea, November 20, 2007. ("Tr."). Tr. p. 3, ll. 13-19. Hinojos, then, pled guilty to Trafficking Methamphetamines 28-100 grams, first offense. Trafficking Cocaine 28-100 grams, first offense. Possession of a Firearm during the Commission of a Violent Crime, Trafficking Methamphetamines by Conspiracy 28-100 grams, first offense, and Trafficking Marijuana between ten (10) and one hundred (100) pounds, first offense. Based upon his continuing cooperation, to include staying in contact with the Special Agent and the Clerk of Court, the State advised the Court that they would have no opposition to Hinojos' attorney's request for "him staying out while we defer his sentencing, and certainly **as long as the bondsman agrees to it**, we would require the same thing, that he check in weekly." Tr. p. 20, ll. 12-15. The Court inquired of Hinojos: "You know the additional conditions of your bond, too, that you are to stay in touch not only with your attorney but also with the Clerk of Court.

* * *

And you will continue to cooperate with S.L.E.D. Any questions about any of that?" and the Defendant answered: "No, sir." Tr. p. 23, ll. 15-25, and p. 24, ll. 1-2.

There being a bondsman, Michael Curlee, for one of the three sureties, the Court then inquired:

"The Court: Mr. Curlee, I understand you are with which bond company?

Bondsman: All-Out-Bail Bonding, sir.

The Court: And you are the bondsman for Mr. Hinojos?

Bondsman: Yes, your honor. There's three bonding companies working with him.

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The Court: All right. And but you understand that you are binding all three of whatever the bonds are that **the conditions will continue until he is sentenced?**

Bondsman: I can't answer for the other two, your honor.

The Court: But All-Out?

Bondsman: All-Out, **I can answer for All-Out.**

The Court: All right.

* * *

The Court: And, of course, his attorney **Do you understand those additional conditions?**

Bondsman: He stays in touch with us, your honor; he calls us and comes to see us.

Ms. Evans: And for the record, just so he will know, if he doesn't we will be moving to estreat the bond, put him on notice that **if he doesn't show up, that we would be moving to estreat his bond.**" Tr. p. 25, l. 25 – p. 26, l. 4. (emphasis supplied).

When Hinojos did not appear at the term of General Sessions Court commencing December 10, 2007, a Bench Warrant for his arrest was issued by the State Grand Jury Clerk of Court's Office, on Friday, December 14, 2007. At the time of the Rule to Show Cause Hearing, November 7, 2008, and of this date, the Defendant Hinojos was and remains still is at large.

ISSUE

The question is whether or not there was a legally enforceable surety bond agreement subject to estreatment after the guilty plea on November 20, 2007.

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DISCUSSION

"The State's right to estreatment of a bond arises from contract. *State v. Bailey*, 248 S.C. 438, 151 S.E.2d 87 (1966); 8 C.J.S. Bail § 62 (Supp.1984). The general rule is that the court cannot redraft a bond so as to impose conditions or obligations not contemplated by the parties. 8 C.J.S. Bail § 64." *State v. White*, 284 S.C. 69, 71, 325 S.E.2d 64, 65 (1985). Moreover, there must be compliance with the Statute of Frauds, S.C. Code Ann. § 32-3-10 (2). *State v. McIntyre*, 307 S.C. 363, 364, 415 S.E.2d 399, 400 (1992). "Equitable Estoppel may be invoked to bar the Statute of Frauds and such rule applies in actions at law." *Atlantic Wholesale Co., Inc. v. Solondz*, 283 S.C. 36, 320 S.E.2d 720 (Ct. App. 1984). "In order to overcome statutory requirements that an agreement be in writing, the party asserting estoppel must show that he suffered a definite, substantial, detrimental change of position in reliance on such agreement and that no remedy except enforcement of the bargain is adequate to restore his former position." *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989).

Our Court has "held that the doctrine of estoppel applies if a person, by his action, conduct, words, or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." *Frady v. Smith*, 247 S.C. 353, 359, 147 S.E.2d 412, 415 (1966), *overruled* on other grounds. In response to the question of the attorney for Hinojos as to whether the State would oppose his staying out while sentencing was deferred, the State stated "certainly" there would be no opposition "as long as the bondsman agrees to it." Tr. p. 20, ll. 10-15. The State contends that the Respondents should be held liable under the doctrine of equitable

estoppel because at Hinojos's guilty plea, on November 20, 2007, Mr. Curlee, who stated "I can answer for All-Out," agreed to continue on the bond. Tr. pp. 25-26.

Moreover, the conditions of appearance bonds are subject to statutory provisions. *State v. McIntyre, supra*. In pertinent part, S.C. Code Ann. § 17-15-20 provides that: "Every appearance recognizance or appearance bond shall 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, . . .*" (emphasis supplied.) To "receive what shall be enjoined by the court" of General Sessions is only and finally accomplished when the defendant answers and surrenders for the purpose of being committed for the service of the sentence endorsed on the indictment in the case, and failure to personally appear in General Sessions Court for that purpose is a breach of the bond. *State v. Bailey*, 248 S.C. 438, 151 S.E. 2d 87 (1966).

Nevertheless, as noted by the Court in *McIntyre, supra*, § 17-15-50 expressly provides that: "The Court may, at any time *after notice and hearing*, amend the order to impose additional or different conditions of release" (emphasis that of the Court). Unlike *McIntyre* and *White, supra*, in this case there was a hearing held at which the Surety's Bondsman, Curlee, appeared, was heard and agreed to the conditions of the bond and, further, was put on notice, with his principal, Hinojos, "that if he doesn't show up, that we would be moving to estreat his bond." Tr. p. 26, ll. 3-4.

The purpose for which the bond was given was to have Hinojos released from custody on the condition that he would personally appear before the court specified to answer the charge or indictment and to do and "receive what shall be enjoined by the court," § 17-15-20, that is, "until final disposition is made of his case," *see* Bail

Proceeding Form II, SCCA/511 (Revised 10/2006). This was an obvious benefit to Hinojos, that the Surety accepted and for which it gave its bond, as was the benefit of having the sentencing deferred and his continuing on the bond.

"It is a rule of general application that, where a bond has accomplished the purpose for which it was given, or the principal has derived benefit from it, both the principal and surety are estopped to deny liability on the bond. This rule has been applied to a bail bond." *Bailey, supra*, 248 S.C. at 447 (citation omitted).

Furthermore, in this case there is evidence that the State suffered a "definite, substantial, detrimental change of position in reliance on the proposed agreement." *Player v. Chandler, supra*. The Defendant Mario Ramos Hinojos has yet to appear "to receive what shall be enjoined by the court," § 17-15-20. *State v. Bailey, supra*.

Here, at least this Surety was represented and heard at the hearing on November 20, 2007, where Hinojos' sentencing was deferred and continued to the term commencing December 10, 2007. The Surety acknowledged it understood the original terms and the additional conditions of release and agreed to remain as a surety bondsman for Hinojos until such sentencing.

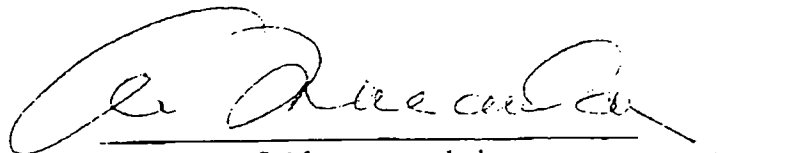
Based on the foregoing, the Respondents, are liable on their appearance bond to the State of South Carolina pursuant to the terms thereof. Therefore, the State is entitled to the estreatment of the appearance bond of Mario Ramos Hinojos and his Surety.

CONCLUSION

THEREFORE, it is the judgment of this Court that, by reason of the failure of the Defendant, Mario Ramos Hinojos, to appear at the court proceeding to which he had been summoned as it was understood and agreed, the bond was breached and is forfeited and the State is entitled to judgment of forfeiture against Mario Ramos Hinojos, Defendant.

Richard G. Thompson, d/b/a All-Out Bail Bonding, and Accredited Property & Casualty Ins., as Surety, in the amount of \$66,666.66., according to the law made and provided in such cases.

AND IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina

April 15, 2009

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State of South Carolina, Respondent,

v.

Mario Ramos Hinojos, as Defendant and
Richard G. Thompson, d/b/a All-Out-Bail
Bonding, as Surety, Accredited Property &
Casualty Ins., as Surety,

of whom Richard G. Thompson, d/b/a All-
Out-Bail Bonding, as Surety, Accredited
Property & Casualty Ins., as Surety, are
Appellants.

Appeal From Greenville County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 4850
Heard February 8, 2011 – Filed July 6, 2011

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Robert T. Williams, Sr., of Lexington, for
Appellants.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and
Assistant Attorney General S. Creighton
Waters, of Columbia, for Respondent.

LOCKEMY, J.: Richard G. Thompson, d/b/a All-Out Bail Bonding (All Out), and Accredited Property and Casualty Insurance (collectively, the Appellants) appeal the trial court's estreatment of Mario Hinojos's bond. The Appellants contend the trial court abused its discretion by modifying Hinojos's bond without proper notice and consent. The Appellants also argue their obligations under the bond were completed at the time of Hinojos's guilty plea. We affirm in part, reverse in part, and remand.

FACTS

On August 18, 2005, Hinojos was arrested in Greenville County and charged with trafficking methamphetamine and cocaine, conspiracy to traffic methamphetamine and marijuana, and possession of a firearm during the commission of a violent crime. On August 22, 2005, the trial court set a \$200,000 surety bond that included conditions that Hinojos be placed on electronic monitoring, maintain contact with the State Grand Jury Clerk, report weekly to South Carolina Law Enforcement Division (SLED) Special Agent Max Dorsey, and not leave the state. Hinojos procured three bonding companies to secure his release: the Appellants; Tracy Bowen, d/b/a Bonds by Gaynell; and Leon Stowers, d/b/a Giggie's Bonding Company. Each bonding company was responsible for one-third of the total bond, or \$66,666.66.

At a March 15, 2007 hearing, the trial court granted Hinojos's motion to have the electronic monitoring condition of his bond removed. Written notice of the hearing was not provided to the three bondsmen, and none were present at the hearing. On November 20, 2007, Hinojos entered guilty pleas to each of the five charges against him. Hinojos's sentencing was deferred until his testimony in the trial of a co-conspirator the week of December 10, 2007.[1] Hinojos requested the trial court allow him to remain out of jail on bond pending his cooperation in his co-conspirator's trial. The State did not oppose Hinojos's request, provided the bonding companies agreed to remain on the bond. Mike Curlee, representing All Out, was the only bondsman present at the guilty plea and consented to remain on the bond until Hinojos's sentencing.

On December 10, 2007, Hinojos failed to appear in court for sentencing as ordered. All three bondsmen were present when the trial court verbally issued a bench warrant for Hinojos's arrest. Subsequently, on January 17, 2008, the State filed a Petition for Estreatment of Bond against all three bonding companies. Estreatment hearings were held in March and November 2008. At the November 7, 2008 hearing, the State conceded a modification was made to Hinojos's bond on March 15, 2007, without the notice or consent of the three bondsmen. The State also withdrew its Petition for Estreatment of Bond against all of the bondsmen except the Appellants because Curlee was present at the guilty plea and consented to remain on the bond.

On April 15, 2009, the trial court estreated \$66,666.66 of Hinojos's \$200,000 bond to the State. In its order, the trial court noted the Appellants were given "notice and hearing" of Hinojos's guilty plea as required by section 17-15-50 of the South Carolina Code (2003) and Curlee appeared and orally agreed to the conditions of the bond. The trial court determined that while bond modifications must comply with the Statute of Frauds, equitable estoppel may be invoked to bar the Statute of Frauds. The trial court noted that "estoppel applies if a person, by his action, conduct, words, or silence which amounts to a representation, or a concealment of material facts causes another to alter his position to his prejudice of injury." The trial court held that the State "suffered a definite, substantial, detrimental change of position in reliance on the proposed agreement" after Curlee agreed to remain on the bond and Hinojos did not appear for sentencing. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, this court is bound by the trial court's

factual findings unless they are clearly erroneous. Id. "On review, this [c]ourt is limited to determining whether the [trial] court abused its discretion." State v. Simmons, 384 S.C. 145, 158, 682 S.E.2d 19, 26 (Ct. App. 2009).

LAW/ANALYSIS

I. March 15, 2007 Bond Modification

The Appellants argue the trial court erred in estreating Hinojos's bond where there was a modification of the bond without the proper notice and consent of the Appellants. We disagree.

The Appellants argue they were not given proper notice of the removal of Hinojos's electronic monitoring device. They maintain they were not notified of the March 15, 2007 hearing and did not consent to the bond modification. The Appellants also assert Hinojos's bond was originally in writing and was not modified in writing as required by the Statute of Frauds. The Appellants rely on State v. McIntyre, 307 S.C. 363, 365, 415 S.E.2d 399, 400 (1992), where our supreme court determined the bond modification at issue violated the Statute of Frauds and section 17-15-50 because it was not in writing and the surety was not properly notified.

The State concedes the Appellants were not properly notified of the March 15, 2007 hearing; however, the State maintains the Appellants erroneously argue the March 15, 2007 bond modification is the bond modification at issue. The State asserts it complied with the notice and hearing requirements of section 17-15-50 and properly notified the Appellants of Hinojos's November 20, 2007 guilty plea. The State maintains the Appellants were represented at Hinojos's plea and consented to remain on the bond.

We agree with the State that the March 15, 2007 bond modification is not the modification at issue in this case. While the Appellants were not properly notified of the March 15, 2007 hearing, Hinojos still appeared before the trial court in November 2007 and entered a guilty plea. Curlee also appeared at the guilty plea and agreed to remain on the bond after the trial court stated the conditions of the bond, which did not include electronic monitoring.

We find this case is distinguishable from McIntyre. In McIntyre, the surety did not agree to remain on the bond after a modification. 307 S.C. at 365, 415 S.E.2d at 400. Here, although Curlee was not notified of the March bond modification, he agreed at the November hearing to remain on the bond after the modification. Therefore, the issue before us is whether estreatment was proper after Curlee, on behalf of the Appellants, consented to the bond modification and agreed to remain on the bond after Hinojos's November 2007 guilty plea.

II. Equitable Estoppel

The Appellants argue the trial court erred in estreating Hinojos's bond where their obligations were completed at the time of Hinojos's plea. We disagree.

"The State's right to bond estreatment arises from contract." McIntyre, 307 S.C. at 364, 415 S.E.2d at 400. Pursuant to the South Carolina Statute of Frauds, a promise to answer for the debt of another must be in writing and signed by the party to be charged. S.C. Code Ann. § 32-3-10(2) (2007). "The general rule is that the court cannot redraft a bond

so as to impose conditions or obligations not contemplated by the parties." State v. White, 284 S.C. 69, 71, 325 S.E.2d 64, 65 (1985). Pursuant to section 17-15-50, "the court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release." S.C. Code Ann. § 17-15-50 (2003).

The doctrine of estoppel may be invoked to prevent a party from asserting the Statute of Frauds. Atlantic Wholesale Co. v. Solondz, 283 S.C. 36, 41, 320 S.E.2d 720, 723 (Ct. App. 1984). Estoppel "applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct. App. 2006). "In order to overcome statutory requirements that an agreement be in writing, the party asserting estoppel must show that he suffered a definite, substantial, detrimental change of position in reliance on such agreement and that no remedy except enforcement of the bargain is adequate to restore his former position." Player v. Chandler, 299 S.C. 101, 106, 382 S.E.2d 891, 894 (1989).

The Appellants maintain their obligations under Hinojos's bond were completed after his guilty plea, and the subsequent agreement by Curlee to remain on the bond was not enforceable because it was not in writing and did not satisfy the Statute of Frauds. The Appellants argue that without an agreement by all three bondsmen, the trial court created and imposed new obligations outside the original bond. The State argues the Appellants' obligations were not completed at the time of Hinojos's plea, but continued until Hinojos's sentencing. The State maintains the trial court properly determined the Statute of Frauds was barred by equitable estoppel, and that but for Curlee's agreement to remain on the bond, the State would have opposed Hinojos's release.

We agree with the State and find the trial court did not err in determining the doctrine of equitable estoppel barred the Statute of Frauds. At the guilty plea, the State informed the trial court that it did not oppose Hinojos's request to remain out on bond until his sentencing, provided the bondsman agreed to continue on the bond. The trial court advised Hinojos of the conditions of his bond, including that he stay in contact with his attorney, the clerk of court, and SLED. Hinojos's attorney informed the court that Curlee was present and agreed to remain on the bond. Subsequently, the trial court again stated the conditions of Hinojos's bond, which did not include electronic monitoring, and Curlee agreed to remain on the bond, stating he could only answer for All Out and not the other bondsmen. The State informed the court that if Hinojos did not show up for sentencing it would move to estreat his bond.

While Curlee's agreement to remain on Hinojos's bond was not in writing, we find the Appellants are still liable on the bond pursuant to the doctrine of equitable estoppel. Curlee orally agreed to continue on the bond, and the State relied upon this agreement to its detriment. But for Curlee's representation to the trial court, the State would not have consented to Hinojos's release and he would have been taken into custody. Because the State relied upon Curlee's agreement, the Appellants are equitably estopped from denying liability on the bond.

III. Abuse of Discretion

The Appellants argue the trial court abused its discretion in estreating \$66,666.66 of Hinojos's \$200,000 bond. We agree.

Section 38-53-70 of the South Carolina Code (2010) provides, "[i]n 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." S.C. Code Ann. § 38-53-70 (2010). Furthermore, in Ex parte Polk, 354 S.C. 8, 13, 579 S.E.2d 329, 331 (Ct. App. 2003), this court determined:

[w]hile the decision regarding remission is within the discretion of the trial court, the court should consider, at a minimum, the costs to the State as well as the purpose of the bond and the nature and willfulness of the default in determining whether, and to what extent, a bond forfeiture should be remitted.

The Appellants argue the trial court failed to consider the three factors established in Polk. The State maintains the trial court did not abuse its discretion and argues the trial court held two rule to show cause hearings, reviewed the transcripts, and requested briefs from both parties. The State also maintains the Appellants failed to show the trial court did not consider the Polk factors.

We agree with the Appellants. As noted by this court in Polk, section 38-53-70 "unambiguously provides that the trial court must consider the costs to the State in determining remission of the judgment on a forfeited bond." 354 S.C. at 12, 579 S.E.2d at 331. The trial court should also examine, at the least, the purpose of the bond and the nature and willfulness of the default. Id. at 13, 579 S.E.2d at 331. We believe Hinojos's bond was forfeited and the trial court properly entered judgment on the bond. However, because the trial court failed to address, at a minimum, the three factors set forth in Polk, we find it abused its discretion in ordering the estreatment of Hinojos's bond in the amount of \$66,666.66. Accordingly, we reverse the trial court's estreatment amount determination and remand to the trial court to consider the Polk factors in its reconsideration of the estreatment amount.

CONCLUSION

We affirm the trial court's estreatment of Hinojos's bond. We reverse the trial court's estreatment amount determination and remand to the trial court to consider the Polk factors in its reconsideration of the estreatment amount.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

WILLIAMS and GEATHERS, JJ., concur.

[1] The trafficking methamphetamine and cocaine charges to which Hinojos pled guilty carried mandatory minimum sentences of seven years' incarceration. At the guilty plea, the State recommended a cap of ten years' concurrent incarceration on all charges.

FEB 25 2013

JAMES H. WILKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	Indictment No.	2005-GS-47-15
	)		2005-GS-47-23
	)		2005-GS-47-24
	)		
v.	)		
	)	ORDER FOR ESTREATMENT OF BOND	
	)		
Mario Ramos Hinojos, as Defendant,	)		
and	)		
Richard G. Thompson, d/b/a	)		
All-Out-Bail Bonding, as Surety,	)		
Accredited Property and Casualty Ins.,	)		
as Surety,	)		
Respondents.	)		
_____	)		

This matter is before this Court on remand from the South Carolina Court of Appeals to determine the amount of estreatment following that Court's affirmance of the fact of estreatment for a bond written by All-Out Bail Bonding ("All-Out"). For the following reasons, this Court orders estreatment of the entire amount of the bond for which All-Out was responsible, \$66,666.66.

I.

Procedural History

On August 18, 2005, Defendant Mario Hinojos was arrested in Greenville county subsequent to a search warrant and charged with several drug related offenses. On August 22, 2005, bond was set on Mr. Hinojos in the amount of \$200,000.00 surety, with specific conditions that the Defendant be placed on electronic monitoring, that he report weekly to the State Grand Jury Clerk of Court, that he report regularly to Special Agent Dorsey with State Law Enforcement Division, and that he not leave the State of South Carolina. Under the foregoing conditions, Mr. Hinojos procured three (3) separate bonding companies to act as Bondsman to secure his release: Richard G. Thompson with All Out Bail Bonding (with Accredited Surety and Casualty Company and Insurers as surety), Tracy

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Bowen with Bonds by Gaynell, and Leon Stowers with GiGi's bonding Company (with Palmetto Surety Corporation as surety for the latter two). Each bonding company was responsible for one third of the total bond, \$66,666.66. {ROA 1}.

On March 15, 2007, Defendant through counsel made a motion to have the electronic monitoring condition of his bond be removed. The motion was filed with the State Grand Jury Clerk of Court and served upon the Attorney General's Office. However, notice was not provided to the bondsmen or sureties. After hearing presentations by the Defendant and the State, this Court ordered that the electronic monitoring be removed. The bondsmen nor sureties were never notified of the hearing, thus they were not present at the hearing. The conditions of bond were changed to reflect the order of the Trial Court, that is to say electronic monitoring condition was removed. All other conditions of the bond remained the same. {ROA 9-10; 30-34}.

On November 20, 2007, Defendant appeared before the Trial Court and entered a guilty plea to 2005-GS-47-15 Count I for Trafficking Methamphetamines by 28 – 100 grams, 2005-GS-47-15 Count II for Trafficking Cocaine 28 – 100 grams, 2005-GS-15-47-15 Count II for Possession of a Firearm during the Commission of a Violent Crime, 2005-GS-47-23 Count I for Trafficking Methamphetamines by Conspiracy 28 – 100 grams, and 2005-GS-47-24 Count I for Trafficking Marijuana between ten (10) and one hundred (100) pounds. At the plea, sentencing was deferred pending an upcoming trial during the December 10, 2007, term in which Defendant was to testify, and he requested that the bond be continued until the sentencing. {ROA 52}. The State stated that they had no opposition to the Defendant's request as long as the bonding companies agreed to remain on the Defendant's bond. Mike Curlee with All Out Bail Bonding was the only bondsmen present at the guilty plea hearing and consented to remain on the bond until the Defendant was sentenced.

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{ROA 55-57}.

On December 10, 2007, Defendant failed to appear for court as ordered and a bench warrant was issued on December 13, 2007. **{ROA 11}**. Subsequently, on January 17, 2008, the State filed a Petition for Estreatment of the Defendant's Bond against all three bondsmen. **{ROA 13-15}**. A hearing was held on March 25, 2008 and the matter was taken under advisement until such time as the transcript of the guilty plea hearing could be obtained and written briefs could be submitted on the issue. **{ROA 59}**. That day Defendant was also sentenced in his absence. **{ROA 84}**.

On November 7, 2008, after the transcript of the guilty plea hearing was obtained a second estreatment hearing was held. At that hearing the State conceded that a modification was made to Defendant Hinojos's bond on March 15, 2007, without the notice or consent of the three bondsmen. The State also withdrew its Petition for Estreatment of the Bond against all of the bondsmen except Richard G. Thompson d/b/a All Out Bail Bonding with Accredited Surety and Casualty Company and Insurers since All Out Bail Bonding was the only bondsmen present at the guilty plea hearing and consented to remain on the bond. This Court took the matter under advisement until parties were able to submit written briefs outlining their positions. **{ROA 99}**.

On April 15, 2009, this Court ordered a bond estreatment against Richard G. Thompson, d/b/a All Out Bail Bonding and Accredited Surety and Casualty Company and Insurers in the amount of \$66,666.66. **{ROA 18}**.

All-Out then appealed this decision to the South Carolina Court of Appeals. Following briefing and argument, the Court of Appeals affirmed the fact of estreatment, finding that All-Out was barred by equitable estoppel from asserting a Statute of Frauds defense to liability on the bond. This was based in the fact that All-Out expressly represented to this Court on the record that it would

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continue on the bond pending sentencing. However, the Court remanded the case back to this Court to expressly consider the Polk factors in determining the amount to be estreated. State v. Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011) (citing Ex parte Polk, 354 S.C. 8, 13, 579 S.E.2d 329, 331 (Ct.App. 2003)).

Defendant is still not in custody. A hearing on remand before this Court was held on August 17, 2012. Lieutenant Max Dorsey from SLED testified. This Order follows.

II.

As an initial matter, this Court must address a new argument against the fact of estreatment that All-Out presented at the hearing on remand. With an effective date of February 1, 2012, the General Assembly passed 2012 Act 115, which amended S.C. Code. Ann. § 17-15-20(B), to provide, in part:

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.

In 2012 Act No. 286, which was effective June 29, 2012, the General Assembly provided as follows:

“SECTION 4. The provisions of Section 1 of Act 115 of 2012 which amended Section 17-15-20 of the 1976 Code and allow sureties to be relieved of an appearance bond under certain designated circumstances are retroactive and apply to all existing and future appearance bonds.

“SECTION 5. Except as provided in SECTION 4, the repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.”

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All-Out argues that because 2012 Act No. 286 made 2012 Act 115 retroactive to all existing bonds, then its obligation was discharged upon the adjudication or finding of guilt at the plea proceeding.

This Court disagrees. First, at the effective date of 2012 Act No. 286 in June of 2012, there was no “existing” bond to be discharged, as the bond in this case had already been forfeited and estreated by this Court’s original order of April 15, 2009. See generally S.C. Code. Ann. § 17-15-170 (“ If any person so bound fails to appear or, upon appearing, does not give a reason for not performing the condition of the recognizance as the court considers sufficient, then the judgment on the recognizance is confirmed.”); § 38-53-70 (“If the surety fails to surrender the defendant or place a hold on the defendant’s release from incarceration, commitment, or institutionalization within ninety days of the issuance of the bench warrant, the bond is forfeited.”) Thus, the new statute is inapplicable.

Similarly, All-Out cannot challenge the *fact* of estreatment because the fact of estreatment is the law of the case. The Court of Appeals rejected All-Out’s appeal and affirmed the fact of estreatment, remanding to this Court only for a determination of the amount to be estreated. The mandate to this Court does not include hearing new arguments All-Out has created as to whether estreatment was proper in the first place – that matter was finally decided when the Court of Appeals affirmed this Court on that point, and All-Out elected not to appeal that decision any further to the South Carolina Supreme Court. Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010) (“An unappealed ruling is the law of the case and requires affirmance.”). Since the fact of estreatment has already been finally affirmed and this Court’s jurisdictional mandate on remand only consists of determining the amount to be estreated, All-Out’s arguments as to the fact of estreatment cannot succeed.

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Even if this Court were to conclude that All-Out can raise new challenges to the fact of estreatment despite the current procedural context, and this Court were to also agree with All-Out that the amendment to section 17-15-20(B) meant the bond was discharged at the guilty plea, All-Out's argument still would fail. At the plea hearing, All-Out expressly told this Court it agreed to remain on the bond until sentencing. {ROA 56-58}. Just as the Court of Appeals found All-Out was collaterally estopped from raising a Statute of Frauds challenge to liability based on the representation it made to this Court on the record at the plea hearing, All-Out is similarly estopped from denying liability based on its current argument. State v. Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011) (discussing the concept of estoppel).

For the foregoing reasons, this Court rejects All-Out's arguments as to the amendment and retroactive effect of 17-15-20(B).

III.

Next, this Court addresses the amount to be estreated. For the following reasons, this Court finds the entire amount attributable to All-Out should be estreated.

The Court of Appeals remanded to this Court to expressly consider the Polk factors. Section 38-53-70 provides "[i]n 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." However, in determining whether any remission of the judgment is warranted, the trial court is not limited to considering only the actual cost to the State. Ex parte Polk, 354 S.C. at 12-13, 579 S.E.2d at 331. Rather, the court should consider, at a minimum, the following factors: (1) the purpose of the bond; (2) the nature and willfulness of the default; and (3) any prejudice or additional

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expense resulting to the State. Id. at 13, 579 S.E.2d at 331.

As to the costs to the State, Lieutenant Dorsey testified the man hours were spent in attempting to locate Hinojos, including the procuring of an order for technological monitoring, and that efforts to locate him continue to this day. {Tr. 14-17}. This Court finds this factor supports remission of the entire amount. Indeed, this Court finds persuasive the Court of Appeals' unpublished opinion in State v. Lavender, Unpub. Op. No. 2009-UP-198 (S.C. Ct. App. May 6, 2009) in which it expressly rejected any contention that the State needed to submit some sort of detailed time sheet in order to substantiate an amount for estreatment.

As to the purpose of the bond, this factor also supports estreatment of the full amount. The purpose of the bond was to ensure Defendant's presence at his sentencing. That purpose has been completely thwarted. See State v. Holloway, 262 S.C. 552, 206 S.E.2d 822 (1974) ("Certainly, prejudice to the State appears when a defendant, without excuse, fails to appear at the time set for trial, thereby obstructing and delaying the orderly administration of justice."). This case is unlike State v. Workman, 274 S.C. 341, 263 S.E.2d 865 (1980), where the amount estreated was considered excessive because there was an accomodation bondsman in the form of the defendant's aunt, and the estreatment was for merely violating the good behavior provision in an appeal bond with unrelated offenses for which the State suffered no prejudice.

As to the nature and the wilfulness of the default, this factor also supports estreatment of the full amount. Here, the trial prosecutor Jennifer Evans told the court at the prior proceedings that Defendant promised a lot to SLED so that he could receive favorable consideration, but delivered very little. Ultimately, as Evans stated, Defendant proved to be a "big time drug dealer" who was "buying his time so he could flee and be facing no time". {ROA 93}.

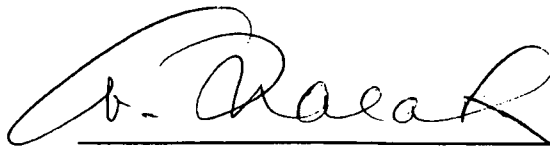
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Finally, as to any prejudice or additional expense resulting to the State, this factor also supports estreatment. Lieutenant Dorsey noted that many man hours were spent developing Hinojos as a cooperating witness, which ultimately led to the arrest of two individuals against whom Hinojos was supposed to testify. His disappearance led the State to have to resolve those charges unfavorably from the State's perspective. Indeed, one of the individuals passed a polygraph, and the State was unable to go back to Hinojos to get further information on the undercover buy he set up. Similarly, prosecutor Evans told the Court as well during prior proceedings that because of Defendant's flight the State had to dismiss a charge against one individual and enter into a deal on the other charge. {ROA 86-87}. This prejudice and additional expense also supports estreatment of the full amount.

IV. CONCLUSION

This Court finds the Polk factors support estreatment of the full amount, whether they are considered individually or together, without mitigation. Accordingly, it is ordered that the State is entitled to a judgment of forfeiture against Mario Ramos Hinojos, Defendant, Richard G. Thompson, d/b/a All-Out Bail Bonding, and Accredited Property & Casualty Ins., as surety, in the amount of Sixty-six Thousand Six Hundred Sixty-six Dollars and 66/100 Cents (\$66,666.66).

AND IT IS SO ORDERED.



ALEXANDER S, MACAULAY, Judge

February 15, 2013
Walhalla, South Carolina

E. J. B.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Alexander S. Macaulay, Circuit Court Judge

Indictment Nos. 2005-GS-47-15, 2005-GS-47-23, 2005-GS-47-24

Ex Parte:

The State of South Carolina Respondent,

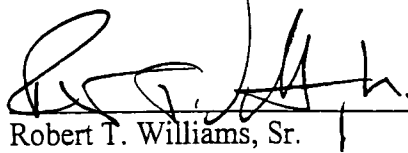
v.

Mario Ramos Hinojos, Defendant, Richard G. Thompson d/b/a All-Out Bail Bonding
and Accredited Property & Casualty Ins., Surety, of Whom Richard G. Thompson
d/b/a All-Out Bail Bonding and Accredited Property & Casualty Ins. are Appellants.

NOTICE OF INTENT TO APPEAL

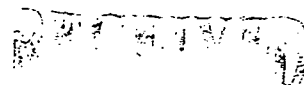
Richard G. Thompson d/b/a All-Out Bail Bonding and Accredited Property & Casualty Ins.
appeal the Order for Estreatment of Bond issued by the Honorable Alexander S. Macaulay, dated
February 15, 2013, and received on March 6, 2013, estreating monies from Appellant and emanating
from a hearing on August 17, 2012. A copy of said order is attached hereto.

March 13, 2013



Robert T. Williams, Sr.
Benjamin A. Stitely
Williams, Hendrix, Steigner & Brink, P.A.
206 East Main Street
Post Office Box 849
Lexington, South Carolina 29072
(803) 359-1550

Other Counsel of Record:
Alan Wilson, Attorney General
S. Creighton Waters, Asst. Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-1601



MAR 15 2013

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Alexander S. Macaulay, Circuit Court Judge

Indictment Nos. 2005-GS-47-15, 2005-GS-47-23, 2005-GS-47-24

Ex Parte:
The State of South Carolina Respondent,

v.

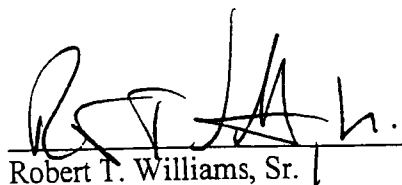
Mario Ramos Hinojos, Defendant, Richard G. Thompson d/b/a All-Out Bail Bonding
and Accredited Property & Casualty Ins., Surety, of Whom Richard G. Thompson
d/b/a All-Out Bail Bonding and Accredited Property & Casualty Ins. are Appellants.

PROOF OF SERVICE

I certify that I have served the **Notice of Intent to Appeal** on the Respondent by depositing
a copy of it in the United States Mail, postage prepaid, on March 13, 2013, addressed to Alan
Wilson, Attorney General and S. Creighton Waters, Assistant Deputy Attorney General, Office of
the Attorney General, P.O. Box 11549, Columbia, South Carolina 29211-1549.

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

March 13, 2013



Robert T. Williams, Sr.
Benjamin A. Stitely
Williams, Hendrix, Steigner & Brink, P.A.
200 East Main Street
Post Office Box 849
Lexington, South Carolina 29072
(803) 359-1550



MAR 15 2013

SC Circuit Court

1 ***** START OF REQUESTED TRANSCRIPT *****

2 (WHEREUPON, THE MOTION TO REMOVE ELECTRONIC
3 DEVICE HEARING COMMENCED AT APPROXIMATELY
4 9:43 A.M.)

5 **THE COURT:** WE ARE HERE ON THE MATTER OF *THE*
6 *STATE OF SOUTH CAROLINA VERSUS MARIO RAMOS HINOJOS,*
7 2005-GS-47-15. WE'RE HERE ON A MOTION TO REMOVE
8 ELECTRONIC DEVICE. MR. HINOJOS IS REPRESENTED BY
9 MR. RICHEY.

10 MR. RICHEY, STATE THE GROUNDS OF YOUR
11 MOTION.

12 **MR. RICHEY:** MAY IT PLEASE THE COURT, YOUR
13 HONOR. MY CLIENT WAS INDICTED IN 2005. HE'S BEEN ON
14 THIS ELECTRONIC MONITORING OVER A YEAR. HE HAS REPORTED
15 IN A TIMELY FASHION, YOUR HONOR; HE HAS COOPERATED WITH
16 THE STATE AND WHAT THEY HAVE ASKED HIM TO DO.

17 SINCE THIS HAS COST HIM AN EXTREME AMOUNT OF
18 MONEY OVER A YEAR'S TIME, WE ARE ASKING THE COURT TO
19 REMOVE THE DEVICE AND ALLOW HIM TO NOT BE SUBJECT TO THE
20 DEVICE, YOUR HONOR. HE HAS BEEN CALLING THE CLERK'S
21 OFFICE ONCE A WEEK.

22 **THE COURT:** HE DOES HAVE A NUMBER FOR THE
23 CLERK?

24 **MR. RICHEY:** YES, SIR. HE HAS BEEN CALLING
25 AND REPORTING TO THEM WHILE HE WAS ON THE MONITOR. AND

1 SO WE WOULD ASK THE COURT, YOUR HONOR, TO CONSIDER
2 REMOVING THE DEVICE. HE'S NOT A FLIGHT RISK. AND THAT
3 THE COURT, THAT HE BE ALLOWED TO DO THAT.

4 **THE COURT:** ALL RIGHT. MS. PORTER, WHAT
5 DOES THE STATE SAY?

6 **MS. PORTER:** UNFORTUNATELY, YOUR HONOR, I
7 DON'T HAVE MUCH TO SAY, OTHER THAN WHAT MR. RICHEY HAS
8 SAID IS ACCURATE: HE HAS REPORTED ANYTIME THE STATE HAS
9 REQUESTED HIM TO REPORT.

10 **THE COURT:** ALL RIGHT. MR. HINOJOS, PLEASE
11 STAND.

12 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
13 COURT.)

14 **THE COURT:** ALL RIGHT. IF I SHOULD GRANT
15 THE MOTION OF YOUR ATTORNEY, YOU DO UNDERSTAND THAT YOU
16 DO HAVE TO CONTINUE TO REPORT TO THE CLERK'S OFFICE
17 WEEKLY?

18 **THE DEFENDANT:** YES, SIR.

19 **THE COURT:** ALL RIGHT. ALSO, ALL THE OTHER
20 CONDITIONS OF YOUR BOND WOULD CONTINUE IN EFFECT. DO
21 YOU UNDERSTAND THAT?

22 **THE DEFENDANT:** YES.

23 **THE COURT:** ALL RIGHT. MORE IMPORTANTLY,
24 ALTHOUGH WE DON'T KNOW EXACTLY WHEN YOUR CASE MIGHT BE
25 DISPOSED OF OR FIRST BROUGHT FOR DISPOSITION, IT IS MY

1 UNDERSTANDING THERE IS A TERM OF COURT FOR APRIL THE
2 9TH, 2007, IN GREENVILLE. SO WHAT I'M GOING TO DO IS
3 ADVISE YOU THAT YOU WOULD HAVE TO REPORT ON MONDAY,
4 APRIL THE 9TH, 2007, AT 9:00 A.M. TO THE GREENVILLE
5 COUNTY COURTHOUSE AND ANYTIME SUBSEQUENT TO THAT THAT
6 YOU MIGHT BE TOLD TO DO SO, CONTINUING TO REPORT WITH
7 THE CLERK.

8 MORE IMPORTANTLY, STAY IN TOUCH WITH YOUR
9 ATTORNEY. HE WILL ADVISE YOU WHEN YOUR CASE WILL
10 ACTUALLY BE DISPOSED OF. IT WON'T BE APRIL THE 9TH,
11 2007, BUT I WANT YOU TO BE THERE AT 9:00 A.M. AT THE
12 GREENVILLE COUNTY COURTHOUSE ON THAT MONDAY TO GET
13 FURTHER ADVICE.

14 THE REASON FOR THAT IS YOU ARE NOW ON
15 NOTICE, AND I THINK YOU WERE PUT ON NOTICE IN YOUR BOND,
16 BUT YOU ARE NOW ON PERSONAL NOTICE THAT IF YOU DO NOT
17 REPORT AT THOSE TIMES, BEGINNING WITH APRIL THE 9TH,
18 2007 AND THEREAFTER, AS TOLD BY THE ATTORNEY GENERAL'S
19 OFFICE AND ALSO YOUR ATTORNEY, THAT IF YOU DO NOT
20 REPORT, YOUR CASE CAN BE CALLED IN YOUR ABSENCE AND YOU
21 WILL BE TRIED IN YOUR ABSENCE, AND IF THERE IS A GUILTY
22 VERDICT IN YOUR CASE, THEN YOU WILL BE SENTENCED IN YOUR
23 ABSENCE. DO YOU UNDERSTAND THIS?

24 **THE DEFENDANT:** YES, SIR.

25 **THE COURT:** IN OTHER WORDS, YOU WILL BE

1 WAIVING YOUR RIGHT TO BE PRESENT DURING THE TRIAL.

2 **THE DEFENDANT:** YES, SIR.

3 **THE COURT:** NOW, DO YOU HAVE ANY QUESTIONS
4 AT ALL?

5 **THE DEFENDANT:** NO.

6 **THE COURT:** ALL RIGHT. ANYTHING ELSE,
7 MR. RICHEY?

8 **MR. RICHEY:** NOTHING, YOUR HONOR.

9 **THE COURT:** ALL RIGHT. I'M GOING TO GRANT
10 THE MOTION BASED UPON EVERYONE'S ASSURANCES THAT
11 MR. HINOJOS HAS BEEN A -- HAS PARTICIPATED IN HIS
12 REQUIREMENTS OF HIS BOND, AS HE SHOULD.

13 BUT YOU WILL CONTINUE TO MAKE CALLS TO THE
14 CLERK, AND ALSO APRIL THE 9TH, 2007 AND ANY TIME
15 THEREAFTER YOUR CASE MIGHT BE CALLED, YOU WILL BE
16 PRESENT; IF NOT, YOU WAIVE YOUR RIGHT.

17 SO WITH THE ADVICE OF BEING TRIED IN YOUR
18 ABSENCE, I WILL GRANT THE MOTION, AND I GUESS IT WILL
19 TERMINATE WHAT IS A WEEKLY CONDITION? I MEAN, IN OTHER
20 WORDS, WHEN DOES HE PAY?

21 **THE DEFENDANT:** ONCE A MONTH.

22 (THE DEFENDANT CONFERRED WITH HIS ATTORNEY
23 OFF THE RECORD.)

24 **THE DEFENDANT:** I'VE ALREADY PAID IT FOR
25 THIS MONTH.

1 **MR. RICHEY:** HE'S ALREADY PAID FOR THIS
2 MONTH.

3 **THE COURT:** WELL, ALL RIGHT. SO YOU WON'T
4 CONTINUE AFTER THAT. IN OTHER WORDS, IF YOU CAN GET A
5 REBATE, FINE, BUT THAT WILL BE UP TO YOU. DO YOU
6 UNDERSTAND?

7 **THE DEFENDANT:** UH-HUH.

8 **THE COURT:** ALL RIGHT. I GUESS, MR. RICHEY,
9 YOU SHOULD PREPARE AN ORDER FOR ME, IF YOU WOULD.

10 **MR. RICHEY:** I WILL, YOUR HONOR. THANK YOU,
11 YOUR HONOR.

12 **THE COURT:** VERY GOOD. THANK YOU VERY MUCH.

13 (WHEREUPON, THE ABOVE HEARING WAS CONCLUDED
14 AT APPROXIMATELY 9:48 A.M.)

15 ***** END OF REQUESTED TRANSCRIPT *****
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1 ***** START OF REQUESTED TRANSCRIPT *****

2 (WHEREUPON, THE GUILTY PLEA HEARING BEGAN AT
3 APPROXIMATELY 2:30 P.M.)

4 **THE COURT:** YES, MA'AM.

5 **MS. EVANS:** WE'RE DOING MARIO HINOJOS.

6 IF IT PLEASES THE COURT, YOUR HONOR, WE'RE
7 HERE ON A GUILTY PLEA, *STATE VERSUS MARIO HINOJOS*. HE
8 IS PLEADING TO TRAFFICKING METHAMPHETAMINES, 28 TO A
9 HUNDRED GRAMS, FIRST OFFENSE; TRAFFICKING COCAINE, 28 TO
10 A HUNDRED GRAMS, FIRST OFFENSE; CONSPIRACY TO TRAFFIC
11 METHAMPHETAMINE, 28 TO A HUNDRED GRAMS, FIRST OFFENSE;
12 CONSPIRACY TO TRAFFIC MARIJUANA, TEN POUNDS TO A HUNDRED
13 POUNDS, FIRST OFFENSE; AND POSSESSION OF A FIREARM
14 DURING THE COMMISSION OF A VIOLENT CRIME. HE IS
15 PLEADING GUILTY TO THESE.

16 AT THIS TIME WE ARE GOING TO DEFER
17 SENTENCING. MR. HINOJOS IS STILL COOPERATING IN THIS
18 CASE, AND WE ANTICIPATE HIM BEING A POTENTIAL WITNESS
19 DURING THE WEEK OF DECEMBER 12TH. BUT AT THE -- WHEN WE
20 DO DO THE SENTENCING AT THIS TIME, MR. HINOJOS CONTINUES
21 TO COOPERATE WITH LAW ENFORCEMENT. AT THIS TIME WE
22 WOULD BE RECOMMENDING AT THE SENTENCING, WHICH WE ARE
23 NOT DOING TODAY, A CAP OF TEN YEARS CONCURRENT ON ALL
24 HIS TIME.

25 YOUR HONOR, I APOLOGIZE. EVERYTHING HE'S

1 PLEADING TO, ALL THE COCAINE, THE METH CHARGES CARRY
2 SEVEN TO 25 YEARS; THE MARIJUANA CARRIES ONE TO TEN
3 YEARS; AND THE POSSESSION OF A FIREARM DURING THE
4 COMMISSION OF A VIOLENT CRIME CARRIES FIVE YEARS, YOUR
5 HONOR.

6 **THE COURT:** ARE YOU MARIO RAMOS HINOJOS?

7 **THE DEFENDANT:** YES, SIR, HINOJOS. THE LAST
8 NAME IS HINOJOS.

9 **THE COURT:** HINOJOS?

10 **THE DEFENDANT:** YES.

11 **THE COURT:** THANK YOU, SIR. IF YOU WOULD,
12 PLEASE, RAISE YOUR RIGHT HAND.

13 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
14 COURT.)

15 **THE COURT:** THANK YOU, SIR.

16 NOW, MR. RICHEY, YOU REPRESENT MR. HINOJOS?

17 **MR. RICHEY:** YES, SIR.

18 **THE COURT:** AND YOU, MR. HINOJOS, YOU HAVE
19 HEARD THE ATTORNEY GENERAL TELL ME WHAT THE CHARGES WERE
20 AND WHAT THE MAXIMUM SENTENCE AND -- MINIMUM AND MAXIMUM
21 SENTENCE IS ON EACH CHARGE?

22 **THE DEFENDANT:** YES, SIR.

23 **THE COURT:** ALL RIGHT. NOW, HAVE YOU
24 EXPLAINED TO THE DEFENDANT THE CHARGES CONTAINED IN THE
25 INDICTMENTS, THE POSSIBLE PUNISHMENTS, AND HIS

1 CONSTITUTIONAL RIGHTS, TO INCLUDE THE RIGHT TO A JURY
2 TRIAL?

3 MR. RICHEY: YES, SIR.

4 THE COURT: IN YOUR OPINION DOES THE
5 DEFENDANT UNDERSTAND THE CHARGE, THE PUNISHMENTS AND HIS
6 RIGHTS?

7 MR. RICHEY: YES, SIR, HE DOES.

8 THE COURT: FROM YOUR INVESTIGATION OF THE
9 FACTS AND CIRCUMSTANCES OF EACH OF THESE CASES, DO YOU
10 FEEL THE STATE COULD PRODUCE SUFFICIENT EVIDENCE TO
11 ESTABLISH THE DEFENDANT'S GUILT BEYOND A REASONABLE
12 DOUBT, AND IF HE STOOD TRIAL, YOUR CLIENT MOST PROBABLY
13 WOULD BE FOUND GUILTY?

14 MR. RICHEY: YES, SIR.

15 THE COURT: ARE YOU AWARE OF ANY PHYSICAL,
16 MENTAL OR EMOTIONAL PROBLEMS THAT MIGHT AFFECT THE
17 DEFENDANT UNDERSTANDING WHAT HE'S DOING TODAY?

18 MR. RICHEY: NONE, YOUR HONOR.

19 THE COURT: NOW, MR. HINOJOS, BEFORE I CAN
20 ACCEPT A GUILTY PLEA, IT'S NECESSARY FOR ME TO MAKE
21 CERTAIN THAT PLEA IS MADE FREELY AND VOLUNTARILY;
22 THEREFORE, I NEED TO ASK YOU SOME QUESTIONS. IF YOU DO
23 NOT UNDERSTAND THE QUESTIONS OR THE WORDS I USE, PLEASE
24 ADVISE ME AND I'LL EXPLAIN THEM TO YOU.

25 ALSO, IF AT ANY TIME DURING QUESTIONING YOU

1 NEED TO CONSULT WITH YOUR ATTORNEY, YOU WILL BE
2 PERMITTED TO DO THAT AS WELL. NOW, DO YOU UNDERSTAND
3 THIS?

4 **THE DEFENDANT:** YES, SIR.

5 **THE COURT:** HOW OLD ARE YOU, SIR?

6 **THE DEFENDANT:** 42.

7 **THE COURT:** HOW FAR HAVE YOU GONE IN SCHOOL?

8 **THE DEFENDANT:** ABOUT 10TH, 11TH, GRADE.

9 **THE COURT:** WHAT KIND OF WORK DO YOU DO?

10 **THE DEFENDANT:** I BUILD HOUSES.

11 **THE COURT:** ARE YOU MARRIED?

12 **THE DEFENDANT:** NO, I'M DIVORCED.

13 **THE COURT:** DO YOU HAVE ANY CHILDREN UNDER

14 18?

15 **THE DEFENDANT:** NO.

16 **THE COURT:** HAVE YOU EVER BEEN TREATED FOR
17 DRUG OR ALCOHOL ABUSE OR MENTAL ILLNESS?

18 **THE DEFENDANT:** NO.

19 **THE COURT:** ARE YOU UNDER THE INFLUENCE OF
20 ANY MEDICATION, DRUGS OR ALCOHOL AT THIS TIME?

21 **THE DEFENDANT:** NO.

22 **THE COURT:** ARE YOU AWARE OF ANY PHYSICAL,
23 MENTAL OR EMOTIONAL PROBLEM THAT MIGHT KEEP YOU FROM
24 UNDERSTANDING WHAT YOU ARE DOING TODAY?

25 **THE DEFENDANT:** NO, SIR.

1 **THE COURT:** YOU HEARD YOUR ATTORNEY TELL ME
2 THAT HE'S EXPLAINED TO YOU THE CHARGES AGAINST YOU, THE
3 POSSIBLE PUNISHMENTS, AND YOUR CONSTITUTIONAL RIGHTS AND
4 THAT YOU UNDERSTAND THESE THINGS; IS THAT CORRECT?

5 **THE DEFENDANT:** YES, SIR.

6 **THE COURT:** NOW, YOU ARE PLEADING GUILTY TO
7 THE OFFENSES OF TRAFFICKING METHAMPHETAMINE, 28 TO A
8 HUNDRED GRAMS, WHERE THE MAXIMUM SENTENCE IS SEVEN
9 YEARS -- I MEAN THE MINIMUM SENTENCE IS SEVEN, THE
10 MAXIMUM IS 25 YEARS AND \$50,000.00; ALSO, TRAFFICKING
11 COCAINE, 28 TO A HUNDRED GRAMS, WHERE THE MINIMUM IS
12 SEVEN YEARS AND THE MAXIMUM 25 AND \$50,000.00; AND
13 POSSESSION OF A FIREARM DURING A VIOLENT CRIME WHERE THE
14 MAXIMUM SENTENCE IS FIVE YEARS.

15 ALSO, YOU ARE PLEADING TO TRAFFICKING
16 METHAMPHETAMINE BY CONSPIRACY, WHERE THE MAXIMUM
17 SENTENCE -- OR MINIMUM SENTENCE IS SEVEN YEARS, THE
18 MAXIMUM IS 25 YEARS AND \$50,000.00; AND FINALLY YOU ARE
19 PLEADING GUILTY TO TRAFFICKING MARIJUANA BY CONSPIRACY,
20 WHERE THE MINIMUM SENTENCE IS ONE YEAR, THE MAXIMUM
21 SENTENCE IS TEN YEARS AND \$10,000.00.

22 IF I SHOULD SENTENCE YOU CONSECUTIVELY, OR
23 YOU SHOULD BE -- YOU COULD BE SENTENCED CONSECUTIVELY,
24 IT WOULD BE 140 YEARS AND \$160,000.00. DO YOU
25 UNDERSTAND THAT?

1 **THE DEFENDANT:** YES, SIR.

2 **THE COURT:** THAT'S THE MAXIMUM SENTENCE YOU
3 COULD RECEIVE ON ALL OF THESE INDICTMENTS.

4 ALSO, THEY ARE GRADUATED OFFENSE; IN OTHER
5 WORDS -- EXCEPT FOR THE PISTOL CHARGE -- IN OTHER WORDS,
6 IF YOU ARE CONVICTED OF THE SAME OR SIMILAR CRIME IN THE
7 FUTURE, YOUR PUNISHMENT NEXT TIME WILL BE GREATER
8 BECAUSE YOU WILL HAVE PRIOR OFFENSES. DO YOU UNDERSTAND
9 THAT?

10 **THE DEFENDANT:** YES, SIR.

11 **THE COURT:** AND FINALLY, IT WILL AFFECT YOUR
12 ABILITY TO GET A DRIVER'S LICENSE IN SOUTH CAROLINA. DO
13 YOU UNDERSTAND?

14 **THE DEFENDANT:** YES, SIR.

15 **THE COURT:** ARE YOU ON PROBATION OR PAROLE?

16 **THE DEFENDANT:** NO.

17 **THE COURT:** YOU DO UNDERSTAND IF YOU WERE ON
18 PROBATION OR PAROLE, YOUR PROBATION OR PAROLE COULD BE
19 REVOKED BY REASON OF YOUR PLEAS TODAY AND YOU COULD BE
20 INCARCERATED FOR ADDITIONAL TIME? DO YOU UNDERSTAND
21 THAT?

22 **THE DEFENDANT:** YES, SIR.

23 **THE COURT:** DO YOU FULLY UNDERSTAND, THEN,
24 THE NATURE OF THE CHARGES AGAINST YOU AND THE RANGE OF
25 POSSIBLE PUNISHMENTS?

1 **THE DEFENDANT:** YES, SIR.

2 **THE COURT:** WHEN YOU PLEAD GUILTY, DO YOU
3 UNDERSTAND THAT YOU GIVE UP CERTAIN IMPORTANT
4 CONSTITUTIONAL RIGHTS?

5 **THE DEFENDANT:** YES, SIR.

6 **THE COURT:** FIRST, YOU GIVE UP YOUR RIGHT TO
7 REMAIN SILENT, THAT IS THE RIGHT TO SAY NOTHING AT ALL.
8 YOU CANNOT BE COMPELLED TO TESTIFY AGAINST YOURSELF OR
9 OFFER EVIDENCE AGAINST YOURSELF. IT'S CALLED THE RIGHT
10 AGAINST SELF-INCRIMINATION. DO YOU UNDERSTAND THIS?

11 **THE DEFENDANT:** YES, SIR.

12 **THE COURT:** SECOND, YOU GIVE UP YOUR RIGHT
13 TO A JURY TRIAL. IN A JURY TRIAL YOU WOULD BE PRESUMED
14 TO BE INNOCENT AND ALL 12 MEMBERS OF THE JURY WOULD HAVE
15 TO BE CONVINCED OF YOUR GUILT BEYOND A REASONABLE DOUBT
16 BEFORE YOU COULD BE FOUND GUILTY. DO YOU UNDERSTAND
17 THAT?

18 **THE DEFENDANT:** YES, SIR.

19 **THE COURT:** THIRD, YOU GIVE UP YOUR RIGHT TO
20 CONFRONT, THAT IS YOUR RIGHT SEE, HEAR AND CROSS-EXAMINE
21 THE WITNESSES CALLED AGAINST YOU AS WELL AS YOUR RIGHT
22 TO PRESENT AND CALL WITNESSES ON YOUR OWN BEHALF. DO
23 YOU UNDERSTAND THIS?

24 **THE DEFENDANT:** YES, SIR.

25 **THE COURT:** DO YOU UNDERSTAND THAT WHEN YOU

1 PLEAD GUILTY, YOU WAIVE OR GIVE UP ALL OF THESE RIGHTS?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: DO YOU UNDERSTAND WHEN YOU PLEAD
4 GUILTY, YOU ADMIT THE TRUTH OF THE CHARGES MADE AGAINST
5 YOU?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: MADAM ATTORNEY GENERAL, HAS THE
8 DEFENDANT BEEN PROVIDED ACCESS TO ALL BRADY AND OTHER
9 DISCOVERY MATERIALS?

10 MS. EVANS: YES, SIR, HE HAS.

11 THE COURT: UNDERSTANDING, THEN, THE NATURE
12 OF THE OFFENSES AND THE CONSEQUENCES OF A GUILTY PLEA,
13 HOW DO YOU WISH TO PLEAD TO EACH OF THESE CHARGES? HOW
14 DO YOU WISH TO PLEAD TO EACH OF THESE CHARGES?

15 THE DEFENDANT: GUILTY.

16 THE COURT: GUILTY. THAT'S TO ALL FIVE
17 CHARGES, INDICTMENTS, COUNTS?

18 THE DEFENDANT: YEAH.

19 THE COURT: IS THAT CORRECT?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: ARE YOU, IN FACT, GUILTY?

22 THE DEFENDANT: YEAH.

23 THE COURT: DO YOU WANT TO TELL ME WHAT YOU
24 DID?

25 THE DEFENDANT: YES, SIR.

1 **THE COURT:** ALL RIGHT. WITH THE
2 METHAMPHETAMINE, TWO INDICTMENTS, TRAFFICKING, 28 TO A
3 HUNDRED GRAMS; AND THEN TRAFFICKING METH BY CONSPIRACY,
4 WHAT WERE THOSE TWO? WHAT DID YOU DO?

5 **THE DEFENDANT:** I HAVE NO IDEA. I DIDN'T
6 UNDERSTAND THE QUESTION.

7 **THE COURT:** ALL RIGHT. YOU ARE PLEADING
8 GUILTY TO FIVE INDICTMENTS, AND YOU UNDERSTAND THAT WHEN
9 YOU PLEAD GUILTY, YOU ADMIT THE TRUTH OF THE CHARGES
10 MADE AGAINST YOU?

11 **THE DEFENDANT:** UH-HUH, YES, SIR.

12 **THE COURT:** IN OTHER WORDS, YOU ARE
13 ADMITTING THAT YOU DID WHAT IS CHARGED IN THOSE
14 INDICTMENTS. IN INDICTMENT NUMBER 2005-GS-47-15, COUNT
15 ONE, YOU ARE CHARGED WITH TRAFFICKING METHAMPHETAMINES
16 BETWEEN 28 AND A HUNDRED GRAMS. AND WHAT WAS THAT?

17 **THE DEFENDANT:** WHAT?

18 **THE COURT:** DO YOU REMEMBER WHAT YOU DID?

19 **THE DEFENDANT:** AS FAR AS THE METH THAT WAS
20 AT THE HOUSE?

21 **THE COURT:** YES, SIR. SO YOU HAD
22 METHAMPHETAMINE BETWEEN 28 AND A HUNDRED GRAMS?

23 **THE DEFENDANT:** YES.

24 **THE COURT:** ALL RIGHT. AND IT WAS HERE IN
25 SOUTH CAROLINA, GREENVILLE COUNTY?

1 **THE DEFENDANT:** YES, YES.

2 **THE COURT:** AND HOW ABOUT COCAINE, DID YOU
3 HAVE SOME COCAINE AT ONE TIME?

4 **THE DEFENDANT:** YES.

5 **THE COURT:** HOW MUCH DID YOU HAVE? WAS IT
6 BETWEEN 28 AND A HUNDRED GRAMS?

7 **THE DEFENDANT:** YES.

8 **THE COURT:** AT LEAST?

9 **THE DEFENDANT:** AT LEAST, YES.

10 **THE COURT:** AND DID YOU HAVE METHAMPHETAMINE
11 OR PARTICIPATE IN A CONSPIRACY WHERE OTHER PEOPLE HAD
12 METHAMPHETAMINE ---

13 **THE DEFENDANT:** YES.

14 **THE COURT:** --- BETWEEN AT LEAST 28 TO A
15 HUNDRED GRAMS?

16 **THE DEFENDANT:** YES, SIR.

17 **THE COURT:** AND ALSO MARIJUANA, DID YOU
18 CONSPIRE WITH PEOPLE TO HAVE POSSESSION OF MARIJUANA?

19 **THE DEFENDANT:** YES, SIR.

20 **THE COURT:** AND FINALLY, DURING THESE
21 OFFENSES DID YOU HAVE A PISTOL?

22 **THE DEFENDANT:** UM...

23 **THE COURT:** A RIFLE?

24 **THE DEFENDANT:** YEAH, I GUESS SO, YEAH.

25 **THE COURT:** DID YOU HAVE A FIREARM?

1 **THE DEFENDANT:** THEY WERE IN THE HOUSE,
2 YEAH.

3 **THE COURT:** UNDER YOUR CONTROL? I MEAN, YOU
4 COULD GET TO THEM? YOU KNEW THEY WERE THERE?

5 **THE DEFENDANT:** YEAH, YEAH, I KNEW THEY WERE
6 THERE, YES, SIR.

7 **THE COURT:** AND IF YOU WANTED TO GET RID OF
8 THEM, YOU COULD HAVE GOTTEN RID OF THEM?

9 **THE DEFENDANT:** YES, SIR.

10 **THE COURT:** YOU COULD HAVE?

11 **THE DEFENDANT:** YEAH.

12 **THE COURT:** WELL, THE REASON I ASK THESE, I
13 WANT TO BE SURE THAT YOU KNOW THAT WHAT YOU DID WAS
14 WRONG ---

15 **THE DEFENDANT:** RIGHT.

16 **THE COURT:** --- AND IT WAS AGAINST THE LAW
17 OF SOUTH CAROLINA.

18 AND THEN THE SECOND THING I WANT TO BE SURE
19 THAT I UNDERSTAND IS THAT IF YOU STOOD TRIAL ON ANY IF
20 NOT ALL OF THESE FIVE CHARGES, REALLY ON EACH
21 INDICTMENT, YOU WOULD BE FOUND GUILTY; IS THAT CORRECT?

22 **THE DEFENDANT:** YES, SIR.

23 **THE COURT:** ALL RIGHT. NOW, I UNDERSTAND
24 THAT THERE HAVE BEEN SOME NEGOTIATIONS RECITED IN A PLEA
25 AGREEMENT DATED 11-20-2007; IS THAT CORRECT?

1 **THE DEFENDANT:** YES, SIR.

2 **THE COURT:** IT'S A PLEA AGREEMENT YOU SIGNED
3 ALONG WITH YOUR ATTORNEY AS WELL AS THE ATTORNEY
4 GENERAL?

5 **THE DEFENDANT:** YES, SIR.

6 **THE COURT:** NOW, OTHER THAN THAT PLEA
7 AGREEMENT, WHAT MIGHT BE RECOMMENDED IN THAT IF THE PLEA
8 AGREEMENT IS FULFILLED, HAS ANYBODY OFFERED YOU ANYTHING
9 OR PROMISED YOU ANYTHING TO GET YOU TO PLEAD GUILTY?

10 **THE DEFENDANT:** NO, SIR.

11 **THE COURT:** HAS ANYBODY THREATENED YOU OR
12 PUT YOU IN FEAR OF YOUR OWN SAFETY TO MAKE YOU PLEAD
13 GUILTY?

14 **THE DEFENDANT:** NO, SIR.

15 **THE COURT:** ARE YOU PLEADING GUILTY OF YOUR
16 OWN FREE WILL AND ACCORD?

17 **THE DEFENDANT:** YES, SIR.

18 **THE COURT:** HAVE YOU FULLY DISCUSSED ALL
19 ASPECTS OF YOUR CASES WITH YOUR LAWYER?

20 **THE DEFENDANT:** YES, SIR.

21 **THE COURT:** DO YOU NEED ANY MORE TIME TO
22 TALK TO YOUR LAWYER?

23 **THE DEFENDANT:** NO.

24 **THE COURT:** ARE YOU COMPLETELY SATISFIED
25 WITH MR. RICHEY'S SERVICES AS YOUR ATTORNEY?

1 **THE DEFENDANT:** YES, SIR.

2 **THE COURT:** IS ANYONE CONNECTED WITH THIS
3 CASE, INCLUDING THE SOLICITOR [SIC] OR THE POLICE
4 OFFICERS, MISTREATED YOU IN ANY WAY?

5 **THE DEFENDANT:** NO.

6 **THE COURT:** HAVE YOU HAD ENOUGH TIME TO MAKE
7 UP YOUR MIND AS TO WHETHER OR NOT YOU WANT TO PLEAD
8 GUILTY?

9 **THE DEFENDANT:** YES, SIR.

10 **THE COURT:** HAVE YOU UNDERSTOOD MY
11 QUESTIONS?

12 **THE DEFENDANT:** YES, SIR, I DID.

13 **THE COURT:** IS THERE ANYTHING YOU WOULD LIKE
14 TO ASK ME ABOUT WHAT WE HAVE BEEN OVER?

15 **THE DEFENDANT:** NO.

16 **THE COURT:** YOU MAY HAVE DISCUSSED PAROLE OR
17 PAROLE ELIGIBILITY WITH YOUR LAWYER OR OTHER PEOPLE. NO
18 ONE CAN TELL YOU WHEN, IF EVER, OR UNDER WHAT CONDITIONS
19 YOU MIGHT BE ELIGIBLE FOR PAROLE. YOU SHOULD ASSUME
20 THAT YOU WILL SERVE THE ENTIRE TIME IN JAIL THAT I
21 SENTENCE YOU TO.

22 DO YOU UNDERSTAND THIS?

23 **THE DEFENDANT:** YES, SIR.

24 **THE COURT:** DO YOU ALSO UNDERSTAND THAT ONCE
25 YOU ARE SENTENCED, YOU HAVE THE RIGHT TO APPEAL YOUR

1 GUILTY PLEA AND THE SENTENCE OF THE COURT, BUT YOU MUST
2 DO SO WITHIN TEN DAYS FROM THAT TIME? DO YOU UNDERSTAND
3 THAT?

4 **THE DEFENDANT:** YES, SIR.

5 **THE COURT:** ALL RIGHT. MADAM ATTORNEY
6 GENERAL, WHAT ARE THE FACTS IN THE CASE?

7 **STATEMENT OF FACTS BY ATTORNEY GENERAL:**

8 **MS. EVANS:** YES. WE'LL START WITH
9 INDICTMENT 2005-GS-47-15, COUNT -- ALL OF THEM ARISE OUT
10 OF A SEARCH WARRANT THAT WAS EXECUTED ON AUGUST 18TH,
11 2005.

12 TO SET UP THE SEARCH WARRANT -- AND I'LL GET
13 TO THIS IN A SECOND -- MR. MARTINEZ WAS COOPERATING WITH
14 LAW ENFORCEMENT. WHAT HE DID, HIS SOURCE, AND THE
15 REASON MR. HINOJOS WAS LEFT OUT WHEN WE DID OUR PRESS
16 CONFERENCE AND ANNOUNCED THIS, MR. HINOJOS WAS STILL
17 ACTIVELY COOPERATING SO, THEREFORE, WE CERTAINLY DIDN'T
18 WANT HIS NAME TO BE PUBLICIZED, BUT THIS IS MR. HINOJOS
19 RIGHT HERE (INDICATING ON CHART).

20 THERE WAS AN UNDERCOVER DEAL ARRANGED. LAW
21 ENFORCEMENT DIDN'T WANT TO GO THROUGH WITH THE
22 UNDERCOVER DEAL, BUT BASED UPON THE DEAL, THEY OBTAINED
23 AND EXECUTED A SEARCH WARRANT ON AUGUST 18TH, 2005, AT
24 MR. HINOJOS'S HOUSE.

25 WHEN THEY GOT IN, THEY FOUND -- FOR COUNT

1 ONE, THEY FOUND APPROXIMATELY 1,937 GRAMS OF ICE IN HIS
2 HOUSE, WHICH IS THE FACTUAL BASIS FOR THE SUBSEQUENT
3 TRAFFICKING METH IN THIS CASE BETWEEN 28 AND A HUNDRED
4 GRAMS OF WHAT HE'S PLEADING TO.

5 IN THAT SAME SEARCH THEY EXECUTED AT HIS
6 RESIDENCE, FOR COUNT TWO OF THAT INDICTMENT, WHICH IS
7 TRAFFICKING COCAINE, THEY ALSO FOUND 883 GRAMS OF
8 COCAINE THAT WERE IN HIS RESIDENCE UPON EXECUTION OF THE
9 SEARCH WARRANT.

10 BOTH TRAFFICKING METH AND TRAFFICKING
11 COCAINE ARE CONSIDERED VIOLENT CRIMES AND, THEREFORE,
12 THERE WAS, AS MR. HINOJOS TOLD YOU, A GUN FOUND AT THE
13 HOUSE, AND HE HAD IT NOT ACTUALLY ON HIS POSSESSION, BUT
14 UNDER THE TERMS OF THE LAW HE HAD IT IN POSSESSION
15 DURING THE COMMISSION OF THE VIOLENT CRIME, WHICH IS THE
16 TWO CRIMES OF TRAFFICKING.

17 GOING BACK -- AND THAT'S HOW WE GOT THE
18 THREE SUBSEQUENT -- TWO SUBSEQUENT TRAFFICKING COCAINE
19 AND TRAFFICKING METH CHARGES AND THE POSSESSION OF A
20 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THOSE
21 WERE THOSE CHARGES.

22 MOVING ON TO INDICTMENT NUMBER
23 2005-GS-47-23, COUNT ONE, THAT IS THIS TRAFFICKING
24 METHAMPHETAMINES CONSPIRACY RIGHT HERE (INDICATING ON
25 CHART). AS YOU HAVE HEARD, MR. MARTINEZ WAS

1 COOPERATING, AND THEN WE EXECUTED THIS SEARCH WARRANT.
2 AS SOON AS THE SEARCH WARRANT WAS EXECUTED, MR. HINOJOS
3 BEGAN TO COOPERATE.

4 THIS CONSPIRACY STARTED AROUND SOMETIME JULY
5 1ST, 2005, TILL APPROXIMATELY THE DATE OF THE
6 INDICTMENT, AUGUST 20TH, 2005.

7 SOMETIME IN ABOUT 2000 MR. HINOJOS STARTED
8 SELLING DRUGS SOLELY FOR PROFIT. IT'S OUR UNDERSTANDING
9 HE WAS NOT USING THE DRUGS AT THE TIME. DURING 2000,
10 2003, HE WAS SELLING THE VARIETY OF DRUGS, INCLUDING
11 MARIJUANA, WHICH I'LL GET TO THE MARIJUANA CHARGE.

12 HOW THEY GOT INTO THIS CONSPIRACY IS HE WAS,
13 KNEW -- MR. MARTINEZ GOES BY FRANKIE, HE KNEW FRANKIE,
14 AND FRANKIE, THIS IS ONE OF FRANKIE'S SUPPLIERS WHO WAS
15 SUPPLYING BOTH J.J. NELSON -- J.J. TURNER AND ERNIE
16 ROBERTS. AND SO HE -- DURING THIS TIME HE WAS ALSO
17 GETTING -- HIS SUPPLIER WAS MR. SOTO. APPROXIMATELY
18 SEVEN TIMES HE RECEIVED ICE FROM MR. SOTO.

19 HE IMMEDIATELY COOPERATED WITH S.L.E.D. TO
20 DO AN UNDERCOVER DEAL, BEING ARRESTED WITH MR. SOTO, AND
21 THAT IS THE ESSENCE OF THE TRAFFICKING METHAMPHETAMINE
22 CONSPIRACY. IT WAS IN AN AMOUNT GREATER THAN 28 GRAMS.
23 FOR THE PURPOSE OF THIS PLEA -- IT WAS OVER 400 GRAMS,
24 BUT FOR THE PURPOSE OF THIS PLEA IT WAS GREATER THAN 28
25 GRAMS.

1 MOVING ON. DURING HIS SAME COOPERATION, HE
2 HAD ADMITTED AND WAS FULLY DEBRIEFED BY LAW ENFORCEMENT.
3 HE TOLD LAW ENFORCEMENT -- AND FOR THE RECORD THIS IS
4 INDICTMENT NUMBER 2005-GS-47-24, COUNT ONE -- HE WAS
5 ALSO INVOLVED IN SELLING MARIJUANA. AGAIN, BEING
6 COOPERATIVE WITH LAW ENFORCEMENT, HE EXPLAINED TO LAW
7 ENFORCEMENT THAT HIS SUPPLIER OF MARIJUANA WAS MR. JORGE
8 HEREDIA-VERDER AND EMILIO SALAZAR-ORTIZ WERE HIS TWO.
9 AGAIN COOPERATIVE WITH LAW ENFORCEMENT, HE ARRANGED TO
10 MAKE AN UNDERCOVER BUY OF THOSE TWO PEOPLE. EVERYBODY
11 IN THAT CASE HAS PLED GUILTY.

12 SO APPROXIMATELY, DURING THE COURSE OF THAT
13 HE RECEIVED SOMEWHERE BETWEEN 600 AND 700 POUNDS FROM
14 MR. ORTIZ, AND THAT IS THE ESSENCE OF THE MARIJUANA
15 CONSPIRACY.

16 ADDITIONALLY, AND WHY WE ARE DEFERRING
17 SENTENCE ON THIS CHARGE, HE ACTUALLY MADE OTHER
18 UNDERCOVER BUYS WHICH ARE SCHEDULED FOR THE TRIAL OF
19 DECEMBER 10TH. MR. VALDOVINOS PALOMINOS (PHONETIC) WAS
20 ONE WHICH MR. HINOJOS ARRANGED WITH UNDERCOVER, WITH LAW
21 ENFORCEMENT.

22 WITHOUT GOING INTO ANY GREAT DETAIL,
23 ALTHOUGH MISTER -- AND I KNOW WE ARE DEFERRING
24 SENTENCING, BUT I DO WANT TO TELL THE COURT WHY WE HAVE
25 AGREED TO THAT HEARING, THAT FACTUAL BASIS. MR. HINOJOS

1 COOPERATED RIGHT AWAY, AND I THINK OUT OF ALMOST
2 EVERYBODY IN THIS CASE, LAW ENFORCEMENT -- AND THEY'LL
3 TELL YOU AT SENTENCING -- MR. HINOJOS HAS BEEN EXTREMELY
4 COOPERATIVE AND ACTUALLY NOT ONLY TURNED OVER ALL HIS
5 SOURCES IMMEDIATELY, ARRANGED FOR UNDERCOVER BUYS, BUT
6 CONTINUES TO COOPERATE WITH LAW ENFORCEMENT.

7 I DON'T CERTAINLY WANT TO GO INTO ANY
8 DETAILS OF WHAT HE'S DOING WITH LAW ENFORCEMENT, BUT HE
9 KEEPS UP WITH SPECIAL AGENT MAX DORSEY. ANYTHING THAT
10 HE CAN DO FOR THEM HE HAS DONE FOR THEM. AND BASED UPON
11 THAT, MR. RICHEY ASKED US IF WE WOULD HAVE ANY
12 OPPOSITION OF HIM STAYING OUT WHILE WE DEFER HIS
13 SENTENCING, AND CERTAINLY AS LONG AS THE BONDSMAN AGREES
14 TO IT, WE WOULD REQUIRE THE SAME THING, THAT HE CHECK IN
15 WEEKLY.

16 HE HAS BEEN AS A CONDITION OF BOND ALSO
17 CALLING THE CLERK OF COURT'S OFFICE TO KEEP UP WITH
18 THEM. I KNOW FROM SPECIAL AGENT DORSEY HE KEEPS UP WITH
19 SPECIAL AGENT DORSEY ON A REGULAR BASIS, ALSO. WE WOULD
20 ASK THAT HE CONTINUE TO KEEP UP WITH THE CLERK OF
21 COURT'S OFFICE. THE CLERK OF COURT TOLD ME RIGHT BEFORE
22 THIS PLEA THAT HE HAS BEEN MEETING THIS REQUIREMENT.

23 AND, LIKE I SAID, WITHOUT GOING INTO TOO
24 MANY FACTS IN OPEN COURT, MR. HINOJOS CONTINUES AND WILL
25 BE CONTINUING TO COOPERATE WITH LAW ENFORCEMENT. HE MAY

1 NOT BE ABLE TO AFTER PUTTING ALL THAT ON THE RECORD IN
2 COURT HERE TODAY, BUT I DID WANT TO, AFTER ESTABLISHING
3 THOSE FACTS, EXPLAIN HIS LEVEL OF COOPERATION, BOTH PAST
4 AND, LIKE I SAID, IT WAS IMMEDIATELY, INSTANT, WITHIN A
5 COUPLE OF DAYS, HAD ALL THAT DONE AND CONTINUED TO
6 COOPERATE WITH LAW ENFORCEMENT.

7 WOULD YOU LIKE TO HEAR HIS RECORD?

8 **THE COURT:** WELL, LET'S FIND OUT ABOUT THE
9 FACTS FIRST. BY THE WAY, ALL OF THIS OCCURRED IN SOUTH
10 CAROLINA?

11 **MS. EVANS:** ALL OF THIS OCCURRED IN SOUTH
12 CAROLINA, MOSTLY IN GREENVILLE COUNTY AND SPARTANBURG
13 COUNTY.

14 **THE COURT:** GREENVILLE AND SPARTANBURG
15 COUNTIES?

16 **MS. EVANS:** YES, SIR.

17 **THE COURT:** ALL RIGHT. DO YOU AGREE WITH
18 THE FACTS AS STATED BY THE SOLICITOR [SIC]?

19 **THE DEFENDANT:** YES, SIR.

20 **THE COURT:** ALL RIGHT. NOW WHAT SORT OF
21 RECORD DOES HE HAVE?

22 **MS. EVANS:** HE HAS ONE CONVICTION FROM TEXAS
23 WHERE IT'S MY UNDERSTANDING IS WHERE MR. HINOJOS IS
24 FROM, AND THAT IS A MISDEMEANOR ASSAULT AND BATTERY FROM
25 1985; AND HIS ONLY OTHER CHARGE WAS IN 2002,

1 CONTRIBUTING TO THE DELINQUENCY OF A MINOR, AND THAT WAS
2 HERE IN GREENVILLE COUNTY.

3 **THE COURT:** ALL RIGHT. IS THAT YOUR RECORD,
4 AS WELL?

5 **THE DEFENDANT:** YES, SIR.

6 **THE COURT:** HAS ANYBODY SUGGESTED TO YOU ANY
7 ANSWERS THAT SHOULD BE GIVEN TO THE COURT DURING YOUR
8 QUESTIONING TODAY?

9 **THE DEFENDANT:** NO.

10 **THE COURT:** FINALLY, HAS EACH AND EVERY
11 ANSWER YOU HAVE GIVEN TO THE COURT TODAY BEEN ABSOLUTELY
12 TRUTHFUL?

13 **THE DEFENDANT:** YES, SIR.

14 **THE COURT:** I FIND THAT THERE IS A
15 SUBSTANTIAL FACTUAL BASIS FOR EACH OF THESE PLEAS, AND I
16 FIND THAT THE DEFENDANT'S DECISION TO PLEAD GUILTY TO
17 EACH INDICTMENT IS FREELY, VOLUNTARILY, KNOWINGLY AND
18 INTELLIGENTLY MADE, WITH THE ADVICE AND COUNSEL OF AN
19 ATTORNEY WITH WHOM THE DEFENDANT SAYS HE IS SATISFIED.
20 THE DEFENDANT'S PLEAS OF GUILTY TO EACH COUNT IN EACH
21 INDICTMENT ARE ACCEPTED.

22 COMES NOW THE DEFENDANT, MARIO RAMOS
23 HINOJOS, WHO IN OPEN COURT AND IN HIS OWN PROPER PERSON,
24 PLEADS GUILTY TO INDICTMENTS NUMBER 2005-GS-47-15, COUNT
25 ONE, COUNT TWO, AND COUNT THREE; INDICTMENT

1 2005-GS-47-23, COUNT ONE; INDICTMENT 2005-GS-47-24,
2 COUNT ONE, AND SUBMITS TO SENTENCE OF THE COURT.

3 AS I UNDERSTAND IT, SENTENCING IS TO BE
4 DELAYED OR CONTINUED UNTIL A LATER DATE?

5 **MS. EVANS:** FOR THE SENTENCE -- HE KNOWS TO
6 COME. WE HAVE A TRIAL SCHEDULED DECEMBER 10TH IN WHICH
7 HE WILL BE TESTIFYING. WE BELIEVE AT THIS TIME WE WILL
8 DO THE SENTENCING AT THAT TIME.

9 **THE COURT:** YOU DO UNDERSTAND, OF COURSE,
10 MR. HINOJOS, IF YOU DON'T APPEAR, YOU CAN BE SENTENCED
11 IN YOUR ABSENCE?

12 **THE DEFENDANT:** YES, SIR.

13 **THE COURT:** ANY QUESTION ABOUT THAT?

14 **THE DEFENDANT:** NO, SIR.

15 **THE COURT:** YOU KNOW THE ADDITIONAL
16 CONDITIONS OF YOUR BOND, TOO, THAT YOU ARE TO STAY IN
17 TOUCH NOT ONLY WITH YOUR ATTORNEY BUT ALSO WITH THE
18 CLERK OF COURT.

19 AND IS IT A REQUIREMENT THAT HE STAY IN
20 TOUCH WITH S.L.E.D.?

21 **MS. EVANS:** CERTAINLY HE HAS BEEN
22 COOPERATING AND HE WILL CONTINUE TO COOPERATE WITH
23 S.L.E.D.

24 **THE COURT:** AND YOU WILL CONTINUE TO
25 COOPERATE WITH S.L.E.D. ANY QUESTIONS ABOUT ANY OF

1 THAT?

2 **THE DEFENDANT:** NO, SIR.

3 **THE COURT:** ALL RIGHT. GOOD LUCK TO YOU,
4 SIR.

5 **MR. RICHEY:** JUDGE, WE HAVE ONE OF THE
6 BONDSMEN HERE AND HE'S AGREED TO CONTINUE ON BOND.

7 **MS. EVANS:** YOUR HONOR, I HAVE THIS NOTE,
8 AND I DON'T KNOW IF WE MISSPELLED HIS NAME ON THE
9 INDICTMENT, BUT I'M JUST GOING TO CORRECT IT FOR THE
10 RECORD TO MAKE SURE IT'S CORRECT. HIS LAST NAME IS
11 SPELLED H-I-N-O-J-O-S. I JUST HAD A NOTE TO CORRECT IT
12 ON THE RECORD, SO I'M NOT SURE, I DON'T HAVE THE
13 INDICTMENT ---

14 **THE COURT:** IT'S ON THE SENTENCING SHEET
15 THAT WAY. I'M NOT SURE IF IT'S ON THE ---

16 **MS. EVANS:** OKAY. I JUST WANTED TO MAKE
17 SURE THE RECORD WAS CLEAR IN THE SPELLING OF HIS LAST
18 NAME.

19 **MR. RICHEY:** THANK YOU, YOUR HONOR.

20 **MS. EVANS:** THANK YOU, YOUR HONOR.

21 **THE COURT:** WELL, LET'S SEE ABOUT THE
22 BONDSMAN. IF YOU WOULD PLEASE, SIR, GIVE ME YOUR NAME
23 AGAIN FOR THE RECORD.

24 **BONDSMAN:** MICHAEL CURLEE.

25 **THE COURT:** MR. CURLEE, I UNDERSTAND YOU ARE

1 WITH WHICH BOND COMPANY?

2 **BONDSMAN:** ALL-OUT BAIL BONDING, SIR.

3 **THE COURT:** AND YOU ARE THE BONDSMAN FOR
4 MR. HINOJOS?

5 **BONDSMAN:** YES, YOUR HONOR. THERE'S THREE
6 BONDING COMPANIES WORKING WITH HIM.

7 **THE COURT:** ALL RIGHT. AND BUT YOU
8 UNDERSTAND THAT YOU ARE BINDING ALL THREE OF WHATEVER
9 THE BONDS ARE THAT THE CONDITIONS WILL CONTINUE UNTIL HE
10 IS SENTENCED?

11 **BONDSMAN:** I CAN'T ANSWER FOR THE OTHER TWO,
12 YOUR HONOR.

13 **THE COURT:** BUT ALL-OUT?

14 **BONDSMAN:** ALL-OUT, I CAN ANSWER FOR
15 ALL-OUT.

16 **THE COURT:** ALL RIGHT. AND THEN THE
17 ADDITIONAL ONES ARE THAT HE STAY IN TOUCH WITH THE CLERK
18 OF COURT, COOPERATE WITH S.L.E.D.

19 IS THERE ANYTHING ELSE?

20 **MS. EVANS:** NO.

21 **THE COURT:** AND, OF COURSE, HIS ATTORNEY.
22 DO YOU UNDERSTAND THOSE ADDITIONAL
23 CONDITIONS?

24 **BONDSMAN:** HE STAYS IN TOUCH WITH US, YOUR
25 HONOR; HE CALLS US AND COMES TO SEE US.

1 **MS. EVANS:** AND FOR THE RECORD, JUST SO HE
2 WILL KNOW, IF HE DOESN'T, WE WILL BE MOVING TO ESTREAT
3 THE BOND, PUT HIM ON NOTICE THAT IF HE DOESN'T SHOW UP,
4 THAT WE WOULD BE MOVING TO ESTREAT HIS BOND.

5 **THE COURT:** ALL RIGHT. DO YOU UNDERSTAND
6 THAT, MR. HINOJOS?

7 **THE DEFENDANT:** YES, SIR.

8 **THE COURT:** ALL RIGHT. VERY GOOD, SIR.

9 (WHEREUPON, THE GUILTY PLEA HEARING WAS
10 CONCLUDED AT APPROXIMATELY 3:00 P.M.)

11 ***** END OF REQUESTED TRANSCRIPT *****
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1 ***** START OF REQUESTED TRANSCRIPT OF RECORD *****

2 **MS. PORTER:** THIS IS AN ESTREATMENT HEARING THE
3 STATE IS ASKING FOR REGARDING MARIO HINOJOS'S BOND; AND
4 IT IS AGAINST MARIO HINOJOS AS DEFENDANT, RICHARD G.
5 THOMPSON DOING BUSINESS AS ALL OUT BAIL BONDING,
6 ACCREDITED PROPERTY CASUALTY INSURANCE COMPANY; TRACY
7 BOWEN, DOING BUSINESS AS BONDS BY GAYNELL, MR. W. LEON
8 STOWERS, S-T-O-W-E-R-S, DOING BUSINESS AS GIGI'S BONDING
9 COMPANY, AS WELL AS PALMETTO SURETY CORPORATION.

10 I BELIEVE THEY ARE ALL REPRESENTED BY MR. THEO
11 MITCHELL [SIC] WHO IS --

12 **MR. WILLIAMS:** YOUR HONOR, I AM NOT THEO MITCHELL.
13 I DO FAVOR HIM. (LAUGHTER.)

14 **THE COURT:** I COULD HONESTLY SAY, MUCH LIKE THE
15 FORMER SENATOR AND VICE-PRESIDENTIAL CANDIDATE FROM
16 TEXAS, I KNEW SENATOR -- I KNOW SENATOR MITCHELL, AND YOU
17 ARE NOT SENATOR MITCHELL.

18 **MS. PORTER:** I APOLOGIZE TO MR. THEO WILLIAMS, YOUR
19 HONOR, FROM LEXINGTON, SOUTH CAROLINA.

20 **THE COURT:** I ALSO KNOW MR. WILLIAMS.

21 **MS. PORTER:** IF I MAY, YOUR HONOR?

22 **THE COURT:** YES, MA'AM.

23 **MS. PORTER:** I HAVE HANDED UP TO THE COURT AS WELL
24 AS MADE A COURT'S EXHIBIT AS WELL AS GIVEN MR. WILLIAMS A
25 COPY OF SEVERAL THINGS, OF WHICH I'VE INCLUDED IN A TABLE

1 OF CONTENTS. THE TIME LINE OF EVENTS IS WHAT I WOULD
2 LIKE TO GO OVER. THE OTHERS ARE JUST COPIES OF ITEMS FOR
3 THE COURT JUST FOR THE RECORD AND FOR INFORMATION OF THE
4 COURT AS FAR AS NOTICES AND THINGS OF THAT NATURE. THE
5 TIME LINE I DID PRODUCE -- AND THERE IS ONLY CORRECTION,
6 AND WHEN I GET TO THAT I'LL POINT IT OUT TO THE COURT.

7 BUT ON AUGUST 18TH, 2005 A SEARCH WARRANT WAS
8 EXECUTED AT MR. HINOJOS'S RESIDENCE. AT THAT TIME 1,937
9 GRAMS OF METHAMPHETAMINE, SPECIFICALLY ICE
10 METHAMPHETAMINE, WAS FOUND; 883 GRAMS OF COCAINE,
11 \$43,017.00 IN CASH, AND 12 GUNS. AT THAT TIME
12 MR. HINOJOS WAS ARRESTED.

13 HE WAS APPROACHED BY LAW ENFORCEMENT AND AGREED TO
14 COOPERATE WITH LAW ENFORCEMENT AT THAT TIME.

15 HE THEN RECEIVED A BOND ON AUGUST 22ND, 2005, BY
16 JUDGE LLOYD. IT WAS A \$200,000.00 SURETY BOND WITH THE
17 CONDITION OF ELECTRONIC MONITORING, KEEPING IN CONTACT
18 WITH THE CLERK OF COURT ON A WEEKLY BASIS, AS WELL AS
19 SPECIAL AGENT MAX DORSEY, AND HE WAS NOT ALLOWED TO LEAVE
20 THE STATE OF SOUTH CAROLINA.

21 THREE DAYS LATER THREE COMPANIES WENT ON THAT BOND
22 TOGETHER FOR \$66,666.66 CENTS APIECE. THAT WAS RICHARD
23 G. THOMPSON AND ALL OUT BAIL BONDING, TRACY BOWEN WITH
24 BONDS BY GAYNELL, AND THEN MR. LEON STOWERS WITH GIGI'S
25 BONDING COMPANY. ACCREDITED SURETY AND CASUALTY COMPANY

1 AND INSURERS, ALL OUT BAIL BONDING, AND PALMETTO SURETY
2 CORPORATION INSURES BONDS BY GAYNELL AS WELL AS GIGI'S
3 BONDING COMPANY.

4 ON DECEMBER 13TH, 2005, MR. HINOJOS WAS INDICTED IN
5 THIS CASE, AT WHICH TIME HE WAS CONTINUED ON BOND. ALL
6 THREE AGREED TO CONTINUE HIM ON BOND WITH THE ADDITIONAL
7 CHARGES.

8 ON APRIL 27TH, 2007 RODNEY RICHEY, WHO IS
9 MR. HINOJOS'S ATTORNEY, AGREED -- OR MADE A MOTION TO
10 REMOVE THE ELECTRONIC MONITORING CONDITION. AT THAT TIME
11 HE HAD COOPERATED WITH NOT ONLY THE STATE BUT WITH ALL
12 THE CONDITIONS OF HIS BOND. I WAS MISTAKEN IN MY TIME
13 LINE. WE DID NOT CONSENT TO THAT. HOWEVER, THAT
14 CONDITION WAS GRANTED BY THE COURT AND REMOVED. AND IN
15 MY TIME LINE I SAID IT WAS BY CONSENT OF ALL THE PARTIES.
16 AND I WAS MISTAKEN ON THAT. THE ORDER IS CLEAR, AND IT'S
17 ALSO ONE OF THE SEVERAL DOCUMENTS I'VE PROVIDED TO THE
18 COURT.

19 ON NOVEMBER 20TH, 2007 MR. HINOJOS PLED GUILTY
20 BEFORE YOUR HONOR AND HE WAS -- HIS SENTENCING WAS
21 DEFERRED TO THE WEEK OF DECEMBER 10TH, 2007. AT THAT
22 HEARING HE WAS SERVED WITH A SUBPOENA BY SPECIAL AGENT
23 REID CRESWELL OBLIGATING HIM TO COME TO COURT THE WEEK OF
24 THE 10TH TO TESTIFY IF NECESSARY IN ONE OF THE TRIALS
25 THAT WAS EVENTUALLY RESOLVED THAT WEEK.

1 IN ADDITION, AT THAT TIME HE WAS CONTINUED ON BOND
2 UNTIL THE WEEK OF DECEMBER 10TH, 2007.

3 ON DECEMBER 3RD, WE BEGAN DOING TRIAL PREPARATION
4 FOR THIS CASE. AND SPECIAL AGENT REID CRESWELL, ALONG
5 WITH DEPUTY ATTORNEY GENERAL JENNIFER EVANS AND MYSELF
6 MET WITH MARIO HINOJOS AT THE FOOD COURT ON THE PELHAM
7 ROAD MALL. AND I APOLOGIZE, I DON'T KNOW THE CORRECT
8 NAME OF THAT MALL, BUT I THINK IT'S THE ONLY ONE ON
9 PELHAM ROAD.

10 WE DISCUSSED HIS UPCOMING TRIAL, WE DISCUSSED HIS
11 TESTIMONY AND HOW WE WOULD CONTACT HIM WHEN HE NEEDED TO
12 APPEAR THE WEEK OF DECEMBER 10TH, 2007. IT WAS ALSO
13 EXPLAINED TO HIM THAT HE WOULD PLEAD GUILTY THAT WEEK AT
14 THE CONCLUSION OF ALL THE TRIALS -- I'M SORRY -- BE
15 SENTENCED THAT WEEK AT THE CONCLUSION OF ALL THE TRIALS.

16 ON DECEMBER 10TH SPECIAL AGENT REID CRESWEL
17 CONTACTED MR. HINOJOS ON HIS CELL PHONE, LEFT A MESSAGE
18 FOR HIM. HE NEVER RETURNED -- MR. HINOJOS NEVER RETURNED
19 THE PHONE CALL. I BELIEVE ON THE 12TH A SECOND ATTEMPT
20 TO CONTACT MR. HINOJOS WAS MADE. WE CONTACTED HIS
21 ATTORNEY. I BELIEVE HIS BONDSMEN WERE ALSO CONTACTED ON
22 THE 13TH.

23 HE FAILED TO APPEAR ON THE 13TH AS REQUESTED. A
24 BENCH WARRANT WAS ISSUED FOR HIS ARREST AT THAT TIME, AND
25 I BELIEVE THAT THE BONDING COMPANIES WERE PRESENT IN

1 COURT WHEN THE BENCH WARRANT WAS VERBALLY ORDERED.

2 ON THE 14TH, THE FOLLOWING DAY, THE STATE GRAND JURY
3 CLERK OF COURT FAXED COPIES OF THE BENCH WARRANTS TO ALL
4 THREE BONDING COMPANIES. I'VE PROVIDED COPIES OF THE
5 CONFIRMATION OF THOSE FAXES TO THE COURT.

6 WE WAITED UNTIL JANUARY 17TH, 2008 TO FILE THE
7 PETITION FOR ESTREATMENT, AND THEN WE EVEN FURTHER WAITED
8 UNTIL FEBRUARY 19TH TO SCHEDULE A DATE FOR THIS HEARING,
9 AT WHICH TIME YOUR HONOR ORDERED A RULE TO SHOW CAUSE
10 HEARING.

11 ON THE 25TH -- AND THAT ORDER WAS DATED FEBRUARY
12 19TH. ON FEBRUARY 25TH THE NOTICE FOR THAT HEARING,
13 ALONG WITH A COPY OF THE PETITION FOR ESTREATMENT OF
14 BOND, AS WELL AS THE ORDER OF THE RULE TO SHOW CAUSE FROM
15 THAT HEARING, WAS SENT BY THE STATE GRAND JURY CLERK OF
16 COURT TO ALL OF THE PARTIES, NOT ONLY THE THREE BONDING
17 COMPANIES, BUT THE TWO SURETY COMPANIES AS WELL.

18 ON MARCH 3RD, MARCH 5TH, MARCH 6TH AND MARCH 10TH --
19 WELL, LET ME BACK UP. OUR OFFICE SENT ADDITIONAL NOTICES
20 BY RETURN RECEIPT MAIL OR CERTIFIED MAIL AND RECEIVED
21 BACK NOTICES ON THOSE DATES FROM ALL OF THE INDIVIDUALS
22 STATING THAT THEY GOT NOTICE OF THIS HEARING HERE TODAY.

23 WE ARE ASKING THAT -- WELL, WE ARE SAYING THAT, ONE,
24 WE HAVE COMPLIED BY STATUTE 38-53-70, 17-15-170 REGARDING
25 NOTICE AS WELL AS THE TIME FRAME AS FAR AS WHEN TO MAKE A

1 MOTION FOR ESTREATMENT OF THE BOND.

2 WE ARE ASKING THIS COURT TO ESTREAT IN FULL UNLESS
3 MR. WILLIAMS CAN CONVEY TO THE COURT WHY ESTREATMENT
4 SHOULD NOT BE MADE IN FULL FOR THE FACT THAT MR. HINOJOS
5 IS NOT HERE TODAY. I HAD SPECIAL AGENTS WITH THE STATE
6 GRAND JURY ATTEMPT TO SERVE MR. MARIO HINOJOS WITH THIS
7 MOTION HEARING AT HIS LAST KNOWN ADDRESS. IT IS EMPTY.
8 NO ONE -- HE IS NOT LIVING THERE. NO ONE KNOWS OF HIM OR
9 WHERE HIS ADDRESS IS.

10 AND SO WE WOULD ASK THAT THIS COURT ESTREAT IN FULL
11 UNLESS PREVAILING REASONS WHY IT SHOULD NOT BE ARE
12 CONVEYED TO THE COURT.

13 **THE COURT:** JUST SO WE KNOW WHERE WE ARE, THIS IS
14 THE STATE OF SOUTH CAROLINA VERSUS MARIO RAMOS HINOJOS AS
15 DEFENDANT, RICHARD G. THOMPSON, DBA ALL OUT BAIL BONDING,
16 AS SURETY, ACCREDITED PROPERTY AND CASUALTY INSURANCE AS
17 SURETY; TRACY BOWEN DOING BUSINESS AS BONDS BY GAYNELL,
18 SURETY, W. LEON STOWERS DOING BUSINESS AS GIGI'S BONDING
19 COMPANY, LLC, AS SURETY; AND PALMETTO SURETY CORPORATION
20 AS SURETY ON INDICTMENTS NUMBER 2005-GS-47-15,
21 2005-GS-47-23, AND 2005-GS-47-24 AND WARRANT NUMBER
22 G 530079.

23 WE ARE HERE ON AN ORDER AND RULE TO SHOW CAUSE FOR
24 ESTREATMENT OF BOND. MS. PORTER AND MS. EVANS OF THE
25 ATTORNEY GENERAL'S OFFICE REPRESENTS THE STATE.

1 MR. WILLIAMS, AS I UNDERSTAND IT, YOU REPRESENT ALL
2 OF THE SURETIES, THAT WOULD BE RICHARD G. THOMPSON, TRACY
3 BOWEN, ACCREDITED PROPERTY AND CASUALTY, INC., LEON
4 STOWERS AND PALMETTO SURETY CORPORATION AS THEY ARE DOING
5 BUSINESS IN THEIR RESPECTIVE FASHION?

6 MR. WILLIAMS: I DO, YOUR HONOR.

7 THE COURT: AND MARIO RAMOS HINOJOS IS THE DEFENDANT
8 WHO IS NOT PRESENT; IS THAT CORRECT?

9 MS. PORTER: THAT IS CORRECT, YOUR HONOR.

10 THE COURT: ALL RIGHT. NOW, YOU HAVE HEARD THE
11 RECITAL OF WHAT HAS OCCURRED UP UNTIL NOW. WHAT DOES
12 THE -- OR WHAT DO THE SURETIES SAY?

13 MR. WILLIAMS: YOUR HONOR, MY ARGUMENT IS SOMEWHAT
14 SHORTER THAN THE RECITAL OF FACTS. AND THAT'S NOT A SLAM
15 IN ANY WAY, IT WAS ACTUALLY A RECITAL OF FACTS.

16 THE COURT: I UNDERSTAND. I UNDERSTAND SHE'S VERY
17 THOROUGH BECAUSE I THINK WE REQUIRE THE STATE TO BE SO.

18 MR. WILLIAMS: YOUR HONOR, AS WE KNOW, ESTREATMENTS
19 ARE GOVERNED BY CONTRACT LAW, AND IT IS IN ESSENCE A
20 CONTRACT BY ALL PARTIES AGREEING TO PERFORM BASED ON
21 CERTAIN CONDITIONS. SHE IS CORRECT IN THE RECITAL OF
22 MOST OF THE EVENTS THAT SHE HAS GIVEN.

23 BUT, YOUR HONOR, I WOULD CALL ATTENTION TO THE FACT
24 THAT AT THE TIME OF THE SENTENCING OR AT THE TIME OF THE
25 ENTERING OF THE PLEA ON DECEMBER THE 10TH, 2007, SHE'S

1 PROVIDED THAT -- THE DEFENDANT WAS CONTINUED ON BOND
2 WITHOUT ANY OBJECTION FROM THE THREE COMPANIES.

3 WE WOULD SUGGEST TO THE COURT THAT AT THAT POINT AND
4 STAGE IN TIME THERE SHOULD HAVE BEEN WRITTEN CONSENT BY
5 ALL BONDING COMPANIES AGREEING TO STAYING ON THE BOND
6 AFTER THE DEFENDANT HAD ENTERED HIS PLEA ON THE CHARGES.

7 NOW, WHAT'S MORE IMPORTANT THAN THAT, YOUR HONOR,
8 WHAT'S MORE IMPORTANT THAN THAT GOES BACK TO AN ORDER
9 WHICH WAS ISSUED ON APRIL THE 27TH OF 2007. AND IF YOUR
10 HONOR HAS THAT ORDER IN FRONT OF YOU, IT'S FILED ON MAY
11 THE 7TH OF 2007. AND, IN THE RECITAL OF THE ORDER WHICH
12 I BELIEVE YOUR HONOR SIGNED, IT STATES THAT (READING):

13 PRESENT AT THE HEARING WAS SUSAN PORTER OF
14 THE ATTORNEY GENERAL'S OFFICE; THE DEFENDANT'S
15 ATTORNEY, RODNEY RICHEY. PRIOR TO THE HEARING THE
16 PARTIES INFORMED THE COURT THAT AN AGREEMENT HAD
17 NOT BEEN REACHED ON THE ISSUE, AND THEN THERE WAS
18 ARGUMENTS OF COUNSEL.

19 AND AT THAT POINT IN TIME THE COURT ISSUED ITS ORDER
20 LIFTING THE ELECTRONIC DEVICE REQUIREMENT.

21 AT THE TIME THAT ALL BONDING COMPANIES SIGNED ON THE
22 BOND, THAT WAS THE CONDITION, THAT WAS THE AGREEMENT,
23 THAT WAS THE BASIS FOR WHICH THE BONDING COMPANIES AGREED
24 TO BE HELD RESPONSIBLE OR LIABLE ON THE BOND, IS THAT
25 ISSUE OF ELECTRONIC MONITORING.

1 THEY WERE NOT PRESENT AT THE HEARING IN WHICH THE
2 MONITORING DEVICE WAS TAKEN OFF, AND THEY DID NOT CONSENT
3 TO THE LIFTING OF THE ELECTRIC MONITORING DEVICE, AND
4 THEY WEREN'T NOTIFIED OF THE HEARING IN WHICH THE
5 ELECTRONIC MONITORING DEVICE REMOVAL WOULD BE DISCUSSED.

6 SO YOUR HONOR, ON BEHALF OF ALL THE BONDING
7 COMPANIES, THE ARGUMENT WOULD BE THAT INASMUCH AS THEY
8 WERE NOT A PARTY TO AN AGREEMENT OF THE LIFTING OF THE
9 ELECTRONIC MONITORING DEVICE, OR NOT A PARTY TO ANY
10 DISCUSSIONS ON THE ELECTRONIC MONITORING DEVICE REMOVAL,
11 THAT THEY SHOULD NOT BE BOUND BY THIS BOND BECAUSE THE
12 TERMS AND CONDITIONS WERE CHANGED FOR WHICH THEY AGREED
13 TO. SO THAT WOULD IN ESSENCE BE THE ARGUMENT OF THE
14 BONDING COMPANIES.

15 **THE COURT:** ALL RIGHT. MS. PORTER?

16 **MS. PORTER:** THANK YOU, YOUR HONOR.

17 FIRST AND FOREMOST, I DON'T BELIEVE THAT -- AND I
18 BEG THE COURT'S INDULGENCE JUST FOR A MOMENT, I'M LOOKING
19 THROUGH MY NOTICES. I KNOW I INCLUDED THAT ORDER. I BEG
20 THE COURT'S INDULGENCE FOR JUST A MOMENT. AND I CAN'T
21 PLACE MY HANDS ON IT RIGHT NOW.

22 I GUESS OUR ARGUMENT WOULD BE THAT THEY HAD
23 NOTICE -- WELL, THEY HAD -- IF THAT ORDER WENT INTO
24 EFFECT ON MAY 7TH, TWO THOUSAND AND -- OR APRIL 27TH,
25 2007, THEY NEVER COMPLAINED ABOUT THAT FROM THEN UNTIL

1 DECEMBER -- WELL, UNTIL NOW.

2 NOW, THEY NEVER COMPLAINED BECAUSE HE WAS
3 COOPERATING AND COMPLYING. IT WASN'T UNTIL HE ABSCONDED
4 THAT THEY RAISED THIS ISSUE.

5 I'M NOT AWARE OF -- WELL, FIRST OF ALL, IT WASN'T MY
6 MOTION, IT WAS RODNEY RICHEY'S MOTION TO HAVE THAT
7 ELECTRONIC MONITORING REMOVED. AT ANY TIME BETWEEN APRIL
8 27TH, 2007 AND TODAY THEY COULD HAVE FOUND HIM, TURNED
9 HIM IN, AND MADE A MOTION TO BE RELIEVED AS SURETY ON HIS
10 BOND. I FIND IT ODD THAT THEY ARE COMPLAINING OF THAT
11 NOW THAT HE'S ABSCONDED, BUT THEY DIDN'T COMPLAIN FOR
12 SEVERAL MONTHS PRIOR THERETO, AT WHICH TIME WE KNEW WHERE
13 HE WAS, HE WAS ABIDING BY THE BOND CONDITIONS AND WAS
14 PRESENT AT HIS ORIGINAL RESIDENCE.

15 AND AGAIN, I'M NOT AWARE OF WHERE IT WAS THE STATE'S
16 DUTY TO NOTIFY THEM OF THAT MOTION. TO ME THAT'S -- I
17 WOULD ACTUALLY EVEN GO FURTHER TO REFER THE STATE TO -- I
18 MEAN THE COURT TO *STATE V. HOLLOWAY*, WHICH IS 262 S.C.
19 552, 206 S.E.2D 822 -- IT'S A 1974 CASE BUT IT'S STILL
20 GOOD LAW -- WHERE THE BOND SIGNED BY THE ACCUSED AND THE
21 BOND COMPANIES REQUIRES THE ACCUSED TO APPEAR AT THE NEXT
22 TERM OF GENERAL SESSIONS COURT, AND THAT THE ACCUSED IS
23 UNDER THE LEGAL DUTY TO APPEAR IN ACCORDANCE WITH THE
24 CONDITION OF BOND WITHOUT FURTHER NOTICE TO THE SURETY.

25 SO I'M NOT SURE WHERE THEY ARE REQUIRED TO HAVE

1 NOTICE. AND I CERTAINLY DON'T SEE WHERE THE STATE WAS
2 REQUIRED TO PROVIDE THAT NOTICE ON A DEFENSE COUNSEL'S
3 MOTION. I THINK YOU WOULD BE PUNISHING THE STATE FOR
4 SOMETHING THEY HAD NO DUTY TO DO.

5 AND AGAIN, THE DELAY OF COMPLAINING ABOUT IT I THINK
6 IS PERTINENT IN THIS CASE BECAUSE THEY KNEW WHERE HE WAS
7 FROM APRIL UNTIL DECEMBER 3RD. AND AT ANY TIME THEY
8 COULD HAVE GONE AND PICKED HIM UP, BROUGHT HIM TO JAIL
9 AND MADE A MOTION TO BE RELIEVED IF THAT WAS THEIR ISSUE,
10 BUT WHICH THEY DID NOT DO.

11 **THE COURT:** ARE YOU SAYING IT WAS A VIOLATION -- IT
12 WAS A CONTRACT OR AGREEMENT BETWEEN THE SURETY AND THE
13 DEFENDANT, THAT THE VIOLATION WAS HE NOT, OR WAS HIM
14 ASKING TO BE RELIEVED FROM ELECTRONIC MONITORING?

15 **MS. PORTER:** DO I THINK THAT WAS A VIOLATION?

16 **THE COURT:** IF THERE WAS A CONTRACT OR AGREEMENT
17 THAT MADE THE SURETY COMPANY A PARTY TO THE BOND OTHER
18 THAN TO ASSURE HIS PRESENCE IN COURT, OR THAT HE WOULD BE
19 PRESENT.

20 **MS. PORTER:** NO, SIR. I THINK THE BASIS OF THE
21 SURETY -- OF THE CONTRACT IS THAT THEY TAKE
22 RESPONSIBILITY FOR MAKING SURE HE'S HERE, REGARDLESS.

23 **THE COURT:** REGARDLESS.

24 **MS. PORTER:** THAT, NO, I THINK THE CHANGING OF THE
25 TERMS OF THE BOND DOES NOT RELIEVE THEM OF THEIR

1 OBLIGATION THAT HE IS PRESENT WHEN CALLED TO COURT. AND
2 IF THEY FELT THAT IT WAS, THEY SHOULD HAVE BROUGHT IT TO
3 THE COURT'S ATTENTION, YOU KNOW, IN MAY OF 2007.

4 **THE COURT:** IN OTHER WORDS, YOU'RE -- BUT AGAIN,
5 COMING BACK TO THE POINT THAT HE WAS RELIEVED FROM, AT
6 HIS REQUEST, "HE" BEING THE DEFENDANT WAS RELIEVED AT HIS
7 REQUEST FROM THE CONDITION THAT HE BE ELECTRONICALLY
8 MONITORED. THAT HE WAS, HAVING BEEN RELIEVED, THEN THAT
9 MEANT THAT HE HAD VIOLATED HIS BOND.

10 **MS. PORTER:** NO, SIR, I DON'T THINK HE VIOLATED HIS
11 BOND AT THAT POINT.

12 **THE COURT:** AGAIN, USING THE TERM "CONTRACT." ISN'T
13 THAT WHAT THE SURETIES ARE SAYING HERE TODAY?

14 **MS. PORTER:** THAT IS --

15 **THE COURT:** THAT THEY HAD SOME SORT OF AGREEMENT
16 WITH THE STATE THAT IF HE VIOLATED SOME TERMS OF THEIR
17 CONTRACT WITH THE DEFENDANT, THAT THEY WOULD BE RELIEVED?

18 **MS. PORTER:** I DON'T THINK THAT THE SURETY BOND
19 COMPANY HAD ANY --

20 **THE COURT:** I'M ASKING YOU TO BE THE DEVIL'S
21 ADVOCATE IN THIS SENSE.

22 **MS. PORTER:** ADVOCATE? YES, SIR. I'M JUST TRYING
23 TO UNDERSTAND -- I'M NOT SURE THAT THEY HAD AN AGREEMENT
24 AS FAR AS THE ATTORNEY GENERAL'S OFFICE, PERIOD.

25 **THE COURT:** THAT'S WHAT I MEAN.

1 **MS. PORTER:** NO, SIR, I DON'T THINK THAT THERE WAS
2 ANY CONTRACT.

3 **THE COURT:** THEIR COMPLAINT WOULD BE WITH THEIR
4 CLIENT.

5 **MS. PORTER:** YES, SIR. AND I THINK THAT'S --

6 **THE COURT:** AND IF THE CLIENT DID SOMETHING THAT
7 VIOLATED THEIR CONTRACT, THEN THEY WOULD LOOK TO THE
8 CLIENT TO --

9 **MS. PORTER:** REMEDY THIS.

10 **THE COURT:** -- TO MAKE IT PERFECT.

11 **MS. PORTER:** YES, SIR. THAT'S OUR CONTENTION.

12 **THE COURT:** I MEAN, I'M USING CONTRACT LAW RATHER
13 THAN SOMETHING LIKE SURETY IN A CRIMINAL CASE.

14 **MR. WILLIAMS:** I'M NOT REALLY SURE THAT THEIR
15 CONTRACT ONLY EXTENDED TO THE CLIENT. BECAUSE IF YOUR
16 HONOR WILL LOOK AT THE TWO ORDERS IN WHICH THEY SIGNED
17 OFF ON, IT STATES THAT THE THREE BONDING COMPANIES AGREE
18 TO THE CONDITIONS AS SET FORTH ON THE BOND, AS
19 ESTABLISHED BY THE STATE OF SOUTH CAROLINA AND --

20 **THE COURT:** AND THEIR CLIENT.

21 **MR. WILLIAMS:** -- AND THE COURT. THE CLIENT DOESN'T
22 SET THE CONDITIONS FOR HIM TO BE RELEASED FROM JAIL.

23 **THE COURT:** NO. I'M NOT SURE HE WILL BE RELEASED
24 UNTIL HE DOES ACCEPT THE CONDITIONS. THE LAST TIME I
25 LOOKED AT A BOND, THAT WAS HOW HE GOT OUT OF JAIL WAS TO

1 AGREE, HE SIGNS A LITTLE THING, HE EVEN INITIALS OTHER
2 THINGS AND ALL THAT. SO IF HE DOESN'T ACCEPT THE
3 CONDITIONS, THEN THERE IS NO BOND.

4 **MR. WILLIAMS:** BUT THE PARTY WHO IS THE SURETY HAS
5 TO HAVE NOTICE OF THE CHANGE OF THE CONDITIONS OF THE
6 BOND.

7 **THE COURT:** WELL, THEN WHY DIDN'T HE NOTIFY THEM?

8 **MR. WILLIAMS:** WELL, IF YOU'LL LOOK AT --

9 **THE COURT:** THAT'S WHAT I'M SAYING. SO, IN OTHER
10 WORDS, THAT IS THE VIOLATION WHEN THE CONDITIONS WERE
11 CHANGED WITHOUT NOTICE TO THE SURETY. THAT'S WHAT YOU
12 ARE SAYING?

13 **MR. WILLIAMS:** YES. AND I THINK THE OBLIGATION --

14 **THE COURT:** AND IN CONTRACT LAW IT'S A BREACH OF THE
15 CONTRACT BECAUSE HE DIDN'T NOTIFY THE SURETIES THAT HE
16 WAS GOING TO ASK THAT HE BE RELIEVED, AND WAS, IN FACT,
17 RELIEVED.

18 **MR. WILLIAMS:** I GUESS IT'S A QUESTION WHO THE
19 CONTRACT WAS WITH BECAUSE THE PERSON WHO HAS, WHO WILL
20 SECURE THE PAYMENT IN THE EVENT THE CONTRACT IS VIOLATED
21 WOULD BE THE STATE.

22 **THE COURT:** WELL, LET ME ASK YOU SOMETHING. HOW
23 ABOUT IF LET'S JUST CHANGE IT A LITTLE BIT. SAY A
24 CONDITION OF THE CONTRACT IS THAT HE REPORTS TO HIS
25 BONDSMAN. AND HE FAILS TO DO THAT. BECAUSE HE VIOLATED

1 HIS CONTRACT WITH THE BONDING COMPANY, WHAT HAPPENS?

2 **MR. WILLIAMS:** YOU ARE TALKING ABOUT SEPARATE -- I
3 THINK YOU HAVE MORE THAN ONE CONTRACT.

4 **THE COURT:** WELL, MY PROBLEM, MR. WILLIAMS, THIS IS
5 A COURT OF GENERAL SESSIONS.

6 **MR. WILLIAMS:** RIGHT.

7 **THE COURT:** AND WE ARE NOT CONCERNED WITH CONTRACT
8 LAW IN THE COURT OF GENERAL SESSIONS. WE ARE CONCERNED
9 WITH PEOPLE WHO SEEK TO BE RELIEVED FROM INCARCERATION
10 DURING THE PENDING, PENDENCY OF CHARGES, AND THAT PROCESS
11 IS THAT A BOND IS SET AND THAT THEY FIND SOMEBODY THAT
12 WILL AGREE TO SECURE THAT BOND.

13 **MR. WILLIAMS:** I UNDERSTAND THAT.

14 **THE COURT:** AND THAT'S IN ANOTHER AREA. NOW, OF
15 COURSE, WE DO CONSIDER IF THEY VIOLATE A CONTRACT, A
16 SURETY CONTRACT BETWEEN THE BONDING COMPANY AND THE
17 DEFENDANT, THERE'S A VIOLATION, THEN THE REMEDY IN
18 GENERAL SESSIONS IS TO BRING THE PERSON INTO COURT AND
19 SAY, "HERE HE IS."

20 I MEAN, AND IT DOESN'T MATTER WHAT THE TERMS OF THE
21 CONTRACT ARE. IT COULD BE THAT IF HE DOESN'T REPORT ON
22 EVERY FRIDAY AFTERNOON AS HE IS SUPPOSED TO, THE STATE IS
23 NOT CONCERNED ABOUT THAT.

24 SO I'M SAYING IF THERE WAS A VIOLATION OF A CIVIL
25 CONTRACT, AND THAT'S WHAT WE ARE SEEKING TO REMEDY, IT'S

1 IN THE COURT OF COMMON PLEAS, NOT GENERAL SESSIONS.

2 **MR. WILLIAMS:** WELL, YOUR HONOR, THE BONDING COMPANY
3 AGREED WITH THE STATE OF SOUTH CAROLINA THAT THEY WOULD
4 PRODUCE THE PERSON OR PAY THE MONEY. THE STATE OF SOUTH
5 CAROLINA CHANGED THE CONDITIONS OF THE CONTRACT.

6 **THE COURT:** NO.

7 **MR. WILLIAMS:** THEY CERTAINLY DID BECAUSE THE STATE
8 OF SOUTH CAROLINA IS THE ONE THAT'S PROSECUTING HIM.

9 **THE COURT:** RIGHT. THEY STILL ARE.

10 **MR. WILLIAMS:** OKAY.

11 **THE COURT:** THAT'S NEITHER HERE NOR THERE. I MEAN,
12 THAT'S THE WHOLE THING. THEY CANNOT PROSECUTE HIM IF
13 HE'S NOT HERE, AND HE ISN'T THERE.

14 **MR. WILLIAMS:** I UNDERSTAND. BUT IF THIS WERE NOT
15 SO, IF IT WERE NOT THIS WAY, THEN WHAT IS THE PURPOSE
16 BEHIND, ON THE BOND HAVING ALL THREE BONDING COMPANIES
17 CONSENT TO THE TERMS AND CONDITIONS OF THE BOND, AND THEN
18 ONCE THE INDIVIDUAL IS INDICTED UNDER SEPARATE CHARGES,
19 THE THREE BONDING COMPANIES AGAIN HAVE TO CONSENT TO ALL
20 THE TERMS AND CONDITIONS OF THE BOND, IF INDEED THIS IS
21 NOT AN AGREEMENT BETWEEN THE STATE OF SOUTH CAROLINA AND
22 THE BONDING COMPANIES SAYING THAT THEY'RE GOING TO PAY IN
23 THE EVENT HE DOESN'T SHOW UP, AND THAT'S WHAT THE COURT
24 IS SEEKING TO -- WELL, THE STATE OF SOUTH CAROLINA I
25 GUESS IS SEEKING TO ENFORCE. SO --

1 **THE COURT:** WELL, THE STATE OF SOUTH CAROLINA SAYS
2 THAT THEY NEVER ASKED FOR THE BOND CONDITIONS TO BE
3 CHANGED.

4 **MR. WILLIAMS:** WELL, SEE, HERE'S --

5 **THE COURT:** SO WHY DO YOU PUNISH THE STATE OF SOUTH
6 CAROLINA FOR SOMETHING THAT YOUR CLIENT, I MEAN THE
7 CLIENT OF YOUR SURETY --

8 **MR. WILLIAMS:** BECAUSE MY CLIENT, WHO IS THE
9 INSURED, HAD NO NOTICE. SEE, THEY WERE NOT INVOLVED IN
10 THE TERMS AND CONDITIONS OF THE CHANGE. I GUESS WE
11 COULD, YOU KNOW --

12 **THE COURT:** WELL, AGAIN, I THINK YOU PROBABLY HAVE A
13 GOOD CLAIM IN COMMON PLEAS TO SUE MR. HINOJOS TO INCREASE
14 THE, I GUESS THE LOSS, OR POTENTIAL LOSS UNDER THEIR
15 CONTRACT.

16 **MR. WILLIAMS:** YOUR HONOR, IF IT WERE NOT THE WAY
17 I'M EXPLAINING, THEN WHY WOULD THE STATE OF SOUTH
18 CAROLINA NOT -- AND THEY DO, THEY NOTIFY THE BONDING
19 COMPANY WHENEVER THERE IS AN APPEARANCE. THEY NOTIFY THE
20 BONDING COMPANY WHENEVER THERE IS A REQUIREMENT IN WHICH
21 THE DEFENDANT --

22 **THE COURT:** BECAUSE THAT'S WHY WE ARE HERE TODAY,
23 BECAUSE THE DEFENDANT DOES NOT APPEAR. AND YOU HAVE BEEN
24 NOTIFIED THAT HE SHOULD APPEAR AND HE DOES NOT APPEAR.
25 THEN WE HAVE WHAT WE CALL ESTREATMENTS --

1 **MR. WILLIAMS:** RIGHT.

2 **THE COURT:** -- OF THE BOND.

3 **MR. WILLIAMS:** RIGHT.

4 **THE COURT:** AND THEN YOUR REMEDY, AS I SAY, UNDER
5 CONTRACT WOULD BE TO GO AGAINST YOUR PERSON WITH WHOM YOU
6 HAVE YOUR CONTRACT.

7 **MR. WILLIAMS:** I GUESS, YOUR HONOR, WE WILL HAVE TO
8 AGREE TO DISAGREE.

9 **THE COURT:** I UNDERSTAND. NOW, AS I SAY, MAYBE IF
10 THIS WAS COMMON PLEAS, YOU MIGHT, YOU COULD PROBABLY GET
11 A DEFAULT JUDGMENT AGAINST MR. HINOJOS.

12 **MR. WILLIAMS:** AND, YOUR HONOR, IF YOU LOOK AT HOW
13 THE BONDING LAWS HAVE BEEN USED, IT'S ALWAYS INTERPRETED
14 PURSUANT TO CONTRACT, LIKE THE RECENT CASE IN WHICH THE
15 SUPREME COURT HAS --

16 **THE COURT:** THEY MOVED IT FROM THE CRIMINAL SECTIONS
17 OF THE CODE TO THE INSURANCE SECTIONS.

18 **MR. WILLIAMS:** JUST AS IF THE STATE DOESN'T
19 PROSECUTE A BOND ESTREATMENT WITHIN THREE YEARS, THEY ARE
20 FORECLOSED TO PROSECUTE A BOND ESTREATMENT. AS JUSTICE
21 TOAL DETERMINED, THAT THE CONTRACT STATUTE OF LIMITATIONS
22 SHOULD BE APPLICABLE. IN ESSENCE EVERYTHING ABOUT BOND
23 ESTREATMENT IS INTERPRETED PURSUANT TO CONTRACT LAW, YOUR
24 HONOR.

25 **THE COURT:** I DIDN'T SAY THAT WE HAVE AN ENTIRELY

1 SEPARATE SET OF PRINCIPLES, I'M JUST TALKING ABOUT WHAT
2 IS THE JURISDICTION FOR -- ADMITTEDLY, WE HAVE UNLIMITED
3 JURISDICTION IN BOTH CIVIL AND CRIMINAL. BUT WHEN WE
4 COME TO GENERAL SESSIONS COURT, WE COME WITH A WHOLE
5 DIFFERENT, YOU KNOW, CONCEPT OF WHAT WE WOULD BE DEALING
6 WITH.

7 AND I CAN UNDERSTAND HOW SOME CONTRACT PRINCIPLES
8 MIGHT APPLY IN GENERAL SESSIONS, BUT I DON'T KNOW IF A
9 CONTRACT BETWEEN TWO PEOPLE NEEDS TO BE LITIGATED
10 BETWEEN, OR AGAINST THE STATE. IF THERE'S BEEN A BREACH
11 OF THE CONTRACT BETWEEN THE DEFENDANT AND YOUR CLIENTS,
12 THEN THERE IS A REMEDY.

13 **MR. WILLIAMS:** YOUR HONOR, IF YOU READ THE BOND
14 FORM, IT SAYS THAT THE BONDING COMPANY STANDS INDEBTED OR
15 BOUND TO THE STATE. THAT'S CONTRACT LANGUAGE FOR WHO
16 THEIR CONTRACT IS WITH.

17 **THE COURT:** NO. THEY'RE ONLY AS A SURETY. IT'S
18 ONLY IF THEIR CLIENT DOESN'T PERFORM, AND THE PERFORMANCE
19 UNDER THE BOND IS APPEARANCE.

20 **MR. WILLIAMS:** I AGREE. I AGREE WITH YOU.

21 **THE COURT:** AND IF THEY HAD BROUGHT HIM IN, YOU
22 KNOW, THE SAME AS IF THEY WOULD HAVE BROUGHT HIM IN IF HE
23 HAD NOT REPORTED LIKE HE WAS SUPPOSED TO, WHICH WOULD
24 HAVE BEEN A CONDITION. I GUESS. THEY ARE AGREEING. ALL
25 RIGHT.

1 NOW -- ALL RIGHT. ANYTHING ELSE? I MEAN, I JUST
2 WANT TO BE SURE. BUT THAT IS THE ISSUE HERE, IS
3 WHETHER --

4 **MS. PORTER:** YOUR HONOR?

5 **THE COURT:** YES, MA'AM.

6 **MS. PORTER:** I'M SORRY. THE ONLY THING I WOULD ADD
7 IS THERE WERE SEVERAL APPEARANCES AFTER THIS AT WHICH HE
8 DID APPEAR, AND THEY WERE ON NOTICE AT THAT TIME THAT THE
9 ELECTRONIC MONITORING HAD BEEN REMOVED AND THEY COULD
10 HAVE ADDRESSED IT WITH THE COURT THEN. AND I'M NOT
11 TRYING TO GET INTO THE CIVIL MATTER, BUT IT SEEMS TO ME
12 LIKE MAYBE THAT POSSIBLY WAIVES THEIR CLAIM.

13 **MR. WILLIAMS:** I'M NOT SURE THAT THE STATE CAN SHOW
14 THAT THEY WERE ON NOTICE THAT THE ELECTRONIC MONITORING
15 HAD BEEN DISENGAGED FOR ANY APPEARANCE THAT WOULD HAVE
16 OCCURRED AFTER IT WAS DISENGAGED. BECAUSE THEY ARE NOT
17 PRESUMED TO BE ON NOTICE UNLESS SOMEONE HAS PUT THEM ON
18 NOTICE.

19 **THE COURT:** LIKE THE CLIENT.

20 **MR. WILLIAMS:** SEE, THE CLIENT -- AND, OF COURSE,
21 THE ORDER WAS ENFORCED UNTIL HE PLED --

22 **THE COURT:** I MEAN, THE PERSON THEY CONTRACTED WITH.

23 **MR. WILLIAMS:** RIGHT.

24 **THE COURT:** THE ONLY THING THEY DID FOR THE STATE IS
25 THEY JUST GUARANTEE THE CONTRACT, HIS CONTRACT WITH THE

1 STATE, AND THEY DID NOT HAVE A SEPARATE CONTRACT WITH THE
2 STATE. DIDN'T HE?

3 **MR. WILLIAMS:** A SEPARATE CONTRACT WITH THE STATE?

4 **THE COURT:** I MEAN, THE SURETIES DIDN'T COME IN AND
5 SIGN AN AGREEMENT WITH THE STATE, THEY JUST SIGNED THAT
6 THEY WERE GOING TO GUARANTEE OR BE THE SURETY THAT HE
7 WOULD DO WHAT HE WAS SUPPOSED TO.

8 **MR. WILLIAMS:** ALL PARTIES SIGNED THE CONTRACT, TO
9 INCLUDE THE STATE OF SOUTH CAROLINA, THE DEFENDANT, AND
10 THE THREE BONDING COMPANIES. THEY WERE ALL A PARTY TO
11 THAT CONTRACT. THEIR SIGNATURES ADHERE TO ALL TO THAT
12 CONTRACT.

13 **MS. PORTER:** YOUR HONOR, IN LINE WITH YOUR ARGUMENT,
14 IF YOU WILL LOOK AT PRICE [SIC] V. ANDERS, 266 S.C. 338,
15 223 S.E.2D 184, IT BASICALLY SAYS THAT THE SURETY IS
16 SIMPLY A GUARANTOR OF THEIR APPEARANCE -- OF THE
17 APPEARANCE OF THE DEFENDANT AT A DATE TO BE SET BY THE
18 COURT UNDER RISK OF FORFEITURE OR PENALTY OF BOND.

19 IN OTHER WORDS, THE OBLIGATION IS NOT TO THE STATE
20 TO PRODUCE THE DEFENDANT, BUT RATHER AN OBLIGATION TO
21 ANSWER IF THE DEFENDANT DEFAULTS UPON ANY OF THE
22 CONDITIONS OF BOND. I'M SORRY. IT'S *PRIDE* V. ANDERS,
23 NOT PRICE.

24 **THE COURT:** WELL, LOOKING AT *STATE V. MCCLINTON*, IT
25 DOES APPEAR THAT CONTRACT LAW IS APPLICABLE. AND ONE OF

1 THE CASES I'M CONCERNED ABOUT IS...

2 WOULD COUNSEL APPROACH, PLEASE?

3 (DISCUSSION AT SIDEBAR.)

4 **THE COURT:** ALL RIGHT. WE ARE BACK ON THE RECORD.

5 THE COURT IS GOING TO RESERVE JUDGMENT ON WHETHER OR
6 NOT THE STATE IS ENTITLED TO ESTREATMENT OF THE BOND.

7 AND I WILL GIVE THE CASE TO, THAT I'M PARTICULARLY
8 CONCERNED ABOUT, AND THAT IS *THE STATE V MCINTYRE*, 307
9 S.C. 363, 415 S.E.2D 399, SUPREME COURT 1992.

10 I'M GOING TO TAKE THE MATTER UNDER ADVISEMENT AS FAR
11 AS WHETHER OR NOT THE STATE IS ENTITLED TO ESTREATMENT
12 UNDER THE CIRCUMSTANCES OF THIS CASE; AND WHICH I DO TO
13 BE SURE THAT I DO UNDERSTAND THE FACTS OF THE CASE ARE
14 THAT A BOND WAS ORIGINALLY ENTERED INTO THAT REQUIRED
15 ELECTRONIC MONITORING AND THAT IS THE BOND THAT THE
16 SURETY SIGNED OFF ON.

17 THEREAFTER, IN APRIL OF 2007, AT THE REQUEST OF THE
18 DEFENDANT, THE ELECTRONIC MONITORING WAS REMOVED. AND
19 AGAIN, I THINK THERE WAS ANOTHER PROCEEDING -- MADAM
20 ATTORNEY GENERAL, MS. PORTER OR MS. EVANS, SUBSEQUENT TO
21 THAT TIME WHEN HE WAS CONTINUED ON BOND?

22 **MS. PORTER:** YES, SIR, YOUR HONOR. ON NOVEMBER
23 20TH, 2007 HE PLED GUILTY, AT WHICH TIME THE BOND
24 COMPANIES AGREED TO REMAIN ON HIS BOND.

25 **THE COURT:** NOW, WHEN YOU SAY THEY AGREED, HOW WAS

1 THAT AGREEMENT ACKNOWLEDGED?

2 **MS. PORTER:** IT WAS VERBALLY ON THE RECORD, YOUR
3 HONOR.

4 **THE COURT:** IT WAS ON RECORD IN OPEN COURT?

5 **MS. PORTER:** YES, SIR. AND I WOULD HAVE TO GET THE
6 TRANSCRIPT WHICH WE WILL BE HAPPY TO PROVIDE THE COURT IF
7 NECESSARY.

8 **MR. WILLIAMS:** YOUR HONOR, THEY WOULD NEED TO DO
9 THAT, BECAUSE THAT IS NOT MY UNDERSTANDING OF THE FACTS.

10 **THE COURT:** WELL, THAT'S THE THING. I DO NEED TO
11 KNOW THAT.

12 **MS. PORTER:** I THINK THE ONLY PROPER THING TO DO
13 WOULD BE TO REQUEST THE TRANSCRIPT WHICH WE WOULD BE
14 HAPPY TO DO.

15 **THE COURT:** ALL RIGHT.

16 **MR. WILLIAMS:** AND, YOUR HONOR, THAT DOESN'T CHANGE
17 THE ULTIMATE QUESTION, AND THAT ULTIMATE QUESTION IS THE
18 CHANGE OF THE CONDITIONS AND NOTICE OF THE CHANGE OF
19 CONDITIONS.

20 **THE COURT:** WELL...

21 **MR. WILLIAMS:** AND THE ACCEPTANCE AND AGREEMENT OF
22 THE BONDING COMPANY TO THAT, BONDING COMPANIES. SO IT
23 WOULDN'T EVEN MATTER IF SHE'S CORRECT ON THAT.

24 **THE COURT:** JUST TO SHOW YOU THE CONCERN THAT THE
25 COURT HAS WITH THIS DILEMMA, MCINTYRE TURNED ON THE

1 STATUTE OF FRAUDS BASED ON THE STATUTE OF QUEEN ANN, NOT
2 SO MUCH ON CONTRACT LAW. AND THERE GENERALLY CONTRACTS
3 ARE REQUIRED BY STATUTE OF FRAUDS TO BE IN WRITING,
4 CANNOT BE ORALLY MODIFIED.

5 AGAIN, IT WAS IN WRITING, THE COURT'S ORDER
6 RELIEVING THE CONDITION OF THE ELECTRONIC MONITORING, AND
7 WHETHER OR NOT THAT WOULD CONSTITUTE NOTICE TO THE
8 SURETIES THAT THEY EITHER KNEW OR SHOULD HAVE KNOWN,
9 CONSTRUCTIVE NOTICE OF SOMETHING OF RECORD. DO YOU SEE
10 THE DILEMMA THAT THE COURT HAS BEEN PRESENTED WITH?

11 **MS. PORTER:** YES, SIR, YOUR HONOR.

12 **THE COURT:** SO I AM GOING TO CONTINUE -- RATHER THAN
13 TAKE IT UNDER ADVISEMENT I AM GOING TO CONTINUE IT FOR A
14 COPY OF THE TRANSCRIPT DEALING WITH THAT PLEA. AND THEN
15 ALSO ONCE YOU RECEIVE THE TRANSCRIPT, YOU WILL HAVE --
16 YOU'RE GOING TO DO YOUR RESEARCH NOW.

17 **MS. PORTER:** YES, SIR. I ONLY HAVE UNTIL APRIL
18 11TH. I'LL HAVE TO RESEARCH FAST.

19 **THE COURT:** WELL, MS. EVANS KNOWS WHERE TO FIND YOU.
20 I'LL SAY, I DON'T WANT TO SAY 30 DAYS. I'LL SAY 20
21 DAYS FROM THE TIME THAT THE TRANSCRIPT IS MAILED TO THE
22 ATTORNEY GENERAL FOR THEIR BRIEF, AND THEN 10 DAYS
23 THEREAFTER FOR THE RESPONDENTS.

24 **MR. WILLIAMS:** THANK YOU, YOUR HONOR.

25 **THE COURT:** AND THEN I'LL DECIDE THE QUESTION AS FAR

1 AS...

2 AND IF I DECIDE THAT THE STATE IS ENTITLED TO
3 ESTREATMENT, I'LL GO AHEAD AND ANNOUNCE NOW THAT I'LL
4 FOLLOW THE SAME POLICY I'VE HAD FROM THE PAST, WHICH IS
5 INCREMENTAL. I THINK IT GIVES IT SIX MONTHS USUALLY
6 DIVIDED UP INTO PORTIONS SO THAT -- AND, OF COURSE, IF
7 THE DEFENDANT IS PRODUCED, UNTIL THERE'S A FINAL RULING,
8 THEN THE COURT WISHES TO BE NOTIFIED BECAUSE THAT WOULD
9 MAKE THE ISSUE MOOT. VERY GOOD.

10 **MS. PORTER:** THANK YOU, YOUR HONOR.

11 (WHEREUPON, THE ESTREATMENT HEARING WAS
12 ADJOURNED AT 12:30 P.M.)

13 ***** END OF REQUESTED TRANSCRIPT OF RECORD *****
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1 ***** START OF REQUESTED TRANSCRIPT *****

2 **THE COURT:** I UNDERSTAND WE HAVE A STATE-WIDE GRAND
3 JURY MATTER?

4 ALL RIGHT. WE ARE HERE ON THE MATTER OF *THE STATE*
5 *OF SOUTH CAROLINA VERSUS MARIO RAMOS HINOJOS*, AS THE
6 DEFENDANT, VERSUS RICHARD G. THOMAS, DOING BUSINESS AS
7 ALL OUT BAIL BONDING AS SURETY; ASSOCIATED PROPERTY
8 CASUALTY, INC., AS SURETY; TRACY BOWEN DOING BUSINESS AS
9 BONDS BY GAYNELL AS SURETY, LEON STOWERS DOING BUSINESS
10 AS GIGI'S BONDING COMPANY, LLC, AS SURETY, PALMETTO
11 SURETY CORP AS SURETY, ON INDICTMENTS 2005-GS-47-1523
12 AND '24.

13 MS. EVANS IS HERE ON BEHALF OF THE STATE AND
14 MR. WILLIAMS IS HERE ON BEHALF OF THE DEFENDANTS IN
15 RESPONSE.

16 MS. EVANS, WHY DON'T YOU TELL ME WHERE WE ARE?

17 **MS. EVANS:** WELL, FIRST OF ALL, I WOULD LIKE TO
18 DRAW THE COURT'S ATTENTION TO THE FACT THAT -- AND I
19 APOLOGIZE FOR THIS, I SAW IT ON THE WAY UP HERE -- THAT
20 THE HEARING THAT WE HAD BACK ON I BELIEVE MARCH 25TH OF
21 LAST YEAR, WE DECIDED TO BREAK THAT HEARING SO WE COULD
22 GET THE PREVIOUS TRANSCRIPT, OF WHICH WE GOT.

23 MS. PORTER WAS ASSIGNED TO HANDLE THIS CASE.

24 MS. PORTER IS CURRENTLY ON MATERNITY LEAVE. AT THE
25 HEARING, I WAS PRESENT AT THE HEARING AND I THOUGHT YOUR

1 HONOR SAID WHEN YOU GET THE TRANSCRIPT WE'LL HAVE A NEW
2 HEARING. I NOTICED ON THE WAY UP THAT YOU DID ACTUALLY
3 SIGN AN ORDER THAT STATED THAT WHEN WE GOT THE
4 TRANSCRIPT, WE SHOULD SUBMIT A MEMO TO YOU WITHIN 20
5 DAYS AND THAT MR. WILLIAMS WOULD HAVE 10 DAYS TO REPLY
6 TO THAT. I APOLOGIZE. I WAS NOT TRYING TO IGNORE THE
7 COURT'S ORDER. MS. PORTER HAD ACTUALLY SAID THE ONLY
8 THING LEFT IS TO SCHEDULE THE HEARING.

9 MR. WILLIAMS DOES NOT HAVE ANY PROBLEM GOING
10 FORWARD WITH THE HEARING, BUT I DID NOT WANT THE COURT
11 TO THINK I WAS IGNORING YOUR WRITTEN ORDER WHICH I DID
12 NOT NOTICE UNTIL I WAS DRIVING UP HERE AND GOING THROUGH
13 EVERYTHING BEFORE THE HEARING.

14 **MR. WILLIAMS:** YOUR HONOR, I NEVER HAVE A PROBLEM
15 GOING FORWARD WITH THE COURT ON ANYTHING. NOW, WITH
16 REGARDS TO WHAT WE COVERED DURING THAT HEARING I MIGHT
17 HAVE A PROBLEM WITH. BECAUSE AS I UNDERSTAND THE LAST
18 HEARING WE WERE HERE ON MARCH 25TH, 2008, WE DISCUSSED
19 ALL THE ISSUES AND ARGUED ALL THE POINTS.

20 THE ONLY ISSUE WHICH CAUSED THE COURT CONCERN WAS
21 THE ISSUE DEALING WITH THE REMOVAL OF THE ELECTRONIC
22 MONITORING DEVICE. THAT WAS THE ONLY PROBLEM THAT THE
23 COURT HAD. WHEN THE COURT LOOKED AT THE CASE, THIS
24 CASE, YOUR HONOR WAS CONCERNED THAT BECAUSE IT WAS
25 REMOVED WITHOUT ANYONE'S CONSENT, THAT THE BONDING

1 COMPANIES HAD NO LIABILITY ON THE CASE. SO AS LONG AS
2 WE ARE RESTRICTED TO THAT ISSUE, THEN I HAVE NO PROBLEM.
3 AND I ASSUME THAT WE ARE RESTRICTED TO THAT ISSUE.

4 **THE COURT:** WELL, OF COURSE, THE COURT DOES RETAIN
5 A CERTAIN DISCRETION TO ADDRESS WHATEVER MATTERS SEEM TO
6 BE RELEVANT AND PERTINENT TO THE MATTER AT HAND, SO YOU
7 CAN ASSUME THAT, BUT I'M NOT SAYING THAT I CLOSED MY
8 MIND TO ANYTHING. BUT IF SOMETHING IS DEVELOPED AND THE
9 COURT WANTS TO KNOW ABOUT IT, I'M GOING TO ASK.

10 **MR. WILLIAMS:** WE'RE JUST CONCERNED ON BEHALF OF MY
11 CLIENTS THAT THEY WON'T BE BLIND-SIDED BY SOME NEW
12 DEVELOPMENT, BY SOMETHING THAT CAME UP --

13 **THE COURT:** WELL, I'M NOT AWARE OF ANY NEW
14 DEVELOPMENT, BUT WE'LL FIND OUT.

15 **MS. EVANS:** YOUR HONOR, THERE IS A NEW DEVELOPMENT,
16 THAT'S WHY I BROUGHT IT TO THE COURT'S ATTENTION. WE
17 WERE LOOKING AT THE TRANSCRIPT. WE GOT TWO DIFFERENT
18 TRANSCRIPTS. ONE WAS THE TRANSCRIPT OF WHEN WE ACTUALLY
19 AGREED WITH RODNEY RICHEY'S MOTION TO REMOVE
20 MR. HINOJOS'S ELECTRONIC MONITORING, WHICH WE CONCEDE.
21 THE CLERK'S OFFICE DID NOT SEND HIM NOTICE OF THAT
22 HEARING AND FROM THE TRANSCRIPT THEY WERE NOT PRESENT AT
23 THAT HEARING.

24 **THE COURT:** THAT'S ALL THE SURETIES?

25 **MS. EVANS:** THAT'S ALL THE SURETIES. AND THAT WAS

1 THE HEARING WHEN WE CONSENTED TO THE ELECTRONIC
2 MONITORING BEING REMOVED. I BELIEVE THAT HEARING WAS
3 SCHEDULED, WAS HEARD MARCH 15TH, 2007. SO THAT ISSUE
4 HAS BEEN RESOLVED BY LOOKING AT THAT TRANSCRIPT. IF
5 THEY WERE THERE, THEY DIDN'T SAY ANYTHING ON THE RECORD
6 SO WE HAVE NO PROOF THAT THEY WERE THERE AND THAT'S NOT
7 THE THEORY WE ARE GOING FORWARD ON.

8 **THE COURT:** ALL RIGHT. WHAT IS THE THEORY?

9 **MS. EVANS:** THE THEORY THAT WE'RE GOING FORWARD ON
10 IS THAT ON NOVEMBER 20TH, 2007, MR. HINOJOS WAS -- THE
11 GUILTY PLEA WAS ACCEPTED. FOR THAT HEARING THE BONDING
12 COMPANIES WERE NOTIFIED THAT THAT WAS TO BE A GUILTY
13 PLEA.

14 AS THE GUILTY PLEA WAS ACCEPTED -- AND I'LL PASS
15 FORWARD A COPY OF THE TRANSCRIPT, AND I APOLOGIZE, THE
16 LAST PAGE IS MISSING. ON PAGE 22 OF THAT TRANSCRIPT,
17 THE GUILTY PLEA FOR MR. HINOJOS WAS ACCEPTED. AT THAT
18 POINT IN TIME THE ORIGINAL BOND THAT WAS SIGNED BY ALL
19 THREE BONDING COMPANIES, WHICH WOULD BE ALL OUT BAIL
20 BONDING, GIGI BONDING COMPANIES, AND BONDS BY GAYNELL,
21 THAT WRITTEN BOND WAS COMPLETED BECAUSE THE GUILTY PLEA
22 WAS ACCEPTED.

23 WE ARE NO LONGER GOING AFTER ANYBODY EXCEPT FOR ALL
24 OUT BAIL BONDING. BECAUSE IF YOU READ ON FROM PAGE 23
25 TO THE REST OF THE TRANSCRIPT, AT THAT POINT IT WAS

1 REQUESTED THAT A NEW BOND BE ISSUED AND THAT MR. HINOJOS
2 BE ABLE TO STAY OUT ON BOND TILL HIS SENTENCING, WHICH
3 WAS GOING TO BE THE WEEK OF DECEMBER 10TH, 2007, AFTER
4 THE TRIAL OF MR. VALOMINOS PALOMINOS. THE NOTICE FOR
5 THE DECEMBER 10TH TERM OF COURT, WHERE MR. HINOJOS
6 SHOULD HAVE BEEN SENTENCED, WAS SENT OUT TO ALL OUT BAIL
7 BONDING.

8 IF YOU READ FROM PAGE 23 FORWARD -- AND OUR
9 ARGUMENT IS THIS WAS A NEW CONTRACT FOR THE BOND -- AND
10 MIKE KERLEE WAS PRESENT AT THAT HEARING. AND THE COURT
11 WENT OVER THE CONDITIONS OF THE BOND, AND YOU'LL SEE ON
12 LINE 15 ON PAGE 23 THAT, THE CONDITIONS OF THE BOND, ONE
13 WAS THAT HE STAY IN TOUCH WITH HIS ATTORNEY, MR. RODNEY
14 RICHEY, THE OTHER ONE WAS ALSO TO STAY IN TOUCH WITH THE
15 CLERK OF COURT. AND THEN WE ASKED IF IT WAS A
16 REQUIREMENT FOR S.L.E.D., WHICH I SAID THAT YES, AND
17 THEN YOU SET A NEW CONDITION OF THE BOND TO COOPERATE
18 WITH S.L.E.D.

19 WE GO ON, AND YOU ASKED ME, AND I BELIEVE IT'S ON,
20 IF THERE'S ANY OTHER CONDITIONS OF THE BOND AND WHICH I
21 TELL YOU, NO. LINE 16, THAT YOU GO THROUGH THE
22 CONDITIONS THAT YOU SET AND YOU ASKED ME IS THERE
23 ANYTHING ELSE, TALKING ABOUT THE CONDITIONS OF THE BOND,
24 AND LINE 20 I SAY --

25 **THE COURT:** WHICH PAGE IS THIS?

1 **MS. EVANS:** PAGE 25.

2 **THE COURT:** ALL RIGHT.

3 **MR. EVANS:** I SAY NO. AND THEN YOU ASKED, GOING
4 DOWN, DO YOU UNDERSTAND THOSE ARE ADDITIONAL CONDITIONS?
5 AT WHICH POINT MR. KERLEE, DOWN ON LINE 24, THE
6 BONDSMAN, HE PREVIOUSLY HAD STATED HIS NAME, YOUR HONOR,
7 AND THAT WOULD BE PAGE 24, LINE 24 AND 25, IT'S MICHAEL
8 KERLEE.

9 AND HE EVEN GOES ON TO ACKNOWLEDGE THAT HE'S ONLY
10 SPEAKING FOR ALL OUT BAIL BONDING, HE CANNOT SPEAK FOR
11 THE OTHER TWO, AND THAT'S ON PAGE 25. AND HE AGREES TO
12 THOSE CONDITIONS OF THE BOND.

13 SO OUR ARGUMENT HERE TODAY IS THAT THE OLD BOND WAS
14 OVER WITH, THE ELECTRONIC MONITORING. WE CONCEDE THAT
15 THEY DID NOT RECEIVE NOTICE. AND WE CONCEDE UNDER STATE
16 V. MCINTYRE THAT WE COULD NOT HAVE GONE AFTER THAT
17 ORIGINAL BOND BECAUSE WE DID EXACTLY THE SAME THING, AND
18 THAT WAS A STATE GRAND JURY CASE THAT HAPPENED IN THIS
19 CASE.

20 HOWEVER, THERE IS A NEW BOND IN WHICH MR. KERLEE
21 ORALLY AGREED. UNDER SOUTH CAROLINA LAW THAT CONDITION
22 OF THE BOND, THAT NEW BOND WAS ENTERED INTO -- EXCUSE
23 ME -- THAT NEW CONTRACT WAS ENTERED INTO ON NOVEMBER
24 20TH, 2007, AND WAS TO BE FULFILLED BY DECEMBER 10TH,
25 2007. ONLY CONTRACTS THAT REQUIRE OVER A YEAR UNDER THE

1 STATUTE OF FRAUDS, PURSUANT TO SECTION 32-3-10 HAVE TO
2 BE IN WRITING. THIS CONDITION OF THE BOND CAN BE
3 CARRIED OUT IN LESS THAN A MONTH, AND ACTUALLY WAS
4 CARRIED OUT. WE FINALLY DID SENTENCE HIM APRIL I
5 BELIEVE 25TH, 2008. IT WOULD HAVE BEEN COMPLETED
6 DECEMBER 10TH HAD HE SHOWN UP WHEN HE WAS SUPPOSED TO,
7 WHICH HE DID NOT, OF WHICH HE RECEIVED NOTICE OF THAT
8 HEARING, ALL OUT BAIL BONDING DID. AND SO --

9 **THE COURT:** WAS ANYBODY ELSE --

10 **MS. EVANS:** I BELIEVE THERE WAS ANOTHER BONDING
11 COMPANY THAT WAS NOTICED. BUT AT THAT POINT WE DID NOT
12 RECOGNIZE THE PROBLEM OF ELECTRONIC MONITORING NOT BEING
13 AN ISSUE. BUT ALL OUT BAIL BONDING WAS NOTIFIED OF THAT
14 HEARING, AND, IN FACT, WAS PRESENT THERE, BECAUSE THAT
15 WAS WHEN WE DISCOVERED THAT MR. HINOJOS HAD, IN FACT,
16 FLED AND THE BENCH WARRANT WAS ISSUED.

17 WE CAME BACK BEFORE THE COURT IN APRIL OF 2008, AND
18 HE WAS ACTUALLY SENTENCED, AND THAT'S WHEN WE HAD THE
19 FIRST MOTION TO ESTREAT THE BOND, AND WE AGREED AT THE
20 APPROPRIATE DATE AND TIME TO DO THAT.

21 OUR ARGUMENT HERE TODAY IS THAT THAT WAS A NEW
22 CONTRACT ENTERED INTO BY MIKE KERLEE ORALLY ON THE
23 RECORD, IN WHICH A NEW BOND WAS CREATED IN WHICH THE
24 CONDITIONS WERE TO SHOW UP ON DECEMBER 10TH, TO BE IN
25 CONTACT WITH S.L.E.D. AND THE CLERK'S OFFICE AND HIS

1 ATTORNEY, AND WHICH THEY AGREED, MIKE KERLEE AGREED TO
2 THOSE CONDITIONS OF THE BOND.

3 IT DID NOT HAVE TO BE IN WRITING UNDER SOUTH
4 CAROLINA LAW BECAUSE IT WAS GOING TO BE FULFILLED IN
5 LESS THAN A YEAR AND ACTUALLY WAS FULFILLED IN LESS THAN
6 A YEAR. SO AT THIS POINT WE THINK THAT ALL OUT BAIL
7 BONDING IS AT LEAST ON THE HOOK FOR THEIR ONE-THIRD,
8 WHICH IS \$66,666.66.

9 BUT I BELIEVE THIS COURT HAD THE AUTHORITY TO HOLD
10 THEM RESPONSIBLE FOR THE ENTIRE AMOUNT OF THE
11 \$200,000.00 BOND BECAUSE HE ACKNOWLEDGES THAT NEITHER
12 ONE OF THOSE OTHER BONDS PEOPLE WERE THERE. IT'S WELL
13 KNOWN THAT MR. HINOJOS WAS OUT ON A \$200,000.00 BOND.
14 THAT I THINK THE STATE HAS THE ABILITY TO ESTREAT THE
15 ENTIRE \$200,000.00 BOND FROM ALL OUT BAIL BONDING, BUT
16 AT THE MINIMUM AT LEAST THE ONE-THIRD THAT HE HAD
17 ORIGINALLY AGREED TO.

18 BUT THAT BOND WAS OVER AND THIS WAS A CLEARLY NEW
19 BOND. AND I UNDERSTAND THAT THIS IS A NEW THEORY AND I
20 APOLOGIZE FOR NOT COMPLYING WITH THE COURT'S ORDER.

21 **MR. WILLIAMS:** I THINK I CAN HANDLE IT, YOUR HONOR.
22 I DON'T NEED EXTRA TIME.

23 **MS. EVANS:** OKAY. WE FEEL THAT WAS A NEW CONTRACT
24 THAT WAS FORMED. HE KNEW THAT CONTRACT WAS BREACHED.
25 IT WAS A CONTRACT THAT NO DOUBT COULD BE FULFILLED IN

1 LESS THAN A YEAR, AND IT WAS NOT MODIFYING AN OLD
2 CONTRACT. IT WAS A NEW ORAL CONTRACT THAT DID NOT HAVE
3 TO BE IN WRITING UNDER THE STATUTE OF FRAUDS BECAUSE IT
4 COULD BE CARRIED OUT IN LESS THAN ONE YEAR, AND THE CASE
5 LAW IS UNANIMOUS THAT THOSE DO NOT HAVE TO BE IN
6 WRITING. AND THAT'S THE STATE'S THEORY IN THIS CASE.

7 **THE COURT:** ALL RIGHT, MR. WILLIAMS.

8 **MR. WILLIAMS:** YOUR HONOR, WE HAVE PROBLEMS FROM
9 NUMEROUS AREAS. AND WE CAN START WITH THE FACT THAT
10 WHEN YOU READ THE TRANSCRIPT, AND THERE'S REFERENCE
11 TO -- NOW I THINK IT'S BEEN ACKNOWLEDGED THAT THE OLD
12 BOND IS DEAD, THAT NO ONE CAN ENFORCE THE OLD BOND
13 BECAUSE THEY CHANGED THE CONDITIONS.

14 YOUR HONOR, DOES YOUR HONOR NEED ANOTHER COPY OF
15 THAT MCINTYRE CASE? BECAUSE I HAVE ONE.

16 **THE COURT:** WELL, IF YOU DON'T MIND.

17 **MR. WILLIAMS:** AND BELIEVE ME, IT WAS HARD FOR ME
18 TO FIND IT THE OTHER DAY.

19 **THE COURT:** I HAD TO FIND IT FOR YOU THE FIRST
20 TIME.

21 **MR. WILLIAMS:** I KNOW. WELL, YOUR HONOR, SINCE THE
22 OLD BOND IS DEAD, FROM THE ARGUMENT COMING FROM THE
23 STATE-WIDE GRAND JURY IS WE NOW HAVE A NEW BOND. THAT'S
24 THE ARGUMENT.

25 NOW, IF WE HAVE A NEW BOND, THEN WE NEED TO KNOW

1 WHAT THE AMOUNT OF THE NEW BOND IS. IF YOU READ THE
2 ENTIRE TRANSCRIPT, AT NO POINT IN TIME IS THERE ANY
3 REFERENCE TO ANY AMOUNTS, ABSOLUTELY NO REFERENCE TO A
4 \$200,000.00 BOND. INDEED, WHEN ALL OF THIS STARTED --
5 SINCE THIS IS THE THIRD TRIP UP HERE -- WHEN ALL OF THIS
6 STARTED, THERE WAS ACTUALLY -- EXCUSE ME -- THERE WAS A
7 PETITION TO ESTREAT THE BOND, THE OLD BOND.

8 NO BONDING COMPANY HAS BEEN SERVED WITH ANY NOTICE,
9 ANY PETITION TO ESTREAT ANY NEW BOND WHATSOEVER. I
10 MEAN, THAT'S KIND OF, IF YOU WANT TO LOOK AT IT FROM A
11 PROCEDURAL STANDPOINT, NO ONE HAS EVER FILED A RULE TO
12 SHOW CAUSE, PETITION OR ANYTHING TO ESTREAT SOME NEW
13 BOND.

14 THERE'S NO REFERENCE IN HERE AS TO THE AMOUNT OF
15 THIS ALLEGED NEW BOND. AND IF YOU READ WHAT THE
16 BONDSMAN SAID WAS, AND THE COURT SAYS, AND YOU ARE THE
17 BONDSMAN FOR MR. HINOJOS?

18 YES, YOUR HONOR. THERE'S THREE BONDING COMPANIES
19 WORKING FOR HIM.

20 ALL RIGHT. BUT YOU UNDERSTAND THAT YOU ARE BINDING
21 ALL THREE OF WHATEVER THE BONDS ARE. WHATEVER THE BONDS
22 ARE --

23 AGAIN, THE COURT IS NOT EVEN ACTUALLY REFERENCING
24 ANY AMOUNTS.

25 -- OR THAT THE CONDITIONS WILL CONTINUE UNTIL HE IS

1 SENTENCED.

2 I CAN'T ANSWER FOR THE OTHER TWO. BUT ALL OUT, ALL
3 OUT, I CAN ANSWER FOR ALL OUT.

4 SO AGAIN, HE DOES NOT AGREE WITHOUT THE OTHER TWO.
5 IF YOU ARE SAYING THAT THE AMOUNT IS \$200,000.00, YOUR
6 HONOR, THERE'S A REAL REASON, A REAL REASON WHY THERE
7 WERE ACTUALLY THREE BONDING COMPANIES WHO SIGNED ON THE
8 BOND. BECAUSE THEY DIDN'T HAVE THE AUTHORITY TO SIGN
9 FOR MORE THAN WHAT THEY DID. THE AMOUNT THEY SIGNED FOR
10 WAS \$66,666.66.

11 **THE COURT:** WHO HAS THE EXTRA PENNY?

12 **MR. WILLIAMS:** I DON'T KNOW. I THINK HE WAS
13 PROBABLY OUT ILLEGALLY, YOUR HONOR, BECAUSE -- WELL,
14 ACTUALLY IT WAS A PROBLEM WITH THE STATE TO RELEASE HIM
15 WITHOUT GETTING THAT EXTRA OTHER PENNY.

16 YOUR HONOR, THE -- SINCE WE'RE NOT EVEN ARGUING
17 ABOUT THE OLD BOND WHATSOEVER. HER NEW ARGUMENT NOW IS
18 THAT EVEN THOUGH WE DON'T HAVE THE AMOUNT, THAT THERE'S
19 A NEW BOND, AND SINCE IT'S ORALLY, WE DON'T HAVE TO HAVE
20 ANYTHING IN WRITING BECAUSE GENERALLY UNDER THE STATUTE
21 OF FRAUDS, IF IT'S ANTICIPATED THAT IT WOULD BE DONE
22 WITHIN LESS THAN A YEAR -- AND I THINK THAT'S HER
23 ARGUMENT -- IS THAT YOU WOULDN'T HAVE TO HAVE ANYTHING
24 IN WRITING.

25 I THINK TODAY IS A CLEAR EXAMPLE THAT THAT'S JUST

1 NOT TRUE. BECAUSE, AS YOUR HONOR ORDERED, WE WERE
2 SUPPOSED TO BE BACK HERE MONTHS AGO TO HAVE DETERMINED
3 THAT. THERE ARE CASES IN WHICH, PARTICULARLY IN THIS
4 TYPE OF CASE, WHERE THE INDIVIDUAL WAS OUT WORKING FOR
5 THE STATE AND PICKING UP PEOPLE. HIS SENTENCING DATE
6 WAS SINCERELY IN THE CONTROL OF THE STATE. SO HE COULD
7 HAVE FULFILLED HIS DUTIES OVER A YEAR.

8 SO THE ARGUMENT THAT IT HAS TO BE DONE WITHIN A
9 YEAR AND THEREFORE YOU DON'T HAVE TO HAVE IT IN WRITING
10 DOESN'T FLOW BECAUSE IT COULD HAVE ACTUALLY TAKEN MORE
11 THAN A YEAR BEFORE HE ACTUALLY ENTERED INTO SENTENCING.

12 AND THERE'S ANOTHER PRACTICAL REASON, YOUR HONOR,
13 WHY THAT'S NOT THE THING TO DO. BECAUSE IF THIS IS THE
14 ARGUMENT, THEN ANY TIME YOU HAVE ANY CRIMINAL CASE IN
15 WHICH YOU GIVE A COURT DATE AND THAT COURT DATE IS LESS
16 THAN ONE YEAR -- AND I WOULD SUGGEST TO THE COURT THAT
17 THERE'S NOT A BOND SET THAT HAS A COURT DATE SET FOR
18 LONGER THAN ONE YEAR -- THAT ANY TIME THAT HAPPENS, THEN
19 THERE'S NO REQUIREMENT THAT THE BOND BE IN WRITING. IF
20 THAT'S THE ARGUMENT, EVERY BOND WHICH IS SET, FROM
21 MAGISTRATE'S COURT TO GENERAL SESSIONS, ALWAYS HAS A
22 DATE IN WHICH THE PERSON IS SUPPOSED TO SHOW UP, AND
23 IT'S ALWAYS WITHIN ONE YEAR, ALWAYS WITHIN ONE YEAR.

24 THERE'S THE ANTICIPATION THAT THE CASE WILL BE
25 DISPOSED OF WITHIN ONE YEAR. SO IF THAT'S TRUE, THEN WE

1 NEVER NEED ANY WRITINGS WHATSOEVER TO HANDLE ANY OF THE
2 BONDING ISSUES. SO THIS IS NEW GROUND FOR ALL OF US.

3 AND I WOULDN'T GIVE UP ON THE FACT THAT HE HAS
4 ACTUALLY AGREED TO CONTINUE ON THE BOND WITHOUT THE
5 OTHER TWO PERSONS. HE SAID: I CAN'T SPEAK FOR THE
6 OTHER TWO PEOPLE. I'M KIND OF OKAY WITH IT, BUT I CAN'T
7 SPEAK FOR THEM.

8 SO IN CONTRACTS, OBVIOUSLY YOUR HONOR KNOWS THAT
9 THE CONTRACT CAN'T BE ARBITRARY, IT CAN'T BE VAGUE. SO
10 WE DON'T KNOW WHAT THE AMOUNT OF THE BOND IS. WE DON'T
11 KNOW IF IT'S 200,000, WE DON'T KNOW WHO'S BOUND TO IT,
12 WE DON'T KNOW HOW MUCH THEY'RE BOUND FOR. AND THAT IS
13 CLEARLY THE REASON WHY YOU HAVE WRITTEN BONDING FORMS
14 AND YOU HAVE POWERS SO THAT EVERYONE WILL KNOW THE
15 AMOUNT.

16 AND AGAIN, WE DON'T GIVE UP THE PROCEDURAL ARGUMENT
17 THAT IF THEY'RE GONNA ESTREAT THE BOND, THEY NEED TO
18 REFERENCE THIS ARBITRARY NEW ORAL BOND WHICH WAS SET AT
19 THE TIME AT WHICH HE WAS SENTENCED.

20 AND LASTLY, YOUR HONOR, IT'S MY UNDERSTANDING THAT
21 THIS GUY WAS PLED AND THEN SENTENCED.

22 **MS. EVANS:** YES. HE'S BEEN SENTENCED WITH A SEALED
23 SENTENCE.

24 **THE COURT:** HE'S STILL AT LARGE?

25 **MS. EVANS:** YES, YOUR HONOR. HE'S NOT HERE TODAY

1 AND WE DON'T KNOW WHERE HE IS.

2 **MR. WILLIAMS:** SO ESSENTIALLY EVERYTHING IS
3 COMPLETED ON THIS CASE, SO THAT THERE'S REALLY NO REASON
4 TO KEEP BRINGING THIS UP. I MEAN, THE PROBLEM IS THERE
5 WAS NEVER A PROBLEM. AND IT'S HARD. THE HARD LAW IS
6 JUST TOUGH TO LIVE WITH; YOU KNOW, IT'S JUST BAD
7 SOMETIMES. IT WAS SCREWED UP WHEN THE CONDITIONS WERE
8 CHANGED, YOUR HONOR. THAT WAS THE PROBLEM.

9 **THE COURT:** THAT'S A LEGAL TERM?

10 **MR. WILLIAMS:** SCREWED UP? (LAUGHTER.) IT'S
11 PROBABLY A CASEY TERM, YOUR HONOR.

12 BUT I MEAN, SERIOUSLY. AND WHEN THAT HAPPENED,
13 IT'S JUST WE'RE JUST FOLLOWING DOWN THAT WAY LOOKING FOR
14 THE MONEY. I MEAN, THAT'S WHAT WE'RE DOING HERE, WE'RE
15 LOOKING FOR THE MONEY. WE'RE NOT ACTUALLY TRYING TO
16 JUDGE IT BASED ON WHAT THE LAW IS. WE'RE TRYING TO GET
17 US THE MONEY HERE, YOUR HONOR.

18 SO I'D ASK THE COURT TO RULE LEGALLY, IN ACCORDANCE
19 WITH WHAT HAS HAPPENED TODAY IS THAT THE BONDING
20 COMPANIES ARE OFF THE BOND. THANK YOU, YOUR HONOR.

21 **THE COURT:** ALL RIGHT, MS. EVANS.

22 **MS. EVANS:** YOUR HONOR, I BELIEVE HE'S TWISTING MY
23 ARGUMENT. YOU CAN'T THROW COMMON SENSE OUT WHEN YOU ARE
24 DEALING WITH THIS. EVERYBODY KNEW WHEN THEY SIGNED THE
25 ORIGINAL BOND IT WAS A \$200,000.00 BOND. MIKE KERLEE

1 KNEW WHAT HE OWED WAS 66-, THE AMOUNT THAT WAS OWED.

2 **THE COURT:** ONE-THIRD OF 200,000.

3 **MS. EVANS:** AND THE TOTAL BOND WAS \$200,000.00. SO
4 TO SAY THAT THAT IS OUT OF THEIR HEAD WHEN HE'S SPEAKING
5 TO THE COURT ABOUT THAT -- AND HE EVEN GOES ON TO SAY
6 THAT -- HE'S TALKING ABOUT MR. HINOJOS -- THAT, YOU
7 KNOW, THAT THE BONDSMAN SAYS WHEN YOU ASK HIM IF HE
8 UNDERSTANDS THE CONDITIONS, HE SAYS (READING):

9 HE STAYS IN TOUCH WITH US, YOUR HONOR, HE CALLS US,
10 HE COMES TO SEE US.

11 SO WE ALL ARE CLEAR ABOUT WHAT THEY ARE TALKING
12 ABOUT. JUST BECAUSE IT WASN'T SAID, THE AMOUNT THERE,
13 MR. KERLEE UNDERSTOOD THE AMOUNT BECAUSE MR. WILLIAMS
14 SAID THAT HE COULD NOT HAVE CONTRACTED FOR MORE THAN THE
15 AMOUNT THAT HE DID AND THAT'S WHY THERE'S THREE
16 DIFFERENT BONDING COMPANIES.

17 I DON'T THINK THAT -- I'M NOT ARGUING THAT WE CAN
18 THROW ALL THE LAW OUT AND THAT NO BONDS NEED TO BE.
19 THIS IS A SPECIAL CASE AND CIRCUMSTANCE, THAT I DON'T
20 KNOW WHY THEY WERE NOT SENT NOTICE OF THAT HEARING WHEN
21 THAT WAS DONE. THEY SHOULD HAVE BEEN SENT NOTICE. AND
22 THERE'S NO DOUBT THAT --

23 **THE COURT:** ON DECEMBER THE 10TH?

24 **MS. EVANS:** NO. WHEN THE CONDITION OF THE BOND TO
25 RELEASE HIS ELECTRONIC MONITORING WAS MARCH 15, 2007.

1 BUT, YOUR HONOR, LIKE I SAID, I DON'T THINK YOU CAN TAKE
2 INTO --

3 **THE COURT:** BECAUSE I DON'T THINK THEY KNEW THAT
4 THEY NEEDED TO BE.

5 **MR. EVANS:** EXCUSE ME, YOUR HONOR?

6 **THE COURT:** I DON'T THINK THAT THEY NEEDED TO BE
7 NOTICED.

8 **MS. EVANS:** NO. WE ALWAYS NOTICE. FOR EVERYTHING
9 THAT GOES ON, THE POLICY IS THAT ALL THE BONDING
10 COMPANIES ARE NOTICED, EVERYTHING, AND THAT WAS IN THE
11 LEGAL TERM A SCREW-UP ON BEHALF OF ME. I'M NOT, I'M
12 NOT, I'M NOT ARGUING AGAINST THAT.

13 BUT, HOWEVER, PRACTICALLY SPEAKING, THEY HAD COME
14 TO OTHER CONDITIONS OF THE BOND. MR. KERLEE SAID THAT
15 HE COMES IN THERE, HE SEES THEM REGULARLY. THEY'RE NOT
16 GETTING REPORTS FROM THE ELECTRONIC MONITORING COMPANY
17 WHICH NORMALLY HAPPENS WITH THE BONDING COMPANY. SO
18 CONSTRUCTIVELY I BELIEVE THAT THEY WERE ON NOTICE. BUT
19 I'M NOT COMING IN HERE AND ARGUING THAT TODAY BECAUSE I
20 CANNOT SHOW PROOF POSITIVE WHERE THEY WERE.

21 HOWEVER, I CAN SHOW WHERE MR. KERLEE COMES, AND
22 HE'S BY HIMSELF. HE COULD HAVE EASILY TOLD THE COURT,
23 YOUR HONOR, I CAN'T, I CAN'T GET ON THIS BOND. I DON'T
24 KNOW WHAT BOND YOU ARE TALKING ABOUT. YOU CAN'T RELEASE
25 THIS GUY BECAUSE WHAT HE'S SAYING IS THAT YOU ILLEGALLY

1 RELEASED THIS INDIVIDUAL AT THE END OF THIS HEARING WITH
2 NO BOND. WE ALL KNEW WHAT BOND WE WERE TALKING ABOUT,
3 IT WAS THE ORIGINAL BOND. AND EVEN IF MR. KERLEE
4 ACKNOWLEDGES THAT BY SAYING HE CAN ONLY TALK FOR HIS
5 PART OF THE BOND, WHICH IS ALL OUT BAIL BONDING COMPANY,
6 AND HE SAYS THAT HE CAN'T SPEAK FOR THE OTHER TWO.

7 SO IT'S CLEAR WHAT BOND WE'RE TALKING ABOUT. TO
8 SAY THAT IT'S NOT CLEAR AT THAT POINT I THINK IS TO
9 THROW COMMON SENSE OUT THE WINDOW.

10 **THE COURT:** DO YOU THINK THAT THAT'S THE WORST,
11 MR. KERLEE'S PARTICIPATION IN THE HEARING ON NOVEMBER
12 THE 20TH WAS GRATUITOUS, IT REALLY DIDN'T HAVE ANY
13 EFFECT? HE WAS JUST SAYING THESE THINGS ON THE RECORD?

14 **MS. EVANS:** YOUR HONOR, HE'S SAYING THAT HE'S
15 AGREEING TO STAY ON THE BOND FOR MR. HINOJOS AND THAT
16 HE'S BEEN FOLLOWING THE CONDITIONS OF THE BOND. I MEAN,
17 THERE WAS A REASON THAT MR. RICHEY HAD MR. KERLEE THERE,
18 SO THAT MR. HINOJOS CAN STAY ON THE BOND BECAUSE YOUR
19 HONOR CAN'T LET HIM GO OUT OF THE COURTROOM UNLESS YOU
20 ACCEPT THAT GUILTY PLEA.

21 AND I HAVE TO CONTEST, I'M NOT HERE TO GET MONEY.
22 I'M HERE TO GET MR. HINOJOS. WHEN BONDSMEN SIGN UP,
23 THEY SAY IF I DON'T, IF I DON'T LIVE UP TO THE
24 CONDITIONS AND I DON'T PRODUCE HIM WHEN I'M SUPPOSED TO
25 PRODUCE HIM, WHICH NONE OF THESE THREE BONDING COMPANIES

1 DID PRODUCE HIM. AND IT HAD NOTHING TO DO WITH
2 ELECTRONIC MONITORING. THEY DID NOT PRODUCE HIM FOR
3 TRIAL.

4 NOW, WOULD IT HAVE MADE IT EASIER? I CAN'T ARGUE
5 THAT IT DIDN'T. BUT THEY WERE SAYING WE WILL PRODUCE
6 HIM FOR TRIAL. THESE THREE BONDING COMPANIES DID NOT
7 PRODUCE HIM WHEN THEY WERE SUPPOSED TO. WE'RE HERE NOW
8 SAYING A BONDING COMPANY JUST CAN'T SIGN A PIECE OF
9 PAPER OR ORALLY AGREE THAT THEY'RE GOING TO DO
10 SOMETHING, AND WE SAY, OH, WELL, HE DIDN'T SHOW UP. YOU
11 DON'T HAVE ANY RECOURSE BECAUSE, LOOK, IT'S JUST A PIECE
12 OF PAPER THAT THEY'RE SIGNING. IF THERE'S NO RECOURSE,
13 THERE'S NO PUNISHMENT IF THEY DON'T DO WHAT THEY'RE
14 SUPPOSED TO DO.

15 I'M NOT HERE TO GET MONEY. I'M HERE TO GET
16 MR. HINOJOS SO WE CAN UNSEAL THAT SENTENCE AND HE CAN BE
17 IN THE DEPARTMENT OF CORRECTIONS LIKE HE'S SUPPOSED TO
18 BE. FOR HOWEVER LONG WE DON'T KNOW, BUT HE HAS TO GO
19 THERE BECAUSE THE MINIMUM WAS SEVEN YEARS THAT HE WAS
20 PLEADING TO. THAT'S WHY I'M HERE. AND IF WE ALLOW ALL
21 THE BONDING COMPANIES NOT TO BE HELD TO THEIR LEGAL
22 OBLIGATION, WHICH ON THE RECORD MR. KERLEE IS SAYING HE
23 IS WILLING TO ACCEPT THAT ON BEHALF OF ALL OUT BONDING
24 COMPANY, THERE'S JUST NO SENSE WHETHER YOU PUT IT IN
25 WRITING OR DO ANYTHING, IF THERE'S NO, IF THERE'S NO

1 PUNISHMENT IF THEY DON'T ADHERE TO IT, IT'S JUST FREE
2 MONEY THEY GET WHEN THE GUY GETS OUT OF JAIL AND THEY
3 CAN JUST GO ON THEIR MERRY WAY AND, OH, WELL, IF HE
4 DOESN'T SHOW UP, THAT'S TOO BAD.

5 I'D LIKE TO HAVE MR. HINOJOS HERE. IF HE HAD
6 SHOWED UP TODAY, OUR PROBLEMS WOULD -- WE WOULDN'T BE
7 MAKING A MOTION TO ESTREAT ANY MONEY. BUT THE LAW IS
8 CLEAR, IS THAT WHEN THERE'S A BREACH, THAT'S THE REMEDY.
9 IF YOUR HONOR WANTS TO GIVE TIME, AS YOU HAVE IN THE
10 PAST ON ESTREATMENTS, CERTAINLY THAT'S WHAT WE WOULD
11 LIKE. BUT IF THERE'S NO LIABILITY, THERE'S NO INCENTIVE
12 TO GO FIND MR. HINOJOS. THAT'S WHAT WE WANT. NOT THIS
13 MONEY.

14 BUT THE REMEDY IS, IF THEY CAN'T PRODUCE HIM, THE
15 REMEDY IS MONEY. AND HE DID ORALLY AGREE -- AND WE ALL
16 KNEW EXACTLY WHAT BOND HE WAS TALKING ABOUT THAT DAY.
17 BECAUSE IF HE DIDN'T, HE WOULDN'T HAVE TALKED ABOUT THE
18 OTHER TWO BONDING COMPANIES.

19 AND YOU ASKED HIM IF HE HAD ANY OTHER QUESTIONS.
20 HE DIDN'T HAVE ANY OTHER QUESTIONS. SO I THINK IT'S
21 CLEAR THAT THERE WAS A CLEAR MEETING OF THE MINDS IN
22 THAT CONTRACT THAT DAY, AND THAT'S WHY WE'RE HERE, AND I
23 THINK THAT ALL OUT BAIL BONDING SHOULD BE ESTREATED
24 MINIMUM THE AMOUNT OF \$66,000.00, BUT I THINK YOUR HONOR
25 COULD ESTREAT THE WHOLE ENTIRE \$200,000.00 BECAUSE HE

1 WAS THERE BY HIMSELF AND DIDN'T ASK THAT THE OTHER TWO
2 BONDING COMPANIES, OR ASK THE COURT TO GET THEM THERE
3 THAT DAY. HE KNEW HE WAS THE ONLY ONE THERE AND HE KNEW
4 WHAT BOND WE WERE TALKING ABOUT.

5 **MR. WILLIAMS:** YOUR HONOR, FOR THE RECORD, I'M NOT
6 POINTING THE FINGER AT THE COURT.

7 **THE COURT:** THANK YOU.

8 **MR. WILLIAMS:** I HEARD HER REFERENCE. I GUESS THIS
9 WAS SOME ATTEMPT TO INDICATE THAT I'M SOMEHOW POINTING A
10 FINGER AT THE COURT.

11 IT'S JUST A MISTAKE, JUDGE. I MEAN, IT WAS A
12 MISTAKE FOR HIM TO BE RELEASED WHEN THERE IS NO NEW BOND
13 IN PLACE.

14 AND I DON'T, I DO NOT AGREE THAT IT IS CLEAR FROM
15 THIS RECORD THAT HE AGREED TO STAY ON A \$200,000.00
16 BOND. IN FACT, ALL HE SAYS WAS, HE SAYS, I'M OKAY WITH
17 IT, BUT THERE ARE THREE OF THEM AND I CAN'T ANSWER FOR
18 THE OTHER TWO.

19 IT WOULD APPEAR --

20 **THE COURT:** WHAT PAGE IS THAT?

21 **MR. WILLIAMS:** IT'S PAGE 25. IT WOULD APPEAR HE'S
22 ANTICIPATING MORE, ANOTHER HEARING, A BOND PRODUCED IN
23 WHICH ALL THREE WOULD SIGN ON THE BOND.

24 **THE COURT:** WELL, THE ONLY THING THAT DOES CONCERN
25 ME IS AS A JUDGE, MANY TIMES, WHEN A CASE IS CALLED, FOR

1 EXAMPLE, AND WE IMPANEL A JURY, THEN THAT'S THE END OF
2 THE BOND. BUT THE DEFENDANT IS IN ON A BOND, HE'S DONE
3 WHAT HE'S SUPPOSED TO DO, AND ASKED MAY HE REMAIN OUT ON
4 HIS BOND DURING THE PROCEEDINGS.

5 AND, OF COURSE, I DO ASK, YOU KNOW, WHO IS ON THE
6 BOND, WHO IS THE BONDS PERSON, OR THE SURETY ON THE
7 BOND, AND IT IS USUALLY THE MOTHER OR SOMEBODY LIKE
8 THAT; AND IF THEY ARE IN THE COURTROOM, I MAKE THEM
9 STAND UP AND RAISE THEIR RIGHT HAND AND PUT THEM UNDER
10 OATH AND THEN I SAY: DO YOU UNDERSTAND THAT YOU ARE
11 STILL OBLIGATED UNDER THIS BOND?

12 AND I GUESS I VIOLATED THE STATUTE OF FRAUDS. BUT
13 I DON'T HAVE -- IF THAT'S WHAT'S REQUIRED -- BUT I HAVE
14 A MATTER ON THE RECORD THAT SAYS THAT THAT SURETY IS
15 RESPONSIBLE, AND IN RELIANCE ON THAT, I DO RELEASE THE
16 PERSON DURING THE TRIAL.

17 NOW, IF I'M SUPPOSED TO STOP THAT, THEN I GUESS I'D
18 BETTER NOTE IT RIGHT NOW. THERE WILL BE A LOT OF PEOPLE
19 WHO -- AND THE INTERESTING PART ABOUT IT, MOST OF THE
20 TIMES I'VE DONE THAT -- NOT MOST, EVERY TIME I'VE DONE
21 THAT THE DEFENDANTS HAVE RESPONDED OR HAVE APPEARED, AND
22 ON SEVERAL OCCASIONS HAVE BEEN ACQUITTED. BECAUSE
23 OTHERWISE THEY WOULD BE INCARCERATED DURING THE TRIAL.

24 I'M NOT SURE. WHEN YOU TALK ABOUT COMMON SENSE,
25 I'M KIND OF REMINDED OF DANIEL BOONE. IT WAS A T.V.

1 PROGRAM WITH FESS PARKER AND IT TOOK PLACE IN BOONESBORO
2 OR WHATEVER. AND THE JUSTICE OF THE PEACE WAS A FELLA
3 NAMED SIMPSON ADDIS (PHONETIC), AND HE WAS A TAVERN
4 OWNER AND THAT WAS HIS COURTROOM. AND IN ONE OF THE
5 EPISODES HE HAD THOMAS JEFFERSON ON ONE SIDE AND PATRICK
6 HENRY ON THE OTHER SIDE ARGUING HIS CASE BEFORE SIMPSON
7 ADDIS, THE BARKEEP, AND THEY KEPT QUOTING BLACKSTONE AND
8 COOKE AND OTHER, YOU KNOW, LEGAL AUTHORITIES AND
9 EVERYTHING. AND FINALLY SIMPSON ADDIS PULLED OUT HIS
10 HORSE PISTOL AND SLAMMED IT DOWN ON THE BAR AND HE SAID,
11 "YOU KNOW, I MIGHT NOT KNOW MUCH ABOUT THE LAW, BUT I'M
12 A BULL ON EQUITY."

13 SO I'M NOT SURE IF I'M GETTING IN THE BULLPEN HERE
14 TO FIGURE OUT WHAT I'M SUPPOSED TO DO ABOUT THIS CASE.

15 **MR. WILLIAMS:** CAN I SPEAK TO THE COURT ON ONE
16 ISSUE?

17 **THE COURT:** PLEASE.

18 **MR. WILLIAMS:** THE ONE OTHER THING THAT KIND OF
19 BOTHERS ME IS THAT, YOU KNOW, WE'VE THROWN THIS
20 MONITORING DEVICE AWAY. AND DOES IT CLEARLY SAY IN
21 HERE, IN THIS, IN THIS SENTENCING HEARING, THAT HE'S NOT
22 GOING TO BE ON THE MONITORING DEVICE ANYMORE?

23 **MS. EVANS:** I THINK IT DOES, YOUR HONOR, ON PAGE
24 25, LINE 16.

25 **THE COURT:** YOU ASKED ME: ALL RIGHT. THEN THE

1 ADDITIONAL BOND THAT HE STAY IN CONTACT WITH THE CLERK'S
2 OFFICE, COOPERATE WITH S.L.E.D. IS THERE ANYTHING ELSE?

3 MY RESPONSE IS "NO."

4 IF MY RESPONSE WAS --

5 **THE COURT:** WELL, AGAIN, THAT RAISES A DOUBLE
6 QUESTION. BUT THAT'S HOW WE GOT THIS IMPASSE THAT THE
7 MONITORING DEVICE WAS REMOVED.

8 **MS. EVANS:** NO DOUBT, YOUR HONOR.

9 **THE COURT:** I MEAN, THAT WAS TAKEN OFF AS A
10 CONDITION.

11 **MS. EVANS:** RIGHT.

12 **MR. WILLIAMS:** AND, YOU SEE, THERE'S NOTHING FOR
13 MR. KERLEE, IF SHE'S, IF SHE'S CONCEDED THAT NOBODY KNEW
14 THAT THE MONITORING DEVICE WAS TAKEN OFF, THERE'S
15 NOTHING IN THE RECORD, EVEN IF YOU SOMEHOW ARE SAYING
16 THAT MR. KERLEE AGREED TO STAY ON THE BOND, THAT HE
17 KNEW.

18 **THE COURT:** SHE'S I THINK -- DON'T LET ME SPEAK FOR
19 YOU, MS. EVANS -- BUT I THINK YOU WERE SAYING THAT YOU
20 STATED WHAT THE CONDITIONS WERE AND THEY DIDN'T INCLUDE
21 IT.

22 **MS. EVANS:** THEY DIDN'T INCLUDE ELECTRONIC
23 MONITORING BECAUSE YOU ASKED ME --

24 **THE COURT:** WELL, THAT'S JUST IT. AND I GUESS WHAT
25 I ASKED FOR --

1 **MS. EVANS:** AND THE COURT, YOU ASKED MR. KERLEE, DO
2 YOU UNDERSTAND THOSE CONDITIONS?

3 HE DOESN'T ONCE RAISE ANY OTHER CONDITIONS AT ALL
4 TO YOU, AND HE SAYS THAT HE STAYS IN TOUCH WITH US, YOUR
5 HONOR, AND HE CALLS AND HE COMES TO SEE US.

6 **MR. WILLIAMS:** JUST LIKE WE ASSUME IT'S
7 \$200,000.00, YOUR HONOR. SEE, THAT'S THAT SAME
8 ARGUMENT. WE ASSUME THAT EVERYBODY KNOWS THE AMOUNT OF
9 THE BOND, SO -- EVEN THOUGH IT'S NOT STATED. SO WE
10 ASSUME WE KNOW WHAT THE CONDITIONS ARE --

11 **THE COURT:** WELL, AGAIN, THAT'S THE SAME THING AS
12 WHEN I AM FACED WITH THE SITUATION WHERE THE TRIAL HAS
13 STARTED, DOUBLE JEOPARDY IS ATTACHED, AND I ASKED IF
14 THEY WANT TO REMAIN OUT ON BOND, THEY SAY GIVE ME THE
15 BOND AND LET ME LOOK AT IT AND SEE WHAT THE AMOUNT IS
16 AND EVEN WHAT THE CONDITIONS ARE. SO I ASK THE PERSON
17 WHO IS THE SURETY, DO YOU AGREE TO CONTINUE HIM ON THE
18 BOND? AND I'M JUST THINKING THEY KNOW WHAT THE
19 CONDITIONS OF THE BOND WAS. AND HERE I DON'T EVEN GO
20 THROUGH -- I DON'T EVEN DO AS MUCH AS I DID HERE
21 USUALLY.

22 AND AGAIN, THAT MIGHT BE TOTALLY WITHOUT EFFECT AND
23 VOID AB INITIO WITHOUT ANY LEGAL IMPORT FOR ME TO DO
24 THAT. EVERYBODY CAN WALK OUT OF MY COURT WITHOUT --
25 JUST FORGET ABOUT WHAT THEY TELL ME. I HATE TO THINK

1 THAT OUR SYSTEM HAS GOTTEN TO BE SO UNTRUSTWORTHY.

2 WELL, LADY AND GENTLEMAN, CAN I GO BACK TO MY ORDER
3 THAT I GAVE BEFORE? I MEAN, OBVIOUSLY THE QUESTION,
4 BECAUSE IT CAME UP IN THE MCINTYRE CASE, TOO, STATUTE OF
5 FRAUDS IS AN ISSUE. BUT TO ANSWER YOUR QUESTION, I'VE
6 SEEN BONDS, I SIGN THEM ALL THE TIME, WILL REPORT,
7 BLANK, AND IT SAYS SOMETHING AT THE CALL OF THE
8 SOLICITOR, WHICH COULD BE, YOU KNOW, WELL, ANY TIME. IN
9 OTHER WORDS, RIGHTFULLY THEY SHOULD SAY THAT THE TERM OF
10 COURT COMMENCING SO AND SO, AND EACH TERM THEREAFTER IF
11 NOT DISPOSED OF.

12 I HATE TO PUT THIS WHOLE THING INTO A SITUATION
13 WHEN ANYBODY APPEARS BEFORE ME SEEKING A BOND, I SAY,
14 NO, NO, I DON'T KNOW HOW TO DO THESE THINGS ANYMORE.
15 I'D PUT ALL THE BONDING COMPANIES OUT OF BUSINESS AND
16 ALL THE JAILS UNDER FORECLOSURE OR SOMETHING BECAUSE
17 THEY'RE GONNA BE OVERCROWDED AND THEY CAN'T MAKE THEIR
18 PAYMENTS.

19 ALL RIGHT. BUT, NO, LET'S DO. YOU WANTED THE 20
20 DAYS I GAVE YOU?

21 **MS. EVANS:** 20 DAYS, YOUR HONOR.

22 **THE COURT:** AND MR. WILLIAMS IS SATISFIED BECAUSE
23 HE'LL PROBABLY NEED HIS TEN DAYS.

24 **MS. EVANS:** I THINK HE HAS CONCEDED THAT.

25 **THE COURT:** MAYBE HE WON'T NEED IT. BUT LET'S DO

1 THAT. YOU ARE RELYING ON THE FACT THAT, LIKE MCINTYRE,
2 THE STATUTE OF FRAUDS APPLIES, WHICH NOT ONLY MEANS THAT
3 IT HAS TO BE IN WRITING, IT'S APPLICABLE, BUT ALSO THE
4 CONDITIONS OR THE TERMS OF THE CONTRACT HAVE TO BE
5 KNOWN. MEETING OF THE MINDS.

6 **MR. WILLIAMS:** YES, SIR.

7 **THE COURT:** AND THAT'S WHY YOU PUT IT IN WRITING.

8 **MR. WILLIAMS:** YES, SIR.

9 **THE COURT:** AND YOURS IS THAT THE WRITING WAS DONE,
10 AND IT'S JUST ASKING, WELL, ARE YOU GOING TO CONTINUE ON
11 THIS WRITING?

12 **MS. EVANS:** EXACTLY.

13 **THE COURT:** WHICH IS WHAT YOU MIGHT DO WITH ANY
14 CONTRACT OR WHATEVER. YOU ALWAYS HAVE TO HAVE A
15 MOTIVATION IF THE CONTRACT IS STILL THERE.

16 **MS. EVANS:** RIGHT. AND OUR POINT IS THAT SINCE THE
17 CONDITIONS WERE GONE OVER, WE'RE NOT IN A NOTICE
18 SITUATION THAT WE WERE UNDER WITH MCINTYRE. MR. KERLEE
19 AT THAT POINT WAS PUT ON NOTICE. AND I JUST WANT TO
20 MAKE IT CLEAR, I'M NOT SAYING THAT THEY DID NOT KNOW.
21 ALL I'M SAYING IS I CANNOT COME HERE IN COURT AND PROVE
22 IT. HE WAS OFF THAT ELECTRONIC MONITORING, HE WAS
23 REPORTING. ELECTRONIC MONITORING YOU CAN TELL.
24 SOMETIMES, SOMETIMES THEY WILL SEND REPORTS.

25 I'M NOT CONCEDING THAT THEY DID NOT KNOW IT WAS

1 TAKEN OFF; I JUST CANNOT PROVE AND COME INTO A COURT AND
2 SAY THAT THEY DEFINITELY KNEW THIS, YOUR HONOR. BUT
3 AS MR. KERLEE EVEN SAID, HE CAME IN, THAT HE KNEW THE
4 CONDITION OF THE BOND, ELECTRONIC MONITORING OR
5 SOMETHING, YOU KNOW, BECAUSE THE ELECTRONIC MONITORING
6 COMPANY -- NOBODY -- LET ME PUT IT THIS WAY. WHEN
7 MR. HINOJOS DIDN'T SHOW UP, NOT ONE OF THE BONDING
8 COMPANIES, FROM WHAT WE'VE KNOWN, WENT AND CALLED THE
9 ELECTRONIC MONITORING COMPANY TO SEE WHERE HE WAS.

10 **MR. WILLIAMS:** YOUR HONOR, WE DON'T KNOW WHAT THEY
11 HAVE DONE AND WHAT THEY HAVEN'T DONE.

12 **MS. EVANS:** I'VE GOT A CONTRACT.

13 **THE COURT:** I THINK IT'S VERY CLEAR THAT THEY
14 DIDN'T THINK THERE WAS GOING BE A QUESTION OF A MATTER
15 OF LAW, NOT OF THE FACTS. THE RECORD IS DEVELOPED HERE,
16 AND THAT'S WHAT I NEED TO KNOW. BASED ON THE TRANSCRIPT
17 OF THE NOVEMBER THE 20TH HEARING, I THINK YOU EITHER
18 HAVE A BOND IN A CERTAIN AMOUNT OR YOU DON'T.

19 **MR. WILLIAMS:** AND WHO IS YOUR HONOR -- IS YOUR
20 HONOR ANTICIPATING THAT I CAN CALL THE OTHER BONDING
21 COMPANIES AND TELL THEM THEY'RE NOT INVOLVED ANYMORE?
22 SINCE SHE'S GIVEN THAT UP, SHE'S WAIVED THAT.

23 **THE COURT:** WELL, LET'S DO THIS. THEY WEREN'T
24 APPARENTLY AT THE NOVEMBER 20TH HEARING, SO THEY
25 CERTAINLY DIDN'T PARTICIPATE. AND I THINK THE COURT'S

1 RULING ON THE FIRST PART ABOUT THE CONDITIONS BEING
2 CHANGED. BUT IF THERE IS ANYTHING, IT WOULD BE ONLY
3 THOSE WHO --

4 **MR. WILLIAMS:** ONLY AS TO ALL OUT.

5 **THE COURT:** BUT, I MEAN, AGAIN, THAT'S ANOTHER ONE
6 OF THESE THINGS THAT THE RULING FROM THE BENCH CAN BE
7 CHANGED COMPLETELY, BUT NOT THE FINAL ORDER. SO REALLY
8 WHAT I'M GOING TO BE DOING IS GIVING YOU ANOTHER 20 --
9 WHAT'S 20 DAYS FROM TODAY? THAT'S THURSDAY. IS THAT
10 THANKSGIVING?

11 **MR. WILLIAMS:** I THINK SO, JUDGE.

12 **THE COURT:** ALL RIGHT. WHY DON'T WE DO THIS. THE
13 STATE WILL SUBMIT A MEMORANDUM BY THE 1ST OF DECEMBER.
14 AND HOW ABOUT THE BONDSMAN, OR MR. WILLIAMS, YOU WILL DO
15 YOURS BY THE 15TH?

16 **MR. WILLIAMS:** YOUR HONOR, I GUESS THE REASON I WAS
17 ASKING THAT IS ANY MEMORANDUM I WOULD DO FROM HERE ON
18 OUT I GUESS WOULD DEAL WITH ALL OUT. I MEAN, UNLESS
19 YOUR HONOR --

20 **THE COURT:** WELL, I THINK THE STATE CONCEDES THAT
21 THEIR RIGHTS, IF ANY, AT THIS POINT DEPEND ON NOVEMBER
22 THE 20TH.

23 **MS. EVANS:** REGRETTABLY SO.

24 **THE COURT:** BECAUSE I THINK IF I HADN'T ALREADY
25 RULED, I THINK I DID RULE THAT MCINTYRE CONTROLS --

1 **MR. WILLIAMS:** YES, SIR, YOU DID.

2 **THE COURT:** -- BUT THE CONDITION THAT WAS DELETED.

3 **MS. EVANS:** YES, YOUR HONOR, IT DOES. THAT WAS A
4 STATE GRAND JURY CASE, AND THIS IS A STATE GRAND JURY
5 CASE LIKE THAT ONE, AND I CAN'T ARGUE AGAINST THAT.

6 **THE COURT:** AND THE LAWYER THAT FOUND THAT FOR THE
7 COURT, OF COURSE, SPLIT IT UP, TOO.

8 **MS. EVANS:** NOW THAT WORKS FOR THE ATTORNEY
9 GENERAL'S OFFICE.

10 **THE COURT:** OF COURSE, SHE'S IN THE BASEMENT IN THE
11 BACK OF THE CORNER.

12 **MR. WILLIAMS:** I WAS IN FRONT OF JUDGE KINARD
13 YESTERDAY IN FLORENCE. I SHOULD HAVE ASKED HIM ABOUT
14 THAT WHILE I WAS DOWN THERE.

15 **THE COURT:** YES, YOU SHOULD HAVE.

16 **MR. WILLIAMS:** I FELT LIKE HE MIGHT BE A LITTLE
17 TOUCHY ABOUT THAT.

18 **THE COURT:** WE'RE OFF THE RECORD NOW.

19 (DISCUSSION OFF THE RECORD.)

20 **THE COURT:** I'LL JUST DO A SHORT ORDER AS TO THE
21 SCHEDULE.

22 **MS. EVANS:** AND I'LL ABIDE BY IT THIS TIME, YOUR
23 HONOR.

24 **THE COURT:** I HATE TO SAY IT, BUT I THINK
25 UNFORTUNATELY SOMETIMES ERRORS CAN BRING FORTH, WHEN WE

1 MISCONSTRUE SOMETHING, CAN HELP US BECAUSE AT LEAST NOW
2 I KNOW I THINK PRETTY MUCH WHAT THE ISSUES ARE GOING TO
3 BE.

4 **MS. EVANS:** THANK YOU, YOUR HONOR.

5 **THE COURT:** DO YOU WANT MCINTYRE BACK?

6 **MR. WILLIAMS:** I'VE GOT A SPARE COPY.

7 **THE COURT:** YOU'VE GOT A SPARE COPY. THAT WILL BE
8 GOOD.

9 **MR. WILLIAMS:** IT TOOK ME LIKE THREE HOURS
10 YESTERDAY TO FIND THE CASE.

11 **THE COURT:** IS IT UNPUBLISHED?

12 **MR. WILLIAMS:** WHEN YOU LOOK IT UP, IT'S HOW THEY
13 REFERENCE IT IN THE COMPUTER. YOU WOULDN'T KNOW TO LOOK
14 IN THE SPOT WHERE THEY PUT IT. IT'S A WEST PROBLEM,
15 IT'S WEST PUBLISHING, THAT'S THE PROBLEM.

16 **MS. EVANS:** AND IRONICALLY, IT'S NOT CITED UNDER
17 ANY OTHER BOND ESTREATMENT LAW.

18 **MR. WILLIAMS:** I DON'T THINK EVERYBODY WANTS TO
19 KNOW ABOUT IT. I THINK THERE'S SOME CONSPIRACY TO HIDE
20 IT.

21 (DISCUSSION OFF THE RECORD.)

22 (WHEREUPON, THE ABOVE HEARING WAS CONCLUDED
23 AT 1:36 P.M.)

24 ***** END OF REQUESTED TRANSCRIPT OF RECORD *****
25

State of South) In the Court of General
 Carolina) Sessions/State Grand Jury
)
 County of Greenville) Indictments Nos:
) 2005-GS-47-15, '23, and '24

State of South)
 Carolina,)
)
 Plaintiff,)
)
 -vs-)
) Transcript of Record
 Mario Ramos Hinojos,) Bond Estreatment Hearing
)
 Defendant,)
)
 Richard G. Thompson)
 d/b/a All-Out Bail)
 Bonding and)
 Accredited Property &)
 Casualty Insurance,)
)
 Surety.)

August 17, 2012
 Walhalla, South Carolina

B E F O R E:

The Honorable Alexander S. Macaulay, Judge.

A P P E A R A N C E S:

S. Creighton Waters, Esq.
 Assistant Attorney General
 Attorney for the Plaintiff

Robert T. Williams, Esq.
 Attorney for the Surety

Robin Sue Hild, FCRR, RPR
 Circuit Court Reporter

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Witnesses

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Donald Max Dorsey II

Direct Examination by Mr. Waters
Cross-Examination by Mr. Williams
Redirect Examination by Mr. Waters

10
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24

Certificate of Court Reporter

50

Exhibits

No.

Description

ID/EV

No exhibits were introduced.

1 ** Start of Requested Certified Transcript of Record **

2 MR. WATERS: Yes, sir. The State calls the State
3 versus Mario Ramos Hinojos as Defendant and Richard G.
4 Thompson, et al, as surety. The Indictment Numbers are
5 2005-GS-47-15, '23 and '24, Your Honor.

6 THE COURT: All right. On behalf of the State?

7 MR. WATERS: My name is Creighton Waters, I'm an
8 Assistant Deputy Attorney General from the Attorney
9 General's Office in Columbia.

10 THE COURT: And on behalf of the -- well, I guess
11 you would be the Respondent here?

12 MR. WILLIAMS: Yes, sir.

13 THE COURT: Mr. Williams.

14 MR. WILLIAMS: Yes, sir. Robert Theo Williams of
15 the Lexington Bar.

16 THE COURT: All right. This is before the Court on
17 a remand decision from the Court of Appeals in State v.
18 Hinojos, 393 S.C. 517, 713 S.E.2d 351 (Ct. App. 2011).

19 The case was remanded for the purposes of a hearing
20 pursuant to Section 38-53-70 as to estreatment, for
21 amount of estreatment, to determine whether, to what
22 extent the bond in this case, which is one-third of the
23 original bond of \$200,000, \$66,666.66 as to the
24 one-third that's involved in this matter.

25 All right. It's my understanding that -- well, if

1 you would, please, Mr. Waters, give us a summary of the
2 case as it stands now because I understand there has
3 been some Legislation as well.

4 **MR. WATERS:** Yes, sir, Your Honor.

5 Mr. Hinojos was arrested in 2005 for trafficking in
6 methamphetamine. He was subsequently, as Your Honor
7 mentioned, he bonded out on a \$200,000 bond that was
8 split in threes. Ultimately electronic monitoring was
9 removed, and Mr. Hinojos, who at the time was
10 cooperating, was allowed to stay out.

11 He pled guilty to the charges with his sentencing
12 to be deferred until after a term of court in which he
13 was to be a witness.

14 Subsequent, when that term arrived, the State
15 attempted to contact him and look for him and he had
16 fled and he still remains at large to this day.

17 He was sentenced in his absence. After that there
18 was an estreatment hearing before Your Honor in which
19 Your Honor estreated the full amount attributable to
20 All-Out Bail Bonding, which would be the \$66,666.66.

21 The All-Out Bail Bonding appealed that matter to
22 the Court of Appeals, and as Your Honor has mentioned,
23 the Court of Appeals issued an opinion in which they
24 affirmed the fact of estreatment but remanded it back to
25 Your Honor for consideration of the precise amount to be

1 estreated. And so that's how we are presently before
2 Your Honor.

3 Your Honor, there has been in the intervening time
4 in June of this year an amendment to the relevant
5 statute that was passed, and I know that Mr. Williams
6 wishes to make an argument in that regard, and
7 specifically he's referring to a portion that, of the
8 Act that purports to state that the bond is terminated
9 upon a deferred disposition in which he is going to
10 allege that the, that for that reason this bond is no
11 longer in existence.

12 Your Honor, the State, of course, has a number of
13 responses to that, including the fact that the
14 estreatment, the fact of estreatment has already been
15 affirmed by the Court of Appeals, so essentially that's
16 the law of the case, the bond is forfeited already, and
17 therefore, the only matter before Your Honor would be to
18 determine the amount. I don't know if Mr. Williams
19 wishes to expound on that further.

20 **MR. WILLIAMS:** Your Honor, I guess I can state for
21 the record that what we are referring to is Section
22 17-15-20, Section B, of the Statute. And it uses the
23 'verbiage (Reading):

24 Unless a bench warrant is issued, an appearance,
25 recognizance, or an appearance bond is discharged upon

1 an adjudication, a finding of guilt, a deferred
2 disposition, or as otherwise provided by law.

3 This case was -- or this Bill, I should say -- was
4 signed into law by the Governor on June the 29th of
5 2012.

6 Section 4 of that Act -- and it was referred as, it
7 was referred to as Act 115 of 2012, Section 4 provides
8 that (reading):

9 The provisions of Section 1 of Act 115 of 2012,
10 which amended Section 17-15-20 of the 1976 Code and
11 allow sureties to be relieved of an appearance bond
12 under certain designated circumstances are retroactive
13 and apply, and apply to all existing and future
14 appearance bonds.

15 So, Your Honor, I think, I think that's correct. I
16 think that's issue number one, and that is the Court
17 would need to determine whether or not, since there is a
18 new law as of this date, as to whether or not that new
19 law would control this case, since it is the law now, or
20 whether or not somehow the Court would be restricted to
21 applying the Polk factors in determining whether or not
22 the \$66,666.66 should be awarded.

23 **THE COURT:** Well, Mr. Williams, one sort of minor
24 point, and I will leave it to the attorneys because I
25 will need this matter briefed inasmuch as this Act went

1 into effect June the 29th, 2012, after the Court's
2 decision.

3 But one minor point, if I might note -- I don't
4 know the significance of it at this point -- is that, of
5 course, Act Number 115 of 2012 seems to apply to, of
6 course the bonding sections, which are Sections
7 17-15-20, et cetera.

8 But as far as the surety provisions, which are in
9 the Title 38, it appears to apply to those provisions in
10 Section 38-53-50, whereas the decision of the Court of
11 Appeals, which addresses this particular case, of
12 course, was concerned about Section 38-53-70.

13 I just direct Counsel's attention to that note,
14 that it has any significance at all.

15 All right. I do, would appreciate -- does anyone
16 want to try at this point to set forth what the issues
17 will be, or am I going to let you do that in an either
18 memorandum or proposed Order? From the State.

19 MR. WATERS: Whatever Your Honor's pleasure is, I
20 would be happy to address it; but if we are gonna do
21 briefing, that probably would be the best opportunity
22 for everybody to gather their thoughts.

23 MR. WILLIAMS: I agree with that, Your Honor.

24 THE COURT: Now, what are we talking about in time?
25 Now, again, we are gonna have an evidentiary hearing

1 pursuant to the remand by the Court of Appeals on the
2 issues under Section 38-53-70 and case law.

3 But just for the purposes of briefing the entire
4 matter, of course, which would require findings of fact
5 and conclusions of law, but I'm going to have the
6 factual presentation following your discussion of the
7 law as to what would be briefed. And how much time does
8 the State need to...

9 MR. WATERS: 30 days would be fine, Your Honor.

10 THE COURT: 30 days?

11 MR. WILLIAMS: That's fine, Your Honor.

12 THE COURT: How much time do you need to reply?

13 15?

14 MR. WILLIAMS: 15 is fine, Your Honor.

15 THE COURT: So 30 days from today...

16 MR. WATERS: And, Your Honor, would you prefer that
17 in the vein of a proposed Order or just a Brief?

18 THE COURT: To me a proposed Order would be better
19 because what I will probably do -- and if you would
20 email it -- what I'll probably do is to take the two
21 Orders and modify them as I would see appropriate --

22 MR. WATERS: Yes, sir.

23 THE COURT: -- for a Final Order.

24 Now, so 30 days from the 17th would be -- well,
25 actually September the 17th would be fairly close to it.

1 So that will be time for the State's proposed Order; and
2 then 15 days from that would be, why don't we say the
3 5th of October?

4 MR. WILLIAMS: All right, sir.

5 MR. WATERS: Yes, sir.

6 THE COURT: All right. Very good. Now you can
7 present your factual case.

8 MR. WATERS: Yes, sir. And we will present
9 Lieutenant Max Dorsey from SLED and then, of course, I
10 think both sides would like to argue each point.

11 THE COURT: Certainly.

12 MR. WATERS: At this time the State would call
13 Lieutenant Dorsey.

14 THE CLERK: Please place your left hand on the
15 Bible and raise your right hand.

16 (Whereupon, the Witness, Donald Max Dorsey II, was
17 sworn by the State Grand Jury Clerk of Court.)

18 THE CLERK: Please state your full name for the
19 record.

20 THE WITNESS: Donald Max Dorsey II. D-o-r-s-e-y.
21 Whereupon,

22 Donald Max Dorsey II,
23 having been first duly sworn, was examined and testified
24 as follows:

25

1 Direct Examination by Mr. Waters:

2 Q. Lieutenant Dorsey, how are you doing today?

3 A. Good, sir. How are you?

4 Q. Pretty good. Could you just tell us briefly,
5 briefly tell the Court what your current duties are?

6 A. Yes, sir. I'm the Lieutenant, Supervisory Special
7 Agent over SLED agents assigned to the State Grand Jury
8 at the Attorney General's Office.

9 Q. Okay. And with those duties were you involved in
10 this particular case involving Mario Hinojos?

11 A. Yes, sir. Actually at that time I was the case
12 agent on that investigation.

13 Q. Okay. And what was Mr. Hinojos arrested for?

14 A. Various crimes related to trafficking illegal
15 drugs, specifically trafficking methamphetamine, I
16 believe trafficking cocaine, maybe a violation of
17 possession, possessing a firearm during the commission
18 of a violent crime. Things of that nature. Serious
19 crimes where he would have been facing 25 to 30 years
20 upon conviction.

21 Q. After Mr. Hinojos's arrest, did you all make any
22 effort to get him to cooperate?

23 A. Yes, sir, absolutely. At the time he was
24 approached, after talking to him for a little bit, he
25 agreed to cooperate with law enforcement.

1 Q. And could you describe for us briefly some of the
2 cooperation that he did?

3 A. Yes, sir. He, he arranged a deal in which five
4 pounds of methamphetamine were transported from Atlanta
5 and seized by us. A quantity of marijuana was seized
6 pursuant to his cooperation. He turned over some assets
7 that were derived from his illegal drug trade. And
8 those, those specifically were done technically while he
9 was in our custody before he actually went to see a
10 judge and had an opportunity to receive a bond.

11 Q. Okay. After his bond, did he continue to
12 cooperate?

13 A. Yes, sir. You know, we communicated with him on a
14 regular basis, telephone calls and meetings. He, he
15 eventually ended up doing a deal for us in March, I
16 believe of 2006, where, where a transaction was arranged
17 by him that led to the arrest of two individuals and a
18 seizure of two pounds of methamphetamine.

19 Q. And was that Mr. Valominos [sic] and Mr. Palominos?

20 A. Yes, sir, that's correct.

21 Q. And that was a deal that he set up?

22 A. Yes, sir.

23 Q. All right. At this time he was out on bond; is
24 that correct?

25 A. Yes, sir, he was.

1 Q. All right. Because of his cooperation, or at least
2 what y'all perceived to be his cooperation at that time,
3 were y'all not opposed then to him remaining out at that
4 particular time?

5 A. That's correct, yes, sir.

6 Q. All right. Could you just quickly describe the buy
7 that resulted in the arrest of Mr. Palominos and Mr.
8 Valominos?

9 A. Well, Mario, Mr. Hinojos had done some arranging on
10 his own outside of our direct control. We had a meeting
11 one day in Greenville where I'd call.

12 And he said, Look, I've been working on these guys
13 or this one particular guy about bringing me a large
14 quantity of ice, of meth.

15 And so he just happened to call us, call me up one
16 day. We were in Greenville. We made arrangements for
17 these two guys to bring this meth to this restaurant.
18 When they arrived, he confirmed that they were there,
19 those were the individuals that had the illegal drugs,
20 and we ended up approaching them and they were found to
21 be in possession of, of those drugs.

22 Q. Okay. Was Mr. Hinojos slated to be a witness if
23 necessary in the trial of those individuals?

24 A. Absolutely, yes, sir. He would have been an
25 essential witness.

1 Q. Okay. As that trial time approached did you along
2 with the prosecutors meet with Mr. Hinojos in
3 preparation for trial?

4 A. Yes, sir, we did.

5 Q. Okay. And was this while he was out pending his
6 sentencing?

7 A. Correct, yes, sir. I don't know if -- I don't know
8 if that was before or after he had pled guilty, but I
9 know there were at least some meetings in preparation of
10 the trial of Valdovinos and Palominos.

11 Q. Had y'all expended time and resources in developing
12 Mr. Hinojos as a cooperating witness, as a CI in making
13 this arrest of Mr. Valominos and Palominos?

14 A. Yes, sir. There were multiple agencies involved:
15 SLED, Greenville County, Pickens County, Sheriff's
16 Offices, lots of them, their agents were involved in
17 that deal. And, of course, there was an unknown amount
18 of hours that I spent just communicating with Mario on
19 the telephone and meeting with him, working to cultivate
20 other, other deals that he might could put together.

21 Q. Okay. When the trial term arrived that would
22 include Mr. Valominos and Mr. Palominos, what happened
23 with regards to Mr. Hinojos?

24 A. He was not available. He ---

25 Q. Can you describe how y'all came to find that out or

1 what happened, to the best of your recollection?

2 A. I can't recall the details. But essentially it
3 came time for trial for those two individuals. He was
4 to be a witness in the trial. He was not available. He
5 was gone. It was evident that he was no longer in the
6 area and no longer accessible to me like he had been
7 while he was cooperating with me.

8 Q. Okay. Did you all send agents by his house to see
9 if he was there?

10 A. Yes, sir.

11 Q. Make phone calls?

12 A. Attempted phone calls. We, we actually made
13 attempts to locate him using some technology that we
14 have.

15 Q. And can you describe what that was?

16 A. It requires authority from the Court in order to
17 utilize this certain technology, and there are some
18 costs that are incurred by the use of that technology,
19 and...

20 Q. So there was time expended in getting this Order
21 from the Court to attempt to use that technology to
22 locate Mr. Hinojos?

23 A. Yes, sir, there was.

24 Q. All right. As a result did Mr. Hinojos ever show
25 up for that trial term?

1 A. No, sir, he did not.

2 Q. Do you know where Mr. Hinojos is today?

3 A. No, sir, I do not.

4 Q. Okay. So he's still at large?

5 A. He's still at large, yes, sir.

6 Q. All right. Because of his absence, did that have
7 any effect on the State's, what the State had to do in
8 disposing of the charges with Mr. Valominos and
9 Mr. Palominos?

10 A. Yes, sir. Now, at the time the prosecutors
11 assigned to Mr. Palominos and Valdovinos's case was
12 Jennifer Evans, Ms. Jennifer Evans, and Ms. Susan
13 Porter. And they had some comm- -- and it is my
14 understanding that they had some communications with
15 those defense attorneys. And it was their position that
16 Mario Hinojos had played a more significant role in that
17 transaction than what he had conveyed to us.

18 Unfortunately, he was not available for us to talk
19 to and interview and investigate this matter further.
20 So it was, it was in the opinion of Ms. Porter and
21 Ms. Evans to, you know, to err on the side of caution
22 and give a less than favorable deal, at least from the
23 State's perspective, to these individuals. It is my
24 understanding that one of those individuals received a
25 reduced sentence, much less than the mandatory 25 that

1 they were facing if they had been convicted at trial.

2 I want to say the other individual may have
3 received time served. I'm not, I'm not absolutely sure
4 about that. But he received a very significant
5 reduction in the potential sentence in comparison to
6 what he was facing.

7 Q. And that's your recollection today. It could have
8 been that he was dismissed? Does that ring a bell?

9 A. It could have been. It could have been.

10 MR. WILLIAMS: Your Honor, I object to that.

11 THE COURT: Again, I think if there is a record of
12 that --

13 MR. WATERS: It's in the transcript, Your Honor, of
14 the prior proceedings.

15 THE WITNESS: And I apologize. I just can't
16 remember that far back.

17 THE COURT: You may proceed.

18 MR. WATERS: Thank you, Your Honor.

19 By Mr. Waters:

20 Q. Since all this took place -- and I believe this was
21 in December of 2007 thereabouts, is that correct, to
22 your recollection, the trial time?

23 A. I know we did, we did Palominos in '06. That could
24 be. I'm sorry.

25 Q. Anyway, since that time a number of years back,

1 have you all, have you done anything further or expended
2 any effort recently in trying to locate Mr. Hinojos?

3 A. We have. There's been some effort based on some
4 information that we received in a current investigation
5 that is ongoing right now that Mr. Hinojos has, is still
6 in the area, but we've not been able to substantiate
7 that.

8 Q. But there's at least been some time and effort
9 expended recently?

10 A. Well, I will say our efforts in this particular
11 investigation have been, have kind of surrounded trying
12 to identify that the information is true, beyond us
13 going down there and just knocking on the door because
14 certainly we wouldn't want to do that.

15 But we have made some efforts in molding our
16 investigation around making attempts to identify if that
17 information is true. We've not been successful to this
18 point.

19 Q. Okay.

20 MR. WATERS: At this time, Your Honor, I'd pass the
21 Witness.

22 MR. WILLIAMS: Thank you, Your Honor.

23 Cross-Examination by Mr. Williams:

24 Q. Are you an Agent or do you have like a Sergeant,
25 or...

1 A. I'm a Lieutenant.

2 Q. All right. Lieutenant?

3 A. Yes, sir.

4 Q. Correct me if I'm wrong. Hinojos essentially was
5 arrested. You used him to provide information, and
6 after he provided the information, he turned over
7 various assets that he possessed that were a result of
8 his illegal drug trade. Then bond was posted to allow
9 him to be out. Is that correct?

10 A. Um, well...

11 Q. Or would you like to add to that?

12 A. I think that's essentially true.

13 Q. Okay.

14 A. As far as, as you well know, you don't sign over
15 assets overnight.

16 Q. I understand.

17 A. So, yeah, we seized those assets. We actually
18 baby-sat him for a few days if I recall.

19 Q. Okay.

20 A. We stayed in his house, or at least we were back
21 and forth between hotels and his house.

22 But during that process, yeah, we seized assets.
23 We seized -- he had a bunch of construction equipment,
24 he had some cash, he had some vehicles, so yes, we
25 seized these items.

1 Q. Okay. And then you allowed him, or you didn't
2 object to bond I guess is a more appropriate way to
3 phrase that, so that he could be out and set up other
4 individuals; is that correct?

5 A. Yes, sir.

6 Q. All right. And I believe what you have testified
7 to is that he set up two individuals after he was placed
8 out on bond?

9 A. That's correct.

10 Q. And on those two individuals it's my understanding
11 that you know that one of them went ahead and pled
12 guilty?

13 A. Correct.

14 Q. You don't know if the other one pled guilty or
15 didn't plead guilty?

16 A. I do not know for sure. It is kind of in the back
17 of my mind now that he may have pled to time served or a
18 lesser-included offense.

19 Q. But pled to something?

20 A. He may have. I don't remember.

21 Q. And, as I understand your argument, if I can say
22 it's an argument, what you are really is just saying
23 something here -- I know it's not an argument.

24 What you are saying is that the reason why that
25 these, this deal was done less than what you think was

1 appropriate was based on your understanding that he
2 wasn't around to be used as a witness; is that right?

3 A. That's correct, yes, sir.

4 Q. But in that regard, obviously you didn't make the
5 call on that at all, did you?

6 A. I have, I have a good bit of influence or input in
7 the disposition of those cases.

8 Q. And are you the one that told the other, told the
9 other, I guess, Attorney Generals that they would not be
10 successful without Hinojos, or had they already agreed
11 to enter pleas before then?

12 A. I certainly didn't tell them not to.

13 Q. Okay.

14 A. I mean, I was of the opinion that that was a case
15 worth going to trial on because of the significant
16 amount of drugs that were seized and the failure of
17 their cooperating, of them cooperating. I'm always of
18 the opinion that you cooperate so we can further
19 investigations; if not, you go to trial or you, or you
20 get a significant prison sentence.

21 Q. Do you know whether or not the other two
22 individuals had entered their pleas prior to Hinojos
23 being not available?

24 A. I do not.

25 Q. So they could have actually entered their pleas

1 before Hinojos was determined not to be available?

2 A. They could have. I reckon so.

3 Q. Now, in terms of the, I guess the effort that has
4 been spent, your testimony today is essentially you had
5 other law enforcement people involved in the arrest of
6 these other two individuals?

7 A. Yes, sir.

8 Q. And that you have had law enforcement personnel who
9 were involved in baby- -- well of course you can't -- in
10 looking for him after he didn't appear. Correct? And
11 you said something about technology that you had to use?

12 A. Yes, sir.

13 Q. You're not, you're not capable in any way of
14 providing any type of quantitative or qualitative
15 testimony in regards to the amount of time that was
16 spent, the hourly cost that would have been expended, or
17 anything monetarily from which anyone can draw any
18 monetary consideration in regards to what amount, if
19 any, it has cost the State, are you?

20 A. I am not, no, sir.

21 Q. Now, in regards to Mr. Hinojos, it's my
22 understanding he entered his plea -- let's see -- would
23 it have been on November the 20th of 2007?

24 A.. Okay.

25 Q. And that he subsequently was found guilty; is that

1 correct? He was sentenced in his absence?

2 A. Yes. He entered a plea, he entered a guilty plea
3 on a date prior to that date.

4 Q. And has since been sentenced?

5 A. That is correct, he's been sentenced.

6 Q. So the bond which was posted for the Defendant
7 allowing him to be out of jail on those charges, he has
8 been sentenced in accordance with the charges that he
9 was charged with that are reflected on the bond?

10 A. That, that I don't know. I mean, I -- he has been
11 sentenced, although he is not present to serve that
12 sentence.

13 Q. All right. So your argument is -- and I keep using
14 the word "argument".

15 A. That's okay.

16 Q. But you know what I'm saying -- is that you are
17 saying that he hasn't served his sentence, and that it's
18 your feeling that you might have done better with the
19 other two individuals that were set up after he was out
20 on bond than what you got when you got it?

21 A. You're gonna have to rephrase that. You lost me.

22 Q. Do you think that you could have gotten more time
23 put on the other two individuals who he set up after he
24 was out on bond if he had been available longer, but you
25 don't really know because you don't really know when

1 they were sentenced?

2 A. That's a fair statement, yes.

3 Q. And now, was it your understanding that the purpose
4 of his bond was to require him to appear in court to
5 answer his charges or to set up new crimes to be
6 committed?

7 A. My opinion would be that the purpose of the bond is
8 to ensure that he appeared at all court hearings that he
9 was required to be at; specifically, being present when
10 he's sentenced so that he could be punished for the
11 crimes in which he was convicted of.

12 Q. All right, sir. And do you know whether or not --
13 obviously I guess you would have to speculate -- you
14 don't know why he didn't show up, do you? I mean, you
15 don't have any personal knowledge as to why he didn't
16 show up, do you?

17 A. I have no personal knowledge. I can speculate that
18 he didn't want ---

19 Q. I mean, he could be dead.

20 A. --- to go to prison.

21 Q. He could be dead, couldn't he?

22 A. He could be. But again -- he could be, yes, sir.

23 MR. WILLIAMS: I think that's all I have, Your
24 Honor.

25 MR. WATERS: Very briefly, Your Honor.

1 Redirect Examination by Mr. Waters:

2 Q. You guys, when you are out looking for somebody
3 who's hit the road or when you are working a witness
4 who's being cooperative and potentially setting up a
5 buy, you are not keeping a time sheet, are you, of that
6 time?

7 A. We're not.

8 Q. And it's fair to say that there were substantial
9 man hours expended in arresting Mr. Hinojos and then
10 developing him as a cooperating witness and then setting
11 up these subsequent buys?

12 A. That's correct. Unfortunately, we do not keep
13 contemporaneous notes on someone staying with us and
14 communicating with us while they're cooperating because
15 that would maybe be under the assumption that you would
16 feel like they're not gonna be around much longer. And
17 if that were the case, well, then you wouldn't be
18 working on them anyway. They would be in jail.

19 Q. And there were also at least some man hours
20 expended in attempting to locate Mr. Hinojos after he
21 failed to appear?

22 A. Yes, sir.

23 Q. And that included also securing an Order to attempt
24 to use technology to locate him?

25 A. That's correct.

1 Q. Would that be a cell phone?

2 A. Yes, sir.

3 MR. WATERS: All right. Nothing further, Your
4 Honor.

5 MR. WILLIAMS: Nothing on Recross, Your Honor.

6 THE COURT: Very good. You may step down. Thank
7 you.

8 (Whereupon, the Witness left the witness stand.)

9 THE COURT: All right. Is there anything else as
10 far as the factual basis for the estreatment?

11 MR. WATERS: Your Honor, other than the, what's
12 already been in the transcript which, of course, has
13 been provided to Your Honor.

14 THE COURT: Again, let the record reflect that the
15 Court has the record on appeal in the case of *State v.*
16 *Hinojos*.

17 MR. WATERS: Okay. And, Your Honor, I would, first
18 to address the one point with regards to Mr. Palominos
19 and Mr. Valominos, the two individuals who Hinojos set
20 up, on pages 86 and 87 of that record, Ms. Evans, who of
21 course was the lead prosecutor and is no longer with us,
22 states that they had to accept a plea of guilty to 15
23 years for one of them and they dropped the charges on
24 the other, so just to clear that matter up. That again
25 is starting on line 18 of page 86 going to the next

1 page, line 7.

2 THE COURT: When we say Palominos -- and who was
3 the other one?

4 MR. WATERS: It's Valdovinos, I believe.

5 THE COURT: Valdovinos and then Palominos?

6 MR. WATERS: Yes, sir. Those are the two
7 individuals, as Mr. Dorsey just testified, who
8 Mr. Hinojos arranged a buy, that they arrested. And so
9 there was, as Ms. Evans expressed there, and that
10 obviously is the best contemporaneous record that the
11 State was materially prejudiced in that regard with
12 regard to the dispositions of those two cases.

13 THE COURT: I'm a little bit confused. Of course,
14 one on page 86 it refers to one individual as Palominos-
15 Valominos (phonetic), and then there's another reference
16 to a Mr. Rojas Valominos, and then there is another
17 reference to a Valominos-Palominos.

18 MR. WATERS: Yes, sir. They have very similar
19 names.

20 THE COURT: Which of the two?

21 MR. WATERS: Well, it's two separate individuals,
22 and I think that Ms. Evans, just because of the
23 similarity in their names, was getting confused. There
24 are two individuals that were arrested at that
25 particular time. With the Court's indulgence I can find

1 that incident report and get those precise names, and
2 I've got it right here.

3 It was, the first individual was Felix Rojas
4 Valdovinos, V-a-l-d-o-v-i-n-o-s, and the second
5 individual was Antonio Valdovinos-Palominos
6 P-a-l-o-m-i-n-o-s.

7 THE COURT: Is that in this particular transcript?

8 MR. WATERS: That's the two individuals that
9 Ms. Evans is referring to there. I think she just,
10 because of the similarity of the names ---

11 THE COURT: So I have a copy of that, just for
12 being able to identify.

13 MR. WATERS: Yes, sir.

14 MR. WILLIAMS: In answer to your question, Judge,
15 it's not in your transcript.

16 THE COURT: Mr. Parker will make a copy.

17 All right. Anything else?

18 MR. WATERS: Your Honor, other than just argument
19 on the amount, which the State would be happy to do at
20 this time.

21 THE COURT: I would like to hear as to amounts
22 'because obviously if I do find that it's no longer, or
23 it's not moot, then I will have to make some sort of
24 determination.

25 MR. WATERS: All right. Thank you, Judge.

1 Just to again set this up, and if you look in the
2 transcript where Ms. Evans was describing what was going
3 on, and she noted what Mister, Lieutenant Dorsey has
4 already testified to, that they were relying on
5 Mr. Hinojos to testify, and because of that, as we've
6 just talked about, there were less than favorable
7 dispositions to those particular two charges.

8 And, in fact, Ms. Evans at one point, and this
9 would be on page 91 of that record, stated that
10 ultimately in her conclusion that Mr. Hinojos was a big
11 time drug dealer who just frankly fooled the State
12 inasmuch as he promised a lot, promised a lot of
13 cooperation, but did not deliver the level that he
14 promised, and then ultimately, when the rubber was about
15 to meet the road, took off and left the State harmed in
16 that regard.

17 With regards to the Polk factors which Your Honor
18 has to consider, there is obviously in the Statute where
19 it states that (reading):

20 The Court should consider the cost to the State in
21 locating the Defendant, and then, of course, Polk goes
22 on to refer to three other factors: the purpose of the
23 bond, the nature and the wilfulness of default, and any
24 prejudice or additional expense that the State has
25 suffered.

1 Your Honor, and I think the first thing that needs
2 to be pointed out, and this is in Polk itself, is that
3 they note the cost to the State in attempting to locate
4 a Defendant who's absconded are not, is not dispositive,
5 is not the overriding claim. And, in fact, the note is
6 (reading):

7 We note, however, that in determining whether any
8 remission of the judgment is warranted, the Trial Court
9 is not limited to considering only the actual cost to
10 the State.

11 So I don't think that there has to be essentially
12 a, you know, a bill presented that has hours and
13 everybody and what Lieutenant Dorsey makes per hour and
14 what Jennifer Evans made per hour and what Susan Porter
15 made per hour and what Agent Creswell (phonetic) made
16 per hour, the law does not require that, and so I think
17 that's a first initial point to make.

18 But regardless, with the cost to the State in
19 locating Mr. Hinojos, as Lieutenant Dorsey has
20 testified, and is also present from the descriptions in
21 the transcript from Ms. Evans, there were at least some
22 man hours that were expended in attempting to locate
23 him, and additionally they went and they got an Order
24 attempting to use a cell phone to do that, and then
25 again there's been some time expended even recently in

1 attempting to locate him. So there is a factual basis
2 there just on the cost of locating him.

3 As we look to, though, the next factor, which is
4 the purpose of the bond, again, the main purpose of this
5 bond was to ensure that Mr. Hinojos was present at his
6 sentencing, and that has been completely thwarted by his
7 flight. And, as noted in State v. Holloway, which is
8 206 S.E.2d 822, the Court stated, and I quote (reading):

9 Certainly prejudice to the State appears when a
10 Defendant, without excuse, fails to appear at the time
11 set for trial, thereby obstructing and delaying the
12 orderly administration of justice.

13 So I think the case law recognizes just the fact
14 that he's not here in and of itself shows prejudice to
15 the State and is supportive of estreatment of a
16 substantial amount if not all of this particular bond.

17 There's one case, State v. Workman (phonetic),
18 where the Court found that the amount estreated was
19 excessive. But they pointed out that the reason there
20 was that, number one, you had an accommodation bondsman,
21 it was the Defendant's aunt; and, number two, the only
22 alleged violation was the good behavior provision, and
23 these were charges that were unrelated to the person who
24 was out on an appeal bond at that time.

25 Here, of course, we've got a commercial bondsman

1 and we've also got the -- the violation of the bond goes
2 right to the whole heart of the matter which is the bond
3 is in place to ensure the Defendant's presence at the
4 necessary court hearings and he did not do that. So I
5 think that that factor certainly weighs in favor of the
6 estreatment of the entire amount.

7 As to the nature and the willfulness of the
8 default, again, I go back to what Ms. Evans stated, that
9 frankly he was a big time drug dealer, and she stated
10 that he was not on drugs or trying to support his own
11 habit, that he was selling anything he could, and that
12 frankly he just fooled the State.

13 And I think that's exactly what happened. He gave
14 them a little bit and a little bit and a little bit, and
15 then, though, when the rubber was about to meet the
16 road, he takes off. And so I think that's completely
17 willful, and the nature and the willfulness of that
18 default certainly weighs in favor again of maximum
19 amount of estreatment.

20 And then finally as to any prejudice or additional
21 expense suffered by the State, as you heard from
22 Lieutenant Dorsey, as is also present from the
23 transcript, and specifically on pages 86 and 87 that I
24 just referred to, the State was materially harmed in
25 that they spent a lot of effort, a lot of man hours in

1 developing Mr. Hinojos as a cooperating witness.

2 He sets up this buy and then disappears. And
3 because of that, because of some of the things that the
4 Defense was raising, that the State was unable to go to
5 Mr. Hinojos and find out about it or to have him present
6 to testify in, they had to, A, dismiss one charge or
7 drop that charge and, B, take a resolution to the other
8 charge that was far less than the amount of drugs would
9 have required.

10 THE COURT: Now, that's -- I notice -- and again
11 I'm trying to put the record together from the
12 transcript. Valominos's sentence was, what, 15 or 20
13 years?

14 MR. WATERS: It's 15 years, Your Honor. She
15 initially says 20, but then she corrected ---

16 THE COURT: She initially said 20 but it was 15?

17 MR. WATERS: Yes, sir. If you go over to the next
18 page, somebody corrected her, and starting at line 6 she
19 says it's 15.

20 THE COURT: And then, but there were some meth
21 charges on Palominos and those were dropped?

22 MR. WATERS: Yes, sir. My understanding was that
23 the two of them were in the car that arrived to make
24 this buy and only one of them was in possession. The
25 other individual said that he had no knowledge of the

1 drugs, and because Mr. Hinojos was gone, there was
2 really nothing the State had to refute that to show his
3 knowledge and involvement in this particular scheme.

4 I believe that's correct?

5 LT. DORSEY: That's correct.

6 MR. WATERS: And so that's why ultimately, without
7 Mr. Hinojos here, they had to drop those particular
8 charges. And I believe it was two, two pounds of meth
9 in that particular transaction, or two kilos. It was a
10 substantial amount, Your Honor.

11 THE COURT: All right. But that was again two
12 charges against Palominos?

13 MR. WATERS: Yes, sir, Your Honor, that's my
14 understanding.

15 THE COURT: And on the, he got 15 years on the
16 other meth charge?

17 MR. WATERS: Right. The passenger was Valdovinos,
18 and he was the one who had possession of the bags of
19 ice.

20 THE COURT: Valdovinos?

21 MR. WATERS: Valdovinos. I apologize, Your Honor.

22 THE COURT: Not Palominos. Palominos did not have
23 the meth --

24 MR. WATERS: Yes, sir.

25 THE COURT: -- did not have the two pounds that

1 were dropped?

2 MR. WATERS: That's correct, Your Honor.

3 THE COURT: So were there any charges on
4 Valdovinos?

5 MR. WATERS: Yes. They were both charged with
6 trafficking is my understanding, and ultimately one pled
7 to the 15 years, and the charges were dropped as to the
8 driver who did not personally have possession of that
9 quantity of drugs.

10 THE COURT: So did the other one get 15 years on
11 the trafficking?

12 MR. WATERS: No. The charges were dropped against
13 the driver. I believe he --

14 THE COURT: Who was the driver?

15 MR. WATERS: The driver was Mr. Palominos.

16 THE COURT: Palominos.

17 MR. WATERS: Yes, sir.

18 THE COURT: So he did not, did not receive any
19 sentence?

20 MR. WATERS: That is my understanding, yes, sir.

21 THE COURT: And Palominos, though, received 15
22 years?

23 MR. WATERS: Valdovinos received the 15 years. I
24 feel like we're playing *Who's on First*? I apologize,
25 Your Honor.

1 Valdovinos was the passenger, Your Honor. He, my
2 understanding is he is the one who received the 15
3 years. Mr. Palominos --

4 **THE COURT:** And he received 15 years for
5 trafficking?

6 **MR. WATERS:** That's correct.

7 **THE COURT:** Palominos was the driver?

8 **MR. WATERS:** Yes, sir.

9 **THE COURT:** And he had two, or he would have been
10 charged with two pounds of meth, but it was dropped --

11 **MR. WATERS:** Yes, sir.

12 **THE COURT:** -- because he passed a polygraph?

13 **MR. WATERS:** Yes, sir.

14 **THE COURT:** All right. All right. Anything else?

15 **MR. WATERS:** No. That would be the State's --

16 **THE COURT:** Have you been able to assess from your
17 familiarity with the case what a reasonable forfeiture
18 would be appropriate?

19 **MR. WATERS:** The State is asking for the maximum
20 amount. I think if you'll look ---

21 **THE COURT:** The full 66,000?

22 **MR. WATERS:** Yes, sir. If you look at the time
23 which was spent, you know, initially locating him, which
24 is not overwhelming, but there was a massive amount of
25 time that was spent in developing him as a cooperating

1 witness, and, of course, as we've just gone through,
2 that his disappearance led the State to a resolution
3 that it didn't prefer, and I think that that prejudiced,
4 and the man hours expended in that regard certainly
5 would certainly more than encompass the 66,000.

6 But I think beyond that, even if we didn't even
7 have that, the nature and the willfulness of this
8 default and the fact the default goes right to the sole
9 and fundamental purpose of the bond, which is presence,
10 that alone would support a full revocation in this
11 instance.

12 THE COURT: Well, let me ask you this. Obviously
13 the bond originally was \$200,000?

14 MR. WATERS: Yes, sir.

15 THE COURT: And let's say we only had one surety
16 for the full 200,000 rather than the three divided.
17 What would be the amount against the full bond?

18 MR. WATERS: Well, again, I think that I would ask
19 for the full amount, for the 200 K, because we're
20 talking about the fundamental purpose of the bond which
21 was to ensure his presence. It's clear he fooled the
22 State and hit the road. And so I think alone that would
23 justify the full amount.

24 And then we can add on top of that we can add in
25 the fact that because of his initial subterfuge in

1 cooperating before he hit the road, that prejudiced, the
2 State suffered, which is essentially icing on the cake
3 beyond the fact that this, the nature and the
4 willfulness of this default is such that the full amount
5 actually I believe should be revoked [sic], or should
6 be estreated to the State.

7 THE COURT: All right.

8 MR. WILLIAMS: Your Honor, you stole some of my,
9 you stole some of my thunder when you picked up the fact
10 that he passed the polygraph.

11 I understand the argument from the State that they
12 had to dismiss the charges. But let's don't forget that
13 this poor individual who was in the car, who was set up,
14 that he actually passed the polygraph. So had Hinojos
15 been here and testified, conceivably an innocent man may
16 have gone to jail. So -- because indeed he did pass the
17 polygraph.

18 Your Honor, the first thing I'd like to talk about
19 is the difference between an appearance bond and a
20 performance bond. Your Honor has been on the bench a
21 long time, and it looks like what we have here is we
22 have an attempt to make an appearance bond turn into a
23 performance bond, because they set the bond on the
24 charges that the Defendant was charged with. And he
25 failed to appear at that -- and I think indeed probably

1 the best argument for the State is that they are
2 entitled to estreatment based on the fact that he didn't
3 show to serve his time. Because throwing these other
4 matters in here turns it into a performance bond.

5 THE COURT: Let me ask you something, though. The
6 only bond affected was the, your client's one-third.

7 MR. WILLIAMS: That's correct.

8 THE COURT: Even though the total bond was 200,000.
9 And that did not -- that, the only reason your -- and as
10 the Court of Appeals found that there was estoppel to
11 deny their liability under the bond -- the only reason
12 that bond came into effect or that portion of the bond
13 came into effect was because it was after his plea when
14 they were in essence saying, "If you will perform, then
15 you will have completed your service."

16 In other words, I'm saying that I can understand
17 the original bond of 200,000 was for appearance.

18 MR. WILLIAMS: Yes, sir.

19 THE COURT: And that he did appear.

20 MR. WILLIAMS: Yes.

21 THE COURT: He was there and pled guilty and
22 therefore he was able to be sentenced in his absence. I
23 don't know what the sentence was, but I imagine it was a
24 significant sentence.

25 And the second thing is this bond that we have at

1 issue in this, the case as it is today, is a performance
2 bond.

3 MR. WILLIAMS: Well, Your Honor, I think, I think
4 here is where the twist --

5 THE COURT: He was to perform something. That's
6 why you left him out so he could make these two cases
7 and appear to testify in those two cases.

8 MR. WILLIAMS: Here's the two points on that, Your
9 Honor. First obviously when we address the issue
10 dealing with the change in the law, I think that will be
11 an issue that will be obviously dispositive of the
12 situation to begin with; or, number two, may impact upon
13 that, because if you take the position that now what had
14 become an appearance bond has now performed ---

15 THE COURT: I don't want to take a position. I'm
16 just responding to your analogy.

17 MR. WILLIAMS: I understand, Your Honor.

18 But if you take the position that something was an
19 appearance bond and it's now turned into a performance
20 bond, then ---

21 THE COURT: You are saying it hasn't been executed?

22 MR. WILLIAMS: It hasn't been executed, the Statute
23 of Frauds would be applied. You would have to go into a
24 new bond ---

25 THE COURT: Well, you take the position that the

1 Statute of Frauds doesn't apply because of estoppel.

2 MR. WILLIAMS: Yes.

3 THE COURT: At least the Court of Appeals did.

4 MR. WILLIAMS: And the Court of Appeals was
5 addressing the issue in regards to an appearance bond,
6 not in regards to a performance bond. Because they were
7 looking upon it as the bonding company acquiesced in the
8 Defendant remaining out of jail on his earlier bond
9 which he had signed, but they changed the conditions of
10 the bond and it wasn't signed.

11 So I would differ with the Court in that regard.
12 I'd say if you are gonna turn it into a performance
13 bond, then indeed the Statute of Limitations would apply
14 and you would -- the Statute of Frauds would apply and
15 you would have to have a written document.

16 THE COURT: Now, Mr. Williams brings up an
17 interesting question. At the time that the bond was
18 modified -- and there was a modification because it
19 removed the electronic monitoring.

20 At the time the bond was modified, did the bonding
21 company know the purpose for the continuance of the bond
22 was to perform?

23 And I'm asking Mr. Waters.

24 MR. WATERS: Well, Your Honor, I'd have ---

25 THE COURT: I mean, can you say that they did?

1 MR. WATERS: Well, I will say that yes. And I'm
2 looking for the reference right now. But my
3 recollection is that at the guilty plea proceeding it
4 was mentioned that he would be out and he would be
5 testifying and that was the reason for his deferral of
6 sentence.

7 THE COURT: That's what I'm asking.

8 MR. WATERS: Yes, sir.

9 THE COURT: If I remember, there were some 140
10 cases and 45 Defendants.

11 MR. WATERS: Yes, sir.

12 THE COURT: And I don't remember them all.

13 MR. WILLIAMS: But, Your Honor, I think...

14 THE COURT: That's all right.

15 MR. WILLIAMS: We would have to look at the record
16 to see that.

17 THE COURT: No. That's just ---

18 MR. WATERS: And that would be on page 52 of the
19 record, Your Honor.

20 THE COURT: That's something that needs to be
21 addressed.

22 MR. WATERS: And, Your Honor, I would respond to
23 that, if I could.

24 MR. WILLIAMS: Well, I'm not really through with my
25 argument, Your Honor.

1 MR. WATERS: I apologize, Your Honor.

2 MR. WILLIAMS: I'm getting cut out of my time.

3 THE COURT: Excuse me. I've got no lights up here.

4 All right. The thing is, that was the Court's
5 interruption.

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: All right. So you may proceed.

8 MR. WILLIAMS: Your Honor, the other matters, I
9 think we talked about the expense to the State. I don't
10 acquiesce on behalf of my client that you can simply
11 forfeit the total amount of moneys without any showing
12 of expenditure.

13 I understand what he's arguing about the case and I
14 understand what he's saying, that the mere fact that you
15 don't show for your sentencing.

16 Because, you see, he's already been sentenced. So
17 it's just a question of whether or not he's given his
18 time I guess to the State. Whether or not that entitles
19 the State to estreat the entire amount of money based on
20 that alone, and I know the case he's talking about.

21 But, Your Honor, if that were true, if that were
22 true, then there wouldn't be any need to address any of
23 the other factors.

24 THE COURT: Well, the only problem with that, if
25 you will forgive me, is the Legislative history of all

1 of these sureties. At one time, of course, sureties and
2 bonds were all under Title 17. Then they decided to
3 modify it and they put it in the insurance section or
4 title.

5 And, as we've discussed, at one time the bondsman
6 had to show what type or how much of the premium he had
7 earned in order to be relieved of the bond.

8 And, of course, now, under the new law, the
9 bondsman does not have to establish the amount of, that
10 was earned, and that he is entitled to keep the entire
11 premium based on -- and the premium is based on the
12 amount of the bond.

13 Now, when you are saying, on the other hand, if the
14 State estreats a bond, which is analogous to being a
15 bondsman relieved on his bond, that the State continues
16 to have to prove actual amounts as they did under the, a
17 bondsman did under the old law?

18 MR. WILLIAMS: Your Honor, I think for it to be
19 incorporated ---

20 THE COURT: I'm just thinking, is there equity
21 here? I'm not sure.

22 MR. WILLIAMS: I think the fact -- and we keep
23 talking about the Polk factors and the Polk case. But
24 these factors were actually incorporated into the
25 statute, so it's actually a statutory obligation now.

1 We're not just talking about a case.

2 THE COURT: You said these are factors to be
3 considered?

4 MR. WILLIAMS: Yes.

5 THE COURT: They're not, they're not necessarily
6 controlling, but you have to -- each one.

7 MR. WILLIAMS: They're not.

8 Your Honor, one of the other issues, which is kind
9 of interesting, is the nature and willfulness of the
10 default. Your Honor, candidly, the only witness that
11 we've had testify today can't tell you whether or not
12 the missing Defendant is alive or dead.

13 And I think if we're talking about the nature of
14 the default, aren't we talking about the willfulness of
15 the Defendant not to appear in court? I don't -- you
16 know, he indicated he could be dead. So maybe that's
17 not a willful default.

18 And the last deal, Your Honor, is the additional
19 expense -- and I'm trying to move quickly. And that is
20 the same argument, that there's, the testimony, if
21 you're talking about additional expense, there is no
22 credible testimony -- no offense intended -- but there
23 is no credible testimony as to what's going on now in
24 regards to searching for him. There is just the
25 statement, "Well, we have been looking for him." There

1 is no testimony, "We went out such an and such a day, we
2 went out on such and such a day."

3 So Your Honor is asked to seize upon this figure
4 and determine the appropriate amount without that.

5 **THE COURT:** The Court has been given some help in
6 that, because, as we all know, bonds are a contractual
7 relationship between the State, the Defendant, and the
8 surety.

9 **MR. WILLIAMS:** Yes, sir.

10 **THE COURT:** And apparently that original contract
11 determined what the value of the services would be,
12 which also implies what the value of the default would
13 be.

14 **MR. WILLIAMS:** Or whether or not it's liquidated
15 damages, Your Honor.

16 **THE COURT:** Well, my point is that we're trying to
17 determine how much, you know, if it wasn't important
18 that Mr. Hinojos be there for whatever reason, for
19 either being sentenced or perform, maybe the bond would
20 have been a personal recognizance --

21 **MR. WILLIAMS:** Yes, sir.

22 **THE COURT:** -- and we wouldn't be here today.

23 But apparently somebody thought it was worth at
24 least 66,000 and all that, and, of course, they
25 collected a premium for it. That's the bonding

1 business.

2 MR. WILLIAMS: Yes, sir.

3 THE COURT: All right. But anyway ---

4 MR. WILLIAMS: That's all I have, Judge.

5 THE COURT: Okay. And I don't mean -- and I say
6 these things more for just rumination that something to
7 be considered as you address the issues that you might
8 be looking at.

9 All right. Anything else?

10 MR. WATERS: Yes. Very quickly in reply.

11 With regards to the appearance versus performance
12 distinction, I don't know that it's necessary in this
13 particular case. Because what I'm focusing on in
14 bringing up the fact of the subsequent prosecution and
15 then the State's prejudice in that regard is referring
16 to factor number three in Polk factors, which is, quote,
17 (reading):

18 Any prejudice or additional expense resulting to
19 the State.

20 And so that's, underneath that, regardless of how
21 you want to characterize the bond, underneath that
22 factor this additional prejudice, this additional
23 expense can be fairly considered by the Court regardless
24 of if you want to get into whether or not we're talking
25 about an appearance bond or a performance bond.

1 With regards to the polygraph, I think that that's
2 part of what we are talking about. As Mister,
3 Lieutenant Dorsey stated, Mr. Hinojos wasn't here to ask
4 about this. The guy passes the polygraph. We can't go
5 back to this individual and talk to him, so ultimately
6 we just had to dismiss the charge, and so that I think
7 doesn't really advance his position in that regard.

8 And finally, with regards to the idea that again
9 the State has to present some sort of detailed, you
10 know, time sheet or something of that nature, it's an
11 Unpublished Opinion, but it was one from Your Honor,
12 Alexander Macaulay, and Mr. Williams was on this case,
13 *State v. Lavender*. And in that particular case the
14 Court of Appeals, and again in an Unpublished Opinion,
15 but they flatly held that there did not need to be any
16 sort of detailed cost analysis, and that was the claim
17 that was raised at that particular time.

18 I think that that would be unduly burdensome on the
19 State if they have to keep a time sheet or something
20 along those lines. I think it's enough to say, as we
21 did here, that significant man hours were expended in
22 this regard and that for that reason the entire amount
23 should be estreated.

24 THE COURT: Can we have a copy of it?

25 MR. WATERS: Yes, sir.

1 MR. WILLIAMS: Of course, this is old law, Your
2 Honor. It's 2009.

3 MR. WATERS: It's actually from the same case,
4 Judge, the same Ice Cream case.

5 THE COURT: All right. So you are suggesting it's
6 the law of the case?

7 MR. WILLIAMS: I wish.

8 THE COURT: All right. Anything else?

9 MR. WATERS: No, sir.

10 MR. WILLIAMS: None from the Defendant, Your
11 Honor -- from the Respondent.

12 THE COURT: I know what your time frame is, and I
13 appreciate it and I look forward to hearing from you.
14 You do have my email that's in the desk book?

15 MR. WATERS: Yes, sir.

16 MR. WILLIAMS: Yes, sir.

17 MR. WATERS: Thank you, Judge.

18 MR. WILLIAMS: Thank you, Your Honor.

19 THE COURT: All right. This is a matter of some
20 consequence and needs to be resolved.

21 Yes, sir.

22 (Discussion off the record.)

23 MR. WILLIAMS: Your Honor, do you need to order an
24 expedited transcript?

25 THE COURT: Robin, what's your schedule like?

1 (Discussion off the record.)

2 **THE COURT:** Okay. This has taken long enough. It

3 will be 30 and 15 days upon receipt of the transcript.

4 (Whereupon, the hearing was adjourned at

5 approximately 1:00 p.m.)

6 ** End of Requested Certified Transcript of Record **

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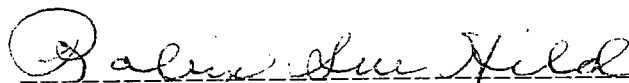
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions/State Grand Jury, for Greenville County, South Carolina, on the 17th day of August, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 21, 2012

A handwritten signature in cursive script, reading "Robin Sue Hild", written over a horizontal line.

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Alexander S. Macaulay, Circuit Court Judge

Indictment Nos. 2005-GS-47-15, 2005-GS-47-23, 2005-GS-47-24

State of South Carolina Respondent,

v.

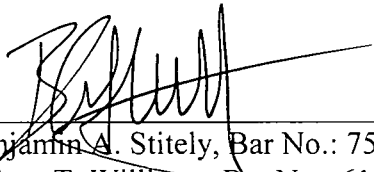
Mario Ramos Hinojos, Defendant,
and
Richard G. Thompson d/b/a All-Out Bail Bonding, as Surety, Accredited Property and Casualty
Ins., Surety,
of Whom Richard G. Thompson d/b/a All-Out Bail Bonding and Accredited Property and
Casualty Ins. are the Appellants.

Appellate Case No. 2013-000567

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed
to be included by any of the parties and not any other material and complies with the Supreme
Court's Order dated August 13, 2007.

June 26, 2013



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of Whom Richard G. Thompson d/b/a All-Out Bail Bonding and Accredited Property and Casualty
Ins. are the Appellants.

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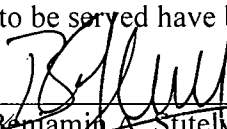
PROOF OF SERVICE

I certify that on June 26, 2013 I have served three copies of the within Record on Appeal
upon the individual(s) named below by hand delivering three copies of same to the address(es)
below:

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
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P.O. Box 11549, 1000 Assembly St, 5th floor
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I further certify that all parties required to be served have been served.

June 26, 2013



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